than to a question of fact, and it was for the jury to decide the facts; but under this Bill the Judges would have to decide, not only upon questions of law, but likewise upon questions of fact. That was open to a serious objection, and although they might pass this Bill under the very exceptional circumstances in which it was introduced to their notice, he doubted whether they should make it a precedent for similar legislation applying to other matters.

The Hon. J. L. HART remarked, that honorable members would learn from papers that had been laid on the table, the precise agreement with Messrs. Brogden, that had led to the framing of the Bill. (The honorable member read paragraph 1 of No. 9 of paper D., No. 19 C.)

The Hon. Mr. MILLER thought that, although the honorable gentleman had made some valuable suggestions, he had been entirely out of order in all that he had said. The subject under consideration was the Government Contractors Arbitration Bill. He would ask the honorable gentleman if he ever knew of a Government contract which could not be broken by the contractor, and whether he ever knew of the Government going into an arbitration case without getting the worst of it, or of regulations being made so stringent as to prevent a contractor from breaking them. He had had some experience in such matters, and he was bound to say that he had scarcely ever seen a Government work about which there was not some dispute, and if the dispute was submitted to arbitration, the Government had to pay heavy damages. The Bill was in reality the outcome of a great deal of consideration and negotiation between the Government and Mr. Brogden. The fact was, that the arbitration under the original contract was of an extremely cumbrous character, for the usual course had been adopted that was pursued in carrying out public works in this colony, under which the Government had invariably come out worsted. Various proposals had been made for settling any disputes that might arise. One was, that they should be referred to the Governor of a neighbouring colony, but he did not think that would have been a very good way to get over the difficulty. The plan of submitting disputes to the Judge of the Supreme Court in whose district the matters to be determined might arise, was a good one. No one could be more reluctant than he was to impose duties of that kind upon the Judges; but he really did not know of any valid objection that could be taken to it, if the Judges had consented to act as arbitrators. The disputes would be settled by the highest judicial authorities, and it appeared to him that if any one should object to the course of so referring matters in dispute, it certainly should not be the Government, but rather the contractor. It was quite obvious that an infinite amount of cost and trouble would be saved in this way, and he thought that there would be very little doubt in any one's mind that the Judges' award would be in accordance with truth and justice. Under these circumstances, he believed the Bill was a wise one, and the Council might feel sure that, in passing it, they would be adopting the best possible course for settling any disputes in connection with the Brogden contracts.

The Hon. Mr. HALL trusted the Council would pass the Bill, although, no doubt, some fault might be found with the system which it was proposad to introduce. He thought, before they denied the expediency of passing it, it would be right for honorable gentlemen to consider the whole circumstances of the case for which the measure was to provide a remedy. Although the negotiations which led to the preparation of the Bill did not pass under his personal observation, he was acquainted with the fact that very protracted personal negotiations had taken place; and in referring to the great desirability of having some comparatively cheap and speedy method of settling disputes with contractors, he would allude to the fact that in every one of the Australian colonies in which large railway works had been carried out, no large railway contract had been brought to a conclusion without its being followed by an expensive and protracted lawsuit. If the Bill were rejected, its rejection would be productive of great evil, and it would be very much to be regretted. The system adopted had been agreed to by both parties, and he would not be travelling beyond the record in saying it had met with the approval, or, at any rate, the cordial acceptance, of the Judges. He did not say that was so in every individual case, but that it was so generally was the impression left on his mind by the conversations on the subject which had taken place between himself and his late colleagues. He thought it was a step in the right direction, that provision should be made, at the outset of such large undertakings as they were now embarking in, for the purpose of avoiding protracted and expensive litigation, which had followed the execution of the large contracts in the Australian colonies, and he thoroughly believed that very much good would result from the passing of the Bill.

Hon. W. W. Johnston: Was Mr. Brogden in New Zealand when the Bill was in print?

Mr. Cave believed he was, but to a certain extent enquiry was lulled by submitting the Bill to Mr. Travers, who naturally thought he would be made acquainted with the fact if it were proposed to make any alterations in the Bill. It was quite possible, also, that Mr. Reid, in introducing the clauses which were objected to, might not have foreseen the construction which the Courts would ultimately put upon them. Mr. Reid, in his memorandum of E.–3, 1878, to some extent supports that view of the case, when he says:—

> Although in reporting on the facts connected with this matter, I am not called upon to point out that the Messrs. Brogden have never experienced any *actual* inconvenience from the provisions of the Act,—their complaints being as yet matters of assumption,—nor to state what I conceive to be fallacies in the arguments put forward by them.

This paragraph would appear to favor the conclusion that Mr. Reid then considered Messrs. Brogden's view of the Act as a fallacious one. It seemed to him (Mr. Cave,) that Mr. Reid himself did not take exactly the same view of the Act which has since been taken by the Judges. Possibly Mr. Reid's intention was, that the Act should limit the time during which the Judges might be called upon to sit as arbitrators. This construction was shared in by many eminent lawyers both in this colony and at Home. Both Mr. Travers and Mr. Macassey, who were well known in New Zealand, held the same views on the subject. That was to say, they were of opinion that the jurisdiction of the Court was not ousted by the Act, but that the Act was intended to provide a supplementary remedy. Mr. Beresford, an eminent English barrister, gave a similar opinion. This was, of course, given upon an *ex parte* case. Since then, the Appeal Court of the Colony had given a decision to the effect that the Act did oust the jurisdiction of the Law Courts. That judgment was delivered in November last. Having considered the circumstances under which the Act was passed, it now became desirable that the operation of the Act in reference to the claims put forward by Messrs. Brogden, should be considered by the Committee. The bulk of the contract work was completed in the early part of 1876, and the accounts for those works were sent in in February of that year. An account of the Waitara and New Plymouth Railway contracts was sent in on the 21st February, 1876, as were also the accounts for the Picton and Blenheim Railway, and the Napier and Pakipaki Railway. Some objection having been taken to these accounts, amended accounts were sent in in May, 1876. These accounts were accompanied by a letter, to the following effect:—

SIR,— Wellington, 10th May, 1876.

As we find that the accounts for the Waitara and New Plymouth Railway Contract, forwarded to you with our letter of 21st February, 1876, have been sent in in a form not consistent with the terms of the contract, we now beg to hand you corrected accounts.

You will observe that the amounts now sent show that we claim—(1.) Contract amount; (2.) Additions to contract; (3.) Interest charges; (4.) Station accommodation; (5.) Interest charges on station accommodation; and, after deducting cash received from Government, there remains a balance still due to us of £3,072 18s. 10d., and request you will issue instructions for that amount, to be paid to us with as little delay as possible.

I have, &c.,

JOHN BROGDEN & SONS,

The Hon. the Minister for Public Works. (*per* JOHN HENDERSON).