

In reply to a remark of a member of the Committee, Mr. Cave said his object was to state the case to the Committee as fairly as he could, and not to put forward only those points which were favorable to the Messrs. Brogden. In February, 1877, it was arranged that Mr. Henderson and the Engineer-in-Chief should meet with the object of going over the items in dispute. Two or three meetings took place, but the Engineer-in-Chief found that he was without sufficient information on the subject, and, as it seemed likely that the items in dispute would be very numerous, he decided that it would not be advisable to go on with the investigation in that form. At the same time Mr. Henderson desired Mr. Travers to come to a definite understanding, if possible, with the Government as to whether the latter intended to plead the limitation clause. It may be mentioned here that about this time Mr. Henderson (possibly unfortunately for Messrs. Brogden) consulted another solicitor (Mr. Barton) on the subject of the claims, who appears to have taken a somewhat different view of the case from that which Mr. Travers took, and, acting on that solicitor's advice, a letter was written by Mr. Henderson to the Government, on the 8th March, 1877. He (Mr. Cave) had not yet had an opportunity of perusing that letter, but he believed that it contained certain insinuations against the good faith of the Government, and against the Solicitor-General, which ought not to have been made, and for which he believed there was no foundation. There could be no doubt, that whatever was done by Mr. Reid, in connection with that Bill, was done in perfect good faith, and with no intention of taking unfair advantage of the Messrs. Brogden. He (Mr. Cave) thought he would be able to satisfy the Committee that Messrs. Brogden themselves considered this letter of the 8th March, 1877, a most ill-advised one, and felt that the charge which it contained should not have been made. There could be no doubt that the Messrs. Brogden did not in any way endorse Mr. Barton's statements, inasmuch as they did not follow his advice in subsequent proceedings. On the contrary, they very soon afterwards ceased to employ him. Mr. Alexander Brogden always expressed very great regret that the letter of the 8th March was written, and, on more than one occasion, expressed a wish that it could be withdrawn. He (Mr. Cave) hoped that any remarks he might make, or might have made, might be so construed as to indicate that he had no charge to make against the Solicitor-General, but at the same time he thought that Mr. Reid did not fully appreciate the difference that the alteration in the Act would make in the rights of Messrs. Brogden. In reply to the letter of the 8th March, 1877, a letter was written on the 19th of the same month by Mr. Ormond, the Minister for Public Works, as follows:—

GENTLEMEN,—

Public Works Office, Wellington, 19th March, 1877.

I have to acknowledge the receipt of your respective letters of the 8th and 16th instant, the former of which has caused considerable surprise to the Government. On the 31st January last your legal adviser, Mr. Travers, addressed a letter to the Solicitor-General, proposing a certain course of action under "The Government Contractors Arbitration Act, 1872," for the purpose of determining disputes between the Government and ourselves in respect to the execution of your contracts.

To this letter a reply was given assenting to the course proposed, and I was therefore wholly unprepared for the proposals contained in your letter of the 8th instant, and the tone in which they were made. I do not propose to discuss with you the merits and probable working of the Act referred to, but I must be allowed to say that in my opinion your letter is based upon a misconception as to its effect and operation. Indeed I am advised that the Act only prescribes the necessary machinery for giving effect to the terms of the contracts entered into by your firm respecting the reference of dispute to Judges of the Supreme Court. Nor can I look upon the past action of the Legislature, nor the past or proposed action of the Government, as having in any degree prejudiced the investigation of your claims against the latter.

Respecting those portions of your letter of the 8th instant which speak of "threats of repudiation," and which contain remarks tending to show that the Government had, in procuring the passage of this Act, knowingly obtained unfair advantages over you, I can only say that your statements are erroneous and wholly uncalled for.

On behalf of the Government I entirely disclaim any wish to embarrass you in taking proceedings under the Act of 1872; but that Act is now law, and I am advised that the request made by you to dispense with its provisions could not be entertained; and I am further advised that the admissions and consents you ask for are unreasonable, and such as the Government have no power to agree to. It must be recollected that the Government is not in the position of a private person. There is a duty to the public, whose affairs the Government are called upon to administer, which must be considered paramount.

To the course formerly proposed on your behalf, and assented to on behalf of the Government by the Solicitor-General, I am prepared to adhere; but I cannot consent to such terms for conducting the references as would preclude the Government from having a thorough investigation of the matters alleged to be in dispute.

I have, &c.,
J. D. ORMOND.

Messrs. John Brogden and Sons, Wellington.

That letter would show that he (Mr. Cave) was right in his opinion, that at the time the letter was written the Solicitor-General did not take up the position, that the 31st clause of the Act was an absolute bar to the prosecution of Messrs. Brogden's claims in the courts of law. That letter, however, clearly showed and stated that it was not in the power of the Government to dispense with the provisions of the Act. That being the position which the Government took up, and Mr. Henderson being advised that the reference under the Act was merely a supplementary mode of procedure, and that it was still open to the Messrs. Brogden to proceed under the Crown Redress Act in the ordinary way. A letter was written to the Government to the effect that the Messrs. Brogden intended taking proceedings under the provisions of the Crown Redress Act, in respect of their claim under the Waitara and New Plymouth contract. The letter referred to ran as follows:—

SIR,—

Wellington, 20th March, 1877.

We beg to inform you that we have instructed our solicitors to take proceedings against the Government in the Supreme Court by petition under "The Crown Redress Act, 1871," such proceedings being for the purpose of testing the validity of "The Government Contractors Arbitration Act, 1872."

We have therefore the honor to request that the consent of His Excellency the Governor may be given in the manner required by section 2 of the "Crown Redress Act," to a petition setting forth the particulars of our claims for work and labour done, and for materials supplied by us for Her Majesty the Queen, and also in a second count setting forth one or more of the contracts entered into between Her Majesty the Queen and ourselves, together with the breaches of contracts on which we claim damages.

We are unable to send with this letter the form of petition, but, as the action will be simply to recover for our work, labour, and materials, such action being sufficient to raise the question of the jurisdiction of the Supreme Court outside "The Government Contractors Arbitration Act, 1872," we presume the Government will intimate their intention of either granting or withholding such consent, without requiring the formality of awaiting the preparation of the petition itself.