

As the above amount, together with the over-payment of £4,582 15s. 1d. on the Waitara and Invercargill Contracts (together, £7,908 0s. 1d.) will nearly absorb the amount applied for, the Minister is unable at present to direct any further payment to be made.

The equity of this decision will, no doubt, meet with your concurrence.

I have, &c.,

JOHN KNOWLES,

Under-Secretary for Public Works.

Messrs. Brogden & Sons, Wellington.

At that time Messrs. Brogden were claiming further sums as being due to them on both the Waitara and Invercargill Contracts—in fact, on all their contracts—and it was admitted that the Government owed them £7,910 4s. 11d. on the Moeraki Contract. Now, surely, the proper course for the Government to have pursued, in respect of the deductions which they claimed, would have been to have taken steps to obtain a decision under the Government Contractors Arbitration Act. The Government wished to make certain deductions, and it was a question in dispute whether they were entitled to make them. By a previous decision of the Court of Appeal it had been settled that the right of set-off did not belong to the Crown, and that the Crown had no right to retain, by way of set-off, moneys which were due from them to a contractor, against sums which were alleged to be due to the Government by the contractor on other contracts. Therefore the Government, by arbitrarily setting off these sums which they alleged were due to them by the contractors, against the sums which they admitted were due to the contractors on another contract, were not only committing an illegal Act, but they were also evading the provisions of the Government Contractors Act themselves. This, too, was long after the six months, during which proceedings should have been commenced, had expired. But since that date what course had been pursued by the Government? From time to time investigations had been made by the Government officers into these claims, and the result of every investigation up to the present time had been to show that something was due to the contractors.

*Hon. Dr. Pollen*: Do you mean upon every contract?

*Mr. Cave* could not say that, but he knew that that was the result in regard to several of the contracts. He could not say that there had been an investigation in the case of every contract.

*Sir John Hall*: You only contend that the Messrs. Brogden have been underpaid on the whole of their contracts?

*Mr. Cave* said that what he wished to show was, that the position the Government took up in February, 1876, had not been maintained up to the present time. In 1877 the Government claimed that they had a right to "set-off" against Messrs. Brogden's claims, the amount that they were alleged to have been overpaid on the Waitara and New Plymouth and Invercargill Contracts. They charged that alleged over-payment as a "set-off" against the sums which they admitted to be due to Messrs. Brogden on the Moeraki Contract.

Later still, on 28th February, 1877, a further certificate was forwarded to Messrs. Brogden, which changed the figures again, but Messrs. Brogden had not been informed how the figures last referred to had been arrived at, nor why the variation in the figures had been made. That certificate showed that the sum of £698 5s. 7d. was due to Messrs. Brogden by the Government. It covered six of the contracts, and showed that there had been some sort of an investigation into them at any rate.

*Mr. Macandrew*: In respect of what contract was the over-payment made?

*Mr. Cave*: The Invercargill and Mataura, and Waitara and New Plymouth Contracts.

*Mr. Macandrew*: What was the sum alleged to be overpaid?

*Mr. Cave*: The sum alleged to have been over-paid on the Waitara and New Plymouth Contract was £2,572, and on the Invercargill and Mataura Contract the amount was stated to be £2,009 16s. 5d. Then the balance was made up by the penalties which the Government claimed to deduct on account of the Moeraki Contract, while at the same time they admitted that they owed money to Messrs. Brogden on account of that contract. In connection with these penalties, he (Mr. Cave) would read a letter, which was written on 25th March, 1881, by Messrs. Brogden & Sons to the Hon. R. Oliver, Minister of Public Works, at Wellington. It was as follows:—

SIR,—

Wellington, 25th March, 1881.

We have the honor to refer to a letter received from the Government (P.W. 76-5640), under date 12th March, 1877, which states that the Minister for Public Works directs that sums amounting to £3,325 5s., will require to be deducted from moneys due to us on account of certain penalties having been incurred on the Moeraki Contract, and Kakanui and Island Creek Bridges Contract.

We cannot recognize the right of the Government to make any such deduction, as the delays were caused entirely by the action of the Government, over which we had no control.

We give a few of our reasons for coming to this conclusion.

The earthwork in several positions was delayed for several months at the request of the Government, and delays have been occasioned by slips in cuttings, deviations of line, alterations, extras, and additions.

The Kakanui and Island Creek Bridges were not ordered until May, 1874, and the Mill Stream Bridge not until 29th April, 1875, and there were several variations from the plans, ordered after the bridges had been commenced. The Kakanui Bridge was for a long time delayed waiting for the Engineer to decide on the foundations.

The detail drawings of the Otepopo Bridge were not received until August, 1875, and the mode of construction of the Waimotu Bridge was not decided on by the Engineer until October, 1875.

An extra bridge was ordered in October, 1876, and both earthwork and permanent-way were materially delayed on account of the Kaka Bridge, the last alteration for which we did not receive until 11th October, 1876,—nine months after the contract time had expired.

The deviation at Otepopo delayed the commencement of that portion of the work for five months.

The Government did not decide to line the tunnel at Otepopo until June, 1874, after which the material had to be prepared.

The platelaying and ballasting were delayed for several months for want of rolling-stock and permanent-way material which the Government should have supplied; and in February, 1876, we had to ask for six miles of rails and fastenings, which had not then been supplied to us.

In addition to the above, the extras and additions to the contracts would alone entitle us to more than twelve months' extension of time.

We do not burden you with further particulars, of which, however, we have a great number.

We have, therefore, to request that the amount withheld from us improperly as penalties be paid to us without delay.

We have, &c.,

JOHN BROGDEN & SONS.