

7. It is hardly necessary that I should specify in detail the items of reduction, or of the additions which were agreed to, so as to produce an ultimate sum of £10,583. It will probably answer every purpose to state the general result, which was as follows:—

| | £ | s. | d. |
|---|---------|----|----|
| Taking Smith's tender as the starting point, we have | 13,615 | 0 | 0 |
| Deductions agreed to, amounting in value to | 3,630 | 12 | 2 |
| <hr/> | | | |
| Reducing original tender to | £9,984 | 7 | 10 |
| Additions agreed to | 598 | 12 | 2 |
| <hr/> | | | |
| Original tender after reduction | £10,583 | 0 | 0 |

8. Martin alleges that the reductions made in the work to be performed were not equivalent to the reduction in the price, and that these reductions were accepted by him, as surety, only because the Colonial Architect assured him that they were fair.

It is perhaps convenient that at this point I should consider the weight of this allegation, because it is one of the questions raised in the petition.

It is very probable that Martin did not exercise an independent judgment in deciding upon becoming surety under the new arrangement. He himself states that he has very little knowledge of matters connected with building contracts, and the question is, on whose advice did he accept this modification? The only answer to this question which appears to me at all reasonable is, that he relied in this case, as he had done in the case of Smith's original tender, on the opinion of Smith himself. There is certainly nothing to show that the Colonial Architect had anything to do with it, beyond a general expression of opinion, in answer to inquiries by Martin, that he thought Smith had a paying contract.

Smith, on the other hand, on whose judgment I assume that Martin acted, had full opportunity for making himself acquainted with all the details of the arrangement before entering into it. I think that the following circumstances go far to prove that he did, in fact, consider the effect of the proposed modifications very carefully.

The proposed alterations were submitted to Smith on March 22, 1869. Several interviews took place between him and the Colonial Architect on the subject; until at last, by a letter dated March 30, 1869, Smith accepts the bill of quantities, as specified in a paper to which he affixed his initials, B. S., stipulating, however, that the ultimate result shall not be below £9,950.

The bill of quantities so agreed upon was, in the first instance, applied to the tender of Abbott, the lowest of all; and the following was the result of the calculation that was made on this basis:—

| | |
|----------------------------|---------|
| Abbott's tender | £12,966 |
| Reductions proposed | 5,032 |
| <hr/> | |
| Effect of reduction | £7,934 |
| Additions proposed | 1,476 |
| <hr/> | |
| Reduced contract | £9,410 |

Thus the first proposal brought out a result which fixed the price lower than that stipulated for by Smith, apparently with a view of acceding to the stipulations required by Smith; another calculation was made, and this time Smith's tender of £13,615 was taken as the basis, and the result arrived at was the sum above stated, £10,583.

I refer to these details because it appears to me that they serve to show how the negotiations which led to the arrangement were conducted; and I think I am warranted in coming to the conclusion that Smith, at least, was not hurried or surprised into an undertaking which cool reflection would have shown him was imprudent. Whether prudently or imprudently, at all events it was with his eyes open that he entered into the arrangement.

It appears to me, moreover, that Martin himself virtually abandons any claim on the ground that he was deceived as to the effect of the amended contract. He does not dispute, but on the contrary distinctly admits, that his bond for £1,000 would have been forfeited if Smith had failed to complete his contract. No plea is raised, with regard to this, on the ground of delusive representations. Now, if such a plea is valid as a ground for exemption from subsequent losses, it is equally valid as a ground for claiming to be released from his bond. If valid at all, it was valid when Smith became insolvent; but at that time Martin, so far from claiming a release, acknowledges, in fact, that he was justly liable for £1,000 unless he could make arrangements for carrying on the works; and not only does he acknowledge this, he assumes it as a matter of course.

It is hardly conceivable that Martin would have gone through the trouble and anxiety which ensued on Smith's failure in order to save himself from this loss, when he might summarily have informed the Government that, as he had been induced to become surety by the representations of the Colonial Architect, which had proved delusive, he would refuse to pay the bond.

One great cause, as it appears to me, of the complications which have arisen, consists in the fact, that Smith was, considering the magnitude of the work, what may familiarly be called a man of straw. It was understood from the first, by all parties, that he would be obliged to depend, in order to fulfil his engagement, on Martin for advances of money during the progress of the works; and thus Martin became mixed up with the details of the contract in a manner which placed him from the first in the position of contractor, as well as surety, until at last he appears to have become more interested in the undertaking than the contractor himself. I find, for example, a letter from the Colonial Architect to Martin, dated 24th November, 1869—that is to say, before Smith's insolvency, and when there was no dispute as to who was in charge of and responsible for the works—in which Martin is addressed as if he were contractor, and urged, as the works were progressing unsatisfactorily, to put on additional workmen, as though they were to be in the employ, not of the real contractor, but under Martin himself.