

On the other hand, what would have been his position had he abandoned the contract altogether, or rather allowed Smith to abandon it, and so forfeited his bond? His losses would, instead of the above £1,578, have been as follows:—

	£	s.	d.
Forfeiture of bond	1,000	0	0
Advances in cash to Smith	700	0	0
Advances in materials	1,215	0	0
	£2,915	0	0
Deduct above losses as supposed	1,578	0	0
Balance in favour of keeping the contract in existence	£1,337	0	0

I will now consider the second alternative; that Martin was employed outside the contract at the risk and cost of the Government.

Martin, as will be seen from the evidence taken, alleges that this was his true position, and he supports this allegation, not by a reference to any documents, but, on verbal agreements which he states were made between himself and the Colonial Architect, though the Colonial Architect states directly the opposite.

It is certain that the Colonial Architect never understood any arrangement of this sort to have been made. He throughout treats the original contract as in existence to the end; and he invariably addresses Smith either directly or impliedly as still contractor. It is true that Smith soon after his insolvency begins to sign his letters "for J. Martin," as though he believed that Martin had taken over the management of the works, whether as contractor or otherwise does not appear.

In the absence of any documents to confirm Martin's view of his position, the only means of deciding between contradictory statements of this sort is to inquire what actually took place.

First, I would draw attention to that part of the evidence which relates to the proposals suggested at the time of Smith's insolvency. From this it will be seen that the Colonial Architect did actually propose to Martin an arrangement exactly similar to that which he affirms was made. It was this: that the contractor should be got rid of, and that Martin should carry on the works for the Government, paying to the Colonial Architect $2\frac{1}{2}$ per cent. (I suppose) for his supervision. The correspondence shows that the question of putting an end to the contract, under clause 13 of the general conditions, had been under discussion some time previous to Smith's insolvency, for there is a letter referring to this from the Colonial Architect to Martin, dated 4th January, 1870, from which I gather that at that time Martin had declined the proposed arrangement. When Smith became insolvent however, the negotiations appear to have been renewed, and some sort of an agreement seems to have in fact been come to, but only conditionally on its being sanctioned by the Government.

When, however, the proposal was submitted for the approval of the Government, that approval was withheld.

It will be seen from Smith's evidence that this refusal on the part of the Government was known to Martin at the time. Moreover, Martin himself denied that any such arrangement had been made, as will be seen from the following circumstance:—About the 9th February, 1870, a statement appeared in the *Advertiser*, to the effect that Martin had placed the works under the charge of Mr. Clayton. The obvious meaning of this was, that the contract with Smith had become void, and that from henceforth the works were to be carried on by the Government. This is exactly what Martin now contends was actually the case. The attention of the Government, however, having been drawn to the paragraph, the statement was brought to Martin's notice, and he was requested to give explanations on the subject,—whereupon Martin wrote back to say (11th February, 1870) that the statement was inserted without his knowledge, and that its contents were untrue. This letter, as will be seen by the date, was written almost immediately after Smith's insolvency, when the arrangement is alleged to have been made.

I will now refer to another circumstance which occurred a year after—on 3rd February, 1871. On that day it appears that a case was heard in the Resident Magistrate's Court, Wellington—*Petford v. Martin*, in which the plaintiff seeks to recover a debt due to him from Martin, on account of materials supplied for Government House. Martin's defence in that case is, that Smith is the contractor, and that his only connection with the works is that he is surety for Smith. Smith corroborates this statement; and thus it is evident that both then believed that the contract had not been broken, that Martin had not the management of the works, and that Smith was still contractor, and this notwithstanding the practice adopted by the latter of signing "for J. Martin."

It will be seen from the review which I have now given, that the evidence, whether oral or documentary, which I have taken, has produced on my mind an impression decidedly unfavourable to Martin's claim, whether for the particular amount stated, or for any other sums on account of losses alleged to have been sustained by the contract for building Government House.

I would wish, before concluding this report, to draw attention to the great discrepancy between the estimate made of the value of the building by the Colonial Architect and the sums which, according to Martin's account, must have been spent on the completion of the work. As will be seen from the early portion of the report, Martin states that he has actually expended out of his own pocket the sum of £14,905, over and above any expenditure incurred before, but, as I understand it, exclusive of the advances made to Smith. This added to the sum paid to Smith, and the amount for materials supplied by third parties, will amount to £19,033 12s. 2d. expended on the building, as follows:—

	£	s.	d.
Payments to Smith	2,674	0	0
Bills unpaid as above	1,454	12	2
Expended by Martin	14,905	0	0

£19,033 12 2