

REPORT OF THE COMMISSIONER

APPOINTED TO INVESTIGATE

THE CLAIM OF MR. J. MARTIN

ON ACCOUNT OF

CONTRACT FOR THE NEW GOVERNMENT HOUSE.

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF
HIS EXCELLENCY.

WELLINGTON,

—
1872.

REPORT OF THE COMMISSIONER APPOINTED TO INVESTIGATE THE CLAIM OF MR. JOHN MARTIN.

No. 1.

The Hon. W. GISBORNE to Mr H. J. TANCRED.

SIR,— Colonial Secretary's Office, Wellington, 30th March, 1872.
I have the honor to transmit to you the accompanying instrument, under the hand of His Excellency the Governor in Council and the Seal of the Colony, appointing you to be Commissioner to investigate the claim of Mr. John Martin, on account of the contract for the new Government House.

The original records of this office on the subject are transmitted for your information.

H. J. Tancred, Esq., Wellington.

I have, &c.,
W. GISBORNE.

Enclosure 1 in No. 1.

G. F. BOWEN, Governor.

WHEREAS, on the thirty-first day of August, 1871, John Martin, of Wellington, merchant, presented a petition to the House of Representatives, stating,—

That in the month of February, 1869, an advertisement was published, inviting tenders for the erection of a new Government House in Wellington; and

That a number of tenders were put in for the said works, and

That the petitioner, before these tenders were put in, had consented to become surety for Mr. Ben Smith, of Wellington, in case his tender of £13,615 for the said works was accepted; and

That the petitioner had been informed that shortly after the tenders were put in, Mr. W. H. Clayton, architect to the Commission, sent for the said Ben Smith, and informed him that his (the said W. H. Clayton's) estimate for the works was £10,583 only, and that he could not, therefore, accept any of the tenders put in, but that he would reduce the quantity and character of the work, so as to bring it within the estimate and leave a fair margin of profit, and would then give to the said B. Smith the preference as a contractor; and

That the said W. H. Clayton then made alterations in the said works, and, as the petitioner was informed, stated to the said Ben Smith that such alterations would so reduce the quantity and character of work to be done as would enable him to contract for the same at the estimate made by the said W. H. Clayton, leaving a fair margin of profit; and

That the said Ben Smith, as the petitioner was informed, relying on the statement of the said W. H. Clayton, accepted his proposals, and at once entered into a contract for the proposed works; and

That the said Ben Smith, and the petitioner, and one James Osgood, as his surety, on the eighth day of April, 1869, entered into a bond for the performance of the said contract; and

That when the petitioner became security for the said Ben Smith, he was informed by the said W. H. Clayton, and fully believed, that the reductions made by the said W. H. Clayton in the works would so reduce the cost of the same that the sum of £10,583, as the contract price thereof, would leave to the contractor a fair margin of profit, and the petitioner avers that but for such assurance he would not have become surety for the said Ben Smith; and

That the said Ben Smith, shortly after entering into the said contract, commenced the said works; and the petitioner relying on the statements of the said W. H. Clayton, provided the said Ben Smith with large sums of money and large quantities of materials, to enable him to carry on the said works, and

That the said Ben Smith, during the progress of the said works, became bankrupt; and

That, at the date of his bankruptcy, the said Ben Smith had received on account of the said works the sum of £2,674, leaving a balance to be received on completion of the said contract of £7,909; and

That immediately after the bankruptcy of the said Ben Smith, the petitioner saw the said W. H. Clayton at his request, and the said W. H. Clayton told the petitioner that, in order to save him from loss under the bond, he would permit petitioner to complete the works, and again assured petitioner that the same would be completed within the original estimate of £10,583, leaving a fair margin of profit; and

That the petitioner, relying on such assurance, consented to carry on the said works for the Government, and did in effect carry on and complete the same to the full intent and meaning of the said contract, and to the satisfaction of the said W. H. Clayton, as architect of the said works, and believed himself in the position of a person employed to carry out the work, and that the performance was given to the petitioner solely in order to save him from loss as a surety under the said bond; and

That the petitioner found that the price at which the said contract was taken was inadequate for the work, and the same would, as in effect it did, cost the full amount for which the said Ben Smith had tendered, and that the reductions made by the said W. H. Clayton were wholly inadequate to reduce the cost of the said work to the sum of £10,583; and

That the petitioner has expended in the completion of the works the sum of £14,080 13s. 8d., and during the progress thereof received on account of the same works the sum of £6,805 5s. 3d., and upon the completion thereof applied to the Government for payment of the sum of £7,275 8s. 5d., being the difference between the amount received by him as aforesaid, and the actual cost of the work, the petitioner being willing to submit to a deduction of £1,000 in respect of the said bond; and

That the Government refused to pay the petitioner the amount claimed by him as aforesaid, and thereupon the solicitor for the petitioner had a correspondence with the Government in relation to the said claim—a copy of which correspondence is set forth in the said petition; and the petition further stated,

That the petitioner, by reason of the refusal of the Government to adopt either of the courses proposed to them for settlement of his claim, and the absence of any tribunal competent to entertain the petitioner's claim, was entirely without redress, and thereupon did petition the House of Representatives; and by the said petition, the petitioner prayed that the House would take his case into consideration, in order that he might obtain redress of the grievance of which he complained.

And whereas the said petition was referred to a Committee of the said House, which, on the fourth day of October, 1871, reported to the said House in the words following; that is to say—

“That the Committee are of opinion, from the evidence adduced, that Mr. Martin has no claim against the Government, but desires to record their opinion that there is no reason why the Government should not consent to be sued by Mr. Martin in the Supreme Court, if he thinks fit.

“The Committee especially recommends that the Government should not consent to refer the case to arbitration.”

And whereas, on the said report being brought up, the said petition was referred to a Select Committee of the said House to report thereon, which reported to the said House as follows:—

“1. Mr. B. Smith contracted for the erection of Government House for the sum of £10,583, besides receiving the old buildings.

“2. The petitioner became surety for the contractor under a penalty of £1,000, but was not bound to complete the work.

“3. The contractor having become insolvent, the Government could have enforced the penalty of £1,000, and would then have had to finish the work at their own cost.

“4. The petitioner might, on the contractor having become insolvent, have paid the £1,000 penalty, which would then have been his total loss on the transaction.

“5. The petitioner, instead of so doing, was induced to carry on and complete the work, in the belief that he might thereby avoid the whole or a portion of that loss.

“6. The value of the work done, according to the statement of the Colonial Architect, is £16,245 12s. 9d.

“7. The petitioner and the Government respectively ought to be placed in the same position as if the petitioner had forfeited his penalty and the Government had been obliged to carry out the work on their own account.

“That the Committee do recommend that the Government, in carrying out the principles of the above resolutions, do refer the whole question between the Government and petitioner to arbitration.”

And whereas, after the bringing up of the said report, the said House resolved as follows:—

“That there is not sufficient evidence before the House to enable it to concur in the report of the Select Committee on the petition of John Martin, especially as the reports of the two Committees who have reported on the petition are in direct opposition; and that the Government should, during the recess, appoint a committee to inquire into the case, and examine witnesses on oath, and report to the House next Session.”

Now know ye, that, reposing especial trust and confidence in your ability, I, Sir George Ferguson Bowen, the Governor of the said Colony, with the advice and consent of the Executive Council thereof, do by these presents authorize and appoint you, HENRY JOHN TANCRED, of Christchurch, to be Commissioner to inquire into the case alleged in the said petition, and to report your proceedings and opinion touching the premises; and with the like advice and consent, I do enjoin you, within three calendar months after the date of this Commission, or so much sooner as the same can conveniently be done (using all diligence), to certify to me under your hand and seal your proceedings and your opinion touching the premises; and I do, with the like advice and consent, order that the Commission shall continue in force, and that you, the said Commissioner, may proceed in the execution thereof from time to time, and at any place or places, although the same be not continued by adjournment.

Given under the hand of His Excellency Sir George Ferguson Bowen, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand and its Dependencies, and Vice-Admiral of the same; and issued under the Seal of the said Colony, at Wellington, this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and seventy-two.

W. GISBORNE.

Approved in Council.

FORSTER GORING,
Clerk of the Executive Council.

No. 2.

REPORT on the PETITION of JOHN MARTIN, presented to the House of Representatives on the 31st day of August, 1871.

IN virtue of the Commission issued by His Excellency the Governor, which, as will be seen by the evidence, was opened on the second day of April, I proceeded to take evidence on the facts connected with the contract for the building of Government House, Wellington, out of which the claim made by John Martin arises.

I have carefully examined the documents, consisting of letters, memoranda, and agreements, and others relating to this case; and I have examined the following witnesses:—Mr. Martin, the petitioner; Mr. Ben Smith, the contractor for the work; Mr. Clayton, the Colonial Architect; Mr. Vine, the Clerk of the Works; Mr. James, second Clerk in the Resident Magistrate's Office, Wellington. No further witnesses having been produced on either side, I assume that I have been enabled to inquire into and to consider all the points of importance bearing upon the case.

The claim made by Martin is for the sum of £7,242 18s. 1d., made out as follows, viz. :—

	£	s.	d.
Expended by him in cash	14,905	12	9
Interest and contingencies	1,505	0	0
	<hr/>		
Deduct—			£16,405 12 9
Payments received	£8,599	12	4
Material unused and given credit for	563	2	4
	<hr/>		
			9,162 14 8
	<hr/>		
Balance claimed	£7,242	18	1

The course which I have prescribed to myself in conducting this inquiry, has been to ascertain, in the first place, not whether Martin is entitled to this or to any other particular sum, but the grounds upon which a claim of any kind may rest; and then, supposing such a claim to be established, to indicate the best means of determining the amount.

It will be convenient, in the first place, to recall shortly the material points relied upon by the petitioner. The following will, I think, be found to be a fair summary of them. That—

1. Ben Smith having tendered to perform the work for £13,615, was induced by representations made to him by the Colonial Architect, acting for the Government, to take the contract at the reduced sum of £10,583, in consideration of certain reductions being made in the quantity and character of the work to be performed.

2. That the reductions so made were not in proportion to the reduction in the price.

3. That, in reliance upon the assurances of the architect to the effect that Smith was agreeing to a profitable contract, Martin was induced to become the contractor's surety, and to enter into a bond for the due completion of the contract.

4. That the contractor having after some time become insolvent, and thus unable to complete the contract, Martin was in danger of forfeiting his bond and incurring a loss of £1,000.

5. That, with a view of saving himself from this loss, and again relying upon the assurances of the Colonial Architect, to the effect that the work would be completed within the original contract price of £10,583, Martin was induced to undertake the completion of the contract.

6. That Martin supposed, in so undertaking to carry on the work, that the original contract was virtually void when the contractor became insolvent; and that he (Martin) was in the position of a person employed by the Government to complete the work, not at his own risk but at that of his employer—viz., the Government.

The two last of these allegations contain, as I understand it, the point to be decided; for if, on the one hand, Martin was induced by representations made by the Colonial Architect, acting for the Government, to take over a contract which the event proved was a losing one, he may fairly, though only as a matter of grace, expect that his case should receive at least a favourable consideration. But if, on the other hand, the contract was at an end (when Smith became insolvent), and the Government was carrying on the works on its own account, only employing Martin as its agent, then it appears to me that Martin is clearly entitled to whatever sums he may have expended in that capacity.

These, then, are the two points to which I have principally directed any attention in conducting the inquiry.

It will perhaps be convenient here to give a short history of the transactions in connection with this contract which appears to me to bear upon the question before me.

1. Tenders having been called for, several contractors came forward; but all the tenders being in excess of the estimate made by the Colonial Architect, viz., £10,000, none were accepted in their original form.

2. The Colonial Architect, rather than incur the delay which would have resulted from calling for fresh tenders, entered into negotiations with those of the contractors whose tenders differed least from his estimate.

3. The three lowest tenders were as follows:—

Abbott	£12,966
Ben Smith	13,615
Whiteford	14,588

4. Mr. Abbott, as the lowest tenderer, was communicated with first, for the purpose of ascertaining whether some arrangement could be come to with him, by reducing the work to be performed so as to bring the contract price within the estimate; but Mr. Abbott being unable to attend personally at Wellington, and the Government declining to treat with the representative named by him, the next lowest tenderer was applied to.

5. It may be noticed here that Ben Smith, who, as specified above, tendered for £13,615, put in his first tender for £15,615. It seems, however, to be admitted, on all sides, that the former sum was that for which he was willing to contract, and all subsequent negotiations proceeded on this assumption. It does not seem quite clear how the mistake arose, but, as it is not suggested by Martin that the reduction caused him any injury, and as he does not bring it forward as a ground of complaint, I do not think it necessary to do more than merely notice the fact.

6. After several interviews between the Colonial Architect and Smith, an agreement was at last arrived at, whereby Smith agreed, in consideration of certain reductions in the original specifications, to take the contract for the sum of £10,583.

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.

Such being the relation in which the parties stood to each other, Martin, at a very early stage of proceedings, began to make advances to Smith, and besides making himself responsible for a large quantity of materials, supplied from time to time, he placed at Smith's disposal, at the bank, a cash credit for £500, which was afterwards extended to £700.

As a security for these advances in money and materials, Smith made an assignment to Martin of all moneys coming due at the Treasury under the contract. This assignment was dated 16th October, 1869, and from that date progress payments were made as they became payable, no longer to Smith but to Martin. As a further security, Smith made over his interest in a certain leasehold property; but this security, as appears from Martin's evidence, was practically valueless.

It is about this time that the Colonial Architect begins to make serious complaints to Martin about the unsatisfactory progress of the works, and several warnings are given that, unless an improvement takes place, the Government will exercise the power it possesses of closing the contract. The result of this step would have been to cause Martin to forfeit his bond.

This power was given to the Government by the contract, or rather by the general conditions attached to and incorporated in the contract. The 13th clause of those conditions was to the effect that, if the contractor failed to use due diligence in the prosecution of the works, the Government might take the works out of the contractor's hand, and employ some other person. The 16th clause gave a similar power in case the contractor became bankrupt.

I have now, I think, described the state of affairs during what I may call the first period; that is to say, from the time when the tenders were issued to the time when Smith became insolvent, so far as it bears upon the question to be described. That question is, as I apprehend, not whether the revised contract was taken at too low a price, for this could only be properly decided by an expert; but whether the contractor was misled by the Colonial Architect, and induced by the representations of that officer to accept a contract which he would have rejected, if he had had an opportunity of exercising an independent judgment.

I think what I have already stated is sufficient to prove that Smith had ample opportunities of considering the nature of the agreement into which he was entering before the contract was signed, and that he did in fact consider it very carefully.

I will here recapitulate shortly the dates which show this. The first proposals for the amended contract were made certainly not later than March 22, 1869; the bill of quantities was accepted March 30, 1869; the contract was signed April 3, 1869; Martin executed his bond as surety, April 8, 1869.

I think if it is shown, as, in my opinion, it is shown, that Smith had full time to consider how far he might safely enter into the contract, it would be manifestly unwise for the Government to make good any losses that he or his surety might incur from an error in judgment. Moreover, it would be unfair to the others who tendered for the same work, some at least of whom appear to have been themselves responsible persons. For these reasons, it appears to me not necessary to consider whether the contract actually entered into was a profitable or unprofitable one for the contractor; and consequently I attach no weight to that part of the claim in which Martin alleges that he ought to be held harmless from any losses which ensued from his entering into the bond.

I will now proceed to consider the second claim made, which may be stated as follows:—Martin being desirous of saving himself from the forfeiture of his bond, which, owing to Smith's insolvency, was imminent, endeavoured to extricate himself by taking over the prosecution of the work into his own hands, believing, from the assurances given to him by the Colonial Architect, that he would be able to complete the work within the contract price.

That it was only after incurring heavy liabilities that he found that he had been deceived, and that a much larger sum was required to complete the work than the amount still to be received.

That, as he had been misled by the representations of the Colonial Architect, as agent for the Government, the Government ought to hold him harmless from all loss, and treat him as a person employed outside of the contract, only taking credit, in reimbursing him for the expenses incurred in that capacity, for the amount of the bond for £1,000.

This, it appears to me, is substantially the view taken of the case by the Select Committee which reported to the House November 7, 1871. I think, however, that in the reasons adduced for arriving at the conclusion at which they arrived, one material fact has been overlooked. The Committee states (section 4) that "The petitioner might, on the contractor having become insolvent, have paid the £1,000 penalty, which would then have been his total loss on the transaction." It will be manifest that, by withdrawing altogether, Martin would not only have forfeited the £1,000, but he would have lost all hope of recovering the advances which he had made; and consequently he had at stake considerably more than £1,000. The following are established in the evidence: £700 cash credit, and £1,215 value of materials supplied to Smith. Thus his certain loss, at the time of Smith's insolvency, supposing the contract to have been put an end to, would have been—

Forfeiture of bond	...	...	...	...	...	...	£1,000
Cash credit	...	...	...	...	...	...	700
Materials supplied	...	...	...	...	...	...	1,215
							<u>£2,915</u>

Thus Martin's total loss on the transaction would have been, not £1,000, but little short of £3,000. It is important to bear this in mind, because it is a material point in estimating the inducements which may be supposed to have led him to continue his connection with the works.

Martin states that it was understood between the Colonial Architect and himself that the contract with Smith was virtually, if not formally, broken when Smith became insolvent, and that then the works were carried on at the cost and at the risk of the Government. Of this understanding there is no documentary evidence whatever in the papers which I have had before me, and therefore, in considering the force of this statement, I can only draw inferences from admitted facts.

The only document which I can find to strengthen, even by implication, this view of the under-

standing is a letter of the Colonial Architect to Martin, dated February 8, 1870, that is to say four days after Smith's bankruptcy. In that letter, Martin is addressed as though he had then come into the place of the contractor, and that the contract with Smith had been put an end to. He is requested to give immediate orders for materials required from Auckland, and is informed that a vessel is sailing that evening.

For the following reasons I do not lay much stress upon the evidence afforded by this letter as to the position of the parties:—

1. The Colonial Architect explains in his evidence (Question 566, *et seq.*) that Martin was then making arrangements (which, however, never were made) for completing the works himself, and that he (the Colonial Architect) had promised to give him a list of the articles required.

2. Before Smith's insolvency, and at a time when Smith was admittedly and exclusively in charge of the works, the Colonial Architect sometimes addressed Martin, and not Smith, requesting him to furnish what was wanted; as for example, the letter above noticed, of 24th November, 1869.

3. As will be seen by the evidence, Smith was not at that date in Wellington, he having felt it desirable, from the circumstances in which he found himself, to leave the town temporarily. He could, therefore, not be communicated with. I have given more prominence to this letter than I think its value, as affecting the case, appears to me to deserve, because it is the only document which has come under my notice in any way calculated to support the view taken by Martin of his position.

Beyond this letter, there is nothing, so far as I am able to discover, in the papers relating to this case to favour the supposition upon which Martin relies, that Smith was out of the contract, and that he himself had come into the charge of the works, whether in the character of Smith's successor under the contract, or as a person employed under the Government. It will be seen that Martin does not appear to be very clear himself as to his exact position, or as to the exact effect of the understanding alleged to have been come to between himself and the Colonial Architect. I refer to his answers to questions Nos. 7 and 36 *et seq.*, from which it appears that he understood generally that he was not to lose anything.

I will consider both of these suppositions. The first is, that although the contract was never formally abrogated, and Smith remained throughout the nominal contractor, yet that the contract was virtually at an end when Smith failed, and Martin then became the real contractor, working under Smith's contract.

The second is, that the contract being, as above, virtually at an end, Martin was employed outside the contract.

As to the first of these suppositions, that Martin was working under the contract, I have already given my reasons for thinking that no claim for compensation can arise on the ground that the contract was an unprofitable or losing contract. Supposing, however, that such a claim could be considered valid, it seems to me clear that even then the amount which would satisfy it would be much smaller than that contended for. It could, at all events, not exceed the difference between the sum which might be ascertained to be fair, and the sum at which the contract was actually taken.

In order to determine this amount in the manner most favourable to Martin, I will concede every point that may be urged on the other side, and assume, for the sake of argument, that the sum originally tendered for, namely, £13,615, is a fair remuneration for the work performed under the contract. This way of putting the case cannot possibly be disputed by Martin, because he accepted it when he agreed to become surety for Smith. Moreover, as a further proof that this is not to him an unfair price, it must be remembered that Messrs. Abbott and Co., a firm represented as perfectly responsible, tendered for a lower sum. In taking this sum as the fair one, it will be observed that I do not take into account the reductions in the quantity and character of the work which were subsequently made.

On the other hand, supposing these concessions to be made, it must also be conceded that Martin can have no claim whatever to consideration if his calculations were erroneous, because it is not pretended that undue influence, such as the assurances of the Colonial Architect, had any effect in inducing him to agree to this sum of £13,615.

I will now proceed to show how Martin would be situated, supposing him to have taken over the contract at the time of Smith's insolvency. In the first place, he had the value of the work already performed by Smith, which may be measured by the payments already made. Next he had to the good a quantity of materials which have never been paid for, and which appear to have been used in the building; and then he had the balance still payable on the contract. These sums are as follows:—

	£	s.	d.
Payments already made to Smith	2,674	0	0
Value of materials not paid for—			
Vennell and Mills	217	13	4
Turnbull and Reeves	900	0	0
Bannatyne	124	0	0
Wages	100	0	0
Smaller sums, total	112	6	10
		1,454	12 2
Balance payable during progress of work		7,909	0 0
			<hr/>
Total values received		£12,037	12 2

Thus the difference between the money or money's worth actually received, and the sum which, on the grounds above stated, Martin cannot escape accepting, is the difference between £13,615, and £12,037, or £1,578; and even this claim could only be made on assumptions which appear to me utterly unreasonable—

- 1st. That a contract which he had had full time to consider was not binding on him.
- 2nd. That the reductions made in the quantity and character of the work were in reality no reductions at all.

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 2½ 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

I do not include in this sum the amount charged by Martin for interest and contingencies. On the other hand, the Colonial Architect's valuation of the building, as it stood after completion, was £16,245, less profit added £1,476, or total cost price £14,769, being £4,264 less than that arrived at by taking Martin's statement as a basis of calculation.

According to the calculations of the Colonial Architect of the values paid, it would appear that the payments actually made, either in money or materials, almost exactly correspond with the value at which he has estimated the building. These payments in money and materials are as follows:—

Paid to Smith	...	...	...	...	...	£2,674
Value of materials on the ground to the benefit of contractor	...	...	...	...	...	1,829
Materials supplied by Government	...	...	...	...	...	314
Total payments to Martin	...	...	...	...	...	<u>9,954</u>

Total payments £14,771

Thus it would appear, according to the valuation of the Colonial Architect, that the cost price of the building has been paid either to Smith himself, or to Martin as his assignee. But over and above these payments, value has also been received by the contractor from third parties, in the shape of bills unpaid, to the amount of £1,454 12s. 2d., as specified above; and if this sum be added to the values paid by Government, it would appear that the contractor had received payment to the following amount:—

	£	s.	d.
Payments as above	14,771	0	0
Bills unpaid	1,454	12	2
	<u>£16,225</u>	<u>12</u>	<u>2</u>

It will probably hardly be necessary for me to explain that the difference between the original contract price for the building, £10,583, and the value of the building at its completion, arises from additions made during the course of the works to the original specifications, under separate supplementary contracts, agreed to by the contractor. I assume that it is not contended that these were taken at too low a price, under the influence of delusive representations by the Colonial Architect, as is alleged in regard to the main contract. On this assumption, I have throughout omitted all reference to these supplementary agreements.

I am totally at a loss to account for the discrepancy between the estimate of the value of the building by the Colonial Architect and the alleged expenditure incurred by Martin. Whether it arises from some unaccountable error on one side or the other, or from an unnecessarily wasteful expenditure on the part of the contractor, I am unable to decide. I am bound, however, to think, when I compare the amount made up of money, materials, and labour which have been put into the building, which, as stated above, comes to £16,225, and the Architect's valuation so nearly coinciding with this sum, viz. £16,245, that the estimate must be nearly correct. It will, no doubt, be remarked that the former of these sums allows nothing for profit, while the latter includes a profit of 10 per cent.; but it will be seen from the evidence of the Colonial Architect that it is not usual, in tendering for contracts of this nature, to include in the sum named in the tender, any profits. The contractor is supposed, in making his arrangements with his sub-contractors, to save sufficient to leave him a reasonable profit.

I shall probably not be considered to be going beyond the limits prescribed by my commission, if I draw attention to the case of those who, without having had any connection with the contract, have sustained heavy losses by supplying materials and labour for which they have never, or at least had not when the Commission was sitting, received payment.

As I have already stated, bills for the aggregate amount of £1,454 12s. 2d., the particulars of which are given above, are still unpaid. For these the contractor appears to be alone responsible; but as he has become bankrupt, there is very little prospect of their being settled. It may be a matter for the consideration of the Government whether, as a matter of grace, though not of right, the case of these persons should receive a favourable consideration. I think such a course might be justified on two grounds.

In the first place, it will be seen from the comparison of the estimated value of the building, £16,245, and the payments made to the contractor, viz. £14,771, that the Government would appear to be gainers to the amount of £1,474, or of about £20 more than these claims, which amount to £1,454.

In the second place, these persons might reasonably suppose that they were safe in supplying materials or giving their labour to a contractor who had undertaken so large a contract and who, therefore, might be expected to have at his command capital sufficient to satisfy their demands.

I enclose herewith, for the information of His Excellency, the following papers:—

1. The Commission issued by His Excellency, dated 28th March, 1871.
2. Minutes of Proceedings taken under Commission.
3. Evidence taken—numbered 1–10 inclusive.
4. Report and Evidence of Public Petitions Committee, 4th October, 1871.
5. Report of Select Committee, 7th November, 1871.
6. Evidence (copy) taken before Select Committee.
7. Schedule (copy) Smith's Assets and Liabilities—the claims of third parties ticked off.
8. Statement of Expenditure, &c., by J. Martin.
9. Sub-contracts entered into by J. Martin.

22nd June, 1872.

HENRY JOHN TANCRED,
Commissioner.

MINUTES OF PROCEEDINGS AND EVIDENCE.

TUESDAY, 2ND APRIL, 1872.

The Commission was opened and read.
Adjourned to the following day, at 11 o'clock a.m.

WEDNESDAY, 3RD APRIL, 1872.

The Commission sat at 11 o'clock.
Mr. Quick, solicitor for Mr. Martin, applied for an adjournment until Monday, the 8th instant, in order to enable Mr. Martin to be present.
Adjourned to Monday, 8th April, at 11 a.m.

MONDAY, 8TH APRIL, 1872.

The Commission sat at 11 o'clock.
Mr. Brandon appeared for Mr. Martin, and *Mr. Attorney-General* for the Government.
Mr. Martin was in attendance, and examined on oath.
Adjourned to next day, at 11 a.m.

TUESDAY, 9TH APRIL, 1872.

The Commission sat at 11 o'clock.
Mr. Martin was in attendance, and further examined on oath.
Mr. Ben Smith in attendance, and examined on oath.
Adjourned to Thursday, 11th April, at 2 p.m.

THURSDAY, 11TH APRIL, 1872.

The Commission sat at 2 o'clock.
Mr. Quick appeared for Mr. Martin.
Mr. Attorney-General opened the case for the Government.
Mr. Clayton, Colonial Architect, in attendance, and examined on oath.
Adjourned to the following day, at 4 p.m.

FRIDAY, 12TH APRIL, 1872.

The Commission sat at 4 p.m.
Messrs. Brandon and *Quick* appeared for Mr. Martin; *Mr. Attorney-General*, for the Government
Mr. Clayton, Colonial Architect, in attendance and further examined on oath.
Mr. Ben Smith, in attendance, and further examined on oath.
Adjourned to 5 p.m. on Tuesday, the 16th instant.

TUESDAY, 16TH APRIL, 1872.

The Commission sat at 5 p.m.
Mr. Brandon appeared for Mr. Martin; *Mr. Attorney-General*, for the Government.
Mr. C. B. Vine, Clerk of Works, in attendance and examined on oath.
Mr. W. P. James, second Clerk in the Resident Magistrate's Office, Wellington, in attendance and examined on oath.
Mr. Ben Smith in attendance, and further examined on oath.
Mr. Clayton in attendance, and further examined on oath.
Mr. Attorney-General summed up for the Government.
Mr. Brandon replied for Mr. Martin.
The Commission rose.

MONDAY, 8TH APRIL, 1872,

Mr. Brandon appeared for Mr. Martin.
Mr. Attorney-General appeared for Government.

Mr. MARTIN, examined on oath.

1. *Mr. Brandon.*] In April, 1869, did you not become security for Ben Smith, the contractor for building Government House?—I did; I was joint security with Osgood.
2. The liability under the bond was for £1,000?—It was so, I think. There was some mistake. In the original I think it is £500, put in by Mr. Felix Wakefield.
3. Did Smith enter upon the work?—Yes.

4. And afterwards become bankrupt?—Yes.
5. At what time?—About four or five months after he commenced the building.
6. Don't you recollect when? No, I do not. It might possibly have been longer than that.
7. When you heard what had happened to Smith—that is, his failing—did you receive anything from anybody relative to the contract?—I think I got a letter from Mr. Clayton. I am not sure, but at all events I was sent for.
8. In consequence of that, did you see Mr. Clayton?—I did.
9. State, as nearly as you can, what took place.—He said, “Smith has gone through the Insolvency Court; what is to be done about Government House?” If you could see what I said before the Select Committees, it would show you what took place. I cannot say more than that. It was just this in a few words: Mr. Clayton said something must be done, and he said “You won't lose any money, and if you like I will carry on the work, and let Ben Smith go. Give me £100 to pay the wages, and it will be all right.” I gave him a cheque for the £100, and I went on then until the building was completed.
10. Did anything further take place at that meeting?—No; that was all, I think.
11. After that, who carried on the work?—The works just went on as they were before. Mr. Clayton said, if I remember right, “You had better send to Sydney and Melbourne, and all parts of the Colony for material. Don't let it stand for that.” I did send to Melbourne and all parts of New Zealand, and put the material on the ground in a few months.
12. Did you see Mr. Clayton at any time before the insolvency relative to the contract?—Yes, we had conversations twice or thrice a week about it.
13. Any conversation as to interfering with the contract?—No. Nothing was said about me taking the contract, before the insolvency.
14. *Mr. Attorney-General.*] You do not say that no conversation took place between you and Mr. Clayton relative to Smith's going on with the work?—Of course there was. Many times he said “Smith is not a man of capital to go on with the work.”
15. *Mr. Brandon.*] Any conversation about your carrying it on?—No; not until Smith failed.
16. Then, when Smith failed, you received a letter from Mr. Clayton?—Either a letter or message, but I think a letter.
17. Then he suggested your carrying on the works?—Yes. That is how I understood it.
18. And Mr. Clayton would see to the works?—Yes.
19. Was anything said as to your carrying it on as surety or contractor?—No. I do not think there was. I have just told you, in a few words, how the matter rested.
20. You did not carry it on as surety for Smith I mean you did not undertake his contract?—No, I did not undertake his contract. Mr. Clayton said to me, “Everything is all right. You won't lose a farthing. Instead of having to pay £1,000, you will be all right.”
21. After that time, who supplied all the materials?—I did. As I said, I sent to Melbourne and all parts of New Zealand, and I have my vouchers for everything I paid.
22. With whom was the subsequent correspondence carried on respecting the progress of the works?—I think with Mr. Clayton.
23. After this, was not the correspondence carried on respecting the works between Mr. Clayton and yourself, and Mr. Smith on your behalf?—Yes; I always had a copy of anything Mr. Clayton wrote, and Smith also had one. Whatever he wrote to me he sent a *fac-simile* copy of to Mr. Smith.
24. And in reply, Smith always signed for you?—I think so. Smith, of course, and Mr. Clayton arranged about anything necessary for the works going on.
25. What was the amount of the original contract and the expenses?—The contract was £10,583, and the extras, £1,315 5s.; making together £11,898 5s.
26. You have received £11,471?—Smith and I have received that on account of the work.
27. In the meantime, until the completion, Smith acted as builder?—Yes.
28. Did you find all the money for the labour, and supply the materials?—Yes.
29. Were you in the habit of seeing Mr. Clayton during that period?—Yes, every few days.
30. Did any further conversation take place between you and Mr. Clayton after the first interview as to the mode of carrying on the works, with respect to the liability?—No; I do not think so. I said to Mr. Clayton, several times, that the buildings were costing a good deal of money. I was several thousand pounds in advance then.
31. Was reference made at any time to the bond?—No; I do not know that there was.
32. Any reference at anytime to you, carrying on as surety, to complete the contract?—No; I do not think there was.
33. Was it understood by you from the first interview with Mr. Clayton about carrying on the works after Smith's bankruptcy, that you were carrying on on your own account as contractor?—I can hardly say that, but I suppose you would infer it. I carried on when Mr. Clayton said I should not lose a penny by it, but I did not understand that I was contractor.
34. After that conversation you had no written contract—no further explanatory conversation as to the mode in which you were carrying on; that is to say, that you supposed you were carrying on to complete Government House, independent of the original contract?—With a full understanding in my own mind that I was to be compensated for every shilling I spent on the place.
35. Independent of the original contract?—Yes.
36. *The Commissioner.*] You say you understood that you were carrying on the work outside the contract?—Yes.
37. That the contract was virtually broken, and that Mr. Clayton employed you, in fact?—That was my understanding.
38. Now, on what grounds did you understand that?—Mr. Clayton just said to me, “If you carry on, you won't lose a half-penny.” That was just the grounds I went on, and advanced the first money, and carried on ever afterwards.
39. *Mr. Brandon.*] Did any conversation ever take place between you and Mr. Clayton as to excess over and above the contract when you ascertained that the amount exceeded?—As I said before,

we had conversations every two or three days, and Mr. Clayton knew very well how things were going on.

40. Do I understand that no conversation ever took place between you and Mr Clayton as to the amount expended by you being in excess?—I think I said to him several times “There are a great many thousands on the wrong side now.”

Mr Martin, on inspection of a ledger, explained the state of the account for Government House to be—

	£	s.	d.
Expended by him	14,905	12	9
Received by him	8,599	12	4
Balance	£6,306	0	5
Less unused material	563	2	4
	£5,742	18	1
Plus interest and contingencies	1,500	0	0
Now claimed	£7,242	18	1

41. All the material that you claim for was really used and expended at Government House?—It was, except that for which I have given credit in the books.

42. *Mr. Attorney-General.*] Will you produce the correspondence that took place between you and Mr Clayton previously to any notice of the insolvency?—I do not think there was any.

43. Do I understand you to say that you do not recollect any letters between you and Mr. Clayton previous to Mr. Smith's insolvency?—There might have been, but I think most of the communications were verbal before Smith's failure.

44. Were you not constantly written to and spoken to by Mr Clayton as to the incapability of Smith to go on, by reason of his not being able to pay his men?—Yes; Mr Clayton told me that several times.

45. Before Smith's insolvency?—It might be so.

46. Immediately after the contract began?—No; not for a long time. Not for many months after.

47. Who took the first progress payment?—Smith, I think, took the first three or four.

48. You had no orders at all?—No; not for a long time. I did not get an order until Smith failed.

49. What was the date of the contract?—The 3rd April, 1869.

[Contract and drawings, and also bond, put in.]

50. There is a mortgage to you of some land, and also of receipts from the Government House contract, by Smith, for a cash credit at the Bank for £500. When did you become liable to the Bank for this £500?—I suppose it must have been about the same time as the deed. I could not tell you to a day or week.

51. Was it not a long time before the date of the deed?—I dare say it was some time before that, but it could not have been very long. I think I gave him one for £500 and another for £200.

52. That cash credit bond is at an end now?—Of course it is.

53. Has it been returned to you?—I do not think I have taken it away yet.

54. Irrespective of that cash credit bond, at the time you received this mortgage, was Smith otherwise in your debt?—No; I think not.

55. Had he been in your debt and paid the debt off?—No; he never was.

56. Then you did not advance him any money from the time you entered into the surety bond?—I must have given him those £500. He must have wanted them for the Government House.

57. Now I ask you, whether you had advanced in any way any moneys to Smith after you had entered into the sureties?—Only that; only just the cash credit. I do not think there is anything in my books against him.

58. You did not advance him any moneys, or guarantee him any bills?—No. I paid that money to the Bank of Australasia.

59. What I wish to know is this:—From the time when you entered into the surety for the bond of £1,000, did you indorse, or accept, or were you connected with any bill transactions with Smith, up to the time of his giving this deed?—No; I do not think so. I could not speak positively until I looked.

60. Did Smith tell you how he was going to get the money to carry on this building when you became surety?—No.

61. Did you ascertain what means he had to carry on the building?—I did not. I ascertained this far, that I went up to Mr. Clayton, and he assured me he thought it a good price for the work, and there were to be reductions. It was supposed to be taken at a good price, and of course a man getting a good price for a thing of that kind will always get credit.

62. Now, what other deeds were made besides this?—I don't think any more. Mr Brandon made all the deeds I had.

63. You have no recollection of any other deeds between you and Smith except this one?—No.

64. This is an assignment of all the moneys coming due?—I believe it is. I never read the deed. I left it to Mr. Brandon.

65. You have no recollection of a deed assigning the contract to you?—I have no recollection.

66. Do you know whether you gave notice of this assignment to the Treasury?—I think that was done at once. I did not do it myself, but I think it was done. I might have taken it up in my hand and shown it to them.

[Guarantee of Ben Smith to John Martin put in.]

67. Who was the other surety?—Osgood.
68. What had Mr. Osgood to say to it?—I do not think he had anything to do with it.
69. Did Osgood become insolvent?—I think so. He went to Melbourne, and became insolvent there, I think.
70. Do you recollect anything about a further surety being obtained in place of Osgood?—No.
71. Did you receive notice of Osgood becoming insolvent?—I think I heard of it. He was not insolvent here.
72. You say that when you first intended to become surety you went to Mr. Clayton?—I did. It was before I signed the document with Mr. Felix Wakefield.
73. Did you go more than once?—I think not. I might have been passing, and gone into his office.
74. Do you recollect what took place?—I recollect this: That I asked Mr. Clayton if there was any danger in my becoming one of the sureties, and he said he thought Smith had a good price for the work.
75. Did he give any reason why he thought Smith had a good price?—I don't recollect.
76. Was anything said about the tenders?—No doubt. He said something about there being a reduction in the price of the old house which would make Smith's contract a very good one.
77. Did he say anything about there being any tenderers lower than Smith?—I do not recollect.
78. You do not recollect that he said there were other tenderers lower than Smith, but the Government did not care to accept them?—He might have said so, but I don't recollect.
79. Did he say to you, when you were talking about this, that you would have to use your own judgment as to becoming surety?—He might have said that.
80. You do not say he did not say it?—No.
81. Do you recollect whether he said it or not?—I do not.
82. Do you recollect admitting he said it, in conversation with Mr. Clayton or somebody else, one day on Lambton Quay?—It is so long a time ago that I do not recollect.
83. Since the Committee of last Session sat?—I do not think so.
84. Do you recollect, when Smith became insolvent, any occasion on which you were written to, informing you that if the work was not completed according to contract, you would be called upon to pay the surety?—I can't recollect whether there was a letter, or whether I was sent for. But at all events I went up. If there was a letter it will be here.
85. Do you recollect whether Mr. Clayton, as architect, and the Government, had not always refused, on all occasions, to treat you as the contractor; but insisted that Ben Smith was in law the contractor, and they could treat no one else as such?—Yes; but that was after a certain time.
86. When was the first time that it was brought to your knowledge that the Government insisted upon Smith being treated as the contractor?—Not until the work was nearly finished. Not until I had all the material on the ground. After the arrangement with Mr. Clayton, I sent for everything that the house required to Melbourne and all parts of New Zealand, and the thing went on as fast as it could. It was not for a long time after that.
87. What is a long time?—Many months.
88. After progress payments?—I think it must have been many months. I recollect saying to Mr. Clayton that I was £4,000 or £5,000 in advance then for material for the house.
89. You say £4,000 or £5,000 in advance, what do you mean? If you were doing the work as a contractor, why did you have progress payments?—I did not go into the particulars at all.
90. Do you wish to tell the Commissioner that the payments you received were not in reference to the progress payments?—So they were, no question of that. Mr. Vine, the Inspector of the Works, said whatever was done, and whatever he said, I got.
91. Do you tell the Commission that you did not know you were being paid on the basis of the contract between Smith and the Government, namely, 75 per cent. on the estimate of the Architect?—That was the kind of payment for the first three or four, but after that it was understood that if I wanted money I could not have it on the contract.
92. You say that because of the conversation between you and Mr. Clayton, you understood that you were working outside the contract?—You may call it working outside the contract; but I say this: I went on considering that I would not lose a farthing. That was my impression.
93. Do you mean to say you were to be a contractor, doing work according as a builder would be who had no express contract?—You see, I was not a builder. I understood that I was not to lose any money; that I was to finish the house, and I did so.
94. Then you were not going on as a builder, but on some express contract with the Government that they were to guarantee you against loss?—I did not suppose the word "guarantee" was used, but that was my understanding.
95. What you understood was, that you were not entering into a new contract, but carrying out Smith's contract, under arrangement with the Government that, in the event of your not being able to finish the work for the price in the contract, you were to be paid the difference?—That is how I understood it.
96. That you were not to have a profit?—There was not a word about that either. My idea was, that instead of losing the £1,000 surety, I would carry on the work, because Mr. Clayton said it would be better to carry it on, as there would be no loss.
97. At that time were you not an assignee of the contract?—I do not know.
98. At any rate you were assignee, of all the moneys coming out of it?—I do not think so.
99. Had Smith ever repaid you that £500?—No.
100. Not up to this day?—No.
101. You say that these payments were made on the basis of Smith's contract?—I do not know; I suppose they were.
102. You know they were, don't you? You knew all along they were?—Not in the first instance; not the first two or three payments; not until I found myself so heavily in.
103. You never wrote to the Colonial Secretary about this question with Mr. Clayton?—I

believe I did not : but if I did, a copy of the letter will be here. I have seen the Colonial Secretary myself, too, several times.

104. Did you ever come into my office?—Several times.

105. And were you told in my presence that no person could be looked on as the contractor except Ben Smith?—I think you said so, and I said “Then what am I to do?”

106. Was it said that the Government could only look on you as a party to the bond?—I think so, but that was at the finale.

107. Was it not in April?—No; I think it was at the end.

108. Was there not very much discussion as to the position of the builder in law, when he was unable to carry on the contract himself?—I expect there was.

109. Have you no recollection about it?—I recollect discussing several points, and possibly that was one; but that did not mend matters then, for they were too far gone.

110. Although at that time you were informed that you could not be looked upon in any other capacity than that of surety, how was it that you did not say at once “I have been deceived,” and so go no further, but claim to be guaranteed the expenditure?—That is all very well; but at that moment I had all the material on the ground, and contracts out to finish the work.

111. You did not do so, at any rate?—No; I thought it would be no use when I had all the contracts out and the material to finish the work.

112. Do you say you had no men on wages?—There were only about half-a-dozen men on wages. If you look at the wages sheet you will see. It was nearly all contract work.

113. Did you write protesting against this view?—No; I think not. I had several interviews with yourself and Mr Gisborne; that is all.

TUESDAY, 9TH APRIL, 1872.

Mr. MARTIN in attendance, and further examined.

114. *Mr. Attorney-General*] You made an erroneous statement yesterday, which I have no doubt you would like to correct. You stated you had no bill transactions with Mr Smith, except the cash credit for £500. I find incidentally that it was otherwise.—I did not speak positively on the subject. There were some bills of Mr. Clayton with Mr. Smith.

115. There is one for £70 on the 3rd of February, 1870; what was that for?—I suppose it was for commission. Mr. Clayton sold a piece of land for me, for which I think there was £25 commission, and I think the rest was for Government House.

116. Due when?—I do not recollect.

117. Was it a renewal?—I think some portion was a renewal; but Smith will be able to tell you about that.

118. Was it for commission due under Smith's contract?—It must have been.

119. Why did you pay this commission which Smith owed?—Well, I do not know why I did it. Mr. Clayton said I had better do it, and so I did it. He said he was pushed for money and would have to press Ben Smith, and under the circumstances I wrote it out and signed it.

120. Was this after Smith's failure?—That I cannot say. The dates will prove that without asking me.

[*Mr. Attorney-General to Mr. Clayton*: Was Martin's indorsement on the original Bill?—No.]

121. Here is a note from Mr. Clayton to you on the 31st January, 1870, saying—“Dear Sir,—I should like to see you at once with Mr. Ben Smith, who takes this note, in reference to finishing the new Government House. I have a proposal to make which will, I think, be satisfactory to all parties.” Do you recollect that?—I do not recollect receiving it; but if I did, I must have gone and seen Mr. Clayton.

122. Did you know that Smith became insolvent about the end of January?—I have no doubt that is correct.

123. Was it not immediately after that that you had the conversation with Mr. Clayton which you have told us about?—It must have been.

124. And in consequence of that letter?—I do not say that; because I had conversations with him twice or thrice a week before Smith's failure.

125. Then do I understand you to say that you cannot say whether it was before or after that letter that you had the conversation?—I cannot say.

126. Here is a letter from Mr. Clayton to Mr. Ben Smith on the 29th of January, in which he says—“I again direct your attention to clause 13 of the General Conditions, quoted at length in my letter of the 8th instant, and in order to comply again with the said clause I now give you notice,” and so on. Was it not after that letter?—That I could not say positively, because we had so many conversations.

127. Assuming that Ben Smith had become insolvent before the 3rd of February, and assuming that this conversation which you had with Mr. Clayton was before the 3rd of February, or about that time, why should you have paid Mr. Clayton his commission—why have taken up Ben Smith's bill?—It was just this: As I was in the office Mr. Clayton told me about not getting his commission, and I have no doubt he said to me, “You had better give me a bill for the two together; it is no use having an overdue bill in the bank.” And I did it, and thought nothing of it.

128. And you expected Smith to repay you?—Well, I did not expect Smith to repay me. But he was kept always at the work, and of course I gave him a few pounds, and no doubt that was charged against him in my books.

129. Where was he at work?—At the Governor's house.

130. That is, immediately after his insolvency, and while the work was in full force?—It was never at a stand-still.

131. Do you mean to say that it never was at a stand-still?—I do not think it was; there was always some one at work there.

132. You say that Ben Smith was always able to carry on up to this time without any assistance except that cash credit?—Yes.

133. Did he pay the Bank?—No.

134. Did he pay you?—No, but I got those houses—the mortgage of those houses.

135. Are you in receipt of rent for them?—No. Schultz is.

136. Why Schultz?—I can't tell you. I believe he has the first mortgage.

137. What is the amount of the first mortgage to Schultz?—That I cannot tell you. I believe it was four or five hundred pounds that Schultz had on them.

138. There was a mortgage from Smith to Burrows; how much did you receive out of that?—I think there were two small bills.

139. You received as a security for £500 a mortgage over some property. What, I want to know, is the value of that?—I don't think it is worth much. The land was leasehold land, and Smith put up some buildings on it. I think he borrowed four or five hundred pounds to put them up, and the material came from old Government House. The material went to Dr. Burrows' house, and also to Mr. Clayton's. There were two small bills on Dr. Burrows' house, and they were paid.

140. You have had the bills?—I had them.

141. To what did they amount?—To somewhere about £70 each, at six months and twelve months, and they have been paid.

142. Mr. Ben Smith very rarely wanted your assistance in this building?—After the first five or six months I think.

143. But there was not much work done in the first five or six months. The Prince was here, and the excavations were going on?—I am sure I never looked; I was down South when the Prince was here.

144. From October, 1869, did you not receive all the money under the contract?—Yes.

145. Under a power of attorney?—I suppose I did.

[Power of attorney, dated 16th October, 1869, put in.]

146. On the 16th November, on the 4th of December, and on the 29th of December, did you not receive progress payments under that power of attorney?—I did.

147. All under this power of attorney?—No doubt I did.

148. Very shortly after Ben Smith's insolvency do you remember a paragraph appearing in a newspaper—some people called it your newspaper—the *Advertiser*, about this contract, and the Colonial Secretary writing to you?—I believe it was in the *Evening Post*, not the *Advertiser*, but I took very little notice of it.

149. There is a letter here from the Colonial Secretary's Office to you, enclosing a copy of a letter from Mr. Clayton, denying the statement in the *Advertiser* that he was acting for you in the Government House contract. Do you recollect that?—I think so.

150. I do not see your answer, but there is a letter from Mr. Macdonald, for the Under Secretary, acknowledging one from you, in which you said that the paragraph about the Government House was inserted without your knowledge, and that its contents were untrue. Did you send such a letter?—I do not recollect sending that answer. I think I took no notice of it.

151. I understood you to say, in answer to my friend Mr. Brandon, yesterday, that from the time of this conversation you had with Mr. Clayton, until nearly the conclusion of the contract, nothing was said to you about your being looked upon simply as carrying on the works as surety to save yourself from paying the £1,000. Was it so?—After I commenced my orders went to Melbourne, to Sydney, and all over New Zealand, and I had very little to say to the matter until I had all the material on the ground. Mr. Clayton and I had several conversations, but he did not say that until it was too late for me, and I was bound to carry on. In five or six months I had certainly four or five thousand pounds' worth of things on the ground; and I always said to Mr. Clayton, "This is a very heavy job and will cost a great deal;" and he always said, "It will be all right,"—not in one instance but in five hundred.

152. Do you mean to say that all this time nothing was said to you about your doing the work as surety?—Not until it was too far gone.

153. At what date?—That I could not tell.

154. Here is a letter from you to the Colonial Secretary, on the 8th August, 1870, in which you complain of a sum of £587 due to you on the 1st not having been paid, and you say, "Under these circumstances, I consider that the Government have broken the terms of the contract." Also, "Having already advanced nearly £5,000 on this contract, besides making regular payments to workmen and meeting accounts for material, &c., I am put to great inconvenience by the delay on the part of the Government in not paying the money when due. It would have been better for me, in the first instance, if I had paid my surety amount, £1,000;" and so on. Do you recollect that?—That might be, no doubt.

155. There is also another letter of the 8th August, from me to you, posted in this book, and put in by you which says, "In reply to your letter of the 6th instant, I desire to inform you that I am not the proper person to whom letters relative to the Government House building should be addressed. I think any letter on the subject should be addressed to the Hon. the Colonial Secretary or the architect. I may observe, however, that in any case all such communications should come from the contractor as well as the surety." Now, how is it that, in the face of this letter and of your own statement that it would have been better for you to have paid the £1,000 in the first instance, you say you were not carrying on this as surety on the 1st of August, 1870?—When I say I would sooner pay the £1,000, it is that I would sooner do so than go through all the trouble and loss. Besides, I had all the material on the ground.

156. Why did you not write to the Colonial Secretary saying that you were not carrying on the business as surety?—Possibly I should have done so. If I had been a builder and known something about the matter I might have done so. I plead my ignorance. That is all I can say.

157. Then you did not inform the Government, after the receipt of that letter from me, that you were not the surety at all?...No.

158. That the contract was at an end, and you were carrying on the work under a different arrangement with Mr. Clayton?—No.

159. Are you aware that there are other letters, of earlier date than this, which refer to you as carrying on the work as surety?—Possibly there are, but I do not think you will find any of those letters until I had a good deal of work done, and material on the ground. I went on in full faith of Mr. Clayton saying I should not lose a penny by it. I took that as a warrant, and carried on accordingly.

160. To whom did Mr. Clayton write orders and notices as to carrying on the work?—I think he wrote to Smith, and also to me.

161. That is to say, that a copy of what was sent to Smith was sent to you also?—I think so.

162. Were not the copies sent to you press copies?—They might have been. I think some of them were not.

163. And were not the letters addressed this way: "Mr. Ben Smith, Contractor, Government House"?—Very likely they were.

164. And were they not, in nearly every instance, speaking of him as contractor?—I think some of them were and some of them were not.

165. About the time of this conversation between you and Mr. Clayton, was there not a stoppage of work from want of material and wages for the men?—I think there was, for a day previous to my giving Mr. Clayton the £100 to pay wages.

166. Do you say that Mr. Clayton asked you for that £100?—I say so distinctly. He asked me for a cheque for £100, and said he would pay the men.

167. Did he pay the men?—I believe he did.

168. Did he not give the cheque to Ben Smith?—That I don't know.

169. Do you not know he gave it to Smith?—I do not. I never saw the cheque since. I know I came down to the office and got the cheque written, and took it up to Mr. Clayton myself.

170. Did you give it to Mr. Clayton?—Yes. I think at his office door, as I was going to the Hutt. Well, I would not be certain on that point.

171. Did you not leave the cheque at your office?—Well, possibly it might be so. Mr. Schwartz will recollect about that.

172. Then you do not recollect giving it to him?—I am satisfied that Mr. Clayton asked me to give him the cheque, and he would pay the wages.

173. At that time had you had this conversation with Mr. Clayton?—The cheque must have been before the conversation, on the same day possibly. Very likely the same day. I believe it was the same day, and that was the reason I gave him the cheque for the men.

174. Don't you know that at that time the men had stopped working?—I cannot say whether it was that; but it could not have been for long, as there was £100 due for a fortnight's wages. I think there were always some men at work.

175. Don't you know that the men complained that you were receiving all the progress payments, and allowed them to go on without giving them any money; and that that was the reason you paid it?—No; they never came to me twice for the money. I paid them every fortnight on Saturday.

176. Previously to this £100, had you ever paid the workmen?—No, I do not think so. It might have been in this way that orders were given on me against the money in the Bank of Australasia. I think Smith gave orders on me for this money, but I would not be certain.

177. Now, when, according to your account, you began to carry on the work, was there not a considerable quantity of material on the ground unpaid for?—Certainly.

178. Have you paid for it?—I have not.

179. Have you worked up all the material on the ground that you knew to be unpaid for?—I have not troubled my head about it. It was all worked up, I believe.

180. Why did you not pay for it?—If I had paid for it my account would have stood very different in the books.

181. According to your idea, you were going to be paid by the Government any expenses in carrying on the work?—What I said to those parties who came to me about the material on the ground was: "If things turn out right you will get your money," as Mr. Clayton told me that I should not lose a penny.

182. You were carrying on this expecting to be paid all the expenses; why then did you not pay the owners of the material for it?—There was not very much, I think. I did not pay them; that is all I can say in the matter.

183. Were you not threatened to be sued for the bricks and other material that were being used?—I might have been.

184. Do you not recollect some woman at the Hutt threatening you? Did you pay her?—No.

185. Were there any wages due at the time you began carrying on the work, and did you pay them?—I believe not.

186. You were an owner of steamers at that time?—Yes.

187. Was it not said by you or Mr. Clayton that you could get the material down here cheaper, by reason of bringing it in your own steamers?—So I did bring it down cheaper than any other man in New Zealand could have got it.

188. Did you not bring up plasterers and other workmen?—Yes, from Nelson, Canterbury, and Otago, and I sent to Auckland for some.

189. At the time you began this work you knew you could do it cheaper than others?—I might have thought so.

190. You were a merchant and could buy things wholesale, and had steamers to bring them here cheaply?—Yes.

191. Did you not know that at the time you began to do this work, it was stopped for want of certain material?—I am not sure.

192. There was a letter to you from Mr. Clayton on the 8th February, 1870, saying that as the "Airedale" was going to the Manukau, you had better send to Auckland for some kauri timber. Was

not that written to you because the material was wanted at once?—I do not know. But that timber was not used for seven or eight months after it came here.

193. On the 11th February Mr. Clayton writes to you—"I have just got the voucher, say £326 19s. 3d., which I have signed and sent on. Did you receive that money?—As I said before, no doubt I received all this money.

194. The account is made out to Ben Smith, and the money is received by you under the power of attorney?—It might be so.

195. Now we come to a matter which no doubt my friend Mr. Brandon will rely upon to support his case—namely, that Mr. Ben Smith signs himself "for John Martin" on all occasions when he writes; but Mr. Clayton always addresses Mr. Ben Smith as contractor for Government House.—I never knew that before, and if I had, I should have taken no notice of it.

196. Was that arranged between you and Ben Smith?—Certainly not. I don't think the man ever mentioned it to me. He might have done so; but if he did, I don't recollect it.

197. I suppose whenever Ben Smith wanted material, he came to you for it?—I suppose Mr. Clayton told him what to do, and he came to me.

198. Did he never bring you a letter from the architect when there were orders for changes?—That I did not take any trouble about. Smith has got those letters, if there are any.

199. All these letters in this book were produced at the last investigation into your case. When did you get those from Ben Smith?—I daresay he brought them down, but I doubt if I looked at half of them.

200. Are you aware that Mr. Clayton always addressed Ben Smith as contractor?—I don't know; he used to call him "Smith," I think.

201. Did you not look at these letters? Did you leave it all to Smith?—He was carrying on the work for me.

202. You had implicit reliance on him?—Yes. Knowing that Mr. Clayton and Mr. Vine were also looking after the work.

203. Was it not the Colonial Architect's interest to have the work done in the best way possible, and of the best material?—No doubt.

204. Was it your interest to have the work done cheaply or dearly?—I considered that, as I was working, the cheaper the work with the best material was the best.

205. Was it immaterial to you whether the work cost a great deal or cost little; whether it was carried on expensively or moderately?—Well, as far as my understanding went, it didn't matter two-pence which way it was. I understood I was not to lose any money by it. At the same time, I say distinctly it was done as cheaply as it could possibly be done.

206. How do you know?—I know from the sources from which I got the material, and from the price of the labour.

207. You had a dispute with the plasterers?—Yes, there was one. The plastering was to be done for eight or nine hundred pounds, and I think it cost nearly double that. These men began measuring the work, and Smith said it was wrong; so it was left to arbitration, and they got all their money.

208. During all this time, when you were so anxious to protect the Government from this unjust claim, did you never say to the Government "These men are making this exorbitant claim; I think I ought not to pay it?"—I did not. I left the matter to Smith and Mr. Brandon. Of course, if they had been paid as we anticipated, it would not have been charged against me.

209. You have put down the cost of that arbitration amongst the expenses?—Yes.

210. Would it not have been fair to the Government to have told them about it beforehand?—Well, I did not do it at all events. Possibly I was wrong; but what Smith told me was, that we should not have to pay more than we thought necessary.

211. Then you have been a victim throughout, doing just as Mr. Clayton and Mr. Smith told you? Do you carry on your business in that way?—No; sometimes I use my judgment.

212. Was there not somebody at the other end of the town, named Haslem, who wanted to be paid for bricks?—I know I paid him a good deal of money.

213. You wrote on the 11th March, 1870, offering to supply plate glass instead of common glass; and then again you wrote on the 15th March, withdrawing your offer, because plate glass was not to be used throughout the building. Now, are you not aware that the price of this plate glass had already been decided on between Mr. Smith and the architect?—Perhaps it was so.

214. Here is a letter of the 19th April, 1870, from Mr. Clayton to Mr. Ben Smith, in which he says, "I was surprised to hear Mr. Martin say a few days ago that you had given me notice of extras to the amount of £300." Do you recollect that?—I might have said so. Smith said something about the foundation of the building not being according to the plans and specifications, and that there would be some rumpus over the matter, but I did not take any notice of it.

215. Did not Smith inform you, on more than on one occasion, that there were extras down which Mr. Clayton would not allow for?—He might have done so.

216. Have you not said yourself that there were a great many extras down for which no orders were given?—I believe I have.

217. Was it not one of your grounds of complaint?—Oh, no.

218. Have you not made it a ground of complaint that you had done a great deal of extra work, outside the contracts, without orders?—Just in conversation with Mr. Clayton I might have said it.

219. Then, supposing you did say so, why did you say so?—It did not matter to you; I don't know why I said so.

220. It did not matter to you at all, if you were to be paid for the work?—If I was to talk for a month, Mr. Attorney-General, I could only say that I understood that I was not to lose a farthing by the job.

221. What you say is, that from what took place on the occasion of the conversation with Mr. Clayton, whether the Government is bound by Mr. Clayton's act or not, as a matter of fact you were induced to go on with the work on the understanding that you would not lose?—Yes.

222. And that the estimates of the cost by Mr. Clayton were such as to make it reasonable for

you to consider that you were in that position?—Yes; Mr. Clayton told me there was a good price for everything, and, as I said before, rather than pay my bond I thought it better to go on.

223. Then it would not matter to you whether the work was extra to the contract or not?—As far as I was concerned I was trying, by taking the trouble to carry on, to save my £1,000.

224. But, so far as the question of payment, it did not matter whether it was in the specification or not?—I suppose so; I can't say exactly; I never thought of it.

225. At any rate, you never said to Mr. Clayton that it did not matter whether he gave you an order or not?—I don't think I did.

226. If you were the person contracting with the Government, and responsible to the Government for the work being done properly, how is it that all these letters were not written to you instead of to Mr. Smith?—I can't tell.

227. You did not complain?—I did not.

228. Did Mr. Clayton keep any account of the materials actually used in the building, or of the wages time of the men?—I don't know.

229. Don't you know he did not?—I presume that Mr. Vine, who was at the building all the time, did so.

230. Do you say that you believe Mr. Vine kept an account of the time that the men were occupied at the work?—I should have thought he would, but I do not know. I should think he would, because he could tell the whole of the material on the ground and the number of men, and would tell Mr. Clayton every day. But I don't know.

231. Did you ever hear of an account being kept, in order that there might be a check upon your account?—No. I don't think so.

232. Under your understanding of the arrangement was it not to be expected that the Government would make provision for checking the amount of material brought on the ground, and the amount of time spent in working it up? Did you ever hear of the Government keeping such a check?—I can't speak positively, but I don't think so.

233. Who removed the unconsumed material from the ground?—It was removed by my orders, and taken down to my place.

234. Did you ever render any account of it to the Government?—It is given credit for in my books.

235. Did you ever render any account of it?—No.

236. Why did you not do so?—There are many things which I find I ought to have done, but which I did not do.

237. Did Ben Smith refuse to allow the Government to have possession of the building until payment had been made?—I think so.

238. Were you present when he refused?—I don't think I was there then. I was up when the policeman was put to take charge of the building. I saw you, I think, on the same occasion.

239. Did you say then that Ben Smith had nothing to do with the building—that he was there as your servant?—I might have said so.

240. On your oath did you ever say so?—I might have said so; but I would not swear positively.

241. Do you not know very well that you never said anything of the kind?—No. I do not know.

242. Was not Smith saying that he would keep possession of the house until the accounts were paid?—Yes.

243. And did you, on any such occasion say, that Ben Smith was your servant?—I might possibly have said so to you or Mr. Clayton.

244. Of course it is possible, but do you say that you ever did say so?—What is the good of my saying so, if I don't know that I did.

245. There is a letter from Mr. Ben Smith for Mr. John Martin to Mr. Clayton, on the 4th May, 1870, claiming for extras for brick work to the foundation and other things. Do you recollect that?—Possibly the claim was made.

246. Have you charged for that extra brickwork in your bill?—Smith will be able to tell you about that. I do not know.

247. Mr. Clayton constantly asks Mr. Ben Smith as contractor to tender for extra work, as on the 5th May, 1870, for trussed girders in the kitchen, and on the 6th May for other things. These were all brought to your knowledge, you being written to at the same time as Mr. Smith.—There is none of those letters that I could have objected to, or they would not be there. We did not want to keep anything secret.

248. Here is a letter from Mr. Clayton to you on the 10th May, 1870, on the subject of extras, in which he says,—“ Mr. Smith has been told, both verbally and by letter, that I cannot entertain any claim whatever for brickwork, and I have not the slightest doubt that no claim for extras can exist in the foundations, but I am ready to admit that the specification reads to admit of a small allowance for the timber. In any case, unless application be made on a fair and reasonable scale, I cannot support it; but on the other hand, if that be done, the fact of an error existing in the level supplied for the preparation of the drawings, in the first instance, would be sufficient reason why I should advise the Government to reimburse the sureties for any extra outlay they may have been put to beyond the deductions made in other ways to meet the error referred to.” In this letter you are distinctly told that you are looked on as surety, and that is exactly three months before I wrote to you. Now, did you say any thing then?—I do not know. By that time the work had progressed very considerably.

249. You say that Ben Smith was acting as your agent. Was it not very curious that letters should be sent to you and to your agent at the same time?—Very curious.

250. There are letters from Mr. Vine to you, on the 13th and 19th May, enclosing copies of letters to Ben Smith about his contract. Can you account for it?—All these letters I took no notice of.

251. The letter of the 19th May says that red pine timber is to be removed, which Smith was causing to be used where totara is required by his contract?—I think I recollect the circumstance. Two little pieces of red pine timber were put in the front of the building.

252. That may appear to you to be the important part of the letter; but as it appears to me, the important part is that he treats Mr. Ben Smith as the contractor, and concludes with these words,—“A copy of this letter I have caused to be forwarded to your surety Mr. John Martin.”—Yes.

253. You see it says,—“If you persist in using materials not in accordance with your contract, and in direct opposition to the directions of the Clerk of Works, it will become my duty to stop the building operations entirely until some other arrangements are made for the proper conduct of the works. I wish you to understand that all further progress payments will be withheld until the objectionable materials are removed, and an assurance is given that you will not knowingly depart from the terms of your contract for the future.” Do you know that after that letter, and in consequence of the neglect to obey it, the progress payments were temporarily stopped?—No; I do not think so. I do not think it made the slightest difference.

254. Don't you recollect going to Mr. Clayton's office with Mr. Ben Smith, and Mr. Clayton saying that the progress payments would be stopped until the objectionable timber was removed?—It might be so.

255. And was not the bay window in Lady Bowen's bedroom, in which it was pulled down?—Yes; I recollect two studs being taken out.

256. In answer to that letter there is none from you, but one from Mr. Ben Smith, of the 21st of May, in which he complains of the tone of the letter. It concludes by his signing it “Ben Smith, for Mr. John Martin;” but was there no letter of yours?—No.

257. All left to Mr. Smith?—I think so. Many of these letters I never saw.

258. On the 23rd of May Mr. Ben Smith sends another to Mr Clayton, but there he appears to forget that he is only your agent, for he says,—“For myself, I again say that I will not in any way use or do any work against your expressed wish;” and he signs for himself, “Ben Smith.”

259. It seems also that Mr. Clayton wished Mr. Ben Smith's tenders to be indorsed by you. There is one case, on the 6th July, about some bridging. Is that so?—I dare say I might have done that.

260. Then there is a letter from you to the Colonial Architect, on the 8th July, about advances, in which you complain of having advanced so much. Now, as you had advanced so much, and the progress payments did not reimburse you, why did you not say to the Government that you would not go on?—Well, I did not do so. I fully expected I should get the money I wanted, or I should have left off long before.

261. In a letter from you to Mr. Clayton, on the 13th July, 1870, you say,—“I have to acknowledge your letter of the above date, stating that the Government are willing to advance me £1,000 out of the retention fund in the Government House contract provided I give an undertaking in writing to finish the whole of the works within three calendar months from this date, under a penalty of £150 per week exceeding that time.” Why should the Government have asked you to enter into this arrangement?—That I don't know.

262. You were not under any bond as a contractor?—I don't know; but I was lying out of a great deal of money at that time.

263. Why should the Government have said, “We will not give you more than £1,000”?—I don't know; but I do know they ought to have given it to me.

264. Then you say the contract will be finished in three weeks?—And it was so.

265. And you got some retention money that you were not entitled to?—I don't think I did. I never got the £1,000. You put a stop to that.

266. Do you remember that there was a question as to whether there should be a retention of 25 per cent. on extras as well as on items under the contract? Was there not in the month of August some discussion between the contractor, Mr. Ben Smith, and the Government, on this subject?—A discussion with whom?

267. In which you yourself were a party?—I don't recollect it.

268. Don't you remember that Mr. Clayton passed a voucher for the whole amount of extras for the month, and afterwards it was discovered that 25 per cent. ought to have been deducted from it?—It appears so.

269. Don't you remember that you came up and complained about the voucher being stopped at the Treasury?—I think it was so.

270. And because Mr Clayton had passed it you were to have the amount; but notice was given to Mr Ben Smith that the full amount would not be allowed in future?—Yes.

271. You allowed the Government to go on thinking they were working under the contract when you knew you were working under a different arrangement with Mr. Clayton?—I should have told the Government, no doubt; but everything was done in order, and cheaply, and well too.

272. Here are two private notes from Mr. Clayton to you, asking you to use your influence with Mr. Smith to secure the completion of the gas fittings by Mr. Tolley. Were not those extraordinary letters for Mr. Clayton to write to you?—Yes; I recollect we went up and kept the same men on.

273. Then you did use your influence?—Yes, I did; and a very anxious time I had of it.

274. You used it as surety?—No.

275. You asked for £2,000 out of the retention money, and were told that you could have it on entering into a bond to secure the Government. Now, why should the Government require you to enter into a bond?—That I don't know; but I do know that it would have cost some £7 or £8 to have the bond prepared.

276. You didn't give it?—No.

277. Did you write insisting on getting the money?—I dare say I did, and applied verbally too.

278. Did you ever see any member of the Government upon the matter?—I think I did.

279. Where, and whom?—I think I saw Mr. Gisborne several times. I told Mr. Gisborne always the amount of money I was in advance for the house.

280. Do you recollect this letter from Mr. Clayton on the 28th September, 1870, exactly at the time you were asking for this money,—“I am directed to inform you, in reply to your application for an advance out of the retention money on the Government House contract, that, on condition of the con-

tractor, Mr. Ben Smith, consenting, and upon giving your own bond, and two approved sureties, in form approved by the Attorney-General, the Government will advance the sum of £1,500, which will absorb the amount of the bond required. Under the existing contract the contractor is liable to a penalty of £20 sterling per week after the 15th October next. A fresh bond will be required to complete the building on or before the 24th day of December next, without prejudice to the existing one." Did you ever write to the Government saying it was absurd for them to be asking for these bonds?—It is very possible, but I do not know that I ever did. These are all late letters, are they not?

281. This was on the 28th September, and the work was not finished until April?—That was only three or four months.

282. Did you make any protest against this view of the Government?—I did not.

283. On the 11th November, 1870, you wrote to Mr. Clayton asking him to get you an advance of £2,000; and on the 17th November, Mr. Clayton wrote you the following reply:—"I am directed to inform you, in reply to your application for an advance on the new Government House contract, that the Government are of opinion that, for reasons connected with your position as surety for carrying out the contract, the safest course is to adhere to the contract." Did you not think from that that it was considered safer to adhere to the contract?—Very possibly.

284. You recollect the last payment being made?—Yes.

285. You recollect you wanted to get the last payment?—I think so.

286. Do you recollect this deed, in which you recite that you had received notice as surety that Mr. Ben Smith had failed in his contract, and that you as surety were to carry it on?—I put my name to that without prejudice in the matter.

287. Certain objections were made to the last payment on account of Ben Smith's insolvency, and the assignments to Turnbull, Reeves, and Co.?—Yes.

288. Was not that deed in consequence?—Possibly. I don't think I ever read it.

289. It was very carefully prepared and considered, and sent down to your office, and lay there for several days?—At all events I never read it.

290. Does it not recite as a fact that you had received notice that Smith failed?—As far as that deed was concerned, it was to get the £2,000. I thought nothing of that.

291. On the 4th of April, 1871, immediately after the indemnity bond, you came up and signed a receipt for £2,105 17s., in full payment of the accounts for that sum attached, without prejudice, and subject to any claim by Mr. Smith or Mr. Martin for alleged extras and deviations from contract, for which it is asserted that they, or one of them, are or is entitled, but disputed by the Colonial Architect. Do you recollect that?—That was just to get the money.

292. *Mr. Brandon.*] Was it not because it transpired on Smith's commencing the work that he had not command of capital, that he requested you to become security to the Bank of Australasia to the extent of £500?—Of course it was. He would not have asked me if he had money to go on.

293. Was not the amount due by Smith to Clayton for which the bills, with the exception of £25, were given, part of the percentage that Mr. Clayton was entitled to under the contract?—I believe it was. Mr. Clayton told me it was.

294. And it was to oblige all parties that you put your name to that bond?—That was just it.

295. You have said that after Smith failed, and after a conversation with Mr. Clayton, you undertook to carry on the works. Why did you continue to employ Smith? Was it not because he knew all about the contract and the prices?—He knew all about the contract and the building, and I thought it was better for Mr. Smith to remain just as he was before.

296. Did he not, under those circumstances, simply act as your agent?—Well, I cannot say that. I considered him as my servant there, and he did anything I told him, and that was all.

297. You are not an architect or builder yourself?—No; I know nothing about it.

298. Did you not supply materials as Smith considered necessary?—I did.

299. I think you said that in using the materials that were on the ground at the time of his insolvency, you had not charged for those?—I have not.

300. A great many were not supplied by you?—A great many.

301. A great many belonged to Turnbull, Reeves, and Co.?—I have not charged for them. All I took away I have given credit for.

302. I think you say, that in the conversation with Mr. Clayton there was no specific contract made; nothing in fact alluded to in reference to the work, other than that you were to carry on and be paid?—Not that exactly, but that I should not suffer loss.

303. Were you aware of the sixteenth clause of the contract with Smith?—Indeed I was not. I never looked to it.

304. I cannot presume that the Government and their architect were ignorant of it. At all events, the contractor became insolvent, and then the architect became empowered to carry on as he pleased. There was nothing further, then, in that conversation?—No, nothing.

305. You made advances, and you got materials, as you say, in the cheapest way. Being an owner of vessels, you were able to get the materials deposited on the ground at a cheaper rate than any other person could have done?—I believe they were.

306. Have you charged the Government with anything more than the simple cost?—No. The steamers were not all mine, and I was obliged to charge freight in some cases.

307. You have seen the correspondence between Mr. Clayton and Mr. Smith?—I believe I have seen some.

308. Are you not aware that Smith always signed for you?—Well, I was aware of it. Sometimes I did see him signing for me.

309. By whom was the plasterers' contract entered into?—I went down to Canterbury and took Smith with me, and we engaged them there.

310. Did you sign the contract?—I did.

311. Was it personal on your part?—Yes. Smith simply went down to see the plasterers, and what the work could be done for.

312. In the dispute with them you understood that they measured the work differently from what they ought to have done?—Yes.

313. Where did you first see the bond that has been recited to you?—I think the first time I saw it was at the Government offices, but I am not sure.

314. When did you sign it?—Just before I got the money. I think the Attorney-General was there at the time.

315. Did you read it over?—No, I don't think I did. I think the Attorney-General read it to me.

316. Was it explained to you by anybody?—I think the Attorney-General explained it.

317. Was the legal effect of it explained to you?—I don't know.

318. Did you give it to anybody to give you a legal advice upon it?—I don't know whether it went down to you, or whether I saw it up here when I came to get the money.

319. You refused to enter into any fresh arrangement in this bond when you were making application for some of the retention money?—I think I did. Allow me to state this: This bond I understood was simply a bond to hold the Government harmless from Turnbull, Reeves, and Co., and in the meantime I was to get the £2,000. I signed it upon this understanding.

320. There had been some action threatened on account of Turnbull, Reeves, and Co.?—Yes, there was; and some correspondence in consequence.

321. Reference has been made to the contract in some of these letters. Was it not considered that the original contract was the basis of operations? When you entered into the arrangement with Mr Clayton, did you not understand that you were to carry on in accordance with the specifications and design, and the payments you were to receive were to be on the same terms as the contract?—That I understood.

322. Under any circumstances, or at any time, did you undertake to execute the contract for the price named in the contract?—No; certainly not.

323. Then with regard to Smith, was he at any time, after going through the Court, in the position of carrying on the work?—No; I don't think so.

324. Did you not give him money?—Yes; I gave him money from time to time. I did not give him very much money.

325. You did not acknowledge him as the party carrying on the contract and you as the surety?—No.

326. But that he was there as your servant, and you paid him for his services?—Yes.

327. *Mr. Attorney-General.*] How much a week did you pay him?—I could not tell you that. I used to give him £20 or £30 sometimes, and so on. I believe a couple of pounds a week; not much more. It might be that.

328. *Mr. Brandon.*] The voucher for the last payments has been referred to; was it not distinctly understood, when you signed that voucher, that all claims you had against the Government were reserved?—Yes; it was. I think that was the understanding between me and the Government.

329. Did you at any time particularly notice the letters of Mr. Clayton, purporting to treat you as surety, carrying on the contract for the sum mentioned in the contract?—No; I never did.

330. Has Mr. Clayton or the Government ever expostulated with you as to the manner in which Mr. Smith communicated with them?—No; I don't think so.

331. I mean in signing, not for himself, but for you. Has the Government said, "How is this; we have been treating Smith as contractor, and here he is signing for you?"—No; I don't think so.

332. Has Mr. Clayton ever led you to believe that you were not to get a single penny beyond the contract work?—Certainly not. I always understood I was not to lose a single penny. At the very last, Mr. Clayton said, "It strikes me it will have to go before the House."

333. So far as you are concerned, you trusted to Mr. Smith and Schwartz to see everything properly carried on?—I did. It was just two years when I was very busy.

334. Did you ever read the contract?—No; I never did.

335. Were you ever advised, when you were going on after Smith's failure, to look at it?—No.

336. Do you remember the proposal that was made when Mr Clayton wrote to you in January, saying that he would like to see you and Mr. Ben Smith, as he had a proposal to make which he thought would be satisfactory to all parties?—I may have seen Mr. Clayton after I received that letter.

337. When was it you insured the House?—I never insured it.

338. Did the Government insure it and charge it against you?—I think so.

339. A letter from Mr. Clayton to you has been referred to, in which you are recommended to send to Auckland by the "Airedale" for timber. Had you any conversation about that with Mr Clayton?—No; I could not say so.

340. All taken as a matter of course?—Yes; as a matter of course. I sent on for everything that I thought was necessary for the house.

341. Can you remember whether anything particular was said as to this bond that you were asked to enter into in September, 1870?—No; I cannot.

342. One of the bills to which we have been referred is this one, for £40 16s. 6d. I see a note from Mr Clayton asking you for a promissory note. Is that one of the Bills?—It is, I suppose; I cannot say.

343. Have you any idea of what was the object of the fresh bond that you were asked to enter into?—I think it was on account of Turnbull, Reeves, and Co., but it would have cost so much that I would not take it up at all.

344. Do you know about Ben Smith being a consenting party to this arrangement?—I don't know.

345. Did you ask him if he would consent?—Yes, and he said "Yes." If that is about the £2,000, he came up and put his name to the deed.

346. Does Smith know anything about the arrangement with Mr. Clayton under which you took up the work?—He was not there at the time.

347. He was not present at any time when you and Mr. Clayton were talking?—He was present afterwards, but not at that time.

348. *The Commissioner.*] What was the date of that conversation with Mr. Clayton, in which he informed you that you would not lose anything if you went on with the contract?—I think that was a few days after Smith failed. It was at the time this £100 cheque passed.

349. You say, as I understand the evidence, that you could not throw up the work?—At that time I could have done so by losing the £1,000.

350. Then you would merely have lost the £1,000?—Just so.

351. When did you get so involved by ordering materials that you could not throw it up?—Immediately afterwards. When Mr. Clayton told me I should not lose anything at all, I sent orders to Melbourne and all over to get materials.

352. Smith did not owe you anything then?—He owed me the overdraft at the Bank of Australasia, and no more.

353. If Smith's contract had been broken, you would have been £1,700 out of pocket?—I should have been, no doubt, about that. Not quite the £1,700, because I had a sort of security which I hold now for whatever it is worth. I don't think it is worth much.

354. Did you enter into an agreement with Mr. Smith to overlook the works for you?—I did not enter into an agreement with him, but I said to him, "You had better stop, as you know everything about this place, and look after this work." There was nothing said about the money, but occasionally I gave him £20 or £30.

355. He was your servant, without any fixed wages?—That was just it.

356. If there was anything over, after the contract was completed, was Smith to have it?—There was something to that effect, but nothing definite. I said, "If everything turns out all right, you will be well paid for your services;" but there was nothing definite in the matter.

357. Of course, in that estimate of Smith owing you £700, you include all the liabilities incurred on account of Smith?—That was all.

358. In his evidence before the Committee, Mr. Smith says in reply to the question, "Was Mr. Martin security to the persons from whom you got the material? He was from October." Is that so?—I do not see how I could be security except by that deed which Mr. Brandon drew up.

359. Then he says, "I owed £1,000 for material, and £60 for labour," and he is asked, "What was the entire liability?" To which he says, "Between £2,000 and £3,000." He says generally that you became security for the material supplied to him. Is it so?—Except by this deed. I cannot see anything else.

360. Would you tell me exactly what the meaning of your arrangement with Mr. Clayton was? It was not as I understand under clause 13, and it was not under clause 16; how then do you make out that Mr. Smith was ousted from his position of contractor?—I do not know.

361. You knew of the existence of the contract?—I knew that.

362. And that Mr. Smith under that was contractor?—Yes; and that was about the purport of it.

363. Now, when this contract was alive, you made another arrangement which ousted Mr. Smith?—The arrangement I have just told you about.

364. Then you trusted to this verbal arrangement with Mr. Clayton?—Quite so. There was no writing over the matter.

365. Did Smith ever sign the contract to you?—I do not think so. No, he never did.

TUESDAY, 9TH APRIL, 1872.

Mr. BEN SMITH in attendance, and examined on oath.

366. *Mr. Brandon.*] What is your occupation?—I am a builder and architect.

367. You undertook the contract to build the new Government House?—Yes.

368. Under the contract and specifications which have been put in?—Yes.

369. Before you had been many months building it, were you not obliged to take the benefit of the Bankruptcy Act?—Yes.

370. What time was that?—February the 4th, 1870.

371. When you had passed through the Court, in what position were you with regard to the contract; I mean what actual position?—I considered that, when the advertisements were in that I could not meet my liabilities, I withdrew from the contract altogether.

372. You considered that the contract was at an end?—Yes, as regards myself.

373. Do you know how the works were carried on after that?—Well, on February the 4th there were advertisements in the *Evening Post* by Mr. Martin for tenders to complete the different parts of Government House, and I considered that the whole matter was out of my hands.

374. How was that?—By the arrangements between Mr. Clayton and Mr. Martin.

375. Then you considered, after going through the Court, that it was all out of your hands?—The only thing I knew about the matter was that I was outside Mr. Clayton's office, and Mr. Martin went in, and Mr. Clayton arranged with Mr. Martin that Mr. Martin was to finish the work, and I was to be done away with altogether.

376. To be done away with—what do you mean by that?—That Mr. Clayton was to carry on the work, and Mr. Martin was to pay him a commission for doing so. There were two little offices at that time, and I was in the outside one.

377. Do you mean your services were to be dispensed with?—Of course.

378. What were the words with reference to yourself?—There was a great stir about the matter at the end of January. I could not pay the wages on the 13th of January, and I went down to Mr. Clayton and told him, and Mr. Clayton and Mr. Martin had a conversation, and Mr. Martin gave Mr. Clayton a cheque, which was to be given to me on the 15th to meet the wages.

379. *The Commissioner.*] Do you know anything at all, of your own knowledge, as to the payment of that cheque?—I received the money for the cheque, and paid the wages.

380. You do not know anything of your own knowledge about it?—I only know from Mr. Martin. He said he would leave a cheque with Mr. Clayton, as he was going South, and Mr. Clayton would give it to me.

381. *Mr. Brandon.*] You continued to carry on the works?—Mr. Martin put an advertisement in the *Evening Post* for tenders to carry on the different sections, and I said that I had nothing more to do with it.

382. When did you commence operations?—The tenders were, I believe, in by the 9th, and there was a local in the *Advertiser* about Mr. Martin having arranged with Mr. Clayton to carry on the matter, and Mr. Martin told me he must contradict it and settle it.

383. I ask you, when did you recommence operations?—About February the 9th. I was away down at Karori at the time. In fact there was a *ca. sa.* out against me, and I went down to Karori to keep out of the way.

384. Then you say you returned again about the 9th?—I returned back to the Government House, and resumed operations there about the 9th.

385. What arrangement did you make with Mr. Martin, if any, about carrying on the works?—Well, Mr. Martin came up to my house and rapped at the gate, and called me out and said, "Well, Ben, you had better come back to that Government House. Everything is in a muddle, and you had better come back. Here I am, and you must do the best you can for me."

386. Was any specific arrangement made?—I said, "I thought Mr. Clayton was going to look after it for you, and you were going to pay him a commission." He said, "That is all off now; there has been a row between the Government and Mr. Clayton about the matter, on account of the local in the *Advertiser*, and you must go back." I said, "I want to go to Auckland, I don't want to stay here, because you made an arrangement in my hearing to carry on, and he said you can't lose by it." It nearly broke my heart, and I did not want to go back.

387. Did you go back?—I did.

388. What arrangement was made?—I said, "If I go back, all I will take from you is just what will barely keep me; and when it is all over you will pay me a good fair wage, according as I may work."

389. Then you went back, stating that during the progress of the work you would only draw sufficient to keep you?—Yes; and that when it was finished I would leave it to him to give me something.

390. Had you any conversation with Mr. Clayton about the matter?—I went down to Mr. Clayton, prior to my stopping, and told him my circumstances, and he said the only alternative was for me to "blow up," and let Mr. Martin finish it. "Blow up" or "burst up," either one term or the other, and leave Mr. Martin to finish it. That was at the end of January; I could not be certain of the date, but I believe it was before the cheque for £100.

391. This conversation was before you went through the Court?—Yes.

392. But after you returned to overlook the work, had you then any conversation with Mr. Clayton relative to your contract?—I went down to Mr. Clayton's office the evening we put these advertisements in the *Post*, and when the tenders were brought in I received them. Of course no contracts were allowable unless Mr. Clayton agreed to them. I drew up the contracts between the plumbers and others and Mr. Martin. Then I had a conversation with Mr. Clayton, and said, "I am going to take the sub-contracts for the work, are you agreeable?" and he said, "Yes." It was for the plumbers, painters, and carpenters' work.

393. Did you enter into the contracts?—Not one. I merely got them for Mr. Martin.

394. Did you make arrangements with the sub-contractors?—Yes; with the plumbers and carpenters, and John Ah Tong, a Chinaman, for carving, and a man named Rook, for doing the entrance hall.

395. In whose name?—For Mr. Martin. They were signed and given over to Mr. Schwartz for Mr. Martin.

396. Did your name appear in them at all?—No.

397. Nobody's but Mr. Martin's?—No.

398. Are these in existence?—Yes.

399. Where are they?—They are down in Mr. Martin's office, I presume.

400. Did these parties enter upon their contracts?—Yes.

401. And did you continue to overlook the work on the same terms with Mr. Martin that you have already stated?—Yes.

402. Was that the reason of your always, in correspondence with Mr. Clayton, signing yourself "Ben Smith, for John Martin"?—Yes. You will see in the correspondence when I am not addressed as contractor—where it is struck out. I was always addressed as contractor before I stopped, and afterwards I was not; at least in some of the letters.

403. Have you ever had any conversation with Mr. Clayton relative to his still addressing you as contractor?—The conversations I had with Mr. Clayton were always that I was on behalf of Mr. Martin. There was one particular circumstance that occurs to my mind. Mr. Clayton will remember it very well. I think it must have been in March or April. I only know the facts being on my mind so well. I was in the outside office, and Mr. Martin went in. I was always quarrelling or at least disagreeing with Mr. Clayton about the contracts. He said, "Martin, I wish you would get rid of that fellow Smith, and get somebody else; I cannot get on with him." Mr. Clayton remembers that I went into the office and said "Good morning, Mr. Clayton; thank you for your good opinion." That will show the position I was in.

404. Have you ever had any conversation with Mr. Clayton about his always addressing you as contractor; I mean since you were overlooking the work for Mr. Martin?—I remember Mr. Martin getting a letter complaining of my not doing as he wished; and I went down to Mr. Clayton's office, and he said, "If you don't get on as you ought, I will get Mr. Martin to dismiss you."

405. You don't give me an answer to my question. Did you ever have any conversation with Mr. Clayton relative to his continuing to address you as contractor?—No. Of course I tell you the truth of the matter. That is what took place, and nothing else except that.

406. You know nothing more of what passed between Mr. Martin and Mr. Clayton, or the terms on which Mr. Martin was carrying on the works, beyond what you have stated?—The only thing I know about the matter is just what I have stated: that Mr. Clayton arranged with Mr. Martin to carry on the works, and I came back to work and act for Mr. Martin in the matter. I simply said, "I am very sorry that things have turned up as they have."

407. Did you get your discharge from the Court?—Yes.

408. Did you put in the contract as an asset?—No; I could not say so to my knowledge at the present moment.

409. Who was your trustee?—Mr. Rainie.

410. Did he ever claim to take it as an asset?—No. I can only say this, that he told me that he had made no claim about the matter. If he has made any claim in writing, I am not aware of it.

411. Was Mr. Clayton from time to time about the works?—About once a week or so.

412. Through whom did all the orders for material pass?—After my stoppage?

413. Yes.—Through Mr. Martin.

414. You got all your supplies and advances from Mr. Martin?—Yes. He supplied all the materials. In case Mr. Martin was not in, Mr. Schwartz signed. Otherwise Mr. Martin went down to the sawmills, and said, "Whatever Smith wants, it is all right; supply it, and put it down to my account." Whatever was supplied was always supplied for Mr. Martin, and not for me in any way whatever.

415. *Mr. Attorney-General.*] Then how much did you put down in your schedule as being owing by you to Mr. Martin?—I could not say now from memory.

416. You can't recollect that?—No; to tell you the truth, if I had had a shilling in my pocket this morning I would have gone and got a copy of it.

417. You know that all the progress payments from October were received by Mr. Martin?—Yes. I don't know from October, but from some date they were.

418. Why was that?—He became security for the overdraft at the Bank of Australasia.

419. That was a cash credit for £500?—Yes.

420. You mean to say that all the progress payments went to pay off that cash credit?—They were given to him as security for that.

421. Then, as they were received they went in reduction of that cash credit?—I could not say that. In fact, to tell you the truth, I am a little confused about that. What I know is, that Mr. Martin became security for £500, and it became advanced to £700. There was £200 added to the £500 cash credit at the Bank.

422. Then, do you say that all the moneys he received under these orders in November, December, January and February, went in reduction of it?—No. It never got less at all.

423. You were always £500 and more behind?—I was always £700 behind. It was always lying there.

424. Directly Mr. Martin got these moneys and put them to your credit, you got further advances?—Yes.

425. And you were still paying your workmen by cheques on the Bank of Australasia up to the time of your stopping?—Yes.

426. Until the 13th January, when you could not pay any more, and then you got a cheque from Mr. Martin for £100?—Yes. Mr. Clayton gave it to me.

427. Had you a conversation with Mr. Clayton on the same day which led to his going down for it?—I have stated that.

428. Not on the occasion when Mr. Martin was present, but when the men were waiting for their money?—They were not waiting for their money. Mr. Martin was going South, and on Thursday the 13th I went to Mr. Clayton and told him I should not be able to pay the wages on Saturday the 15th, and that I did not know what to do. I was getting no progress payments, and so on. "The fact of the case is," I said, "Mr. Martin is my surety, and went into this matter on your recommendation, and you had better go down and see him;" and he did go down, and I got the cheque on Saturday morning.

429. Had you any conversation with Mr. Clayton between that day on which you supposed he went down and the day on which you got the cheque?—I don't think I had. I recollect meeting Mr. Clayton in town, on his horse, and getting the cheque from him, and going up at once and paying the men.

430. Did Mr. Clayton object to having anything to do with this cheque?—No. If I remember right, I think he paid the money into his own account, and gave me his cheque, I believe he gave me a cheque on the Bank of New South Wales.

431. Did not you beg of Mr. Clayton to get this cheque for £100 for you, and did not he object to being mixed up with the transactions about wages?—No; nothing of the kind. When I talked with Mr. Clayton, I said "Go down and see Mr. Martin." Of course he must have gone, or I should not have got the money.

432. Previous to this you had letters in which Mr. Clayton complained of the way in which the work was carried on?—I could tell if I saw the letters.

433. You don't recollect it?—I recollect there was something. I recollect Mr. Clayton speaking about the matter, and my saying I had not drawn more than 50 per cent. of what I had done, and that the works would be stopped and my credit destroyed. But, of course, these things are two years old.

434. You have no recollection of a letter in which Mr. Clayton said he would complain to your sureties?—There might possibly have been, but I don't recollect. I believe there was, but I don't know anything about the contents.

435. Then it made some impression on your mind?—I know I wrote about not getting sufficient money advanced.

436. Had not you and Mr. Clayton and Mr. Martin a meeting at which an arrangement was to

be made, by which Mr. Martin was to advance you money to carry on the work?—In January, 1870? In January 1870, there was an arrangement between Mr. Martin and Mr. Clayton by which Mr. Martin was to carry on the work.

437. Answer my question. Was there not a proposal, to which you and Mr. Clayton were parties, by which you were to carry on the work and Mr. Martin was to assist you with money?—No; nothing of the sort. I recollect nothing of the sort.

438. Do you know, or recollect, whether or not Mr. Martin did not object to assist you in any such way?—I will tell you what did happen. Mr. Martin objected to advance any more money beyond the £700 until the £100 turned up.

439. Then he objected to advance more and yet gives you £100?—It was his own arrangement, or Mr Clayton's. I was up a tree.

440. What was the date of that arrangement?—I think it was January the 13th.

441. Had this arrangement been made at time for Mr. Martin carrying on the work?—No; I don't think so. I heard nothing about it that day.

442. Then why do you say the cheque was not given to you?—Well, because it was not advanced to me.

443. Then to whom was it advanced?—It was given to Mr. Clayton by Mr. Martin, for me to pay.

444. Who was to repay it?—I had to pay the money to the men, and did so.

445. Then, you tell the Commissioner on your oath that you do not know to whom that money was advanced?—I only know that Mr. Clayton had the cheque for £100, and I got it on Saturday morning and paid the men; and what arrangement Mr. Martin and Mr Clayton made I do not know.

446. You say that arrangement between Mr. Clayton and Mr. Martin was not made at that time?—Not within my knowledge.

447. You say within your own knowledge it was made afterwards. Why do you say so?—I told Mr. Clayton to go down and arrange with Mr. Martin for the money.

448. *Mr. Brandon.*] Were you not responsible to Mr. Martin for the amount?—I suppose I should have been responsible to Mr. Martin if I had been able to pay.

449. *Mr. Attorney-General.*] Now, at the time of which you are speaking, about the 11th January, was there not a proposal that you should assign your contract to Mr. Martin?—There may have been, but I don't recollect the fact.

450. Here is a letter from Mr Clayton to you on the 11th January, 1870: "In any transfer or assignment you may make of your contract for the new Government House, I have to remind you that the following orders in favour of Messrs Turnbull, Reeves, and Co., which you instructed me to deduct from your progress payments will be stopped from the same." Do you recollect that letter?—I remember that letter now I see it.

451. Here is another of the 11th January, with regard to the insurance on the carpenters' risk; another on the 13th January, the same day as you got that cheque, and another on the 19th January, with regard to substituting plate glass for Chance's sheet glass. Now you say, although these three letters are written to you between these dates, that on the Saturday you were out of the contract, when that cheque was given to you?—I never said anything of the kind.

452. What do you mean when you say that the cheque was not given to you, because Mr. Martin had determined not to advance you any more money?—I said most straightforward that the cheque for £100 was given to Mr Clayton, and he gave it to me.

453. And you wish the Commissioner to believe that the £100 was advanced to Mr. Clayton?—I understood that my arrangement with regard to Government House was a myth.

454. How so?—Because I had no more money to carry on with, and the whole thing went over to Mr Martin.

455. What I wish to know is why you say this £100 was not advanced to you?—Because Mr. Martin would not advance more money to me. I was done with it entirely.

456. Did you ask Mr. Clayton to go down and induce Mr Martin to pay the £100 for the wages?—Yes. I can't state more than what happened.

457. Now, I ask you to say whether it was after you state, upon your oath, that you were out of the contract, and had nothing more to do with it, that Mr Clayton wrote to you?—I never said that; I said I was a myth. I was there until I failed.

458. Can you fix the date of that conversation between Mr. Clayton and Mr. Martin, when you were outside the door—the conversation at which you say it was arranged that Mr Clayton was to receive his commission from Mr Martin for carrying on the work, and that you were to be out of it?—It would be some time about the end of January or beginning of February. I could not tell the date, for you had better believe I was in such a state of trouble at the time that I could not give particular dates.

459. Although you were so tender about paying the men, and could not, how was it that you carried on till the end of January?—Under the belief that Mr Martin was going to carry on.

460. And yet you tell us that it was not until the end of January that you heard this conversation?—Yes. I said the conversation was about the end of January or beginning of February.

461. You believed that, although this conversation did not take place until the end of January, yet there was an arrangement between Mr. Martin and Mr. Clayton to pay the wages?—I believed that Mr Martin had the thing in his own hands, so that when the time came round he would pay the wages.

462. How in his own hands?—It was just a casual conversation, that he had arranged something with Mr. Clayton, and made it all right.

463. When did Mr. Martin say he had made it all right with Mr. Clayton?—I think it was on Thursday or Friday, before the fortnight's wages became due.

464. Were you not very much surprised when Mr. Martin said he had made this arrangement with Mr. Clayton?—You had better believe I was surprised when I went down to get the money to pay the wages, and when he said, "My boy, I'll pay nothing more until I have a full understanding with Mr. Clayton. I will find no more wages."

465. And the men have not been paid to this day?—No, they have not, I am sorry to say.

466. What was the commission that Mr. Martin was to pay Mr. Clayton?— $2\frac{1}{2}$ per cent. on the amount of work to be done.

467. That was in addition to the commission to be paid by the contractor?—That was paid already.

468. In addition to that, he was to pay Mr. Clayton $2\frac{1}{2}$ per cent.?—Yes.

469. You say that, subsequently to this, Mr. Martin came to you and said all that had been broken off?—All what?

470. All that arrangement with Mr. Clayton?—I never said all that arrangement with Mr. Clayton.

471. Did not Mr. Martin come to you and say he wanted you to go back to the work, and that all that arrangement was broken up?—Yes; but that was on or about the 9th February; and that all was broken up about Mr. Clayton superintending the work.

472. Then you came back to the work?—Yes.

473. Was it in consequence of this note from Mr. Clayton to Mr. Martin on the 31st of January, in which he said he would like to see you and Mr. Martin, as he thought he could make arrangements satisfactory to all parties; was it in consequence of that note that you and Mr. Martin went to Mr. Clayton's office?—I believe that was the time the conversation took place.

474. That was on the Monday after the Saturday on which you failed to pay the money?—Yes.

475. Did not that stop the work?—No; the men came round on Monday in hopes they would get the money.

476. It was in consequence of this letter that you met at Mr. Clayton's office?—I was outside the office. Mr. Martin said, "You stop outside, and I will see Mr. Clayton." I remember walking away when I heard a conversation that did not please my feelings.

477. At that time you had not made a declaration of insolvency?—No.

478. The proposal was that the work should be taken out of your hands under the contract; that Mr. Martin should carry on, and that Mr. Clayton should superintend for Mr. Martin as well as for the Government, and should receive a commission of $2\frac{1}{2}$ per cent.?—That is it, except about the Government. He said that Mr. Vine was a capital foreman of works, and so he was.

479. That was the proposal?—Yes; and I walked away.

480. Was nothing said about referring to the Government in this matter?—That was all I heard; I walked away.

481. It did not take many minutes?—No, not many. I was very wild and excited, and would not have been responsible for what I might have done, in consequence of the remarks Mr. Clayton made.

482. Mr. Clayton was not complimentary to you?—No; you had better believe he was not.

483. Are you aware of some notice in the *Advertiser* about the arrangement being made for Mr. Martin to carry on the work, and to pay Mr. Clayton $2\frac{1}{2}$ per cent., and so on?—I think on February the 9th there was something in the *Advertiser*.

484. Mr. Clayton wrote a letter denying that; were you made acquainted with that letter?—The first intimation I had of that was Mr. Martin coming round and saying, "There is a local in the *Advertiser*, and there is a row with the Government, and I shall have to write an apology about it, so as to save Mr. Clayton; and you will have to come back and see me through it."

485. How do you mean "see him through it"?—He said "I don't understand about building. I have known you for some time, and trusted you with thousands of pounds, and I don't know any one else I can trust." Then I said, "Give me as much as will keep me, and when it is all done give me good wages."

486. Then, whenever you received letters from Mr. Clayton, you took them to Mr. Martin?—Yes, always.

487. Always?—Perhaps not the day I received them, but afterwards.

488. You were acting then simply as foreman of the works for Mr. Martin, and of course always took these letters to him?—Yes. I did not consider myself as contractor, because it was all off. I took the letters to Mr. Martin or Mr. Schwartz, as his man, and I did not do anything in the matter without Mr. Martin's authority and instructions.

489. Although in these letters you are addressed as contractor?—I took word "contractor" as from Mr. Clayton not wishing to insult me.

490. Did you point out to Mr. Martin how in these letters Mr. Clayton refers to the contract as your contract?—No, I did not. The only thing I showed him was just the matter of business. He left everything in my hands. I never used to go into the details about the matter, but acted for him as if he was there himself, and everything addressed to me I took as if it was addressed to Mr. Martin himself.

491. There is a letter written to Mr. Martin about the contract on the 10th of May, in which Mr. Clayton says, "In any case, unless application be made on a fair and reasonable scale, I cannot support it; but on the other hand, if that be done, the fact of an error existing in the levels supplied for the preparations of the drawings in the first instance, would be a sufficient reason why I should advise the Government to reimburse the sureties for any extra outlay they may have been put to." Do you remember that?—Mr. Clayton might write a folio of what he thought fit; I never looked upon it; I looked upon things in Mr. Clayton's letters as matters of business, but whatever was in it of verbiage I did not attend to.

492. Again on the 19th, Mr. Clayton writes to you complaining of some materials you were using, and he concludes in these words,—"A copy of this letter I have caused to be forwarded to your surety, Mr. John Martin." Do you recollect that?—No.

493. Do you recollect having a quarrel with Mr. Martin about money matters while the works were going on?—I don't know what you are alluding to.

494. Do you recollect having a difference with Mr. Martin about the way in which he was treating you in respect to this contract?—I remember Mr. Martin, during the time the £700 was running up, speaking very hard to me about the matter.

495. I mean after that, and before the conclusion of the work?—I think I remember about the month of April Mr. Martin coming round and saying, "We are going on at an awful rate," and that he had been sold by Mr. Clayton in reference to the contract; and that it was all very well, but I had deceived him in the matter. I said, "I had not." He said, "At the rate I am supplying material and making advances, I shall be ruined by it." In fact, he was putting material on the ground at the rate of 50 per cent. more than was advanced to him.

496. What was the reason he gave for saying that you had deceived him?—It was that if his arrangement with Mr. Clayton was going on he would be getting 75 per cent. paid to him, and instead of that he was only getting 50 per cent.

497. He was to get 75 per cent.?—I told him he would be sure to get that to carry on.

498. Mr. Martin was very much put out because there seemed to be more material brought on the ground than he was getting progress payments for?—Yes; it was about April, 1870, I think.

499. What difference did it make to Mr. Martin if he was going to be paid by the Government?—I am sure I don't know, except being cash out of pocket. I know it makes a great difference, because I felt it myself when I was carrying out large contracts.

500. At the conclusion of the contract do you recollect refusing to give up Government House?—Me?

501. Yes.—I remember Mr. Martin refusing to do it.

502. Did you not refuse to give up the keys and Mr. Martin urged you to do so?—No, he did not. He came up to me and said, "Go into that building. I must be paid before I give it up." And I went in.

503. Do you say you never refused to give up the key on your own account?—Never. I always considered that I was acting for Mr. Martin.

504. My question was not what you considered. Did you refuse to give it up, saying it was on your own account you kept it?—No.

505. Did you ever know that Mr. Martin wished you to give it up and you refused?—No. I never remember anything of the kind.

506. Did you ever make any difficulty with Mr. Martin about refusing to sign for the last progress payment?—Yes.

507. Why?—Because I said I had nothing at all to do with it.

508. Did you not wish to make some terms with Mr. Martin?—No.

509. Did you never object to signing it unless you got some money for doing so?—No; I did not. I said, "What have I got to do with signing the matter?" He said, "It is a whim of the Government and the Attorney-General, and Mr. Clayton says you must sign before I can get it."

510. Do you know Mr. Vine?—I do.

511. Did you ever say in Mr. Vine's presence that you would not give up the key or the place until Mr. Martin gave you £2,000?—It is preposterous. I swear most positively that I never said anything of the kind. I'll tell you what I did say: Vine and I were talking one day about this money, and I said, "In case Martin gets this money, it would serve him right if I did not sign until I got everything I ought to have. But I have known him for many years and have always trusted him, and I will trust him still farther." All I got was just bread and cheese, and if I had gone to Auckland I should have got £1,000. I recollect about the keys very well. I took the keys, and I said, "I'll lock that place," because it is the duty of a foreman of works to do so. I should expect it myself, and as a matter of course I went round and locked the doors.

512. I understand you to say that, in my presence, in that of Mr. Clayton, and in the presence of Mr. Martin, in my office, Mr. Martin did not express his desire that you should give up the keys, and you did not refuse?—I recollect meeting you in the kitchen.

513. No, before that, in my office?—I never recollect being in your office except before the contract was given to Mr. Martin.

514. That is the occasion I mean.—That was after I failed; there were no keys in existence then.

515. Do you not recollect being in my office the day before the building was handed over to the Government?—I don't recollect it. I recollect meeting you and Mr. Clayton and Mr. Martin in the kitchen.

THURSDAY, 11TH APRIL, 1872.

Mr W. H. CLAYTON, Colonial Architect, in attendance, and examined on oath.

516. *Mr. Attorney-General.*] Do you recollect calling for tenders for this work?—Yes.

517. Do you recollect the tenders being sent in?—Yes.

[Original tenders with schedule put in.]

518. Which were the lowest tenders?—Abbott and Co's.

519. Who were they?—Contractors, of Dunedin.

520. Do you know of your own knowledge that they were respectable?—Yes.

521. Are they persons who carried on considerable works?—They had just been accepted by the Provincial Government of Otago, as contractors for a work of £20,000 in Southland.

522. What work was that?—Something in connection with the Southland railways.

523. Do you know it of your own knowledge?—I know it from the contractors themselves. The Provincial Government called for tenders, and I put one in myself, but theirs was accepted.

524. What works did they carry on while you were living at Dunedin?—Numerous road works and country works. They were well known as contractors.

525. You have known Mr. Ben Smith for some time. Have they carried on more extensive works than he has?—I did not know Mr. Smith as a contractor until he tendered for this work. He was in Dunedin for some time; but I only knew him as an architect, and, I think, a timber merchant.

526. Peter Gunn, one of the tenderers, who is he?—He did several contracts under me; but he has failed since then.

527. Mr. Whiteford put in a tender for fourteen thousand and odd pounds?—The Government looked to the securities as much as to anything.

528. Was Mr. Martin down as a surety?—Yes.

529. What does Mr. Martin mean to say when he says that he was induced to become surety by representations of yours?—I don't know.

530. Did his name come in with the tender before it was known that Mr. Smith's would be accepted?—Yes.

531. Abbott and Co.'s tender was not accepted; do you know why?—Mr. Abbott telegraphed up that he was required in Invercargill, having tendered for this very railway which I have spoken of, and his presence was necessary there, but he said, "I will send an agent up with full powers to act for me." When the agent arrived, he turned out to be a Mr. McKenzie—"long McKenzie" he was known as—who was then out on bail, I think, for tampering with tenders in Southland. It was notorious at the time, the case having been mentioned in the papers. Mr. Stafford, immediately he was made aware of that, refused to have anything to do with Abbott's tender, and instructed me to apply to the next lowest. That was Mr. Smith.

532. You did apply to Mr. Smith?—Yes. Mr. Smith refused at first. I think then he and Mr. Whiteford amalgamated. At any rate, they arranged, and the contract was taken.

533. What was the result?—The result was the contract with Mr. Smith, with Mr. Martin and Mr. Osgood as sureties, for £10,583.

534. Mr. Smith began and went on with his work?—Yes.

534A. There is a letter from you to Mr. Martin on the 24th November, 1869, in which you say, "Mr. Smith, the contractor, having failed to fulfil his promise to place sufficient hands on the works, I now beg to call your attention, as his surety, to the matter, and hope you will lose no time in increasing the number of men to the fullest extent." Do you recollect whether that was the first application you made to him as surety?—I can't say that it was the first, but at any rate it was one of the first.

535. After that, did you make any other application to him, either by word of mouth or in writing?—Frequently, both by word of mouth and in letters, which are all put in.

536. There is a copy of a note by you to Mr. Martin on the 2nd December, and a memorandum on it, in which you say, "I have tried by the above note of a more private character to get the contract carried on. Mr. Martin accordingly called and promised to guarantee the payments for material, but as yet I see no improvement in consequence." Did Mr. Martin say anything to you about guaranteeing materials?—I think he was guaranteeing the materials all the time up to about a month or a fortnight before Smith failed.

537. Do you recollect his coming to you, and saying anything about guaranteeing materials after you had written that letter?—I can't remember.

538. Was Mr. Whiteford a contractor?—Mr. Whiteford was never taken into the contract.

539. On the 4th January, 1870, you wrote to Mr. Martin, "Referring again to Mr. Smith's contract for the new Government House, which is still proceeding unsatisfactorily, I am informed that you object to a mutual arrangement being entered into for carrying on the works, as I am empowered to do under clause 13 of the General Conditions." How was that? Why did you tell him that you understood that he was not disposed to enter into a mutual arrangement?—It became evident that Smith could not find money to carry on, and I had power under the 13th clause to close the contract and carry it on myself; but I thought if an arrangement could be made which would be satisfactory to all parties—to Mr. Martin as surety, Mr. Smith and the Government—it would be better than doing it by force. That arrangement is explained in my report to the Government for the month of December, 1869, written on the 5th January, 1870, in which I say, "It appears to me that if a mutual agreement could be entered into (and this is very probable) between the contractor, the sureties and the Government, authorizing the architect to guarantee 75 per cent. of the cost of materials and labour, and charge the amounts against the contract, it would be a preferable course to enforcing clause 13, because all its conditions would be secured, and the security increased by 25 per cent., whereas in the other case the Government would have to pay in full, would in fact become their own builders."

540. Were tenders called for in your name?—No.

541. You write to Mr. Martin saying that you are informed that he objected to the mutual arrangement. Had you been informed of that?—I had, but I don't remember how. I must have been informed or I would not have written so. I recollect my proposal verbally to Mr. Martin was what I have just read; that rather than force the conditions, it would save him advancing moneys if the Colonial Architect was allowed to guarantee to the extent of 75 per cent., and charge it against the contract.

542. You saw Mr. Martin about that?—Yes. He did not agree to it.

543. Was any other proposal made?—Mr. Martin and Mr. Smith came to my office, and Mr. Martin asked me if I would manage the building for him.

544. At what time was that?—Just after Smith's failure Mr. Martin wanted to know if I would conduct the building for him, and I told him I would not do so without the consent of the Government; but if I did so the charge would be 2½ per cent., the usual commission.

545. Was anything said on that occasion as to what the 2½ per cent. was to be paid on?—On what it would cost to finish the work. There was a fixed amount to finish the work, because so much had been paid on the contract.

546. Was anything said as to its being on the actual cost as distinguished from the balance of the contract price?—No; nothing was said more than 2½ per cent., as far as I remember. Mr. Smith, I may say, was in the outer office, and heard me say I was sick of him, and should like to see him out of it, which was perfectly true. Mr. Martin had previously told me he wanted to get rid of Smith.

547. Then you spoke to the Government?—Yes; I spoke to Mr. Gisborne, and the Government objected, and I told Mr. Martin immediately afterwards.

548. Were the works stopped during that week, do you recollect?—They had one or two men on so as to say the works were not stopped.

549. Were the works always going on?—Yes, they were always going on.
550. Did you ever take the work out of Mr. Smith's hands?—Never.
551. Did you ever give him any notice of any kind that you took the work of his hands because of his insolvency?—No.
552. Did you ever, previously to this, speak to Mr. Martin about his position as surety?—I had numerous conversations about his being surety. I don't remember anything further.
553. On the occasion of the conversation about your having 2½ per cent. to look after the work, did you say anything about the Government guaranteeing him against loss?—No.
554. Did you ever say anything to him about guaranteeing him against loss?—I may have said in casual conversation that he would not lose.
555. Was it your opinion at the time that he would not lose?—I thought so, because he had so much in hand.
556. What do you mean by so much in hand?—There were £4,000 or £5,000 to the good already on the ground.
557. Are these figures correct—£2,172 work actually performed in January; a progress payment of £330 due; detention money, £1,000; materials on the ground, £1,829?—Those are correct.
558. What do you mean by £4,000 or £5,000 on the ground?—The building already standing there, the detention money, the progress payment that was to take, and the materials that were unused.
559. Do you know what the value of the material on the ground was at the time?—£1,829.
560. How do you know that?—My clerk of the works reported to me monthly, and I learnt from his report.
561. You say that you had never given Mr. Smith any notice whatever as to your taking the work out of his hands?—None; I gave him no notices except those which could not be acted upon until April.
562. You say there were always one or two men at work?—Yes.
563. After you told Mr. Martin that the Government did not approve of the proposed arrangement, do you remember calling his attention to something that appeared in the *Advertiser*?—Yes.
564. Did you inform Mr. Martin that the Government objected?—Yes, verbally.
565. What did he say to that?—I don't recollect. The thing dropped, and the work went on.
566. We find that you wrote to Mr. Martin on the 8th of February, recommending him to send to Auckland by the "Airedale" for some timber; why did you write that letter to Mr. Martin?—Mr. Martin was then arranging to carry on himself, and it was necessary that these boards should be seasoned, and I undertook to give him a list of them. The steamer was leaving for Auckland, and I believe he sent for them.
567. Had anything taken place between you and Mr. Martin which led you to write this?—I think he asked me what timber was most needed first of all.
568. All your letters to Mr. Smith seem to be addressed to "Mr. Ben Smith, Contractor," but I see in some of his letters that he signs "Ben Smith, for John Martin." Do you know why Mr. Smith signs for Mr. Martin?—No.
569. You have observed that this was so?—Yes; I noticed it.
570. You supposed that all the money that was being found to carry on the work, was found by Mr. Martin?—Yes.
571. In February did the works go on satisfactorily?—Yes. I find in my report to the Government, on the 17th February, I say "Since Mr. Martin has taken the management of affairs, things are very different, numbers of sub-contractors swarm the buildings, and day men are employed where the nature of the work requires them."
572. Had you ever any authority from the Government to make an arrangement with Mr. Martin?—On the contrary, they objected to my making an arrangement.
573. Did they give any reason?—Because the position would not be a consistent one if I were acting for both parties.
574. Did the Government ever authorize you to make any special arrangement with Mr. Martin to carry on?—No.
575. Or any contract to pay him anything he might be out of pocket?—No.
576. And you never told him the Government would see him through?—No.
577. Did you ever say anything that he could have understood to be an engagement on your part, pledging the Government that he should not lose by the contract?—Never.
578. Did you ever say anything to him about his not being still looked upon as surety?—On the contrary, in conversation I have always considered and told him he was surety.
579. Have you on many occasions, since the first week of February, spoken to him and of him as surety?—Yes; frequently.
580. Can you mention any particular occasion?—No; I cannot.
581. On some occasions you seem to have sent Mr. Martin copies of letters which were sent to Mr. Smith?—I may state that I never took any steps from beginning to end, where I had a doubt, without consulting the Attorney-General.
582. It was under advice that you sent the letters to Mr. Martin as well?—Yes.
583. You seem to have addressed Mr. Smith as contractor, but not Mr. Martin as surety; that appears to be the only failure?—Yes; but he is spoken of as surety in some of the letters.
584. Do you recollect an occasion on which Mr. Smith, Mr. Martin, and yourself came over to the Attorney-General's office, some time in April, 1870, or about that time—not long after Mr. Smith's insolvency?—I remember being in the Attorney-General's office with Mr. Martin, Mr. Smith, and yourself, but I don't remember the date. I think there was some one occasion on which we all met in your office.
585. In none of these letters has Mr. Martin denied that his position was that of surety?—Never.
586. And in none of his answers did he ever deny it?—I have no recollection of his ever denying it. He used frequently to say, chaffingly, "The contract is broken."

587. Do you recollect any particular occasion on which he said that, and what he would do?—Especially about the time he wanted some retention money, he was angry, and came into my office and spoke in that way, and said, "There is no contract." I remonstrated with him, and said, "Broken by whom?" and said "Certainly not by the Government." It has been spoken of numbers of times casually.

588. He applied on several occasions for advances out of the retention money?—Yes.

589. Do you recollect the occasion when the work was pushed, and the contract was completed?—Yes.

590. Was there any difficulty in getting possession of the building?—Yes; not at first. Yet there must have been at first; but at length Mr. Martin and Mr. Smith came to my office together, and they did not bring the key with them; and I asked Smith for it, and he said, "It is all right; you can have it," and he gave me his hand upon it. I then went to the Government and asked who should be put in possession. It was recommended that some of the Armed Constabulary should be put in. They were put in that evening, and somebody told Smith that the Government had forcibly taken possession. He came up next morning, and got into the house through one of the windows, and took the keys out of several of the doors, and considered himself in possession. Mr. Martin persuaded him against it, but he kept one key for some days.

591. Do you recollect any one coming to my office about that?—I came myself.

592. Alone?—Mr. Martin and Mr. Smith and you and I were all together in the kitchen, I think; and previously in your office, I think.

593. You don't recollect it?—Not thoroughly; I am rather confused about the dates. I recollect the four of us were in your office once, but I can't remember the date.

FRIDAY, 12TH APRIL, 1872.

Mr. CLAYTON in attendance, and further examined on oath.

594. *Mr. Brandon.*] I understand that you said you allowed Mr. Martin to go on with the work, and a lot of correspondence to take place, but without anything definite or specific being arranged between you and him?—No, I never said that; I think I explained yesterday fully that there was an arrangement proposed, but never entered into.

595. Exactly. There was no specific arrangement entered into?—Never.

596. There was a large amount of correspondence, and Mr. Martin went on with the contract?—Yes, as surety. The arrangement that was spoken of was to carry on the work for him as surety.

597. There was no further explanation between you?—After the Government declined to allow the arrangement to go on it dropped. There was nothing more about it. Mr. Martin made his own arrangements.

598. You never called upon him to find out what terms he was going on?—No; I considered he was going on under the contract.

599. But you were quite aware of Smith's insolvency at first?—Oh, yes.

600. Did you ever ask him how he stood with his co-surety?—No.

601. Never suggested anything to him?—No.

602. Did Mr. Martin tell you at any time that the amount he had paid for material and labour had far exceeded the contract price?—I think he frequently said so latterly.

603. Merely mentioned it casually?—Just casually, in conversation.

604. Has he never, during the progress of the work, told you that he considered he should be paid for the excess?—Never, that I am aware of. In fact I don't know how he could do so. He has frequently said latterly that the contract was broken. I think he wrote it also.

605. Smith has also written it, has he not?—Smith has said, at the latter part, there was no contract. That was at the delivery up of the keys especially.

606. But before that he wrote to say that there was such a discrepancy between the plans and specifications that he considered it broken?—I don't think so.

607. Is there not some letter to that effect?—He has said, I think, that there was more in the building than there was in the plan; but I frequently warned him, from the commencement, that if there should appear in the working drawings anything extra to the contract he should give me notice of it in writing. That all the working drawings were to be considered part of the contract, and unless he gave me written notice they must be considered to be so.

608. Have you made any valuation of the building since it has been completed?—Yes. I was ordered by the Select Committee to make a valuation of the building as it stood at the date of the sitting of the Committee in November last.

609. Complete possession had been taken, and the whole thing handed over?—Yes.

610. What was the amount?—£16,245. The details are in Mr. Commissioner's hands.

611. Was there not a dispute as to the cost of the erection of the Post Office in Dunedin?—The contractors claimed some extras.

612. Was it £6,000 they claimed?—I don't know the amount, but it was left to Mr. Balfour to settle. £2,000 was about it, I think. The circumstances were totally different to this contract.

613. *Mr. Attorney-General.*] Were prices higher at the time of the valuation, on the 7th November, 1871, than at the time the contract was taken in 1869?—Some articles.

614. Materials?—Yes. Lead, I think, was one. I have specified everything in my valuation. Materials had risen in value from the time the contract was taken to the extent of £985.

615. Have any fallen?—I don't think so.

616. Do you say whether this rise had taken place during the time the work was going on, or from the time of the completion?—From the date that the contract was signed to the date of my making that estimate, the prices had risen £985.

617. When you made the valuation you put down a sum of £1,476 15s. "percentage for profit on

valuation; can you explain that?—That is the percentage always put on in valuation.” I have never known it to be put on in tendering, in the colonies at all events.

618. There is another item of £206 for insurance; why should not that be charged?—That was in the specification. I stated in my valuation that I suppose the insurance item was thrown in.

619. There are items for materials supplied by the Government; how much have you allowed for those?—£314.

620. Mr. Smith and Mr. Martin had to pay the insurance?—Yes. I have allowed a sum of £366 “low in estimate,” which is explained in my report to the Committee. Smith’s tender was low by £366, and that I have added.

621. What is the amount for materials on the ground?—£1,829.

622. And the amount paid to Mr. Smith?—£2,674.

623. Were the materials on the ground used up?—Yes. By Mr. Martin, I believe.

624. Was there a sum paid to Messrs. Turnbull, Reeves, and Co. out of the contract?—No, they withdrew their claim.

625. What sums would you deduct from your valuation of £16,245, as not coming out of Mr. Martin’s pocket?

Payments to Smith	...	...	...	...	...	...	£2,674
Materials on the ground	...	...	...	...	...	...	1,829
Percentage on valuation	...	...	...	...	...	...	1,476
Materials supplied by Government	...	...	...	...	...	...	314
							<hr/>
Making a total of	...	...	...	...	...	...	£6,293
Money paid to Mr. Martin	...	...	...	...	...	...	9,954
							<hr/>
							£16,247

626. And supposing he had purchased the materials eighteen months before your valuation he would have been able to do the work £985 cheaper than you value it, on account of the rise in price of material?—Yes.

627. *The Commissioner.*] I see in the evidence before the Select Committee, Mr. Martin was asked on what amount you received commission, and he says “Ben Smith and myself made it up according to the receipts to be £21,000.” Was that so?—No; I only got commission on £13,678, the amount of Ben Smith’s tender, and that is what I admitted before the Select Committee.

628. With regard to that tender of Mr. Ben Smith’s there must have been some confusion. He appears to have originally tendered for £15,600 in round numbers, and yet it is taken at £13,678. Smith withdrew his first tender. Then Whiteford tendered at £14,000 and odd, and Smith and Whiteford by arrangement agreed to take up Smith’s original tender at £13,678, and signed a tender to that effect; but it was agreed by the Government that Smith should be treated with, because his sureties were considered the best. He then gave a written tender, which you have, saying that he would take up the contract at £13,678. That tender was accepted and the contract drawn up.

629. There were certain reductions which brought it down lower, were there not?—Yes.

630. Then Mr. Whiteford disappears from that time?—He was not taken into the contract at all.

631. Why was that?—It was thought that Smith was quite sufficient. There was, I believe, a private arrangement between Whiteford and Smith, and Smith has always called him his partner; but he did not appear in the contract.

632. You have said that it was proposed to Mr. Martin to carry on the contract, he paying you $2\frac{1}{2}$ per cent. to look after it?—Mr. Martin wished me to manage the work for him instead of Mr. Smith, after Mr. Smith’s failure. I told him I could not do so unless the Government would consent, when the charge would be $2\frac{1}{2}$ per cent.

633. $2\frac{1}{2}$ per cent. on what?—On what it would cost to finish it.

634. That was in contemplation of declaring Mr. Smith’s contract void. Was it not?—No. It was a proposition of Mr. Martin’s to get rid of Mr. Smith.

635. Then you acted under the 13th clause of the General Conditions?—If some arrangement of that kind had been carried out, and Mr. Martin gone on with it, I should have fallen back on the 13th clause and taken Mr. Smith out of it altogether, holding Mr. Martin responsible to the extent of his surety.

636. Then he would have been both surety and contractor?—Had I taken it under the 13th clause he would simply have stood as surety; and had there been a deficiency after the retention money was spent, we should have come back upon Mr. Martin for the £1,000.

637. *Mr. Brandon.*] Supposing, after having undertaken the work on these terms, the cost of finishing it had been £2,500 in excess of the original contract, he would then have been entitled to be paid £1,500, the Government retaining £1,000 as his penalty under his bond?—Just so.

638. *The Commissioner.*] If you had acted under the 13th clause, the contract would have been broken and Mr. Smith ousted?—Both Mr. Martin and Mr. Smith would have been, except that Mr. Martin would have had to pay under his bond. I would not have called upon Mr. Martin to do work of this kind; most likely I should have called for fresh tenders.

639. Then what was the proposal?—As I understand it, it was that Mr. Martin was to carry on the work and be responsible for it. Mr. Martin, as surety, instead of having Mr. Smith to manage for him, wanted me to do so; and if carried out I should have managed for both the Government and Mr. Martin.

640. In order to do that you would have had to take it out of Mr. Smith’s hands?—Yes.

641. What would have been Mr. Smith’s position then?—He would have been out of it.

642. *Mr. Brandon.*] If Mr. Martin had come in under that arrangement, would he not have been engaged by you to carry on the works irrespective of the amount of the contract?—I looked upon it as simply putting him in Mr. Smith’s place.

643. *The Commissioner.*] What I want to get at is the position of all parties—contractor, surety, and Government—if that arrangement had been carried out. What would have become of the contractor?—That is a legal point on which I cannot give an opinion. Every step I took was under the advice of the Attorney-General.

644. *Mr. Attorney-General.*] Could you have got rid of the contractor against his will, except by acting on the 13th clause?—I don't know.

645. At all events, you would have had to get the consent of the contractor to this arrangement?—You will see in my papers that it was to be with the consent of all parties.

646. *The Commissioner.*] There was a letter from you to Mr. Martin, saying that some vessel was going to Auckland, and that he had better send for certain timber by it. Was that after or before Mr. Martin was informed that the Government would not agree to the arrangement?—It was on the 8th of February.

647. *Mr. Brandon.*] About that £1,476 profit on valuation. I do not understand why that should be deducted?—It is the custom. That is the only answer. A contractor in tendering does not put down a profit, but puts down the market price of materials, and relies upon being able to supply them himself at cheaper rate.

648. *The Commissioner.*] The contract was for £10,583; was more than that expended?—Yes.

649. How did the additional sum arise?—By separate tender for each item.

650. Were these extras beyond the £10,583 fresh contracts?—Yes.

651. With whom?—With Mr. Ben Smith.

652. Were they outside the original contract?—Yes.

653. Then, in fact, Mr. Ben Smith had not one contract, but several?—A dozen, perhaps.

654. Was there nothing provided in the original contract in case of extras?—In the General Conditions, there is a clause providing that for extras separate agreements shall be entered into. I had power under the General Conditions to make these extra contracts.

655. Then they would not injuriously affect Mr. Smith's ability to carry out the original contract?—No; it was part of his engagement.

656. There was power to make these extra contracts with the contractor?—Yes.

FRIDAY, 12TH APRIL, 1872.

Mr. BEN SMITH in attendance, and further examined on oath.

657. *Mr. Attorney-General.*] I understood you to say that there were no other monetary transactions between you and Mr. Martin, except this £700 advanced by him?—I said £500, and then a further £200, and afterwards the cheque for £100.

658. Do you owe him anything else for moneys advanced on goods or anything else?—I don't know.

659. You put in your schedule £1,215, how is that?—That is right. It was for guarantees he gave to various merchants for the purchase of materials, and he has had to pay it since.

660. That £1,215 was all owing on account of Government House?—Yes.

661. *Mr. Brandon.*] Was anything of that for materials lying on the ground?—They were lying on the ground.

662. Was that owing to him at the time of your insolvency over and above the payments he had received under the assignment?—I don't remember any payments. What payments?

663. Under the assignment you gave him?—I gave him an assignment of all and everything I had.

664. You gave him nothing of the kind. It was an assignment of the moneys arising from the Government House contract. Then I ask you, was that £1,215 owing by you to him over and above any payments he may have received under that assignment?—Yes.

665. You gave Mr. Martin some security over some land?—Yes, over some leasehold property.

666. Has not the landlord gone into possession, and is he not now in possession of that?—Yes.

667. So that Mr. Martin gets no benefit whatever from that?—He never got a penny from it.

TUESDAY, 16TH APRIL, 1872.

Mr. C. B. VINE in attendance, and examined on oath.

668. *Mr. Attorney-General.*] Your Christian name, Mr. Vine?—Charles Boniface.

669. You were clerk of the works at the Government House from the time of its commencement till its completion?—Yes.

670. Are you aware that some time in February, 1870, Mr. Smith became insolvent?—Yes.

671. Do you recollect when the work was finished, and Government House given over by the contractor?—Somewhere about April or May, 1871. I think April.

672. After Mr. Smith's insolvency, who carried on the work then?—Mr. Smith.

673. Was there any difference, so far as you saw, in the manner in which he carried on the work, after and before the insolvency?—None whatever. I treated him as contractor from beginning to end.

674. Did he behave otherwise than he had done before?—No; I saw nothing different.

675. Did he ever, while you were there, tell you that he was only in the position of agent or overseer for Mr. Martin?—Never. He never led me to believe anything of the kind.

676. Did he ever say anything to the contrary?—Yes. He always led me to believe that he was contractor to the end; and that he anticipated receiving any overplus that might be going—if there should be any—at the end of the work. That was in conversation.

677. Do you recollect any particular occasion when he mentioned any particular amount?—No.

678. Were these conversations that you refer to after the insolvency?—Yes.

679. Do you remember a person named Petford suing Mr. Martin in the Resident Magistrate's Court for doing some gas-fitting work?—I do.

680. Were you present?—I was subpoenaed by Petford, and was present.
681. Was the work done after the insolvency?—Yes.
682. Do you remember what date it was done?—The work was in hand for a long time.
683. But all after the insolvency?—Yes.
684. You were present in the Court?—Yes.
685. Was Mr. Martin there?—Yes.
686. Was Mr. Smith there?—Yes.
687. Did he give evidence?—Yes; both of them did so.
688. Who conducted the case for Petford?—Mr. Allan.
689. Who was the Magistrate who decided the case?—Mr. Crawford, the Resident Magistrate.
690. Do you remember when this matter was tried?—It must have been about fourteen months ago—about February or March, 1871.
691. You heard Mr. Smith give his evidence?—Yes.
692. Did he or did he not say whether he was contractor at the time this work was done?—He said he was contractor.
693. Did he say what Mr. Martin was?—I don't recollect his saying what Mr. Martin was.
694. And did Mr. Martin pay in the end?—Yes, I think so.
695. You heard the evidence given?—I won't say I heard the whole of the evidence.
696. You were there when the contract came to an end?—Yes.
697. Did Smith say anything to you then?—He made some remark to the effect that he was going to have £2,000, but I put it down as some of his other remarks. I did not take much notice of it. He said something about keeping the key.
698. What was that?—He made some remark about not giving up the key unless he got £2,000.
699. Was that at the termination of the works?—About the termination of the works.
700. He said nothing about Mr. Martin having this £2,000?—No.
701. You were in Court when Mr. Martin was examined?—Yes.
702. Do you recollect any question being asked him about wages?—Yes.
703. What was the answer?—Mr. Allan asked him whether he was not in pay of Mr. Martin—whether he did not receive a salary from Mr. Martin, and he said no.
704. Do you recollect the amount of the claim?—No.
705. *Mr. Brandon.*] Did Mr. Smith at any time say whether there was any arrangement as to his obtaining any money if there was a surplus, and on what grounds?—No, I don't remember Mr. Smith saying that, or alluding to any particular circumstances.
706. You say he said he was to have £2,000 out of the surplus; did he say when, how, and where.—No. As I said before, it was merely a passing remark he made about keeping the key. I didn't pay any attention to it at the time.
707. Against whom was he to keep it?—Really it was a mere matter of conversation, and I did not think anything of it at the time.
708. You took it as all "bosh"?—I took it as merely talk.
709. Did you not know yourself that Mr. Smith was not finding either material or money for labour?—It was pretty plain he was not.
710. You knew who was finding the material and labour?—It was always known that Mr. Martin was the man with the money.
711. Had not Mr. Martin to be there frequently?—Frequently.
712. Had you ever any communication with Mr. Martin?—No.
713. Do you know who supplied the material?—I apprehend that it came from several yards, from the tickets that passed through my hands.
714. Do you know on whose responsibility?—No.
715. You did not suppose for one minute it was on Mr. Smith's?—It was generally supposed that all the parties were paid by Mr. Martin for anything they supplied.
716. Who was the party sued by Petford in these proceedings you have referred to?—Mr. Martin, I think.
717. And Mr. Martin had judgment given against him?—I am pretty sure it was so.
718. Then, in fact, there was nothing very definite in the conversation between you and Smith?—No.
719. Nor with Mr. Martin?—No.
720. *The Commissioner.*] Do you know why Mr. Martin was sued by Petford, and not Mr. Smith?—I don't know anything more than that it was generally understood that Mr. Martin was to find the money for all these works.
721. Do you know if there was any difficulty, after the contract was completed, in the Government getting possession of the building?—No; there was no difficulty. The Government placed some of the Armed Constabulary in possession on the Saturday.
722. Why?—Simply because it was understood that they had possession of the building. But on the Monday they had orders that no one was to be admitted to the place except they had an order from Mr. Clayton, and Mr. Smith came up to the works and made an entry himself.
723. The police were then in the building?—Yes.
724. For what reason did he make an entry?—Some of his property was in the building.
725. You don't know anything about his refusing to give up possession?—No.

TUESDAY, 16TH APRIL, 1872.

Mr. W. P. JAMES in attendance, and examined on oath.

726. *Mr. Attorney-General.*] You are second clerk in the Resident Magistrate's office, Wellington?—Yes.

727. Were you so in February, 1871?—Yes.

728. Do you produce the proceedings in the civil case of *Petford v. Martin*?—I do.

[Proceedings produced.]

729. Will you read the evidence given by Mr. Smith and Mr. John Martin on that occasion?—
“Ben Smith sworn: Is contractor for Government buildings. Attorney-General has it. Martin is not a joint-contractor with me. He is one of my sureties to the Government for the due fulfilment of my contract. I hired Petford in my position as contractor for the works. I never told Petford at time of hiring, or at any other time, that Martin was responsible to him. Gave Petford authority to buy things. Martin would be liable to Government if work was not completed at a certain date. Martin often came up to see how we got on. Works were behind. Martin tried to hurry every one. Martin never hired labourers to do the work I had contracted to do. He never discharged any labourers.

“By Mr. Allan: I became bankrupt and was unable to complete the contract. The Government called upon Martin, as surety to complete the contract. I know that Martin has to find the money for me to complete the contract. He pays for all the materials on my orders. He never sends any orders at all; I order everything. He never orders timber, without my order. I hold myself liable to pay, by order, upon Martin. My creditors are to get the profits. Martin is not there as managing man. He has not the power of dismissing any man he pleases. I never sent time on that account; I send pay so much money on account. Never said “Bloody buildings.” I could turn Martin out if I thought proper. I never had wages from Martin. I show him the work.

“Re-examined: The Government and the Government Architect treat me as contractor. Martin pays on my account. Money is paid from Government to me, and I hand it to Martin.

“John Martin sworn: I am the surety for the Government Buildings. Contractor got into difficulties. He is still the contractor. I made the payments. If things turn out well I am to get a commission; no more. I have never interfered in the contract. I have gone round to push on the works. I have never engaged any man, nor dismissed any.

“By Mr. Allan: Government did not require me to finish the contract. They said, You have to pay £1,000, or allow the contractor to go on. I take a great interest in it. Smith is still the contractor. I have never given orders for timber, except on previous notice of Smith. All orders have gone through me. I hold myself responsible to pay the men, if the contractor authorized it. I wished the men to make overtime so as to get on with the work. I pay nothing, except what the contractor tells me to. If he says the work is done, I pay. If any workman comes to me for money, I say I do not know him.

“Ben Smith recalled: I have passed through the Court. I get my living by money that I earn. My only work is at the Government Buildings. I do not get a salary from Martin. He pays me on account of expenses; for money laid out. I shall expect to get remuneration for my work. I have made over all my interest in the contract to Mr. Martin. I have had about £30 only between February and December. I have not heard of Martin giving notice. I have assigned to Martin all the moneys coming from the contract. I know Ringrose. Martin guaranteed his contract. Contract produced is Martin's. Ringrose has not done the work. I do not report to Martin.

“By Mr. Borlase: Martin is liable for damages if work is not completed. I am still the contractor. I have to give an order to Martin to receive the money. I have to get balance, if any.

“John Martin recalled: I did not give a notice after Smith's bankruptcy that the public were to look to me and not to Smith. Notices from Government are not sent to me. Copies of letters to contractor are sent to me; have had two or three. This is my signature to contract produced. Did it at request of contractor. I am willing to pay this debt if contractor says it is correct.”

730. Those are the proceedings in the suit *Petford v. Martin*?—Yes; on the 3rd February, 1871.

731. That is Mr. Crawford's handwriting?...Yes.

TUESDAY, 16TH APRIL, 1872.

Mr. BEN SMITH in attendance, and further examined on oath.

732. *Mr. Brandon.*] Having heard the Magistrate's note of the evidence given by you in the suit *Petford v. Martin* read, can you express what was meant by saying you were still contractor in February, 1871?—I said I was still recognized as contractor, from the letters addressed to me.

733. What did you mean by saying you had made over the contract to Mr. Martin?—What I meant was, that I had made over all the rights I had in the contract before I stopped.

734. When did you do that?—About four or five months before I stopped.

735. Did you sign any other deed than that which has been produced?—I did not. I know I was called upon at a minute's notice to give that evidence.

736. You said you expected to get remuneration; what did you mean by that?—Nothing more than I have said already. I said to Mr. Martin, “You must give me enough to keep me, and if everything turns out right, then pay me a good sum.”

737. What do you mean by saying that you could turn Mr. Martin off at any time?—I could not have said so. It must have been taken down wrong. I know I was very much excited. I think it was in cross-examination by Mr. Allan; and I think I remember saying that if Mr. Martin came and interfered with any men working on the job, I would have to turn him off the works or leave myself; and so I should. If any man interfered with the works, I would turn him off or leave myself. That is exactly what it implies.

738. You say you would turn Mr. Martin off if you thought proper?—That is just it. I remember saying I would turn him off or he would turn me off—one or the other. That was what I said. The whole of my evidence goes to show that I was there for Mr. Martin in carrying out the works. I made the contract with Petford, no doubt, but it was the same as anybody else who would be carrying on the works.

739. There has been no other deed than that one produced?—No.

740. *The Commissioner.*] Then Mr. Martin called you as witness on his side?—Yes. The fact of

the case was this: This man was a cantankerous man, and he sued Mr. Martin for the money. I was called in on the spur of the moment as a witness, and Mr. Borlase was called in on the spur of the moment as counsel for Mr. Martin. There is how the whole thing turned up.

741. Do you know why Mr. Martin disputed this debt?—Because I found this man, who was working by the day, asleep at his work. I found him asleep in the tower, and I kicked him off the building. He was found asleep upon one or two occasions. There were rows between him and almost every workman on the building.

742. You engaged Petford, did you not?—Yes.

743. Then why did he not sue you?—Because he knew I was engaging him for Mr. Martin. Everybody knew I was engaging the men for Mr. Martin.

744. *Mr. Brandon.*] What was the agreement in the contract referred to?—There was no written agreement.

745. *Mr. Attorney-General.*] There is a report of that case in the *Independent* of 21st January, 1871. I ask you is this true or untrue:—"Ben Smith deposed: I am the contractor for the Government House. Mr. Martin is not a joint contractor. He is surety for me to Government. I hired Mr. Petford in my position as contractor; but I never told Petford that Mr. Martin was responsible to him. I gave him the authority for making any alterations, and paid him for them, but never authorized him to purchase any tools, such as he has down in his bill. Mr. Martin used to visit the work often. We were over contract time, and he was anxious to see the work hurried on with, so as to get in his money that was lying idle, but he never took on men nor discharged men.

"By Mr. Allan: I became bankrupt, and the Government called on Mr. Martin to finish the work. I know he had to find the money for me. Upon my orders he pays for all the material. My creditors are to get the profits, I hope, if there should be any. I was not satisfied at all with the work of Mr. Petford. Mr. Martin is not the managing man, and he does not know who is taken on or discharged. I would not allow him to discharge any one against my wishes, while I am recognized by the Government as the contractor. I never made use of such words as "I don't care if the b—y place burns down." My character is too well known in Wellington for any one to believe that I could use such language. Mr. Martin pays money on my order.

"By Mr. Allan: Mr. Martin receives all money.

"John Martin called: I am surety for the contractor of the Government House, but I have not interfered with the contract in any way. I have advanced over £7,000, for which I am to get a commission if things turn out well, but nothing more; and if there is any profit over that it goes to the contractor, Mr. Smith.

"By Mr. Allan: The Government did not call upon me to finish the contract, but they asked me to be responsible for my surety of £1,000. I then told Smith that I would advance him, on commission, the necessary money to complete the work, so as to save my £1,000. I asked Petford, 'Why don't you make overtime? I should like to see all the men make overtime, as it is a very serious matter to me.' I have always held myself responsible for orders for work signed by Smith. I have done so hitherto, but I don't know how much longer I shall keep up, as I think the work is overpaid by this time." Is that report true or untrue?—How can I tell whether it is correct or incorrect. I can only say this, that it is a very varnished report, because the press was biased against Mr. Martin at that time.

746. *The Commissioner.*] What sums are down in your schedule that belong to the Government House work?—Wages due to the men, £100; Turnbull, Reeves, and Co., £918; Vennell, Mills, and Co., £217; Wm. Fleet, for bricks, £27; Maslem, £65; Tonks, £60 8s.; W. M. Bannatyne, £124 2s.; John Tolly, £21. These are all, besides Mr. Martin's advances. The figures may not be correct to a pound or two, as the schedule was made up in a great hurry.

747. *The Attorney-General.*] Were there not orders from Mr. Clayton to pay Turnbull, Reeves, and Co.?—The paper between me and Turnbull, Reeves, and Co. was made by the Clerk of the Works, and not by Mr. Clayton.

748. The orders from Mr. Clayton were towards this £918?—Yes.

749. These orders were given between September and October, 1869?—You know.

750. They were long before the insolvency; you gave a deed to secure them?—No; I gave them bills, to be paid out of the balance of the contract.

751. Did you give any order on the Government?—The arrangement between me and Turnbull, Reeves, and Co. was, that the order should be given on the Clerk of Works; but instead of being given to the Clerk of Works they were given to Mr. Clayton, and these orders are part and parcel of this £900 that I received 75 per cent. on in the £2,674 paid to me.

752. You gave the order and spent the money on other things?—Yes, in paying wages and other things.

753. *Mr. Brandon.*] But the deed given subsequently to Mr. Martin, was it not for the cash credit at the Bank?—Yes.

754. And did not the money you drew from that go in payment of the materials you had previously ordered and used for Government House?—Yes.

755. Had not Turnbull, Reeves, and Co. been paid for the various things they had supplied before?—Yes, some four or five hundred pounds. In fact I think it was upwards of £500.

756. *Mr. Attorney-General.*] Do you mean to say that some of these orders you gave to Turnbull, Reeves, and Co. were paid?—No, it was money prior to these orders. This is the balance, and these orders are contained in that balance.

FRIDAY, 16TH APRIL, 1872.

Mr. CLAYTON in attendance, and further examined on oath.

757. *The Commissioner.*] Why did you ask Mr. Martin for that bill in September, 1870, for commission on extras?—Mr. Martin had taken up Mr. Ben. Smith's previous bill, which was dishonoured; and hence the reason why I drew upon him for commission on the balance of the extras.