

"After careful consideration of the clauses of the specification relative to tunnel works, I am inclined to consider their real intention (whatever the legal construction may be) to be, that the material from the tunnel was to be used as far as required for the works, and that any surplus undisposed of was to be run to spoil on ground provided at the expense of the contractors. This point appears to me, however, to be comparatively unimportant, so far as the claim under consideration is concerned, as I think that this embankment follows upon, and forms an essential part of, the works consequent upon the alterations of the line at the southern entrance to the tunnel, which the contractors agreed to excavate for the sum of £5,000.

"Even assuming, for the sake of argument, that the contractors were entitled to be paid for this embankment, the rate charged appears to be unreasonable and exorbitant. The cost of obtaining and depositing material for the embankment of adjoining ground was, I am informed, about 2s. per cubic yard, whereas the contractors claim 5s. per cubic yard for merely depositing material otherwise paid for in the cuttings or tunnel excavations.

"Taking a most favourable view for the contractors—assuming that the embankment was not included in the additional work which they agreed to execute for £5,000, I should consider 1s. per yard upon 30,000 cubic yards (£1,500) ample payment for any additional cost connected with depositing the material. The work now charged for has, in my opinion, been already paid for, and I do not think that the contractors have any fair or just claim for further payment on account of it.

"*Second Claim.*—Amount for being compelled to construct the portion of the Lyttelton and Christchurch Railway between Ferrymead Junction and the Christchurch station, with the siding there.

	£	s.	d.
Extra cost of 442½ tons of rails, chairs, and fastenings, including lighterage and cartage	885	0	0
Extra freight on posts and rails, wire, sleepers, timber for bridges, together with the difference in cost of material	2,132	10	0
Extra on ballast which should have come from the tunnel, but had to be bought and carted to the work	3,087	10	0
Extra on price of bricks and stone for culverts, and difference in cost of labour and horse hire	1,625	10	0
	<u>7,730</u>	<u>10</u>	<u>0</u>

"With reference to this portion of the line, the contract deed expressly provides that the contractors 'will not, during the first four years of the said term of five years, or until the completion of the said tunnel and the works connected therewith, according to the full intent of such contract specifications and drawings as aforesaid, commence or proceed with the construction of any portion of the said railway and works between the City of Christchurch and that part of the said railway situate in the Heathcote Valley, three miles twenty chains distant from the said City of Christchurch, as delineated on the said railway plans and sections hereunto annexed, unless upon receipt of a requisition in writing from the said Superintendent, or his successors, requiring them to proceed with any such portion; and upon receipt of such requisition they shall proceed forthwith to construct and complete the works referred to therein, subject, &c. Provided always that they shall not be obliged to maintain or repair such works for more than twelve months after completion thereof, as certified by the Engineer.'

"The correspondence relative to the subject apparently commenced with a letter from the Provincial Engineer to the Provincial Secretary (date, 14th August, 1862), recommending that Messrs. Holmes and Co. should be instructed to import metals required for line at an early date, so that Government might be able to open line to Heathcote at an early date in anticipation of completion of tunnel.

"On 14th November, 1862, the Provincial Secretary wrote to Messrs. Holmes and Co., that although the Executive do not call on the contractors to proceed with the main line from the hills to Christchurch; yet, if the contractors are disposed to procure rails and chairs, the Government will not object to pay for them on certificate of Engineer.

"The following minute appears to close the correspondence:—

"*Minute of Executive Council, 9th December, 1862.—Lyttelton and Christchurch Railway.*

"The Council resolve, upon consideration of the estimates of traffic supplied by the Order-of-Council, that the contractor should be directed to proceed with that portion of his contract which provides for the making of the main line from Christchurch to three miles twenty chains."

"The evidence given before the Railway Inquiry Commission by the gentlemen who held the offices of Superintendent and Provincial Secretary when the works were commenced also incidentally confirms the general impression conveyed by the tenor of the correspondence and minutes.

"Under the circumstances, this claim of £7,730 10s. may be very summarily disposed of.

"1st. It does not by any means appear from the correspondence that the contractors were, as they allege, compelled to execute these works; on the contrary, they appear to have raised no objection to proceeding with them.

"2nd. Even if they were compelled, the contract specially provides that they shall construct them on the condition that they shall not be obliged to maintain them for more than twelve months.

"3rd. In January, 1863, the contractors agreed to construct the works on the Ferrymead branch at the same rates as the contract schedule prices for the main line, from which I think it may reasonably be inferred that they, at that time, considered the arrangement to construct the line from Christchurch to Ferrymead Junction likely to prove advantageous to both parties, and that the schedule prices were sufficient to yield a profit on the outlay for the work.

"On the other hand, it may fairly be assumed that considerable additional expense would be incurred in constructing this portion of the line before the completion of the tunnel. Had its

Mr. Rolleston.
26th Nov., 1877.