

1877.

NEW ZEALAND.

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**PUBLIC PETITIONS COMMITTEE.**

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**REPORT ON THE PETITION OF GEORGE HOLMES & CO.**

(TOGETHER WITH MINUTES OF EVIDENCE.)

*(REPORT BROUGHT UP 7th DECEMBER, 1877.)*

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**REPORT.**

THE petitioners were contractors for the Lyttelton and Christchurch Railway, under the Provincial Government of Canterbury, and they state that deviations were made by the contracting parties from the original contract which involved the straightening of the tunnel and various alterations in the vicinity of the tunnel mouth, for which deviation and alteration a sum of £5,000 was agreed to be paid. This alteration of the original plan necessitated the original lines of reclamation to be extended seaward, and the petitioners claim payment for this extended reclamation, which they state was not included in the sum of £5,000 agreed to be paid for the alterations in the tunnel and tunnel mouth.

The Committee, having examined the documents bearing on the case, and taken the evidence of W. S. Moorhouse, W. Rolleston, and W. Montgomery, who were connected with the Government of Canterbury during the progress of the contract, and also examined Mr. Dobson, C.E., who was engineer of the works, direct me to report that the Committee are unable, at this period of the session, to give that careful consideration to the mass of evidence before them that the importance of the case demands, but are of opinion that the petition and evidence should be referred to the Government for consideration during the recess, with a view to instituting an inquiry into the matter if necessary.

**T. KELLY,**

Chairman Public Petitions Committee.

7th Dec., 1877.

1.—I. 2D.

## MINUTES OF EVIDENCE.

MONDAY, 26TH NOVEMBER, 1877.

MR. T. KELLY, Chairman.

MR. TRAVERS, M.H.R., examined.

*Mr. Travers.*  
26th Nov. 1877.

1. *The Chairman.*] You presented the petition to the House, Mr. Travers?—Yes; at the request of the petitioners.

2. I have summoned you because it is usual that the person who presents a petition to come before the Committee. In what position do you appear?—As a witness. I happened, years ago, to have been engaged professionally for Messrs. Holmes & Co., and am therefore familiar with the facts, but I have no other connection with the case.

3. Then, do you desire to make a statement, or to be called as a witness?—I am familiar with the facts; I can state what I know of the facts in support of the petition.

4. The Committee has no desire for you to make a statement unless you wish?—I have no objection to make a statement.

5. *Mr. Rolleston.*] Is it understood that the member who presents the petition should conduct the case?

6. *The Chairman.*] He simply indicates what witnesses are to give evidence.

7. *The Chairman.*] If you have no statement to make, I will question you as a witness?—I did not understand that was the rule.

8. *The Chairman.*] Not necessarily; the person who is summoned by the Committee is permitted to make any statement he thinks proper?—This is a claim made by Messrs. Holmes and Co., the petitioners, for work done in connection with the Lyttelton and Christchurch railway. These claims were not recognized by the Provincial Government. They sued the Provincial Government to recover the moneys as in the nature of extra works done under the provisions of the contract; the Provincial Government pleaded a plea which precluded any points on the merits from being enquired into—a technical plea, that the work was not done under any contract sanctioned by law, and that there was no appropriation. The judgment that was given upon the matter by the Judges in the Court of Appeal discloses the defence relied upon. The claim was, I think, for £34,117, and the plea was in effect that the defendant was sued as Superintendent of the Province, that the work and labor alleged to have been done was done without the sanction or authority of the Provincial Council of Canterbury in any ordinance, and that no appropriation had been made.

9. *Hon. Mr. Reynolds.*] Is that the Judges' decision?—That is the judgment in which the Judges decided that they saw an absolute bar. The case was somewhat peculiar, for Mr. Moorhouse had in fact entered into a contract under the provisions of the Lyttelton and Christchurch Railway Act of the General Assembly of 1860. Here is the Act. He had entered into the contract, assuming that he had authority to do so under the second section. He assumed that that gave him authority to contract for the railway. The Judges decided that it required further sanction of the Assembly. No difficulty arose as regards the main contract, for from time to time (during several years) the Council passed ordinances appropriating moneys for this railway. Here are all the Provincial Ordinances appropriating money for the purpose of this railway (ordinances handed in.) These were passed after the General Assembly Act. The decision of the Court of Appeal runs:—"The Lyttelton and Christchurch Railway provides by section 2, that it shall be lawful for the Superintendent to take all necessary steps for the construction of the railway, to enter lands, &c. The Act makes provision to enable the Superintendent to cause compensation to landowners and damages to be paid out of the public revenues of the colony. It was, however, held that the words of the section did not empower the Superintendent to engage the public credit by contracts for the execution of the works; and therefore a plea to an action founded on an implied contract by the Superintendent to pay for work done by a person employed by his predecessor in office, to the effect that the contract was made without the previous sanction of the Provincial Council, and that they had never ratified it or made provision for the plaintiffs' claim was held good on demurrer." It is on the authority of a case in England, *Churchman against the Queen*, which requires either a specific act or a specific appropriation, and that was pleaded, and the consequence was the case never went to trial. There was a case stated for the Court of Appeal.

10. For what purpose?—The case was decided by the full Court. It came a second time before the Court, and precisely the same grounds were taken. It was sought on the second occasion to rely upon all these Provincial Ordinances as amounting to a ratification; but it was held that these ordinances did not help the matter. So that the claims of Messrs. Holmes never came before the Court on its merits.

11. Hence the petition?—Hence the petition. This really gives the ground upon which the Court held that Messrs. Holmes and Company could not get before a jury. They were anxious to try the case upon its merits, but were quite unable to do so. It was in consequence of that difficulty that the case could not go to trial. As to the merits of the claim I know nothing at all.

Hon. E. RICHARDSON, M.H.R., examined.

12. *The Chairman.*] With regard to the details of this claim stated in the petition, Mr. Richardson, *Hon. Mr. Richardson.* I think the best course would be to take them *seriatim*. It is stated that in the year 1861, a contract was signed by your firm, to construct the railway according to the plans and specifications for £240,500. Have you got the specifications?—Yes. *son.* 26th Nov., 1877.

13. Was this contract duly entered into for that sum?—Yes.

14. You state that among other things, if any dispute arose during the construction of the work, that it was to be settled by arbitration?—Yes.

15. Where is that shown?—In the 27th section of the conditions of the contract as follows:—“The contractor in all cases is to carry out the instructions of the engineer, whose decision is to be binding in all cases of dispute, and should any difference of opinion arise between the engineer and contractor affecting the amount to be paid to the latter, either in respect of the works described in the specification, or any additional works that may be ordered in connection therewith, the matter in dispute is to be referred to arbitration in the usual manner, at the joint expense of the Provincial Government and the contractor.”

16. Do you consider that intended to include any extra works over and above the original contract?—Certainly; it particularly says so—any additional works.

17. Was the same understanding held by the Government of the day?—As far as I know. The conditions were relied on all through the contract from beginning to end.

18. You further state in section 3 of the petition, that in 1862, it was decided to make certain alterations at the Lyttelton end of the tunnel, and that the works involved by this alteration were estimated to cost £5,000. Was a further contract entered into to provide for this additional work?—No; there was no further contract. While the work was progressing, it was suggested, for several reasons, that it would be better to straighten the tunnel. (The tunnel previously had a very sharp curve at Lyttelton). This alteration was decided upon, and involved a certain amount of work at the tunnel mouth. The schedule of these works was drawn out by the engineer, Mr. Dobson, (and of which I hold a copy in my hand), and the work under that came to £4,917. The balance was made up of wear and tear bringing it up to £5,000. This was agreed to, and Mr. Holmes agreed to do the work, as previously described to him, for that sum.

19. Was the contract entered into in writing?—No; the agreement was between the executive and the contractors. The executive undertook to ask the Council to vote the amount.

20. Who were the members of the Provincial Executive at that time?—Mr. Maude, was the Provincial Secretary; Mr. Murray-Aynsley, was also a member. I forget who were the other members.

21. Who was the engineer?—Mr. Edward Dobson.

22. Was the verbal contract carried out?—It was carried out as far as it could be carried out. In the course of carrying these works out, other works became necessary on account of the nature of the ground, and consequently a larger sum was involved than was provided for in the original understand.

23. That was the commencement of this claim?—That was the commencement of the claim.

24. These more extensive works, were they entered into between the contractor and the executive in the same manner?—They were done by direction of the engineer.

25. Simply an agreement between the engineer and the contractor?—There was no agreement, but simply a direct order from time to time, from the engineer, as to how this work was to be done.

26. Was it understood that all these were extra works?—We always understood it so.

27. After this verbal contract between the contractors and the Engineer had been entered into, what was the next work involving extra payment?—The only work that we pressed the Government for, is the additional reclamation work.

28. That simply was done on the order of the engineer?—Yes; from time to time.

29. Have you got that in writing?—No; it was simply done by the direction of the engineer.

30. What were the conditions of the specification with regard to extras: what does it direct?—The 21st section recites:—“Should any arrangements made with the land owners involve the execution of any works beyond those described in the drawings and specifications, the contractor is to execute such works on the written order of the engineer the same as though they formed part of the works contracted for, and the contractor shall be paid for these additional works such a sum as the engineer shall consider a fair remuneration for the same.”

31. Then how is it that no written instructions in accordance with the specification were given for these extra works?—We had every confidence that we should receive fair treatment at the hands of the Government.

32. It was simply a verbal instruction?—As far as I am aware there were no written instructions

33. Have you got a detailed statement of those works that were executed?

(Statement put in.)

*The Provincial Government of Canterbury,*

*Dr. to George Holmes and Co.*

1869.

To work and labor done and materials supplied in altering the Lyttelton end of tunnel, by direction of the Engineer, from the original curved line, as per contract, to a straight line—including Iron Bridge under road to Peacock's Wharf; Culvert from Salt's Gully; alterations, additions, and substitutions to masonry in tunnel; force and retaining walls and drains—viz., from December, 1863, to June, 1868—

Hon. Mr Richard-  
son.

	£	s.	d.
1797 cubic yards mining in rock shoulders, at 30s. ... ..	2695	10	0
836 cubic feet of timber destroyed in shoring, &c., at 2s. 9d. ... ..	114	19	0
156½ cubic yards rubble walling, at £3 10s. ... ..	546	17	6
169½ cubic yards block in course, at £5 ... ..	846	5	0
1652 cubic feet sandstone ashlar, at 6s. ... ..	495	12	0
408 " " in quoins, at 8s. ... ..	163	4	0
387 cubic feet coping and parapets, at 11s. ... ..	212	17	0
22 tons ironwork fitted complete, at £50 ... ..	1100	0	0
7614 superficial feet timber in floor, fixed, at 32s. ... ..	121	16	6
31½ lineal yards, forward of drive excavated on original curved line, at £20	633	6	0
17 yards run, drive for culvert used for drain from tunnel drain, at £20...	340	0	0
72 hardwood sleepers, fixed, at 14s. ... ..	50	8	8
2 cwt. 1 qr. 15 lbs., in iron bars, at 1s. ... ..	13	7	0
59½ cubic yards dry rubble filling, at £1 ... ..	59	10	0
15 cubic yards rubble, in mortar, at £3 ... ..	45	0	0
4750 cubicfeetashlarinfaceoflowerandupperwalls,piers,andbuttresses,at6s.	1425	0	0
414 cubic feet dressed ashlar quoins, in octagon piers, at 12s. ... ..	248	8	0
207 feet run of culvert from Salt's Gully to main outlet drain, laid in with Australian hardwood five inches thick, bolted with iron, including all work at mouth of drain in Bank Garden, and excavation and mining of same, at £7 ... ..	1449	0	0
195 feet run fencing in Bank Garden, at 8s. ... ..	78	0	0
61½ yards run, additional drive on old line as per engineer's estimate, at £20	1233	0	0
9½ cubic yards, deepening drive to carry off water, at £1 ... ..	9	5	0
19 cubic yards rubble to side walls of drain, at £3 ... ..	57	0	0
24 cubic feet ashlar to end of culvert, at 8s. ... ..	9	12	0
9 cubic yards brickwork in arch, packed dry to old roof, at £4 ... ..	36	0	0
	<u>£11,983</u>	<u>17</u>	<u>8</u>

Cr.

	£	s.	d.	£	s.	d.
By Cash ... ..	5000	0	0			
5164 cubic feet—191 cubic yards, dressed rubble, at £3 15s. ... ..	716	5	0			
23½ yards tunnel omitted, at £66 10s. ... ..	1573	16	8			
126 cubic yards rubble, at £3 10s. ... ..	441	0	0			
384 cubic yards excavation, at £1 ... ..	384	0	0			
146 cubic yards excavation in drain, at £1 ... ..	146	0	9			
30½ cubic yards arched brickwork, at £5 ... ..	151	13	4			
1571 cubic feet ashlar parapets, at 11s. ... ..	864	1	0			
				<u>£9276</u>	<u>16</u>	<u>0</u>

Balance due to G. Holmes & Co., interest to be added ... .. £2707 1 8

22. Are these the whole of the extras that were done under this arrangement?—That is the whole of what was done under the arrangement that was come to with the Executive, that was supposed to be covered by the £5000.

23. I was referring more particularly to works over and above the £5000?  
(Copy of Claim for Reclamation put in.)

*The Provincial Government of Canterbury,*

*Dr. to George Holmes and Co.*

1869. To work and labor done, and materials supplied, in forming embankment in Lyttelton (as per tracing herewith), including sorting stone, placing the larger stone to the sea face, and repairing the same from time to time, viz.—

	£	s.	d.
30,000 cubic yards of filling, deposited by orders of the engineers, at 5s. ...	7,500	0	0
2½ years interest to June, 1868, at 10 per cent. ... ..	1,875	0	0
8,000 cubic yards of filling, same as above deposited during 1866, at 5s. ...	2,000	0	0
1½ years interest to June, 1868, at 10 per cent. ... ..	300	0	0
6,450 cubic yards of filling, same as above deposited during 1867 and 1868	1,612	10	0
	<u>£13,287</u>	<u>10</u>	<u>0</u>

34. I refer to the whole claim Mr. Travers mentioned—£34,000.—Mr. Travers's figures are open to correction. We do not make a claim for so large a sum as £34,000.

35. You state further in your petition that the material excavated from the tunnel was the property of the petitioners. How does that appear?—It was our reading from the first, and we maintain that it was the Government reading also. There is a clause in the specifications which compels the Government to find us land to deposit material on, but to be paid for by us. In one instance we acted upon that power in the contract. The Government purchased material from us previous to our making a claim in 1865. As late as 1868 they purchased similar material from us. The claim was put in 1865. It was objected to, and we continued to give the Government notice from time to time. In 1867 we were called upon to name a price for which we would supply a lot more of that same material. We tendered, and our tender was accepted.

Hon. Mr. Richard-  
son.

36. This material was rock?—Yes; rock.

37. Can you show any clause in the conditions or specifications which make this your property?—That is one of the points that were taken into the Court. There is a clause in this contract.

38. So this claim for material that you say belonged to the contractor;—was the surplus material?—Yes.

39. Anything over and above what was required for the purpose of the contract you claim as surplus?—Yes.

40. You state that a portion was sold previous to 1865?—Yes; to the Government.

41. Any to private individuals?—To private individuals and the Government.

42. And the Government paid you?—Yes.

43. At what time did you make the claim?—In 1865 we put in a formal claim. We can procure evidence if necessary that we received progress payments. If it had not been that the appropriation for the year ran out, I am perfectly satisfied we should have gone on receiving, and the question would never have arisen.

44. What was the reason for the sudden alteration of the opinion of the engineer. He had previously certified, and after wards refused?—Simply, that he had instructions from the Secretary of Public Works. He intimated to the Government that we were going to make a claim which would amount to a very large sum. The question was officially raised on December 19, 1865.

45. Was this at the time the original contract reclamation was complete?—It was going on all the time. The contract reclamation had been complete for a long while.

46. You consider that after the first reclamation was completed, the balance of the material belonged to the contractor?—Yes.

47. Then you claim the balance?—Yes

48. In December, 1865, this question first arose as to the material. What did the Executive say?—The reply was that Mr. Dobson's absence had precluded him from dealing with it:—

(Copy of Correspondence put in.)

“Christchurch, Dec. 19th, 1865.

“To the Provincial Engineer.

“SIR,—We have the honor to request payment at the rate of 90 per cent. on the work done, in executing 30,000 cubic yards of stone embankment, at the Lyttelton end of the tunnel.—This extra embankment is made to suit the curve of 10 chains radius, and is caused by the alteration from the original plan.

Say 30,000 cubic yards of rock, at 5s.	...	...	£7,500	0	0
Less 10 per cent.	...	...	750	0	0
Amount now due	...	...	£6,750	0	0

“We have the honor to be, Sir, your obedient servants,

(Signed) “GEORGE HOLMES AND CO.”

Lyttelton and Christchurch Railway.—Extra Embankment at Lyttelton.

“Provincial Engineer's Office, Christchurch, 13th Jan., 1866.

“GENTLEMEN,—I beg to acknowledge the receipt of your letter of the 19th ult., enclosing an account for the extra width of embankment at Lyttelton.—The matter has been delayed in consequence of my absence from town; but the account will be sent forward so soon as I have been able to prepare a plan of the station ground, shewing the line originally contracted for, with a statement of the quantity of rock actually near to bank.—I remain, gentlemen, your obedient servant,

“E. DOBSON, Provincial Engineer.

“Messrs. Holmes and Co., Christchurch.”

There is no official reply till June, 1866, when the following was received:—

“Provincial Engineer's Office, Christchurch, June 25, 1866.

“Messrs. Holmes and Co.

“GENTLEMEN,—I beg to enclose a copy of a letter, from the Secretary for Public Works, declining to recognise your claim for additional width in embankment in Lyttelton,—and remain, gentlemen, your obedient servant,

“E. DOBSON, Provincial Engineer.”

[COPY.]

“Public Works Office, Christchurch, Canterbury, N.Z., 21st June, 1866.

“SIR,—With reference to your letter of the 22nd ultimo, respecting Messrs. Holmes and Co.'s claim for payment in respect of the additional width of embankment rendered necessary by the alteration of the curve at the Lyttelton entrance of the tunnel, I am directed to inform you that the Government cannot recognise any claim which may be put forward for the extra work referred to.—I have the honor to be, Sir, your obedient servant,

(Signed) “F. E. STEWART, Secretary for Public Works.

“The Provincial Engineer.”

49. This extra work was material and labour?—Work and labour done.

50. *Hon. Mr. Reynolds.*] The labour by which you deposited the stuff?—It was this: that the large stones were to be put on the sea wall, and the others inside.

51. *The Chairman.*] Having received this intimation from the Engineer, did you appeal to the Government under the Arbitration Clauses?—Not then—because we relied on the contract. But we kept the claim alive, as we were instructed by our solicitors.

52. Up to that time you were simply in communication with the Government through the engineer?—Yes; of course we were.

53. Nor was there any definite action with regard to the claim, otherwise than with the engineer?—Not till 1868.

54. At that time the contract was completed?—Yes.

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Hon. Mr Richard-  
son.  
26th Nov., 1877.

55. Then, this claim had been in abeyance?—Yes; because it was going on and increasing. We continued receiving orders.

56. Why did you go on, seeing the uncertainty?—Because we held to the contract and were satisfied with it.

57. Even after he said he would not pay?—We held that he was bound to pay. In May, 1876, Mr. Dobson told us that he had measured up this work; that the amount of work charged for was correct; that the price was fair; and that the Government had a good equivalent. I have no doubt there is an official report to that effect. Mr. Dobson showed us that, and on the strength of it we went on.

58. This contract was finished in 1868?—Yes.

59. I suppose it would take days to get the question settled?—We have got into unpleasant terms with the Government, and we were called upon after an angry correspondence to furnish our claim, as they had an engineer going to report on the matter. We sent in those claims to which we thought we were equitably entitled, and stated that we were prepared to give their engineer any information in our power, and we further offered to take Mr. Patterson's judgment as final, if we were allowed to place our whole case before him. He advised the Government, and we took exception to the statement as an ex parte one, as we were never heard at all.

60. Was the same engineer in charge of the work during the whole of your contract?—With a very short interval—I forget how long it was. A gentleman named Aiken had charge of that particular work.

61. Mr. Dobson was the engineer?—Mr. Dobson.

62. In 1868 Mr. Dobson had charge?—Yes.

63. Did he report on the claim at all?—I think not, although he may have to the Government.

64. Did you agree that Mr. Patterson's dicta were to be accepted?—We offered to agree if Mr. Patterson was appointed sole arbitrator. He never was appointed.

65. What position did he assume in reference to this?—Simply to enquire as directed by the Executive Government, and on the case as put before him by them. You have a report in print; but, as we stated in our reply, that was an ex-parte statement.

66. He acted on behalf of the Provincial Government?—Yes.

67. The contractors were not heard?—No.

68. What action did you take after that? Was there any application made to the Provincial Government for payment?—Any amount of applications and correspondence, until it got to be so angry and so much biassed by political feeling, that we considered, and were advised to decline any further communication as our only course.

69. In fact, the Provincial Government declined to pay?—Yes.

70. You took action in the Supreme Court?—We took action. We did not take proceedings at the moment, thinking that the political feeling would cool down. We had never been in Court before, and wished to avoid it. We delayed taking action for some considerable time.

71. Does this claim for material form any large proportion of your claim?—It is the large claim for which we pressed. There were only two other claims. The others were equitable claims, but could not be pressed in Court, though if they went to arbitration we would likely have succeeded; but we knew perfectly well we had no legal claim. On the two items we considered that we had a legal claim. We never thought that it was necessary to procure an ordinance of the Provincial Council before proceeding with the work. Had we so thought, we believe we could have got it.

72. With respect to the arbitration, the reason you could not enforce was because the contract was *ultra vires*?—I was given to understand, and was so advised, that the reason the arbitration clause could not be enforced was because we had not inserted the name of the arbitrator, as was done by the Brogden's. They named in their arbitration clause a judge of the Supreme Court. Had we done this we would have been safe. So we were advised.

73. Mr. Swanson.] You went to law?—Yes.

74. Now that you have been beaten, what course do you wish to take?—Our idea to remedy the matter is simply to have the case heard on the merits before a Court of competent jurisdiction.

Mr. MOORHOUSE, M.H.R., examined.

Mr. Moorhouse.  
26th Nov., 1877.

75. The Chairman.] Perhaps you could give the Committee some information on this case, Mr. Moorhouse?—I made the contract with Messrs. Holmes and Company.

76. In 1860 or 1861?—In 1861.

77. You were Superintendent at the time of the original contract?—Yes; I was in 1861.

78. The agreement was made in Melbourne?—No; I went to Melbourne upon the advice of my Executive for two purposes—money, and to find a contractor. I succeeded in picking out three firms I thought competent, and asked these gentlemen to tender. I took over sections and plans. These three firms, upon a day named by me, sent in tenders. Holmes and Company I preferred from what I could gather in mercantile circles. They were the highest; the lowest tenderer failed to find security. The middle man, upon consultation with some friends of his, told me he declined the contract on the ground that the rock was too hard and that there was too much uncertainty, and he would have nothing to do with it. Upon this I addressed myself to Mr. Holmes. He undertook in writing with me that if he on visiting the ground found that the description corresponded with the fact, he would undertake the work. So he came down with me, viewed the ground, and gave me a letter signifying his willingness to perform the work at the price originally named by his firm; upon which I gave instructions, and an agreement was prepared. The work went on from that time without any hitch. I heard nothing to disturb my comfort till Messrs. Holmes & Company came down

making representations about the action of the Government on the labor market. They stated the great loss they were likely to suffer in consequence of the remarkable rise in the price of labor since the time their contract was entered into. That was the only difficulty I remember. Afterwards I became acquainted with the circumstances detailed by Mr. Travers.

79. Nothing was done during your Superintendency?—No.

80. With regard to the provision about arbitration, what was the interpretation put upon that by the Government?—It was certainly intended to refer matters to arbitration. That was my mind on the matter. I did not know anything about the proceedings in Court. I always found the contractors acting with very great good faith under very remarkable difficulties. It was the opinion of the newspapers that the difficulties of the work would result in its abandonment. We had the gratification to see the work carried out under very great difficulties. My opinion is that the contractors deserve the thanks of the people of the colony.

81. Do you remember any question with regard to the ownership of the stone?—I think there was, but I forget the circumstances in many instances. I acted under the advice of my Executive Council in these matters; I gave no personal directions.

82. Did the Executive Council, during your tenure of office, consider whose property this stone was—whether it was the property of the contractors?—I was re-elected in 1866. I continued in office till 1868. During that time there were disputes between Messrs. Holmes & Company and my Executive about this stone. I know that no protest was made, though they sold this stone. I believe Mr. Richardson's statement is correct, (though I am not quite certain without looking over the papers), that Government had bought this same stone during my time.

83. Had any alteration of the original contract been entered into during your tenure?—No; there was a deviation stipulated for by Mr. Bealey.

84. What year was that?—In the latter end of 1863 Mr. Bealey asked me to go down to see him, and he said that the contractors had suggested that the tunnel would be much better and safer if the line were quite straight. I said I never could see what Mr. Dobson meant by making a curve. He said the contractors offered to straighten the tunnel. The price was not discussed: I said do it by all means. I did not hear about any difficulty until long after it was done.

85. Was there anything about extras in your second tenure of office?—No; not that I am aware of.

86. All these claims had arisen before your second tenure?—Yes.

87. Then, practically, you have no knowledge of any of these arrangements that were entered into for additions and alterations?—No; personally no.

88. Because they occurred at a time that you were not in office?—I think so. There was one arrangement, but I think there is no claim sent in in respect of that.

89. Were you in office at the time the contract was completed?—I was.

90. And this claim was made to you?—It never came before me. I have no official cognizance of it.

91. Had it been considered by your Executive?—As far as I remember I made no direction.

92. Had it been considered by your Executive?—I think not; Mr. Montgomery would know.

93. What year did you leave office?—In 1868.

94. What month?—May. After I had retired from office I went down as an envoy from Messrs. Holmes and Company upon a request from them that I would treat with Mr. Rolleston as Superintendent. I received a notification from Mr. Rolleston to the effect that he was not disposed to enter into any negotiation (I have got that letter) on the ground that it had been dealt with by the Provincial Government. I forget the terms of the letter.

95. Were you acting as agent?—No, I was not an agent; I was very much interested in the success of the Tunnel and Railway, and went to Mr. Rolleston with a view to an amicable settlement of difficulties. I went there as a friend; there was no proposal to arbitrate.

96. *Hon. Mr. Richardson.*] Was that arbitration clause put in in good faith in the contract?—It was so intended, and I am quite sure my Executive intended that if any difficulty arose it was to be referred to arbitration. I have no doubt upon the matter.

97. *A Member of the Committee.*] Did that apply to the matter of surplus material?—It applied to any matter connected with the carrying out of the contract. I may state, as a matter of opinion, that if I had had charge of the Government of the Province I should never have dreamt of preventing Holmes and Company from having access to the Supreme Court. I disapprove very highly indeed of using a technical defence, I think the proper course would have been to go to Court; but I give that simply as my opinion.

Mr. ROLLESTON, M.H.R., examined.

98. *The Chairman.*] During your tenure of office as Superintendent did these claims come before you?—If the Committee please I will make a statement: I took office in 1868. There were a number of claims outstanding at that time. It was about the time, as Mr. Richardson has said, that the contracts were approaching completion. The settlement of these claims would take a considerable expenditure, and there were many points of difference between the contractors and the Government. These disputes ended in a letter in which the contractors (2nd July, 1868) stated that they wished to consider the negotiations at an end. On that, the Provincial Government were not satisfied with the matter as it stood. The course which the Government took was first to send for the Engineer, Mr. Dobson. He appeared before myself and Mr. Montgomery, who was then Provincial Treasurer, and gave us his opinion of the practical value of these claims. I have here the notes of the interview of what passed with Mr. Dobson. The first course which we took was the ordinary official one of meeting the engineer. In a memorandum of conversation with the Railway Engineer, Mr. Dobson, on the 1st July, 1868, Mr. Dobson stated:—

“There have been no advances on rolling stock, only on contractors' plant. There have been two

*Mr. Moorhouse.*  
26th Nov., 1877.

*Mr. Rolleston.*  
26th Nov., 1877.

Mr. Rolleston.  
26th Nov. 1877.

payments, amounting together to £8,000, in sums of £5,000 on tunnel plant, and £3,000 additional when the line on the plains was commenced.

"These allowances have all been recouped in respect of the claim for the alteration of the tunnel (the additional embankment). The £5,000 was paid in progress payments as part of the whole tunnel works, and the stuff now claimed for was being laid down at the time when the works were in progress, but no extra payment was claimed on that account.

"Messrs. Holmes and Co. themselves, without reference to me, laid out the running line in its present altered position.

"My orders were simply to keep out the new embankment in the same relative position to the new line as the line of embankment shown in the contract was to the old running line; that is, the edge of the embankment was to be as much to the seaward of the centre line as in the contract plan. I never gave any other instructions. Any instruction which I gave was entirely in terms of the arrangement for the alteration of the line.

"In equity, I don't consider the contractors entitled to payment for the additional embankment; because they gave no intimation at the time that they would prefer such a claim, and also because it was evident that there would be a large amount of surplus stuff for which they must provide a place of deposit.

"I might, at the time, if a claim had been made, have agreed to a small payment—say, not exceeding a shilling a yard. I think that this payment would be fair at the present time on account of the hardness of the stuff generally in this tunnel, and because the Government have really gained a considerable value in the additional ground they have obtained. If they had had soft stuff, the work would have been sooner done, and they would have been obliged to find some shoot, or to have protective works to keep the harbour from silting up. I would not give them more than one shilling a yard.

The above was read over to Mr. Dobson, and admitted by him to be correct.

" W. ROLLESTON,  
" W. MONTGOMERY."

On 27th June Mr. Dobson said at another interview that:—

"The claim of Messrs. Holmes and Co., in respect of the additional width of embankment at Lyttelton, has never been recognized at all, and no money has been paid upon it.

"The Government has recognized the claims of Holmes and Co. to ballast by paying for broken metal for the station and yards at Christchurch and Lyttelton.

"They (Messrs. Holmes and Co.) have supplied broken metal by tender. Messrs. Holmes, at a meeting of the Executive, in Mr. Dobson's presence, guaranteed that the whole expense of the alteration in the tunnel should not exceed £5,000 (five thousand pounds). Mr. Maude was present.

"The instruction was given to Mr. Dobson to see the work carried out, but no written contract was made.

"The alteration was begun in 1864. The difference of the position of the stone was an essential consequence of a change of the centre line.

"On one occasion Messrs. Holmes and Co. asked me verbally, in 1865 or 1866, whether they might sell material out of the tunnel for ballasting vessels, and I refused to allow any stuff to be sent away until the necessary width of embankment had been completed. They in consequence did not sell. I would not have allowed any charge at the time. I considered that £5,000 would cover the whole change (alteration). No letters passed on the subject. The position of the spoil was not shown in the drawings, but it followed as a matter of course. It is what I call taking an unfair advantage of Government.

"I think they (Messrs. Holmes and Co.) have a legal claim.

"I don't consider that the Government has any claim to the stuff out of the tunnel after all the works specified have been carried out. Had the tunnel been straight through in the first instance the present embankment would have been an absolute necessity. The contract would have shown about 30,000 yards more than it did. With regard to the claim for extra payment on account of the line between Christchurch and Heathcote, no payments have been made on a scale in excess of that provided in the contract. The 10 per cent. was reserved, and the balance was paid over after the 12 months' maintenance. No intimation was ever given to me that any extra claim would be made on the ground of making the line before the tunnel.

"On reading the agreement it appears to me to bar the claim. There was no contract for the Ferrymead portion of the line, but it was to be paid for at the same rates of payment as far as possible as the rest of the line along the flat.

"They (Messrs. Holmes and Co.) received payment accordingly.

"It is not the case that the contractors got any payment in excess of contract rates.

"The above statements are correctly taken down, and were read over to Mr. Dobson, and allowed by him to be correct in our presence.

" W. ROLLESTON,  
" W. MONTGOMERY."

The Committee will observe that, in Mr. Dobson's opinion, the contractors had a legal claim. I should like to say to the Committee, with respect to that, that, so far as I recollect the circumstances, we called for tenders for broken metal, and that, in accepting Messrs. Holmes and Co.'s tender, we were advised that we did not prejudice the question of the ownership of the metal, because it was a question in which labour was involved. It was the metal that we wanted. The question of ownership was not prejudiced at all.

99. Was there any particular metal specified?—I cannot speak positively of that.

100. I want you to state whether the stone was to come out of the tunnel?—I do not know that it was.

Mr. Rolleston proceeded: On the furnishing of the General Report there was a reference made to this specific claim for £5,000. At the end of this General Report, furnished by Mr. Patterson,

Mr. Dobson says:—"It was a clear understanding the position taken up by the Government was this: that any claim with regard to the justness of which the Government were not assured the Government would not consent to pay that claim, but that they would allow any claim as to the justness of which there could be no doubt. But where there was a doubt where the Government, would be able to see if the case went in favour of the contractors, there should be only a certain amount awarded to them; the Government would then consent to put that to arbitration. But so long as the Government was in a position to judge themselves of the value of these claims, they would refuse to put them to arbitration."

Evidence of a similar character was given by Messrs. Maude and Bealey.

101. Were the contractors heard before the Commission?—They were heard. The course the Provincial Executive took was to write to Mr. Patterson and ask him to report upon these claims. First of all, Messrs. Holmes and Co. were asked to send in a claim to be submitted. They answered that they were perfectly willing, and that they would meet him. I may state that this letter and Mr. Patterson's report appeared in the *Lyttelton Times*, November 28th, 1868, as follows:—

*Lyttelton and Christchurch Railway—Extras on contract.*

"SIR,—

"Christchurch, 3rd August, 1868.

"In compliance with your verbal request made during a conversation with you on Friday last, that we should forward you the whole of our claims on account of works done in connection with the Lyttelton and Christchurch Railway, in order that they may be submitted to Mr. Patterson, C.E., before he leaves Christchurch, we have the honor to forward you the following statement, and in laying it before Mr. Patterson, we have to request that you will intimate to him that, should he require any information on any of the matters herein referred to we shall be glad to meet him, and supply any particulars that he may require.

"In the first place we claim to be paid for filling up a large and valuable piece of land with material from the tunnel by direction of the engineer from time to time, and for a portion of which we claimed payment in the month of December, 1865, and we renewed our claim as the filling up was proceeded with.

"A considerable quantity of this material, about 14,000 cubic yards (in addition to the amount referred to in the memorandum of agreement dated 31st July, 1868,) from the tunnel, was originally, intended by the engineer, to have gone towards Christchurch from the Heathcote end of the tunnel and formed part of the embankment there; but had this intention been adhered to, the works of the tunnel would have been very much delayed, and to avoid that delay and push on the work to a speedy completion, we excavated an equivalent quantity of clay from the cutting at Heathcote at our own cost.

	£	s.	d.
Amount of our claim sent in on 19th December, 1865 ... ..	7,500	0	0
Interest on above at 2½ years at ten per cent. ... ..	1,875	0	0
8,000 cubic yards filled in during the year 1866 ... ..	2,000	0	0
Interest on above, 1½ years ... ..	300	0	0
6,450 cubic yards filled in during the year 1867... ..	1,612	10	0
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	13,287	10	0

"In the second place, we claim to be paid the following amount for being compelled to construct the portion of the Lyttelton and Christchurch Railway, between the present Ferrymead junction and the Christchurch station, with the siding there.

"We have evidence to shew that at the time the contract was entered into, there was no intention to make this piece of line till after the tunnel was finished, and all our calculations were made on that understanding; the total price paid us for portion of the line would not cover the cost of materials used, owing to the extra charges named below, and for which we claim to be paid.

	£	s.	d.
Extra cost of 442½ tons rails, chains and fastenings, including lightings and cartage ... ..	835	0	0
Extra freight on posts and rails, wire sleepers, timber for bridge, together with the difference in cost of material ... ..	2,132	10	0
Extra in ballast, which should have come from the tunnel, but had to be bought and carted on to work ... ..	3,087	10	0
Extra on price of bricks and stone for culverts, and difference in cost of labor and horse hire ... ..	1,625	10	0
	<hr/>		
	7,730	10	0
Our third claim is for extra price beyond that already paid to us, for constructing 23 yards lineal of the tunnel over the contract length, taken as through hard rock .. ..	759	0	0
Fourthly.—We claim to be paid for work done at the face of tunnel in Lyttelton over and above that allowed us at present ... ..	1,760	0	0

Fifthly.—The material in the hill through which we bored has turned out to be very different to what was represented to us on taking the contract. When Mr. Moorhouse, the then Superintendent, came down to Melbourne to negotiate with us for making the tunnel, he brought with him the accompanying section of the hill through which the tunnel was to be driven, prepared by Dr. Haast, and also brought specimens of all the different kinds of rock referred to in the section. This section shews that the rock to be tunnelled was for the most part rock easily workable, and that hard black rock occurred only at intervals in small pockets.

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"It was on the understanding that the rock to be tunnelled was approximately of the nature set out in this section that we entered into the provincial contract in Melbourne.

"Mr. Holmes, when he came down here, had nothing further to guide him as to the nature of the rock than this section, and the data available to Dr. Haast, and entered into the final contract on the faith of the section being approximately correct. In the place of the hard black rock occurring here and there in pockets, at least one half of the tunnel had to be bored through it. This has added at least fifteen thousand pounds to the cost of the work, beyond what it would have cost had it turned out even approximately in accordance with the geological section.

"The contract was taken in 1861 when wages were paid at the rate of 6s. per day here, and our men were engaged in Melbourne to work here as miners at the rate of seven to nine shillings per day of ten hours.

"The Otago diggings broke out, and the wages went up immediately to 10s. to 12s. per day of 8 hours, thus adding at least 33 per cent. to the cost of labor on the whole work.

"It was optional with us to throw up the contract at any time, we forfeiting the ten per cent. retained in hand, but we persevered to the end, fully believing as we now believe, that this matter will be treated with the fairness and equity it deserves, and that a fair allowance will be made to us on this head.

"Again, when the Government of the day decided to force through the road to the West Coast, without giving us the least chance of protecting ourselves by tendering for the work, a large number of the best of our hands on the work, and men whom we had been at the expense of bringing into the province, were tempted away from us by a very large increase of wages, causing our work to come pretty nearly to a standstill; and we never were able to get over the loss of these men, having been obliged to break in a large number of strange hands, and at a time when we were at the most difficult portion of the work, but we were advised to go on and trust to our being in the end fairly treated.

"It is well known that our predecessors, Messrs. Smith and Knight, declined to go on with their work unless they were allowed to reduce the size of the tunnel by one-third, and receive sixty thousand pounds over and above the amount of our contract. Doubtless they knew, from being on the spot so long, what they were likely to have to contend with in the shape of the hard rock, but the shafts then sunk and the works executed did not in any way lead us to suppose that the contents of the hill really varied much from the geological section.

"We shall be glad to hear from the Government that they have taken the above claims into their serious consideration, and do not doubt that they will "give us anything that they may find due to us either by law or equity.

"We have not included the undermentioned matters, as it is understood that our claims in respect of them are admitted, and that merely the question of the amount to be paid us on some of them remains open, these are:

"Claims for extra labor, &c., on account of the line being opened before completion.

"Claims for surplus materials and working plant.

"Balance on works at the Selwyn and Christchurch Station.

"Balance on account of supply of three engines.

"Balance on contract for supply of rolling stock, and amount of account of stores for working the railways.

"We mention the above as per your request to send in all our claims.

"This letter must be considered as entirely without prejudice, in case an amicable settlement should not be come to.

"I have, &c.,

"GEORGE HOLMES & Co.

"To the Secretary for Public Works."

*Holmes and Co.'s Claims.—Mr. Patterson's Report.*

"SIR,—

"Dunedin, 19th October, 1868.

"I have the honor to submit the following Report upon the claims for work done in connection with the Lyttelton and Christchurch Railway, as stated in letter dated 3rd August, 1868, from Messrs. George Holmes and Co. to the Secretary for Public Works.

"*First Claim.*—Filling up land at Lyttelton with material from tunnel.

		£	s.	d.
December 19th, 1865.—	30,000 cubic yards of rock, 5s.	...	7,500	0 0
August 3rd, 1868.—	Interest on above 2½ years, 10 per cent.	...	1,875	0 0
	8,000 cubic yards filled in during the year 1866	...	2,000	0 0
	Interest on above 1½ years	...	300	0 0
	6450 cubic yards filled in during the year 1867	...	1,612	10 0
Total amount of first claim		...	13,287	10 0

"The ground to which this claim refers extends along the harbour to the southward, and outside of the line shown for edge of embankment in the contract drawings. The area of additional land embanked is about 4,000 superficial yards, and the material used was obtained from excavations from the tunnel and cuttings.

"The embankment was required in connection with the alteration of the line at the south end of the tunnel, and in my opinion forms an essentially necessary part of that alteration.

"The contractors state in their claim that about 14,000 cubic yards of the material used was originally intended by the Engineer to have gone towards Christchurch to form part of the Heathcote embankment; but as the Railway Engineer informed me that the excavations carried on from each end eventually met near the centre of the tunnel, I do not attach much weight to the argument advanced, especially seeing that the time occupied in the construction of the tunnel has been much longer than was contemplated, or than was provided for under the contract. Had the material been otherwise disposed of, the time required would have been still further beyond the contract time.

"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.

Mr. Rolleston.  
26th Nov., 1877.

construction been deferred until the tunnel was opened through, the difference in cost of lighterage between Lyttelton and Ferrymead would have been saved, and there would probably have been a further saving on the other works. What this difference in cost would have amounted to I am not in a position to state, but I should be inclined to think it may probably be estimated at about as many hundred pounds as the claim amounts to thousands.

"I do not think the contractors have any claim for further payment for this work.

"*Third Claim.*—For extra price beyond that paid for constructing 23 yards lineal of the tunnel, over the contract length, taken as through hard rock, £759.

"This additional length of tunnelling has already been paid for at the contract schedule rate. The circumstances under which the work was constructed are referred to in Report and Evidence of the Railway Inquiry Commission.

"It is only necessary further to point out that the contract schedule rate has in this case been adhered to. Had the re-distribution of the contract rates been adopted, the amount payable would have been considerably less.

"The contract schedule forms the only basis for fixing the price of the additional length of tunnel, and upon that basis the contractors have already received full payment for the work.

"*Fourth Claim.*—For work done at the face of the tunnel in Lyttelton over and above that allowed at present, £1,760.

"There are no details given for this claim; nor do the drawings, to which I have had access, furnish sufficient information for the preparation of accurate comparative statements of the amount of work included under the contract, and of work as actually executed. I have, however, carefully examined the work, and have received full explanations from the contractors and Engineer regarding it, and have also prepared such comparative estimates as the information at my disposal enabled me to do. After carefully considering the whole matter, I am of opinion that, even allowing a considerable price for additional embankment at Lyttelton, the amount of £5,000, already paid to the contractors for additional work in altering the line at the Lyttelton end of the tunnel, is more than sufficient to cover the additional cost of such alteration. Judging from the information and evidence received on this point, I am of opinion that the sum of £5,000 was clearly intended to cover the whole additional cost of the alteration, of which I presume the additional work referred to in the fourth item of claim forms a part.

"*Fifth Claim.*—Without making a direct claim, Messrs. Holmes and Co. state that, in consequence of the strata intersected by the tunnel proving to be different from what was represented on a section prepared by Dr. Haast, and which was submitted to them by the Superintendent in negotiating the contract in Melbourne, they have been put to an additional expense of at least £15,000 beyond what it would have cost had it turned out even approximately in accordance with the geological section.

"Had the information on the section been guaranteed, or had the drawing been incorporated with the contract, without special reservation, the contractors might have had some grounds for a further claim if the works were proved to have been of a more expensive description than might reasonably be anticipated from the information given; but in the present instance I must assume that the information given by the Government was not guaranteed in any way, but was given by them, and received by the contractors *quantum valeat*—the contractors forming their own estimate of its value, and being at liberty to accept or reject, as they thought fit; the contractors taking the usual risk of the strata proving more or less favourable.

"There are further statements advanced by Messrs. Holmes and Co. as to circumstances which occurred subsequently to the contract being entered into, and which tended materially to their disadvantage in carrying out their contract.

"The circumstances stated have apparently in some instances borne hard upon the contractors, who appear to be deserving of credit for having perseveringly continued their work in the face of the difficulties mentioned; but unless the contract is to be entirely ignored, I do not see that Messrs. Holmes and Co. can have any claim against the Government on account of these untoward circumstances; and, besides, it should be remembered that Messrs. Holmes and Co. have been to some extent already recompensed by being employed to execute station and other extra works, amounting to a very large sum, and also by receiving a large and lucrative contract from the Government for the construction of the Great Southern Railway.

"There may be other circumstances or information in connection with the foregoing claims with which I am unacquainted, and which might induce me to alter or modify my opinions regarding them; but, judging from the information at present in my possession, I do consider that the Government have dealt liberally towards the contractor throughout; that full payment has already been made for all works referred to in the foregoing claims, and that no further sum is due to Messrs. Holmes and Co. on account of them.

"There are sundry other matters referred to in Messrs. Holmes and Co.'s letter, but as the claims on account of these are stated to be admitted, they are not included among the foregoing claims, nor have they been considered in this Report.

"I have, &c.,

"T. PATTERSON.

"To His Honor the Superintendent of Canterbury."

You will observe that the Government was advised that this reclamation was an essential part of the alteration. The £5,000 was to be payment on account of it.

102. *Hon. Mr. Reynolds.*] Mr. Patterson was an Otago railway engineer?—Yes. There were five claims on all of which he reported. The Provincial Government were in this position; that they had a large number of claims amounting, on the whole, to about £30,000, and that they were advised by Mr. Patterson and their legal advisers (and they felt it to be their duty) to resist to the utmost, because they considered them to be unfair. That was the position taken up by the Provincial Government. I would like to say that some of these claims were admitted. We invited Messrs. Holmes and Company to send in full details of their claims. A number of these were settled and, as appeared from Mr. Patterson's report, liberally settled.

103. *The Chairman.*] Part of the claim of £30,000?—I could not say without further reference. This particular claim never was settled. I may say that after that, letters came from Messrs. Holmes and Company to the effect that they declined to have any further dealings with the Provincial Government, and that they should take their own convenient time to try the law in the case. Such was the state of the question up to the time that legal proceedings were instituted, and the Provincial Government felt it to be their duty to defend the claims. On the 27th November, 1868, these letters were written.

*Mr. Rolleston.*  
—  
26th Nov., 1877.

*Lyttelton and Christchurch Railway—Holmes and Company's claim for extras.*

"SIR,—  
"Christchurch, 7th November, 1868.  
"We have the honor to state, that as all friendly negotiations have failed, at a convenient time we intend to take the necessary steps to enforce our claims (mentioned in our letter to you of the 3rd August last, amounting to £23,537, together with the other claims of which you have been made aware, the exact amount of which has not been ascertained) in a Court of Justice.

"We have, &c.,  
"GEORGE HOLMES & CO."

"To the Secretary for Public Works.

*Lyttelton and Christchurch Railway—Holmes and Company's claim for extras.*

"SIR,—  
"November 27th, 1868.  
"We have the honor to receive yours of the 26th inst. this day. In reply, we very much regret that the Government have not taken the usual necessary means where technical matters are concerned namely, by refusing us the privilege of having witnesses to give evidence in support of our claims before arbitrators.

"The Government must therefore have arrived at a conclusion on *ex parte* statement, because our strongest proofs can only be brought forward before an impartial tribunal.

"It is therefore necessary for us now to take a new position, after having tried all means to avoid unpleasant proceedings, and to stand firm by the equity of our case.

"It may be necessary to state that we shall not from this date submit to any compromise for the claims in possession of the Government, or any other outstanding claims not yet discussed.

"We regret that we are compelled to take this position in order to maintain our rights, although in the end it might have been more satisfactory to all parties if the Government had not so peremptorily refused us what was in reality a part of the contract, namely, arbitration.

"We have, &c.,  
"GEORGE HOLMES & CO."

"To the Secretary for Public Works.

From that date the question has been a matter for the legal tribunals. I may say that the principle which was laid down by the Provincial Government in this matter, was this, as had been stated by Mr. Montgomery in the Provincial Council: they asked for details to enable them to judge as to whether there was a *prima facie* claim. If there was, they would be prepared to entertain it; but if not, and they declined to refer to arbitration, not to entertain it at all. This is what they said:—

"The position taken up by the Government was this—that any claim with regard to the justness of which the Government were not assured, the Government would not consent to pay; but that they would allow any claim as to the justness of which there could be no doubt. But when there was a doubt—when the Government would be able to see if the case went in favour of the contractors, there should be only a certain amount awarded to them, the Government would then consent to put that to arbitration; but so long as the Government were in a position to judge themselves of the value of these claims they would refuse to put them to arbitration."

I am here putting the case of the Provincial Government after so considerable a lapse of time. They felt bound to resist these claims where they thought they had no foundation; in the interests of the public they would resist all such claims. That has been the course they have been taking. I may say that subsequently the Executive were entirely confirmed by the Council in the matter. In 1873, again a motion was made that no obstacle should be raised to the claims being brought before a jury. That motion was brought on in Provincial Council, and a division was taken, resulting in—noes, 24; ayes, 4.

104. Was that a fair majority?—The number of the Council was 39.

105. *The Chairman.*] I should like to have the opinion of the Government of the day with regard to the arbitration clause. In what light was it considered by the Government?—I do not recollect what passed about that. I acted by legal advice. I held the claims to be of such a nature that we were bound to resist them, and that we were not being dealt fairly with by Messrs. Holmes and Company in refusing to supply us with all the papers. The statement which has been shown to me (that by Mr. Dobson to the Secretary for Public Works, dated May 22, 1866,) I have never, so far as I recollect, seen before.

106. I would like to get your opinion with regard to the arbitration clause. Is it not usual to give effect to such a clause unless there is some very good reason to the contrary?—I have no recollection of these claims. I presume I was advised upon the interpretation of that clause as applying to this contract, which was outside this original contract for the tunnel.

107. With respect to the alteration involving £5,000, there does not appear to have been anything in writing?—Nothing; it was shown by Messrs. Bealey, Maude, and Dobson, to cover the whole cost of the alteration.

108. I want you to show the Committee how it forms an essential part of the alteration?—That was stated by Mr. Patterson and Mr. Dobson. It is purely an engineering question.

109. *Hon. Mr. Richardson.*] When it was decided to do away with the tunnel mouth curve, was it determined to have a curve at the tunnel mouth as is now the case, or do away with the curve altogether, and run the line straight out to sea?—I cannot say. The papers which I have read show whether this reclamation was an essential part of the alteration.

110. *Mr. Shrimski.*] The engineer stated that this second embankment was essentially part of the  
4.—I. 2D.

*Mr. Rolleston.*  
26th Nov., 1877.

verbal agreement as to alterations, can you show the Committee how it forms an essential part?—That is an engineering question. It was stated by the engineer to be a part of the agreement.

111. The Committee is to understand that this is the opinion of the engineer, and being an engineering question you cannot of yourself state further?—I cannot of myself.

112. The engineer was present when the contract was made?—He was present, and we naturally took his statement of what the agreement was.

113. *The Chairman.*] You stated also in commenting on Mr. Dobson's letter that the contractors had no legal claim?—Yes; I was so advised.

114. What is the meaning of that, that they could not recover in a Court of Law?—Mr. Dobson considered that they had no claim in equity. He gave me to understand that the claim was not a fair one. In fact he states so.

115. Being advised that the contractors had no legal claim, why did the Provincial Government refuse to allow them to go to law; that is, without raising a technical defence?—The Provincial Government did not think it was entitled to place facilities in the way of the prosecution of a claim which had no foundation.

116, *The Hon. Mr. Reynolds.*] From what you know of the case now, do you think they have any legal or equitable claim?—My opinion is still the same, that they have no equitable claim.

117. The Government took a technical objection against the trial of the case in the Supreme Court?—The Government, through the solicitor, did. They took every objection that could be raised to what they considered to be a wrong prosecution.

118. Were you afraid that the Court would give it against the Government?—I cannot say that.

119. Then, what was your reason?—I think the Government was bound, when an appeal was made to law, to take the advantages which the law gives. I do not think that, in the interests of the public, it would be right to forego any fair plea that they were advised to take.

120. *Mr. Moorhouse.*] You would have got your costs.—I could not be expected to take legal advice, and then determine how the case was to be conducted.

121. *The Hon. Mr. Reynolds.*] Had the Provincial Council been in existence, do you think they would have entertained this case at all?—I have no reason to think they would. In 1873 they absolutely declined. This claim first arose in 1868. I have every reason to believe that, if the thing had been brought forward, they would not have entertained it. The Council decided that the Government were bound to use the law in the matter.

122. *Hon. Mr. Richardson.*] In the broken metal that was bought, do you state that the Government only paid such a price as would cover the cost of labour?—I distinctly stated that I was only speaking from recollection. I remember the question being raised as to whether that would prejudice the question of the ownership. We were advised it did not, because labour was mixed up with it.

123. Are you sure that that question was raised with respect to the Christchurch matter?—That is my recollection—but it is only recollection; I have no documents.

124. With regard to the material that was supplied in Lyttelton—I understand you to say the same of that.—No; I have no recollection.

125. In 1867 we were called upon to name a price?—I know nothing of that. I was not in office.

126. Have the Executive ever seen the document you mentioned just now?—I cannot say.

127. Did Mr. Dobson produce the document?—I do not recollect that he did; and I cannot think that he could, because his evidence is dead against that.

128. Are you aware that the level of the station ground in Lyttelton is raised, and that for that we were paid full price?—That is stated in one of your letters.

129. *Hon. Mr. Richardson.*] Mr. Rolleston has drawn attention to the fact that we did not submit details. You are aware I stated that great political feeling then existed. You will remember that one member of the Executive, who asked for these details publicly in the Provincial Council, had branded us as jobbers. This was not calculated to impress us with an idea that we should meet with fair consideration?—My answer is simply, that I never said anything of the kind.

130. *Mr. Rolleston to Hon. Mr. Richardson.*] You were asked to furnish a statement from Mr. Patterson?—I stated distinctly that I went to Mr. Patterson, and he said that he had to judge on the case as it was put before him.

WEDNESDAY, NOVEMBER 28.

Mr. MONTGOMERY, M.H.R., examined.

*Mr. Montgomery.*  
28th Nov., 1877.

131. *The Chairman.*] You were a member of the Provincial Executive of Canterbury?—Yes; in 1868.

132. And these claims of Messrs. Holmes and Co. came before the Government of that period?—Yes.

133. Have you any knowledge of the circumstances that led up to the initiation of these claims?—I only know they were presented during the time I was in the Executive.

134. It appears there is a deviation from the original contract—that a new contract was entered into for the sum of £5,000 for straightening the tunnel, and doing other works in the vicinity of the tunnel mouth. What did you understand at the time?—I was not in the Executive at the time of making the agreement. It came before me as a member of the Executive some years afterwards.

135. What work did you think this £5,000 included?—I thought, from the agreement and the surroundings of the case, that that sum was paid for straightening the tunnel and doing the work consequent on that—that is, carrying the embankment further to seaward to make the curve of ten chains radius from the straight line, and, in order that the curve of ten chains radius might be preserved, it had necessarily to be carried further to seaward.

136. And that necessarily involved a larger reclamation?—I don't know about reclamation. It involved the line going further to seaward.

137. Consequently taking a larger area of ground from the sea?—Yes.

138. Was this agreement reduced to writing?—I understood it never had been reduced to writing. There was never any evidence shown to me that it had been.

139. Were any understandings subsequently placed on paper with respect to this contract?—Mr. Rolleston and myself took Mr. Dobson's evidence in the matter respecting the tunnel.

140. That is the memorandum in 1868 which Mr. Rolleston referred to?—Yes. It was about that time.

141. There was a large amount of rock came from the tunnel?—Yes.

142. Whose property was that supposed to be?—There was a difference of opinion. The contractors held that the spoil belonged to them, and the Provincial Solicitor, I believe, held that the spoil belonged to the Superintendent.

146. Did the contractors deal with it as they thought proper?—I think there would have been no objection offered to them so long as they completed the works they undertook to do.

147. But these works they had undertaken to do was, I understand, the matter in dispute. Under the first contract, if the surplus material belonged to the contractors, there would be a large amount at their disposal?—Yes; more than under the second contract.

148. And therefore, if there was any sale for this material, the contractors would reap the benefit?—Yes. My own impression is, there would have been no objection to their disposing of it so long as they did the contract.

149. Have you any knowledge as to what was the difference as to the quantity of material to be placed under the first original reclamation and the second—of the amount of reclamation involved in the two contracts?—I think it is given by Messrs. Holmes and Co. in the claim they sent in.

150. This would represent the difference between the original reclamation and the second one?—I am not sure it would. I made a statement in the Council which was, I believe, correctly reported in the newspaper, and the particulars are given in that statement.

151. That, I presume, represents the difference between the work they were bound to do under the original contract and the second one?—I suppose it does.

152. The view the Government took of it was, that the £5,000 included the whole of the alterations—including this reclamation?—The Government asked Messrs. Holmes and Co. to send in particulars of the claim, and the Government would then consider the matter fairly between the province and Messrs. Holmes and Co., and when I was in the Government, two members of the Executive and myself called on Mr. Holmes, who was not very well at the time, in order to see if some settlement could not be come to with respect to the opening of the tunnel, and any claims. They had closed the tunnel, and the traffic was stopped. At the instance of the Executive, having arranged previously, I stated to Mr. Holmes it was a pity we should not have these claims adjusted satisfactorily, and that the Executive was anxious they should be adjusted without any law proceedings; and that if they (Messrs. Holmes and Co.) would give the Executive particulars of these claims, and the grounds on which they preferred the claims, the Executive would consider the matter as jurymen would consider it in the jury-box, and come to a decision according to the best of their judgment; and it would then be for Messrs. Holmes and Co. to consider whether they would agree to that decision or not. Mr. Holmes said he was perfectly willing to agree to that, and said, "I shall give you the particulars if you sit down and take them." I sat down at a table, and was commencing to do this, when Mr. Richardson said, "No; let us go to arbitration; we may have to go to law, and I object to this. Mr. Holmes said, "Very well. As my partner objects, I cannot go any further." And no further information could I get.

153. What year was that?—I think in the month of July, 1868. There was another matter—the opening of the railway for traffic—which we settled amicably; but I could not get that information necessary to enable the Executive to come to a decision as to these claims.

154. These were the claims over and above the £5,000?—Yes.

155. Then, the Government did consider they were entitled to something beyond the £5,000?—No; the Provincial Executive did not. They never had anything before them to show the contractors were entitled to anything more than they had received; but when we got the particulars in afterwards, we thought it necessary to have an independent Commission appointed to look into this matter. Mr. Symington, who was considered a merchant of very good repute and well up in accounts, and Mr. Patterson, who was considered high up in his profession as an engineer, and a gentleman of high standing, were appointed a Commission to examine into the matter, and take what evidence was required to arrive at a proper conclusion. All the papers in the possession of the Executive were placed in Mr. Patterson's hands, and he had power to call witnesses. We gave him no instructions. We offered him every facility, but we left him entirely free. He held an inquiry, as these documents show; took evidence from the parties who made that verbal contract with Messrs. Holmes and Co. respecting the straightening of the tunnel, and I think Mr. Richardson was examined. I was not present; nor had I anything to do with it, and knew nothing, except from the facts which came to my knowledge afterwards. Mr. Patterson sent in a report, and upon that report, and upon examination of the documents and papers connected with the matter, I, on the part of the Government, gave the decision respecting the claims. That was communicated to Messrs. Holmes and Co. by letter. We could not recognize any of those claims as valid, or that the money should be paid by the Provincial Government.

156. Did these Commissioners receive their instructions in writing?—I think so. Certainly they received my verbal instructions. They were simply to take evidence, examine the claims and other matters connected with the railway works, and report upon them.

157. Was this intended to be a full and complete inquiry?—Yes.

158. Then, I presume it was intended that Messrs. Holmes and Co. were to be examined?—The Executive didn't intend anything except that these men of high character should make an inquiry and report. They got no instructions beyond that. It was for them to decide what they should do in the matter.

159. An inquiry of that kind involved the examination of witnesses?—I know the Commission took evidence, and sent in a very full report.

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160. Were the petitioners examined?—Those examined were mentioned in the report.
161. Was there not a condition in the specification, that, in the case of any dispute between the Government and the contractors, it should be submitted to arbitration?—Between the engineer and the contractors.
162. Was that given effect to?—We never understood there was any dispute. By the original contract, whatever deviations were to be made could only be made—I speak from memory—upon the written instructions from the Engineer. Then we held that, if he did give written instructions, and there was a dispute, that dispute should be referred to arbitration; but if the Engineer never gave written instructions, and work was done which the Engineer said was only necessary in carrying out the original works, there was no matter of dispute.
163. Then you consider that as the contractors had no written instructions as to this deviation, the arbitration clause could not be brought in?—Yes.
164. Under that interpretation of the specification, the Government could have refused to pay this £5,000?—Upon the arbitration clause, yes.
165. Then, is the Committee to understand there was no dispute between the contractors and the Engineer?—The Engineer said that Messrs. Holmes and Co. carried out the curve as originally laid out on the plan; and when the curve in the railway did not commence until it was outside the tunnel, the curve of a ten chain radius would necessarily throw the line more seaward.
166. Why didn't the Engineer stop them?—Because that was part of the original contract. I, myself, am only speaking from what I learnt after examining the documents and the Engineer, and also after reading Mr. Patterson's report.
167. In 1868 there were no authentic documents and plans to show what the nature of this alteration was?—I think not. They never came under my observation.
168. You had the word of the contractor on the one side, and the word of the Engineer on the other?—No; we had more. We had the word of Mr. Bealey, of Mr. Maude, and, I think, of Mr. Aynsley, and the evidence brought forward by Mr. Patterson—that £5,000 meant for all the works.
169. Was Mr. Bealey Superintendent?—Yes.
170. What year?—In 1862 or 1863.
171. These deviations from the original contract had been verbally arranged between the contractors and the Executive, upon the advice of their engineer?—I think so.
172. Without being laid down on the plan or reduced to writing?—Yes. I understood they were simply to follow out the original curve of ten chains radius. Instead of commencing the curve in the hill, they were to commence it outside.
173. Under the circumstances, you thought this arbitration clause did not apply?—Under these circumstances, we thought the arbitration clause would not apply. Had the claims been for a small, moderate amount, the contractors and the Government would probably have parted good friends—that the Executive would have been inclined to strain a point; but the claims were so exorbitant that the Executive were obliged to rely on the report of the Commissioners and the law.
174. In fact, you took every defence the law allowed you, because you considered the claims too large?—Because we never could get a satisfactory explanation of these claims. There was a difference of opinion, and we could not meet very amicably. I thought the Executive was entirely inclined to go into the matter in a perfectly fair manner; but I fear the contractors did not think the Executive took that view. I may say, respecting going to law, that I was not on the Executive at the time they went to law. Messrs. Holmes and Co. said they would take a "convenient" season to bring their claims before a law court. It was not during my time that any law proceedings were taken.
175. *Mr. Dignan.*] Did the Commissioners furnish a report?—Yes.
176. Did they specify particulars of deviation?—They did, I believe, in some cases; but they reported upon the claims sent in by Holmes and Co. that these claims were inadmissible—that they were fully met. *Hon. Mr. Richardson.*] That was Mr. Patterson's report—not the report of the Commission.
- Witness*] I thought they were one and the same thing. I see that, on the 14th September, 1868, Mr. Richardson was examined before the Commission. Mr. Dobson was also examined. The evidence given by Mr. Moorhouse, Mr. Dobson, and Mr. Maude, all touching the £5,000, was signed by both Commissioners.
177. And the £5,000 covered all extra work?—That is what the Commissioners stated, as far as I remember the report. The report is before the Committee.
178. *Hon. Mr. Reynolds.*] Do you remember what decision the Provincial Council came to?—When I brought it before them, I said I was aware that Messrs. Holmes and Co., might take a different view of it; but I, on the part of the Government, would not recommend any money to be appropriated for payment of any portion of the claims, and the Provincial Council, by not taking further action, endorsed that.
179. Can you tell the Committee what was the decision of the Provincial Council in 1873?—No; I was not in the Council then. In 1868 and 1869 they were very strong against Messrs. Holmes and Co.'s claims.
180. *Hon. Mr. Bowen.*] I understand this case has never been before a Committee of the Council in any way?—Not to my knowledge.
181. Nor before a jury?—Not to my knowledge.
182. Was there not a talk at one time of appointing arbitrators?—When I was in the Government the Executive would not consent to arbitration upon an indefinite claim.
183. Has there ever been before any kind of Court an opportunity of getting out the evidence in the case?—I don't think there has been.
184. When it was before the Supreme Court, the legal question only was argued?—I am not sure. I am under the impression it never went before a jury.
185. Except what came before the Commission and the Council, the question of evidence has never been gone into?—No; I believe not.
186. *Mr. Murray.*] Do you know what was the object for straightening the tunnel?—I don't know.

I suppose there were two objects. It was much better, I suppose, for the convenience of traffic, that there should not be a curve in the tunnel, because those in charge could not, on the curve, see the trains, or any obstruction which might be on the line. That would be something; but I know it was considered a great advantage to the contractors, because no calculations were required to be made, as the line was straight through the hill. *Mr. Montgomery.*  
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187. Was not the running of a jetty right straight from the tunnel one of these reasons?—I do not know, I know in my time there was a talk in the Executive about running a jetty out after the railway was opened; years after the arrangement was made for straightening the tunnel.

188. Was there not a considerable amount of feeling existing in Christchurch about this matter in 1868?—A great deal both inside and outside the Council.

189. Party feeling ran very high both inside and outside the Council?—Not very high inside the Council, because the feeling was almost unanimous.

190. Was there not a Government upset on this question?—No.

191. Was there not a Government put into power on this question?—I think there was a feeling that Messrs. Holmes and Company got too many advantages from a previous Government, and that might have affected men's minds, and was partially the reason why the Government was turned out. It was partially upon a contract given to Messrs. Holmes and Company for railway material, while the Council was in session, without consulting it; that there was a vote of want of confidence, and the Government was turned out.

192. There was a Government put in power on purpose to rectify all these evil deeds on the part of Holmes and Company?—I am not quite sure, we did not consider them evil deeds.

193. The fact is a Government was put in for the purpose of crushing Holmes and Company?—Certainly not.

194. Was it not that same Government that was in power that refused to grant Holmes and Co. arbitration?—It was.

195. And was it not that identical Government that refused to allow the case to go into Court on technical grounds?—No; as far as I am aware the Government didn't object to going into Court.

196. That Government opposed it on a technical ground?—The Government of which I was a member did not do so. That is the Government which is known as the Government which upset the old coach.

197. I simply meant to get at the bottom of why these people were not allowed a fair trial?—It was not in my time.

198. Why were they prevented, on technical grounds from going to a jury?—If so, it was not in my time; I know nothing about the matter myself; I was not in the Government when it took place; I speak from a memory of nine years, but I think there was no writ served when I was in office, that was from 1868 to 1869.

199. When did you go into office?—In March, 1868, and continued till March or April, 1869.

200. Was it not during that time that one trial was prevented?—Not respecting these claims. I think the case in respect to the debentures was initiated.

201. Was that upset on technical grounds?—Yes; but I believe the judge said that upon its merits the case would have been upset.

202. The case, at any rate, was not allowed to go before a jury?—No, I do not think that occurred in my time. It may have been initiated in my time.

203. It did not go before the judge in your time?—No; I do not think our Government ever took technical grounds. I never advised technical grounds.

204. Did you not say you refused arbitration?—Yes; I refused that on the merits of the thing. I find this: If a man makes a claim for £5000, and it is referred to arbitration, he appoints one arbitrator, his opponent appoints another. These two act as advocates and appoint an umpire, who very frequently, to settle the matter, splits the difference.

205. Was there not a stipulation in the contract to the effect that these things should be settled by arbitration?—Yes; I speak from memory, if an order was given in writing that the work should be done

206. Given by whom?—The engineer.

207. Do you mean to say you would upset the whole of the conditions of the contract because an order was not given in writing?—No; I do not say so, I would carry out exactly what was understood.

208. I have understood there was no writing in respect to the £5000?—The terms were expressed.

209. But in that case the Government refused to allow the matter to go to arbitration?—That was one claim amongst others, and the Government would not consent to arbitration for the reasons I have stated.

210. *Hon. Mr. Reynolds.*] That gives rise to another question; you say it was not in writing, was there a verbal understanding?—There was a verbal understanding as I gathered from the evidence.

211. You say there was no writing; but did the engineer, Mr. Dobson, report on the contract?—He did not enter into it. The Executive entered into it.

212. What did the Executive understand by this verbal contract?—From the evidence and report of the Commissioners, I learn they were to pay £5,000 for the whole of the contract and every thing that would result from the contract.

213. There was no writing to show to the contrary?—No.

214. *Mr. Burns.*] Why then did the Government not allow the matter to go to arbitration?—Messrs. Holmes and Co. wished to go to arbitration, but refused to give particulars to be laid before the Executive. I always wanted the matter to go to a jury so that it might be settled in open Court on sworn evidence. I did not like arbitration. I am speaking of my own feelings.

215. If that work was part and parcel of the original contract, and it had been arranged that in case of disputes they should be settled by arbitration, why did the Government break that arrangement?—The Government did not consider that this was part and parcel of the contract.

216. Still, it was a dispute between the parties?—Yes.

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38th Nov. 1877.

217. Then why was it not settled by arbitration?—There was a demand for £22,000 or £24,000 sent in.

218. Supposing it was £50,000, surely it was all the same?—For one, I objected to going to arbitration on indefinite amounts, because very frequently, in the process of "splitting the difference," Governments have to pay more than should be paid.

219. In fact, did not the Provincial Government break their earlier arrangement?—I did not consider so.

220. *Mr. Shrimski.*] You state you were in office from 1868 to 1869 when the claim was before the Executive, and in accordance with the duty you owed to the Council and the country, you refused to recognise the same?—Yes.

221. *Mr. Dignan.*] As to the £5,000: You acknowledged a liability of £5,000?—Yes.

222. Was that £5,000 received by the contractors in the whole, or in part?—The whole of it was paid to them in cash.

223. *Hon. Mr. Reynolds.*] Supposing it had been your own private case, and you admitted a liability of £5,000 when £10,000 was claimed, would you have paid the £5,000 and have gone to arbitration on the other £5,000?—Certainly not; It was upon that ground that I objected.

224. *Hon. Mr. Richardson.*] With regard to the arrangement about the £5,000 for additional work at the tunnel mouth, you said just now that part of the arrangement was, that the reclamation was necessary to be carried out, and was included in the £5,000 agreed to be paid?—I did not say anything about the reclamation. I said that it was necessary that there should be a ten chains radius.

225. Were you aware that before that arrangement was made, a suggestion had been made, and was almost agreed to, to run out a straight jetty from the tunnel, and that that was the object of straightening the the tunnel?—I was aware that a suggestion of that sort had been made.

226. If that had been agreed to, and that work had been gone on with, would there have been any necessity for additional reclamation at Lyttelton at that time?—I think there would have been.

227. Were you aware in 1868, when you resisted this claim, that a detailed statement had been made out of all work necessary to be done in connection with the alterations in the tunnel mouth, and submitted before the offer was made or accepted by the Executive?—I do not remember having seen it.

228. Supposing there was such a statement made out, and it contained no mention of any further reclamation, would you still consider that the reclamation was included in the original contract?—Of course I would require to see that statement and look at it before I gave an answer. I do not know of any change made, unless expressed in writing, providing that the same curve mentioned in the original contract should not be kept, viz., that of a ten chains radius. That should have been adhered to, unless there was something to the contrary expressed in writing.

229. You said just now that we had an opportunity of being heard, that you went down and gave us an opportunity of being heard, but we refused to give any information. Were you not aware that just before you went down, at any rate, two members of the Executive had publicly and privately expressed their belief that we were robbers and jobbers, and that the Executive would take care we got nothing?—I do not know what was stated privately. I believe something of the kind was said by a gentleman who came into the Executive, but who was in the opposition when he spoke in that manner. I did not say such a thing myself.

230. Do you remember the reason given by myself at that interview, why we were not desirous of entering into details till it was decided by the Government and ourselves to refer the matter to some independent tribunal?—I do not. If you mention what is in your mind, I may be able to tell you.

231. You know that Executives change and Provincial solicitors change very often. The gentleman whom we had engaged to conduct our case suddenly became Provincial solicitor, and the consequence was that our positions were immediately changed, and we were left in the position of having nobody to act for us, at least, nobody whose advice we chose to have confidence in, because pretty well all the solicitors had been mixed up with the case on behalf of the Government. We therefore felt that any evidence we produced would be used against us, and it was not fair to call upon us to submit such evidence. I further stated this most distinctly that we were prepared at once that the whole matter should go to arbitration, in which case we would give our evidence, but not otherwise?—What I remember is this. We went down and met you, and I was preparing to write down Mr. Holmes's statement, but you got up and came over to the table and said, "No; I cannot agree to this; we must carry the matter further than this." Mr. Holmes then said, "Very well, as my partner does not agree I cannot go on." You well remember there were threats then of carrying the matter to the Privy Council.

232. Oh, Yes; we fully intended to take the case there if we could have got past the Court of Appeal. You alluded to a letter just now in which we said we should take time to institute proceedings?—Yes.

233. I wish to remove any misapprehension that might have been created in the minds of members of the Committee, by that remark, as to any length of time having elapsed before we took action. Did not our action commence in January, 1869, some four months after that letter was written; there having been some additional correspondence in the interval?—I do not know what time the action commenced; I do not think it commenced while I was in the Executive.

234. The writ was served on 21st July, 1869?—I understood that was in the action on the debentures.

235. It has been said that we had an opportunity and did not avail ourselves of it, of appearing before the Commission, and also before Mr. Patterson, who was appointed to report?—I always understood that Mr. Patterson had just arrived in Canterbury, and we expressed willingness to refer the whole matter to him and to abide by his settlement?—I do not remember that.

236. Could you tax your memory as to whether any instructions were given to Mr. Patterson that he was not to hear us?—No instructions were given to him except by letter. Although I was head of the Executive Council, I never spoke a word to him on the subject; I carefully avoided doing so.

237. I understand you to say that the first you heard of this claim was in 1868?—Yes.

238. Are you aware that the claim was first made by us in 1865, and that it was reported upon by Mr

Dobson, officially in May, 1866, a copy of which report was sent to us?—Yes; I had learned that in *Mr. Montgomery* 1868. I have not seen the report.

239. Are you aware that from that day to this we have never ceased to make the claim, that it was continually renewed, and increased as the work went on?—You kept on renewing it, but I do not think you made it until some years after the work had been commenced. *28th Nov., 1877.*

240. Are you aware that in 1867, while this dispute was going on, we were called upon to send in tenders for the supply of some of this same material in a different place to that in which we were placing it, to place it in a certain direction altogether beyond the line of our original contract?—I believe there was such a contract entered into, and it was carried out.

241. Are you aware that the price we were paid was one shilling a yard higher than this claim because there was a little extra haulage?—I am not aware of that.

MONDAY, 3RD DECEMBER, 1877.

Mr. E. DOBSON, C.E., examined.

*Mr. Dobson.*

242. *The Chairman.*] You were engineer for the Lyttelton Railway contract?—Yes.

243. When the petitioners had the contract for its construction?—Yes.

244. The original contract was for £24,000?—Yes; that was the amount of Holmes and Company's contract.

245. Before that was completed, we understand there was a deviation from the original contract?—Yes; the deviation of the tunnel was altered.

246. When was that agreed to by the contracting parties?—I think it must have been at the end of 1862. I could not say exactly unless I referred to the papers.

247. What was the nature of the deviation?—It was to make the tunnel straight instead of curved. The alterations were all at the Lyttelton end.

248. Had anything been done at the Lyttelton end when this deviation was made?—The drives had been begun. The heading had been driven on the curves.

249. That work was done away with; it was lost?—Yes.

250. Was the agreement for this deviation reduced to writing?—No; the contractors expressed willingness to make the alteration, and do all that was necessary, for a sum of £5,000. The Executive gave me verbal instructions to get the alterations made, and a vote for £5,000 was taken in the Provincial Council.

251. What was to be done for the £5,000?—It was to include the whole cost of altering the tunnel.

252. Did it refer to the tunnel only?—To nothing else I believe.

253. It was extra work?—I should not call it extra work; I should call it alterations.

254. Could you give us a detailed statement of the work done?—No; not without having my working plans before me. It was a very complicated work; there were two water courses and three public roads to be dealt with.

255. In the plan before the Committee, it appears that under the original contract, some reclamation was to be made seaward of the tunnel mouth?—Yes; that portion marked red in pencil.

256. This sea wall (on the face of the embankment) was to be of stone taken from the tunnel?—It was not a sea wall at all; it was simply an embankment. That is to say there was no masonry; it was simply rubble stone thrown into the sea.

257. Could you tell the committee how many cubic yards of stone it involved?—No; not without the plans; the quantities were all carefully taken out on them.

258. It appears to be about 30,000 cubic yards to me by the section of the work; could you say approximately?—No.

259. What was to fill in this land which was to be reclaimed?—Partly the stuff out of the tunnel and partly the stuff from the excavation near the mouth.

260. The filling up had to be done by the contractors?—Yes.

261. After the alteration was decided upon, the original line of embankment was extended further seaward?—Yes; They tipped the stone all along the outer line shown on the plan.

262. Supposing the original contract had been carried out, the line of reclamation would have been thus shown on the plan, and marked red in pencil?—Yes.

263. What would then have been done with the surplus stone?—That was a question for the contractor entirely; he would do what he pleased with it. The contract was drawn in such a way as to relieve the Government of any expense in connection with the surplus. If it had turned out bad the Government might, unless such a provision were inserted, have been put to many thousands of pounds expense; therefore I specially guarded the Government against that contingency. Of course, if it were hard rock it would have been good to the contractor, although there would have been the expense of cutting through it.

264. Was there no agreement as to the land the spoil was to be put upon?—The Government were bound to find land when required by the contractors, but the contractors were bound to pay for the cost of such land.

265. Supposing the contractors had selected land to the east of the reclaimed land, what then?—The Government would not have allowed them to take that land, at any rate not the freehold of it.

266. Where would they have found land?—That I do not know; it had nothing to do with us. That was matter entirely resting with the contractor.

267. What was the number of cubic yards between the first reclamation and the second?—I could not say exactly. When I reported, it was about 30,000 cubic yards, but I believe there has been more added since then; 30,000 was the quantity I thought necessary to give a proper curve. Originally my idea was to make the station in a straight line from the tunnel.

268. Where is the present line of reclamation?—Seaward of the original line as shown on plan. It was estimated that the quantity to be filled in would be 30,000 yards additional.

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269. Could you inform the committee of the number of cubic yards which came out of the Lyttelton end of the tunnel?—I think there were about 100,000 yards, or perhaps a little more than that, in the whole tunnel. The Heathcote end had to be cut away very fully; half of that 100,000 yards say, came into Lyttelton.

270. Of this 50,000 yards which came out of the Lyttelton end, I suppose only about 20,000 were required for the first reclamation?—Not more.

271. The balance is represented by this extended portion of the reclamation?—Yes.

272. Messrs. Holmes and Company sent in a claim for 30,000 yards?—Yes; you will find I reported twice, once generally, and on the other occasion, I went into detailed quantities.

273. The committee then are to understand that you consider this surplus material belonged to the contractors?—There is not the slightest doubt on the subject. The terms of the contract specially provided for that.

274. Were they directed to put the material along the outer reclamation?—No; but when it was decided that the station was to be placed here, I refused to allow them to remove spoil until the requisite width of bank was made up.

275. When you refused to allow any material to be taken away, was it understood that they were to be paid for the extra material?—It was understood that they had made a claim, and that their claim had been refused.

276. Before this, they had merely tipped the stuff within the line of the first reclamation?—It was taken out to the full extent.

277. I understood that in putting up this sea embankment, the stuff was selected—the large stones were put outside to form the face and the smaller stuff was kept back?—Yes; that was done. I may tell the Committee this, that if we had not had this stuff, it would have cost the Government many thousands of pounds to get stuff for the reclamation.

278. The original curve was 10 chains radius?—Yes; it is the same now.

279. Of course, carrying the embankment further out sea, made the curve easier?—Yes.

280. Was there no understanding at the time these alterations were made, that in consequence of this additional reclamation Messrs. Holmes and Co. were to get additional payment?—Nothing was said about the matter. I only received verbal instructions with reference to the tunnel, and then a vote for £5,000 was included in the next appropriation act.

281. Nothing was said about this extended reclamation?—Nothing whatever at that time.

282. When did you become aware for the first time that an extra claim would be made?—In 1865, I think. The embankment was very nearly finished when the claim was made. You will find a letter of mine in 1865, I think, in which I said that the contractors had a claim, and that I would report upon it at an early date.

283. This claim was considered by the Executive and they rejected it?—Yes.

284. At the time the claim was made, you reported favourably upon it. You considered that under the contract they were entitled?—We certainly could not have compelled them to do the work. I reported that the claim of 5s. per yard was fair. It was only by using the stuff out of the tunnel that it could have been got at all at any reasonable cost.

(Letter read.)

"SIR,—

"Provincial Engineers' Office, Christchurch, May 22nd, 1866.

"In continuation of my letter, 13th January, 1866, I have now the honor to forward a plan showing the additional extent of embankment required for connecting the railway with the wharfs now under construction.

"The total quantity of additional stone embankment, when completed, will be about 30,000 cubic yards, for which Messrs. Holmes and Co. propose to charge 5s. per yard. As this is a fair price under the circumstances of the case, I have to request your approval of the contractors' terms, that they may be credited with the value of the work done.

"I may here observe that the value of the additional amount of space, which will be obtained in front of Norwich quay, by bringing the line of wharfage further to seaward, than was originally proposed, will far outbalance the additional outlay.

"Signed.—E. Dobson,

"Provincial Engineer."

285. I understand that the contractors were obliged to get rid of their spoil at their own cost?—Yes.

286. Could they have got rid of it in any other way than in putting in this place?—Yes. They could have sold it to the wharf contractor.

287. What was the date of that contract?—I could not tell without reference to the office papers.

288. Whose contract was it?—E. G. Wright's. He would have taken a great deal of it, and would have been very glad to get it, I should think. It was in 1865 that I reported upon the wharf tenders. I believe Wright was put to great expense in getting stone for the wharf backing.

289. You think the contractors could have sold to Wright?—Yes.

290. What price could they have got from him?—I do not know. I do not know at what price it was going; but I know the stuff he got cost a good deal.

291. Where did he get it from?—He opened some quarries at the other end of the town.

292. The reason they did not sell it to him was that they used it for the benefit of the Government?—Yes; the greater part of it. A quantity was stacked at Heathcote Valley, and afterwards sold to the Government. They must have sold several thousand yards. If they had refused to do that work we could not have compelled them to do it. The stuff was absolutely theirs under the contract.

293. The contract for the wharf was begun in 1865?—Yes.

294. When was the tunnel open?—In 1867, temporarily, in order to bring the season's wool through, and then closed and finished in 1868.

295. If they had sold the stuff to Wright, how could they have completed their own reclamation?—They could have taken the stuff from the other end.

296. But that could not have been done until the tunnel was opened?—No.

297. How long did it remain in their hands after it was open?—A long time; but a waggon could be taken through long before the tunnel was opened, and the stuff could have been taken through to Lyttelton, instead of being taken to Heathcote, where many thousands of yards of stuff were taken.

298. Would it have been practicable to have carried that from the Christchurch end to Lyttelton?—They could have done that while the tunnel was in course of construction. A waggon heading was taken through on Queen's birthday, 1867.

299. There is a letter from yourself to Mr. R. G. Stephenson, of London, dated June, 1867. Do you mean to inform the Committee that, long before that date, a waggon could have gone through?—I think it must have been May, 1867, when the drives met.

“DEAR SIR,—

“Christchurch, 5th June, 1867.

“You will be interested in hearing that, on the 29th ultimo, the drives of our port tunnel were connected with centre, lines and levels being perfectly true.

“Very little remains to be done, and I expect to have the engine running through by the end of next month. I enclose a newspaper which contains a tolerable correct account of the undertaking, and remain,

“Yours faithfully,

“E. DOBSON.

“R. G. Stephenson, Esq.”

300. How long did the line remain in the contractors' hands after that?—Till the middle of 1868.

301. That is about a year after you joined the drives?—Yes.

302. You think there would have been ample time for the spoil, if the Lyttelton end had been taken by Wright, for the contractors to have made arrangements to have brought stuff from Christchurch to have completed their reclamation?—Yes. All the stuff for metalling the Lyttelton station yard was brought from Christchurch.

303. This agreement with regard to the alteration of the original contract was made between yourself, and the contractors, and the Executive?—Yes.

304. Did you think at that time that the whole cost involved in the alteration would be £5,000?—Yes; but at the time the £5,000 was agreed upon I intended that the line would go straight out, and that the station would be upon a jetty, to be erected in a straight line from the tunnel.

305. Your intention was to have the original reclamation, and to carry the line straight to sea, out by means of a jetty?—Yes. I wanted to get the station there.

306. That reclamation was part of the original contract?—Yes; as shown on the original plan.

307. Then, we are to understand that, when this deviation was made, it was not your intention to make a larger reclamation, but to run the railway out along a jetty?—Exactly.

308. But this idea of a jetty in continuation of the railway being abandoned, then this extended reclamation became necessary?—Yes. A commission was appointed in London to report upon the harbour works, and they went dead against my idea of a jetty.

309. Did the contractors do this work—the additional work over which the dispute has arisen—under orders from you?—Not until it was sealed by the Executive that the station at Lyttelton was to be put down here [points to plan]. Then I gave them the line, so that the same curve might be preserved.

310. You gave them the line seaward?—Yes.

311. Did the Government at any time recognize the contractors' right to the spoil?—No; but they purchased the stuff from the contractors.

312. Was not that recognizing the right of the contractors to it?—I think so.

313. Did the contractors ever sell to any other person?—I do not know. I have heard so. I know the Government purchased metal for the Lyttelton station, and also at the Christchurch end.

314. Was the stone valuable for building?—It was too much broken for that. It is valuable for rubble.

315. *Mr. Baigent.*] The contractors received the £5,000 on account of straightening the tunnel?—Yes.

316. *Mr. Shrimski.*] You were Provincial Engineer?—Yes.

317. Is it usual to enter into such contracts as this verbally?—It is very unusual indeed.

318. You know what the claims of Messrs. Holmes and Co. are?—I have read the petition.

319. Do you know the amount of the claim?—Yes.

320. Have you ever been consulted on that claim by the Executive?—The Executive have asked me all sorts of questions for the purpose of forming their opinion.

321. Did you ever advise the Executive not to recognize the claim?—No.

322. Are you sure?—Perfectly.

323. Have you never reported to the Government with reference to the spoil?—You have before you two reports, in which I recommended them to pay 6s. per cubic yard.

324. *Mr. Murray.*] What was the cost of the work which had to be abandoned—the work already done?—Something like £300.

325. Would it not be easier to make a tunnel straight than round, as regards actual work?—I do not see that it would make any difference.

326. Did you consider that the alteration in the tunnel would cost £5,000?—Yes.

327. Was there more spoil owing to the alterations than there would have been under the original plan?—No. The excavation became very dangerous. We had to run between the Union Bank and Peacock's store and Aynsley's store. The ground was very bad, being boulders and running sand, and had to be got out in short lengths, and heavily shored, which was both difficult and expensive.

328. On what ground did the contractors claim the material from the tunnel?—On the ground of the terms of the contract. There is the clause:—“The Government will put the contractors in possession of the land coloured green upon the plan, free of all expense, and will also make arrangements for the use of any additional land that the contractor may require for temporary occupation, or for side cuttings; but all expenses incurred in respect of such additional land are to be borne by the contractor, and will be deducted from time to time from the balances to be paid him on account of the work.”

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329. Is that all the evidence of title the contractors had?—Yes. I should think it is evidence enough.
330. Supposing the tunnel had gone through a coal mine, would the contractor have had the right to the coal he brought out?—Certainly.
331. Is such a specification usual?—Yes; unless there is a special provision.
332. Supposing a contractor comes across a gold mine?—I believe gold is reserved to the Crown; but when a contractor comes across ordinary material, whether it be valuable or not, he has a right to it under the common law. If the stuff turned out to be sand and mud, he would have to dispose of it; and if it were good stuff he got the benefit of it.
333. If it had been sand and mud, would he have been allowed to put it into the harbour?—No.
334. And he would have had to provide other stuff for the reclamation?—Certainly.
335. *Mr. Swanson.*] There were progress payments on the tunnel work?—Yes.
336. Was there any in respect of this embankment in dispute?—No; because the claim was not recognized. In the first place, however, the contractors did not ask for money for some years, and when they did, the claim was not recognized.
337. What was the percentage paid on the contract?—90 per cent.
338. When was the first claim made in respect of the work?—In 1865.
339. How much of the work was then done?—About two-thirds.
340. Was two-thirds of the other work done before any money was asked for?—Yes.
341. Was it not calculated to be a surprise for the Government?—I think that is a question you should ask the Government.
342. Were you not at that time the brains and eyes of the Government, and did it not come as a surprise upon you?—It did.
343. The Government had no chance of coming to an understanding with the contractors?—Well, I did not want to stop the work. So long as the contractors would give us good stuff for nothing, I did not object to it.
344. And did you warn the Government of what was going on?—No.
345. Did you consider they were doing right?—Yes. I thought the more they did for us on such terms the better.
346. Do you think they are entitled to anything extra?—I think they have a legal right.
347. Do you not think it was your duty to have warned the Government—to have told them these contractors were doing so and so, for which they had no authority, but might want payment by-and-by?—I do not think it was my duty. I did not know then there would be any demand for payment, and as they were doing us good, I did not object.
348. But supposing a man, unasked, does you a good deal of good, and then pops in a bill, what would you do? Would you pay him?—It would depend upon circumstances. I should examine into the claim, and see whether it could be legally claimed or not.
349. Would it not have been better for you to say to the contractor, "Well, you are doing this, but I never asked you to do it, and I am not going to pay you for it?" Would it not have been better if you, as acting between the Government and the contractors, had had an understanding on the subject?—No. If a contractor likes to put his spoil where it will do me good, I am perfectly satisfied.
350. But supposing he comes afterwards, and wants money—would you be satisfied then?—I am satisfied in this case that the contractors ought to be paid something.
351. *Hon. Mr. Richardson.*] You said just now, in reading the specification, that we were to be supplied with land upon which to put this material?—Yes; that is so.
352. As we were not stopped from putting material upon that land, had we not a right to suppose that the Government had no objection to our using it?—Temporarily, but not otherwise.
353. Exactly. Was it during your time, or was it during the short interval that Mr. Aiken had charge of the harbour works, that we were stopped from selling ballast?—I think you were stopped from selling ballast just before the wharf contract was made.
354. Do you recollect that we were selling ballast, and that we put a small jetty up?—I do not know about that. I know Mr. Holmes asked me if you might sell ballast, and I said, "No."
355. Are you not aware that we did sell a considerable quantity before we were stopped?—No. I believe you sold some, but I do not know this from personal knowledge, and I have no idea of how much was sold; but Mr. Holmes told me he was selling ballast. That was just about the time the wharf contract was being let. I then took a stand, and said I could not let any more be sold.
356. Do you remember Mr. Holmes saying we had an offer for the whole of the surplus material from Mr. Wright?—I do not.
357. You did not know that Wright offered us a price for the whole of the stuff?—No.
358. It was after that date, was it not, that we sold the Government some of the stuff for the Christchurch yard?—Yes. You did not sell any of the stuff till the station was fit to be opened.
359. Was it sold at a price which would merely pay for the labour of handling it, or at the ordinary market price for such material?—It was simply sold at the ordinary market price. There was no consideration as to where the stuff came from; it was simply a question as to what was the value of broken metal.
360. Do you remember that, after the work was finished, the Government invited us to tender for the supply of some of the material in Lyttelton?—I think there was some correspondence on the subject.
361. We did tender, and our tender was accepted?—Yes.
362. It has been repeatedly said that the £5,000 agreed upon to be paid was to cover the whole of the work. I want to ask you this—Was it ever intended to cover the cost of reclamation?—Not in my mind. Almost immediately after I received verbal instructions from the Executive I made out working plans, and then submitted them to you, in order that there might be no mistake as to what was to be done for the £5,000.
363. And there was nothing about reclamation in them?—No. My idea was that the line was to run straight out.

364. Have you ever had these claims of ours referred to you as Engineer to report upon?—Never. *Mr. Dobson.*  
The Executive have had me for hours asking me questions; but the matter was never referred to me to report upon. 3rd Dec., 1877

365. You are aware that Mr. Patterson reported upon the claims?—I am not aware that he reported upon your claims.

366. He did not examine you, then?—No.

367. Although he was called upon to report in regard to the tunnel works, you never had an opportunity of explaining the reasons for the way in which you had altered the work, and had it carried out?—No. It was after I went over to Melbourne to take charge of the Hobson's Bay line. I had no communication with him whatever.

368. *Mr. Baigent.*] You said the Government benefitted by these works, or something to that effect? Yes.

369. What would be the extent of the benefit?—It is just one of those things which should go to arbitration. I recommended the Government to offer 1s. per cubic yard.

370. Have you any idea of the number of yards?—Yes; about 30,000. I did not think they should get the full amount of their claim; but at the same time they had done important work, which the Government must have had done, and they should get consideration for it.

371. *Mr. Burns.*] I think you said the contractors had a perfect right to the spoil?—Yes.

372. Then why did you stop Messrs. Holmes and Co. from sending the ballast away?—Because it had been settled that the station was to be in front of Lyttelton. Reclamation was therefore necessary, and I said that the cheapest way of doing it would be by using the tunnel spoil.

373. You were afraid, I suppose, unless you did that, there would not be enough spoil to do it?—Yes. Although the Executive had refused to recognize the claim, I could not let the spoil go.

374. You considered that the spoil belonged to the contractors?—Certainly.

375. There was no reclamation done beyond what you wanted done?—No. When I left, the reclamation was just up to the lines I had given.

376. What is the extent of the claim for reclamation?—It is for 30,000 cubic yards beyond the original reclamation.

377. Was there not an arbitration clause in the contract?—Yes.

378. But it was not acted upon?—No.

379. Never?—No.

380. Would you not consider this was a fair case for arbitration?—It is just one of those things which an arbitration clause is intended to meet. If not on the original contract, it arose out of the original contract.

381. Your opinion on the matter was never asked?—No. The Executive made up their minds not to recognize the claim.

382. You were never asked to report upon it, although you were Provincial Engineer?—No.

383. Are you aware that a technical objection was then taken to prevent the case going to arbitration?—I do not know.

384. You are aware that there was some case in the Supreme Court?—I was in Melbourne. I went in January, 1869, so that that occurred after I went to Melbourne. I simply know that there were some legal proceedings taken.

385. *The Chairman.*] You were examined before the Railway Enquiries Commission, consisting of Messrs. Symington and Patterson?—Yes.

386. You then said in evidence, "In regard to additional sum of £5,000 paid for straightening the tunnel there was an offer made by the contractors to perform the work for that amount, which offer was accepted by the Government on my recommendation. There was no written contract. The matter was arranged by the contractors and the Superintendent at that time (Mr. Bealey), at a meeting of the Executive, at which I was present. It was a clear understanding that the sum of £5,000 was to cover the whole cost of straightening the tunnel. The straightening of the tunnel necessarily involved carrying the face of an embankment further seaward. I ordered no other extra work at Lyttelton besides this and the culvert in Salts Gully in connection with the main line." Did you intend to convey to the Commission that the £5,000 covered the embankment?—No; only the cost of the tunnel.

387. The embankment was rendered necessary by the alteration in the design?—Yes. It would not have been necessary if the station had been in a line with the tunnel.

388. Did you state to the Commission that it was your intention, when the curve in the tunnel was altered, to make the jetty straight ahead?—Yes. I do not know whether it appears in my evidence as printed.

389. At what date did this extended reclamation become necessary?—In the middle of 1865 it was settled that the station was to be in front of Lyttelton, and from that time I refused to allow the contractors to take away the spoil. Until then I had treated it as ordinary spoil.

390. Did the Executive give instructions as to the reclamation?—None whatever.

391. And you simply allowed the contractors to go on, seeing the work was necessary to carry the order of the Executive into practical effect?—Yes.

392. At this time did it not appear likely that the claim would be made?—The claim was made in 1865.

393. Did you anticipate the claim before that?—No.

394. *Mr. Shrimski.*] You recommended the alterations in the tunnel?—Yes. I said it would cost about £5,000.

395. Through whom was intimation given to the contractors that £5,000 would be paid to them for the work?—I did. We were always in conversation.

396. But upon whom did the duty rest of making the agreement?—The Executive should have done it through their solicitor.

397. *Mr. Murray.*] What was the price of the ballast at the time—in shipping?—I could not say.

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398. What quantity would be sold in a year?—I do not know.
399. You said two-thirds of the reclamation had been made before you were aware that the contractors intended to charge for it?—Yes.
400. What happened when the charge was made?—Nothing particular. The work went on.
401. The contractors took upon themselves the responsibility, and ran the chance of being paid?—Yes; as soon as the site for the station was fixed upon, I took upon myself the responsibility of refusing to have any of the stuff removed.
402. Do you think they were being put to more expense than if they had simply tipped the stuff up in that locality?—Yes.
403. How much?—3d. to 6d. per yard as regards the facing. When the site of the station was fixed, I had the slope trimmed.
404. *Mr. Shrimski.*] Is it usual for a solicitor to draw up agreements for public works?—It is usual in such cases as these for the Engineer to draw up specifications, and for a solicitor to embody them in agreements.
405. Then it would have been your duty to draw up specifications and forward them to the Provincial Solicitor?—It was the duty of the Executive to have instructed the solicitor to draw up a contract which might simply have consisted of an understanding on the part of the contractors to do all that was necessary for the sum of £5,000.
406. Did you not think it was your duty, as the officer in whose department the work occurred, to urge upon the Government to get this agreement made?—The way in which the Executive business was conducted was so loose that, even had I suggested this course, it would very likely not have been carried out. I, myself, had no instructions from the Executive except verbally, and I believe that no minute of instructions given verbally by the Superintendent was entered in the Executive minute book.
407. *Hon. Mr. Richardson.*] Would the contractors have been stopped from selling that ballast if the decision had not been come to to alter the site of the station, and put it in front of the town?—I should not have stopped you.
408. *Mr. Burns.*] Did I understand you to say just now that you received no minute of instructions to go on with this £5,000 work?—None whatever.
409. Who gave you authority to do it, then?—The Superintendent; but there was nothing in writing.
410. And does the late Superintendent not recognize the claim because no authority was given in writing?—The contractors have been paid the £5,000 for the additional work.
411. But the Government have refused to go to arbitration on this other matter because no authority was given in writing. Do you know anything about that?—No.
412. *Mr. Bowen.*] Supposing, when there was talk of no payment, the contractors had declined to go any further with the work, could they have been compelled to go on?—Certainly not.
413. Would the Government have then had to go on with the work?—The Government would have had to finish the reclamation at great expense.
414. Where could they have got the stone?—I cannot say. They would, I expect, have had to open new quarries in the hill sides. It was for that reason that I took up the position I did, and refused to allow the stone to be taken away.
415. *Mr. Burns.*]—The contractor was obliged to find land at his own expense whereon to put the spoil. Was there any land available in Lyttelton where he could have put it except the reclamation land?—Supposing it was rock, it would have done no harm in the harbour; but supposing it was bad stuff, there was no place where it could be put, except at great expense for protective works.
416. I am talking of rock, as it was found to be. Was there no place in Lyttelton other than on this reclamation ground where the contractors could have deposited it?—They could have put it on land already made.
417. I suppose the bulk of it would have gone to the Christchurch end?—Certainly not.
418. Could they not have got it through?—After the drive was through. They could have stacked it at first.
419. I understood you to say the drives had met?—That was not till 1867. This occurred in 1865.
420. Supposing they had stacked the spoil at side, would it not have interfered with the work?—No.
421. *Hon. Mr. Richardson.*] As a matter of fact, did not the contractors stack a lot of it at side with a view of selling it?—There was a good deal of it stacked at side for a time.
422. Can you tell the Committee how much was put in the reclamation with orders against its removal?—No.