

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The three lowest tenders were as follows:—

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

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

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

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