

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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