

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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