

348. *The Commissioner.*] What was the date of that conversation with Mr. Clayton, in which he informed you that you would not lose anything if you went on with the contract?—I think that was a few days after Smith failed. It was at the time this £100 cheque passed.

349. You say, as I understand the evidence, that you could not throw up the work?—At that time I could have done so by losing the £1,000.

350. Then you would merely have lost the £1,000?—Just so.

351. When did you get so involved by ordering materials that you could not throw it up?—Immediately afterwards. When Mr. Clayton told me I should not lose anything at all, I sent orders to Melbourne and all over to get materials.

352. Smith did not owe you anything then?—He owed me the overdraft at the Bank of Australasia, and no more.

353. If Smith's contract had been broken, you would have been £1,700 out of pocket?—I should have been, no doubt, about that. Not quite the £1,700, because I had a sort of security which I hold now for whatever it is worth. I don't think it is worth much.

354. Did you enter into an agreement with Mr. Smith to overlook the works for you?—I did not enter into an agreement with him, but I said to him, "You had better stop, as you know everything about this place, and look after this work." There was nothing said about the money, but occasionally I gave him £20 or £30.

355. He was your servant, without any fixed wages?—That was just it.

356. If there was anything over, after the contract was completed, was Smith to have it?—There was something to that effect, but nothing definite. I said, "If everything turns out all right, you will be well paid for your services;" but there was nothing definite in the matter.

357. Of course, in that estimate of Smith owing you £700, you include all the liabilities incurred on account of Smith?—That was all.

358. In his evidence before the Committee, Mr. Smith says in reply to the question, "Was Mr. Martin security to the persons from whom you got the material? He was from October." Is that so?—I do not see how I could be security except by that deed which Mr. Brandon drew up.

359. Then he says, "I owed £1,000 for material, and £60 for labour," and he is asked, "What was the entire liability?" To which he says, "Between £2,000 and £3,000." He says generally that you became security for the material supplied to him. Is it so?—Except by this deed. I cannot see anything else.

360. Would you tell me exactly what the meaning of your arrangement with Mr. Clayton was? It was not as I understand under clause 13, and it was not under clause 16; how then do you make out that Mr. Smith was ousted from his position of contractor?—I do not know.

361. You knew of the existence of the contract?—I knew that.

362. And that Mr. Smith under that was contractor?—Yes; and that was about the purport of it.

363. Now, when this contract was alive, you made another arrangement which ousted Mr. Smith?—The arrangement I have just told you about.

364. Then you trusted to this verbal arrangement with Mr. Clayton?—Quite so. There was no writing over the matter.

365. Did Smith ever sign the contract to you?—I do not think so. No, he never did.

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TUESDAY, 9TH APRIL, 1872.

Mr. BEN SMITH in attendance, and examined on oath.

366. *Mr. Brandon.*] What is your occupation?—I am a builder and architect.

367. You undertook the contract to build the new Government House?—Yes.

368. Under the contract and specifications which have been put in?—Yes.

369. Before you had been many months building it, were you not obliged to take the benefit of the Bankruptcy Act?—Yes.

370. What time was that?—February the 4th, 1870.

371. When you had passed through the Court, in what position were you with regard to the contract; I mean what actual position?—I considered that, when the advertisements were in that I could not meet my liabilities, I withdrew from the contract altogether.

372. You considered that the contract was at an end?—Yes, as regards myself.

373. Do you know how the works were carried on after that?—Well, on February the 4th there were advertisements in the *Evening Post* by Mr. Martin for tenders to complete the different parts of Government House, and I considered that the whole matter was out of my hands.

374. How was that?—By the arrangements between Mr. Clayton and Mr. Martin.

375. Then you considered, after going through the Court, that it was all out of your hands?—The only thing I knew about the matter was that I was outside Mr. Clayton's office, and Mr. Martin went in, and Mr. Clayton arranged with Mr. Martin that Mr. Martin was to finish the work, and I was to be done away with altogether.

376. To be done away with—what do you mean by that?—That Mr. Clayton was to carry on the work, and Mr. Martin was to pay him a commission for doing so. There were two little offices at that time, and I was in the outside one.

377. Do you mean your services were to be dispensed with?—Of course.

378. What were the words with reference to yourself?—There was a great stir about the matter at the end of January. I could not pay the wages on the 13th of January, and I went down to Mr. Clayton and told him, and Mr. Clayton and Mr. Martin had a conversation, and Mr. Martin gave Mr. Clayton a cheque, which was to be given to me on the 15th to meet the wages.

379. *The Commissioner.*] Do you know anything at all, of your own knowledge, as to the payment of that cheque?—I received the money for the cheque, and paid the wages.