

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.