

103. *The Chairman.*] Part of the claim of £30,000?—I could not say without further reference. This particular claim never was settled. I may say that after that, letters came from Messrs. Holmes and Company to the effect that they declined to have any further dealings with the Provincial Government, and that they should take their own convenient time to try the law in the case. Such was the state of the question up to the time that legal proceedings were instituted, and the Provincial Government felt it to be their duty to defend the claims. On the 27th November, 1868, these letters were written.

Mr. Rolleston.
26th Nov., 1877.

Lyttelton and Christchurch Railway—Holmes and Company's claim for extras.

"Sir,—

"Christchurch, 7th November, 1868.

"We have the honor to state, that as all friendly negotiations have failed, at a convenient time we intend to take the necessary steps to enforce our claims (mentioned in our letter to you of the 3rd August last, amounting to £23,537, together with the other claims of which you have been made aware, the exact amount of which has not been ascertained) in a Court of Justice.

"We have, &c.,

"To the Secretary for Public Works.

"GEORGE HOLMES & CO."

Lyttelton and Christchurch Railway—Holmes and Company's claim for extras.

"Sir,—

"November 27th, 1868.

"We have the honor to receive yours of the 26th inst. this day. In reply, we very much regret that the Government have not taken the usual necessary means where technical matters are concerned namely, by refusing us the privilege of having witnesses to give evidence in support of our claims before arbitrators.

"The Government must therefore have arrived at a conclusion on *ex parte* statement, because our strongest proofs can only be brought forward before an impartial tribunal.

"It is therefore necessary for us now to take a new position, after having tried all means to avoid unpleasant proceedings, and to stand firm by the equity of our case.

"It may be necessary to state that we shall not from this date submit to any compromise for the claims in possession of the Government, or any other outstanding claims not yet discussed.

"We regret that we are compelled to take this position in order to maintain our rights, although in the end it might have been more satisfactory to all parties if the Government had not so peremptorily refused us what was in reality a part of the contract, namely, arbitration.

"We have, &c.,

"To the Secretary for Public Works.

"GEORGE HOLMES & CO."

From that date the question has been a matter for the legal tribunals. I may say that the principle which was laid down by the Provincial Government in this matter, was this, as had been stated by Mr. Montgomery in the Provincial Council: they asked for details to enable them to judge as to whether there was a *prima facie* claim. If there was, they would be prepared to entertain it; but if not, and they declined to refer to arbitration, not to entertain it at all. This is what they said:—

"The position taken up by the Government was this—that any claim with regard to the justness of which the Government were not assured, the Government would not consent to pay; but that they would allow any claim as to the justness of which there could be no doubt. But when there was a doubt—when the Government would be able to see if the case went in favour of the contractors, there should be only a certain amount awarded to them, the Government would then consent to put that to arbitration; but so long as the Government were in a position to judge themselves of the value of these claims they would refuse to put them to arbitration."

I am here putting the case of the Provincial Government after so considerable a lapse of time. They felt bound to resist these claims where they thought they had no foundation; in the interests of the public they would resist all such claims. That has been the course they have been taking. I may say that subsequently the Executive were entirely confirmed by the Council in the matter. In 1873, again a motion was made that no obstacle should be raised to the claims being brought before a jury. That motion was brought on in Provincial Council, and a division was taken, resulting in—noes, 24; ayes, 4.

104. Was that a fair majority?—The number of the Council was 39.

105. *The Chairman.*] I should like to have the opinion of the Government of the day with regard to the arbitration clause. In what light was it considered by the Government?—I do not recollect what passed about that. I acted by legal advice. I held the claims to be of such a nature that we were bound to resist them, and that we were not being dealt fairly with by Messrs. Holmes and Company in refusing to supply us with all the papers. The statement which has been shown to me (that by Mr. Dobson to the Secretary for Public Works, dated May 22, 1866,) I have never, so far as I recollect, seen before.

106. I would like to get your opinion with regard to the arbitration clause. Is it not usual to give effect to such a clause unless there is some very good reason to the contrary?—I have no recollection of these claims. I presume I was advised upon the interpretation of that clause as applying to this contract, which was outside this original contract for the tunnel.

107. With respect to the alteration involving £5,000, there does not appear to have been anything in writing?—Nothing; it was shown by Messrs. Bealey, Maude, and Dobson, to cover the whole cost of the alteration.

108. I want you to show the Committee how it forms an essential part of the alteration?—That was stated by Mr. Patterson and Mr. Dobson. It is purely an engineering question.

109. *Hon. Mr. Richardson.*] When it was decided to do away with the tunnel mouth curve, was it determined to have a curve at the tunnel mouth as is now the case, or do away with the curve altogether, and run the line straight out to sea?—I cannot say. The papers which I have read show whether this reclamation was an essential part of the alteration.

110. *Mr. Shrimski.*] The engineer stated that this second embankment was essentially part of the
4.—I. 2D.