

*Mr. Montgomery.*

28th Nov., 1877.

160. Were the petitioners examined?—Those examined were mentioned in the report.

161. Was there not a condition in the specification, that, in the case of any dispute between the Government and the contractors, it should be submitted to arbitration?—Between the engineer and the contractors.

162. Was that given effect to?—We never understood there was any dispute. By the original contract, whatever deviations were to be made could only be made—I speak from memory—upon the written instructions from the Engineer. Then we held that, if he did give written instructions, and there was a dispute, that dispute should be referred to arbitration; but if the Engineer never gave written instructions, and work was done which the Engineer said was only necessary in carrying out the original works, there was no matter of dispute.

163. Then you consider that as the contractors had no written instructions as to this deviation, the arbitration clause could not be brought in?—Yes.

164. Under that interpretation of the specification, the Government could have refused to pay this £5,000?—Upon the arbitration clause, yes.

165. Then, is the Committee to understand there was no dispute between the contractors and the Engineer?—The Engineer said that Messrs. Holmes and Co. carried out the curve as originally laid out on the plan; and when the curve in the railway did not commence until it was outside the tunnel, the curve of a ten chain radius would necessarily throw the line more seaward.

166. Why didn't the Engineer stop them?—Because that was part of the original contract. I, myself, am only speaking from what I learnt after examining the documents and the Engineer, and also after reading Mr. Patterson's report.

167. In 1868 there were no authentic documents and plans to show what the nature of this alteration was?—I think not. They never came under my observation.

168. You had the word of the contractor on the one side, and the word of the Engineer on the other?—No; we had more. We had the word of Mr. Bealey, of Mr. Maude, and, I think, of Mr. Aynsley, and the evidence brought forward by Mr. Patterson—that £5,000 meant for all the works.

169. Was Mr. Bealey Superintendent?—Yes.

170. What year?—In 1862 or 1863.

171. These deviations from the original contract had been verbally arranged between the contractors and the Executive, upon the advice of their engineer?—I think so.

172. Without being laid down on the plan or reduced to writing?—Yes. I understood they were simply to follow out the original curve of ten chains radius. Instead of commencing the curve in the hill, they were to commence it outside.

173. Under the circumstances, you thought this arbitration clause did not apply?—Under these circumstances, we thought the arbitration clause would not apply. Had the claims been for a small, moderate amount, the contractors and the Government would probably have parted good friends—that the Executive would have been inclined to strain a point; but the claims were so exorbitant that the Executive were obliged to rely on the report of the Commissioners and the law.

174. In fact, you took every defence the law allowed you, because you considered the claims too large?—Because we never could get a satisfactory explanation of these claims. There was a difference of opinion, and we could not meet very amicably. I thought the Executive was entirely inclined to go into the matter in a perfectly fair manner; but I fear the contractors did not think the Executive took that view. I may say, respecting going to law, that I was not on the Executive at the time they went to law. Messrs. Holmes and Co. said they would take a "convenient" season to bring their claims before a law court. It was not during my time that any law proceedings were taken.

175. *Mr. Dignan.*] Did the Commissioners furnish a report?—Yes.

176. Did they specify particulars of deviation?—They did, I believe, in some cases; but they reported upon the claims sent in by Holmes and Co. that these claims were inadmissible—that they were fully met.

*Hon. Mr. Richardson.*] That was Mr. Patterson's report—not the report of the Commission.

*Witness.*] I thought they were one and the same thing. I see that, on the 14th September, 1868, Mr. Richardson was examined before the Commission. Mr. Dobson was also examined. The evidence given by Mr. Moorhouse, Mr. Dobson, and Mr. Maude, all touching the £5,000, was signed by both Commissioners.

177. And the £5,000 covered all extra work?—That is what the Commissioners stated, as far as I remember the report. The report is before the Committee.

178. *Hon. Mr. Reynolds.*] Do you remember what decision the Provincial Council came to?—When I brought it before them, I said I was aware that Messrs. Holmes and Co., might take a different view of it; but I, on the part of the Government, would not recommend any money to be appropriated for payment of any portion of the claims, and the Provincial Council, by not taking further action, endorsed that.

179. Can you tell the Committee what was the decision of the Provincial Council in 1873?—No; I was not in the Council then. In 1868 and 1869 they were very strong against Messrs. Holmes and Co.'s claims.

180. *Hon. Mr. Bowen.*] I understand this case has never been before a Committee of the Council in any way?—Not to my knowledge.

181. Nor before a jury?—Not to my knowledge.

182. Was there not a talk at one time of appointing arbitrators?—When I was in the Government the Executive would not consent to arbitration upon an indefinite claim.

183. Has there ever been before any kind of Court an opportunity of getting out the evidence in the case?—I don't think there has been.

184. When it was before the Supreme Court, the legal question only was argued?—I am not sure. I am under the impression it never went before a jury.

185. Except what came before the Commission and the Council, the question of evidence has never been gone into?—No; I believe not.

186. *Mr. Murray.*] Do you know what was the object for straightening the tunnel?—I don't know.