

364. Have you ever had these claims of ours referred to you as Engineer to report upon?—Never. *Mr. Dobson.*
The Executive have had me for hours asking me questions; but the matter was never referred to me to report upon. 3rd Dec., 1877

365. You are aware that Mr. Patterson reported upon the claims?—I am not aware that he reported upon your claims.

366. He did not examine you, then?—No.

367. Although he was called upon to report in regard to the tunnel works, you never had an opportunity of explaining the reasons for the way in which you had altered the work, and had it carried out?—No. It was after I went over to Melbourne to take charge of the Hobson's Bay line. I had no communication with him whatever.

368. *Mr. Baigent.*] You said the Government benefitted by these works, or something to that effect? Yes.

369. What would be the extent of the benefit?—It is just one of those things which should go to arbitration. I recommended the Government to offer 1s. per cubic yard.

370. Have you any idea of the number of yards?—Yes; about 30,000. I did not think they should get the full amount of their claim; but at the same time they had done important work, which the Government must have had done, and they should get consideration for it.

371. *Mr. Burns.*] I think you said the contractors had a perfect right to the spoil?—Yes.

372. Then why did you stop Messrs. Holmes and Co. from sending the ballast away?—Because it had been settled that the station was to be in front of Lyttelton. Reclamation was therefore necessary, and I said that the cheapest way of doing it would be by using the tunnel spoil.

373. You were afraid, I suppose, unless you did that, there would not be enough spoil to do it?—Yes. Although the Executive had refused to recognize the claim, I could not let the spoil go.

374. You considered that the spoil belonged to the contractors?—Certainly.

375. There was no reclamation done beyond what you wanted done?—No. When I left, the reclamation was just up to the lines I had given.

376. What is the extent of the claim for reclamation?—It is for 30,000 cubic yards beyond the original reclamation.

377. Was there not an arbitration clause in the contract?—Yes.

378. But it was not acted upon?—No.

379. Never?—No.

380. Would you not consider this was a fair case for arbitration?—It is just one of those things which an arbitration clause is intended to meet. If not on the original contract, it arose out of the original contract.

381. Your opinion on the matter was never asked?—No. The Executive made up their minds not to recognize the claim.

382. You were never asked to report upon it, although you were Provincial Engineer?—No.

383. Are you aware that a technical objection was then taken to prevent the case going to arbitration?—I do not know.

384. You are aware that there was some case in the Supreme Court?—I was in Melbourne. I went in January, 1869, so that that occurred after I went to Melbourne. I simply know that there were some legal proceedings taken.

385. *The Chairman.*] You were examined before the Railway Enquiries Commission, consisting of Messrs. Symington and Patterson?—Yes.

386. You then said in evidence, "In regard to additional sum of £5,000 paid for straightening the tunnel there was an offer made by the contractors to perform the work for that amount, which offer was accepted by the Government on my recommendation. There was no written contract. The matter was arranged by the contractors and the Superintendent at that time (Mr. Bealey), at a meeting of the Executive, at which I was present. It was a clear understanding that the sum of £5,000 was to cover the whole cost of straightening the tunnel. The straightening of the tunnel necessarily involved carrying the face of an embankment further seaward. I ordered no other extra work at Lyttelton besides this and the culvert in Salts Gully in connection with the main line." Did you intend to convey to the Commission that the £5,000 covered the embankment?—No; only the cost of the tunnel.

387. The embankment was rendered necessary by the alteration in the design?—Yes. It would not have been necessary if the station had been in a line with the tunnel.

388. Did you state to the Commission that it was your intention, when the curve in the tunnel was altered, to make the jetty straight ahead?—Yes. I do not know whether it appears in my evidence as printed.

389. At what date did this extended reclamation become necessary?—In the middle of 1865 it was settled that the station was to be in front of Lyttelton, and from that time I refused to allow the contractors to take away the spoil. Until then I had treated it as ordinary spoil.

390. Did the Executive give instructions to the reclamation?—None whatever.

391. And you simply allowed the contractors to go on, seeing the work was necessary to carry the order of the Executive into practical effect?—Yes.

392. At this time did it not appear likely that the claim would be made?—The claim was made in 1865.

393. Did you anticipate the claim before that?—No.

394. *Mr. Shrimski.*] You recommended the alterations in the tunnel?—Yes. I said it would cost about £5,000.

395. Through whom was intimation given to the contractors that £5,000 would be paid to them for the work?—I did. We were always in conversation.

396. But upon whom did the duty rest of making the agreement?—The Executive should have done it through their solicitor.

397. *Mr. Murray.*] What was the price of the ballast at the time—in shipping?—I could not say.