

MINUTES OF EVIDENCE ON THE PETITION OF JOHN MARTIN.

21st SEPTEMBER, 1871.

Mr. Clayton, being in attendance, was examined.

Mr. Clayton.

1. *The Chairman.*] I am Colonial Architect. When Mr. Ben Smith became insolvent, his sureties were given notice to complete the contract for the erection of Government House.
2. Notice as above was duly given to Mr. Martin. Mr. Martin elected to finish the "job," rather than pay the amount of his bond as a surety. No agreement was entered into by Mr. Martin with the Government; he simply carried on the work on behalf of the contractor.
3. Notwithstanding his bankruptcy, Mr. Smith was regarded as the contractor to the finish of the work.
4. Mr. Smith received all notices as contractor, and copies were sent to Mr. Martin as his surety. I believe that payments were made by the Treasury to Mr. Martin, on an order from Mr. Smith in favour of Mr. Martin.
5. Orders were given by me as Architect, to Mr. Smith, for "progress payments."
6. Mr. Martin could have thrown up the work at any time on payment of the £1,000.
7. *Mr. Bryce.*] Mr. Martin was not employed under clause 16 to complete the work.
8. *Mr. Wood.*] Mr. Martin was never employed at all, but rather than pay the £1,000 he went on with the contract.
9. All my certificates for progress payments were made out in Smith's favour.
10. *Mr. Peacock.*] No special agreement was made with Mr. Martin, to the effect that he should finish the building at the risk of the Government.
11. I took the advice of the Attorney-General as to the form in which I should make out my certificates for progress payments.
12. Mr. Martin did not make the suggestion to me that he should finish the contract.
13. *Mr. Creighton.*] I should have had to employ men to complete the building if Mr. Martin had decided not to go on with the contract, or I could have called for fresh tenders.
14. I looked upon Mr. Martin as a surety. When I made out progress payments to Mr. Smith as contractor, I was aware that his estate was in liquidation for the benefit of his creditors.
15. I did not think it was my duty to communicate with the Trustees of Bankruptcy.
16. An application was made by a trustee to examine how the contract stood, but no action was taken by him in the matter. The trustees appeared to have acquiesced in Mr. Martin completing the contract.
17. It is common for contractors to sue for "extras" if payment is refused; but in this case there has been a separate agreement for every "extra" that has been incurred. Agreements were made with Smith for "extras." They were indorsed by Mr. Martin in most cases.
18. *Mr. Johnston.*] I do not think any notice was given to the trustees of Smith's estate.
19. I stated to Mr. Martin that Smith's tender was not the lowest by two others; that was the only statement I made that was likely to influence him in becoming surety.
20. I made no statement to Mr. Martin, when he was given notice of the failure of Smith to complete the contract, which could influence him to carry on the work.
21. If the work had been pushed on at the time the contract was taken, I have no doubt it could have been completed for the amount tendered for.
22. *Mr. Shepherd.*] I had the advice of the Attorney-General as to how to act, with a view to enforce the original contract before taking fresh action on the failure of Smith to perform his contract.
23. Penalties have been enforced, amounting to about £320, for nonfulfilment of contract as regards the time for the completion of the works.
24. I have had frequent conversations with both Smith and Martin during the progress of the works.
25. Latterly, Mr. Martin spoke as if the contract with Smith had been broken. I asked him in what way, but he gave no reply in explanation. This was within the last month or six weeks prior to the completion of the contract, or somewhere thereabouts.
26. Since Smith's failure, Mr. Martin has been connected with the works for more than eighteen months.
27. On the advice of the Government, I should have called for fresh tenders, or employed mechanics to finish the works, and not a merchant like Mr. Martin.
28. I do not remember that anything was said between Mr. Martin and myself, on the failure of Smith, respecting Mr. Martin's carrying on the work, with a view to save the £1,000 penalty incurred as surety for the contractor.
29. *The Chairman.*] I cannot state how it was that the contract was not signed by Mr. Stafford, but I believe it was owing to the Ministry, of which Mr. Stafford was a member, going out of office.
30. As far as I am aware, the contract was never disputed on the ground that it was not signed by Mr. Stafford.
31. In case of my having employed men, as empowered by clause 16 of the conditions of contract, I do not think that Mr. Martin would have been responsible for more than the amount of his bond.