

32. I was advised that it was not my duty at once to demand the payment of the £1,000 from *Mr. Clayton*. *Mr. Martin*, on the failure of the contract.

28TH SEPTEMBER, 1871.

*Mr. John Martin*, Petitioner, examined.

33. *The Chairman.*] I am a merchant trading in Wellington. I agreed to become a surety for *Mr. Martin*. *Mr. Ben Smith* when he sent in the original tender for building Government House. This tender formed the basis of an agreement between *Mr. Smith* and the Colonial Architect. Certain additions to and deductions from the original tender were made, resulting in a net sum of £10,583, but I was not made acquainted with the particulars.

34. I became one of the sureties under the new arrangement.

35. After carrying on the work for some time, *Mr. Smith* became bankrupt; *Mr. Clayton* then sent for me, and said, "*Smith's* broke, now what is to be done?" I said perhaps it would be better for me to pay the £1,000, and have no more to do with it. *Mr. Clayton* said, "No. If you'll give me a cheque for £100 to pay the wages of men now owing, it will be all right." I then gave him the cheque; at the same time he said, "You do not require *Ben Smith*, I will look after it." I took no more notice. I imported the necessary materials, and paid wages. I have receipts to show for everything I have done. I understood clearly that I should not lose a shilling.

36. I considered that I was finishing the building in preference to losing the £1,000 as a surety.

37. I considered *Smith* was no longer contractor.

38. *Smith* was there all the time. I gave him a few pounds for his family. He was there looking after the men employed.

39. I cannot say in whose name the "progress payments" were made out.

40. I drew and gave a receipt for the money from the Treasury after *Smith's* bankruptcy.

41. The last £2,000 was received in my own and *Smith's* name. The Attorney-General said it would be as well to have *Mr. Smith's* name added to the receipt.

42. It was before his bankruptcy that I received authority from *Smith* to draw money on account of the contract.

43. It was because I had advanced *Smith* money to carry out his contract that I received from him authority to draw.

44. I considered I had no personal responsibility in the matter of carrying on the works after the failure of *Smith*.

45. The cheque which I gave the Architect for £100, is the only documentary evidence I can produce in support of my view of the position I considered I was in after the bankruptcy of *Smith*.

46. I have no witnesses to bring in support of my statements.

47. *Mr. Peacock.*] I was induced by *Mr. Clayton's* representations to become security under the agreement. The Colonial Architect knew perfectly well that *Smith* had no money.

48. *Mr. Clayton* represented to me, after *Smith's* insolvency, that the price was sufficient to leave a margin of profit.

49. I should have paid the £1,000 immediately, if this representation had not been made, instead of carrying on the work.

50. I don't know what the Attorney-General meant when, on the last payment of £2,000 being made, he said that it would be as well to have the signature of *Smith* to the receipt as well as my own.

51. After I had commenced to carry on the work, I soon found that the amount of the contract was wholly inadequate to finish the work; but it was impossible for me to throw it up, as there were several orders for large amounts given in all parts of the Colony, for materials to carry on the work.

52. *Mr. Bryce.*] I would have been entitled to any profit which might have been made on the contract after the bankruptcy of *Smith*.

53. *Mr. Clayton* told me that I should make money out of the contract, instead of losing any.

54. It did not occur to me that there could be any mistake made by *Mr. Clayton* in the matter. I relied on *Mr. Clayton's* knowledge of the subject.

55. *Mr. Creighton.*] I have made a large loss, amounting to somewhere about £7,000. I attribute this loss to the statements made by the Colonial Architect.

56. *Mr. Shepherd.*] I was to receive 5 per cent. from *Smith* on the contract of £10,583 for building the Government House, in the event of it turning out a profitable work.

57. *Mr. Smith* led me to believe that there would be a profit on the contract.

58. At the time of *Smith's* failure there was nothing to make me believe that the contract would not turn out a profitable one; I still thought it would pay.

59. I did not think anything of the 5 per cent.; I was trying to save the £1,000 bond, which I should have paid had it not been for the representations of the Colonial Architect.

60. I received the money through an order given by *Smith* in my favour.

61. Had I not been responsible for £1,000, I certainly should not have carried on the works.

62. I complain of *Mr. Clayton* making me believe that it was a payable contract.

63. Undoubtedly it could have been carried on more favourably by a builder than by myself. *Smith* always looked after the works.

64. When *Smith* failed, I had no longer faith in him. I then went to *Mr. Clayton* to get his opinion. *Mr. Clayton* told me that I should not lose a penny.

65. The Government did not enter into a fresh contract with me. They did not release *Smith*.

66. *Mr. Clayton* used to send me letters. I think he also sent them to *Smith*.

67. *Mr. McGillivray.*] I have nothing to produce in proof of the assent of the Government to my undertaking the completion of the works.

68. I did not understand that the Colonial Architect had power to treat with me for the purpose of completing the works.