

*Mr. Martin*

69. *The Chairman.*] The £100 went to pay wages of the men. Mr. Smith was paid by me for his services as overseer.

70. I was to take the profits (if any) arising from the works after Smith's failure.

29TH SEPTEMBER, 1871.

*Mr. Prendergast*, Attorney-General, attended, and was examined.

*Mr. Prendergast.*

71. *The Chairman.*] In January, 1870, I was consulted as to what action the Government should take in the matter of Smith's insolvency, with regard to his contract to build Government House.

72. In March of same year I was again consulted, and gave my opinion as attached to the Report of the Board commissioned to inquire into the matter of the Government House contract. I gave a memorandum on 18th March, 1870, minuted on a letter from Mr. Clayton.

73. The bankruptcy of a person does not put an end to his contract to build. It does not pass to the assignees. Smith was therefore still contractor, and I advised the Government that notices with respect to the carrying on of the work should be sent to both Smith and Martin.

74. Mr. Martin still remained surety after Smith's bankruptcy. He was not in any way relieved from his bond by the bankruptcy of Smith.

75. I think Smith's assignees might have claimed payments from the Government between the time of his bankruptcy and his discharge by the Court, that is, of his profits on the work.

76. The assignees in this case declined to go on with the contract.

77. Mr. Smith, between the time of his insolvency and his discharge, could have given, I think, authority for a third person to receive progress payments.

78. The fact of Mr. Stafford not having signed the contract does not, in my opinion, make any difference to Mr. Martin's position with regard to his right to sue.

79. I do not see any objection to Mr. Martin having an opportunity to sue, if he should desire to do so.

80. *Mr. Peacock.*] From first to last my advice was, that payments should be made on the order of Smith in favour of Martin, except in the last instance at the winding up, when I advised that both signatures should be had to the receipt.

81. The reason why I advised that the names of both parties should be attached to the receipt was, because rumours were about that Smith would not give up possession of the building, and that there were disagreements between him and Martin.

82. There was an assignment by deed from Smith to Martin of all moneys coming to him under his Government House contract, and also of the Mount Cook Barracks contract, made previous to his bankruptcy.

83. Mr. Martin's signature to the last receipt did not debar him from any right of action.

84. It is hardly possible to conceive that Martin could have had any arrangement with Mr. Clayton, suggestive of his being considered in the light of a third party carrying on the contract for the Government.

85. I think it is very likely that Mr. Clayton may have said to Mr. Martin that he had better carry on the contract, taking into consideration Mr. Martin's liabilities under his bond and otherwise.

86. I have repeatedly told Mr. Martin that he was not the contractor—that he was only the surety of the contractor. This was since Smith's insolvency.

87. If the Architect was stated to have received a percentage from the contractor of  $2\frac{1}{2}$  per cent. on a sum exceeding the total amount of the contract price and "extras" authorized, it would be a matter for the Government to inquire into the truth of such statement.

88. It would not affect the position of the Government in respect of the contract.