

Hon. Mr Richard-
son.

26th Nov., 1877.

55. Then, this claim had been in abeyance?—Yes; because it was going on and increasing. We continued receiving orders.

56. Why did you go on, seeing the uncertainty?—Because we held to the contract and were satisfied with it.

57. Even after he said he would not pay?—We held that he was bound to pay. In May, 1876, Mr. Dobson told us that he had measured up this work; that the amount of work charged for was correct; that the price was fair; and that the Government had a good equivalent. I have no doubt there is an official report to that effect. Mr. Dobson showed us that, and on the strength of it we went on.

58. This contract was finished in 1868?—Yes.

59. I suppose it would take days to get the question settled?—We have got into unpleasant terms with the Government, and we were called upon after an angry correspondence to furnish our claim, as they had an engineer going to report on the matter. We sent in those claims to which we thought we were equitably entitled, and stated that we were prepared to give their engineer any information in our power, and we further offered to take Mr. Patterson's judgment as final, if we were allowed to place our whole case before him. He advised the Government, and we took exception to the statement as an ex parte one, as we were never heard at all.

60. Was the same engineer in charge of the work during the whole of your contract?—With a very short interval—I forget how long it was. A gentleman named Aiken had charge of that particular work.

61. Mr. Dobson was the engineer?—Mr. Dobson.

62. In 1868 Mr. Dobson had charge?—Yes.

63. Did he report on the claim at all?—I think not, although he may have to the Government.

64. Did you agree that Mr. Patterson's dicta were to be accepted?—We offered to agree if Mr. Patterson was appointed sole arbitrator. He never was appointed.

65. What position did he assume in reference to this?—Simply to enquire as directed by the Executive Government, and on the case as put before him by them. You have a report in print; but, as we stated in our reply, that was an ex-parte statement.

66. He acted on behalf of the Provincial Government?—Yes.

67. The contractors were not heard?—No.

68. What action did you take after that? Was there any application made to the Provincial Government for payment?—Any amount of applications and correspondence, until it got to be so angry and so much biassed by political feeling, that we considered, and were advised to decline any further communication as our only course.

69. In fact, the Provincial Government declined to pay?—Yes.

70. You took action in the Supreme Court?—We took action. We did not take proceedings at the moment, thinking that the political feeling would cool down. We had never been in Court before, and wished to avoid it. We delayed taking action for some considerable time.

71. Does this claim for material form any large proportion of your claim?—It is the large claim for which we pressed. There were only two other claims. The others were equitable claims, but could not be pressed in Court, though if they went to arbitration we would likely have succeeded; but we knew perfectly well we had no legal claim. On the two items we considered that we had a legal claim. We never thought that it was necessary to procure an ordinance of the Provincial Council before proceeding with the work. Had we so thought, we believe we could have got it.

72. With respect to the arbitration, the reason you could not enforce was because the contract was *ultra vires*?—I was given to understand, and was so advised, that the reason the arbitration clause could not be enforced was because we had not inserted the name of the arbitrator, as was done by the Brogden's. They named in their arbitration clause a judge of the Supreme Court. Had we done this we would have been safe. So we were advised.

73. Mr. Swanson.] You went to law?—Yes.

74. Now that you have been beaten, what course do you wish to take?—Our idea to remedy the matter is simply to have the case heard on the merits before a Court of competent jurisdiction.

Mr. MOORHOUSE, M.H.R., examined.

Mr. Moorhouse.

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75. The Chairman.] Perhaps you could give the Committee some information on this case, Mr. Moorhouse?—I made the contract with Messrs. Holmes and Company.

76. In 1860 or 1861?—In 1861.

77. You were Superintendent at the time of the original contract?—Yes; I was in 1861.

78. The agreement was made in Melbourne?—No; I went to Melbourne upon the advice of my Executive for two purposes—money, and to find a contractor. I succeeded in picking out three firms I thought competent, and asked these gentlemen to tender. I took over sections and plans. These three firms, upon a day named by me, sent in tenders. Holmes and Company I preferred from what I could gather in mercantile circles. They were the highest; the lowest tenderer failed to find security. The middle man, upon consultation with some friends of his, told me he declined the contract on the ground that the rock was too hard and that there was too much uncertainty, and he would have nothing to do with it. Upon this I addressed myself to Mr. Holmes. He undertook in writing with me that if he on visiting the ground found that the description corresponded with the fact, he would undertake the work. So he came down with me, viewed the ground, and gave me a letter signifying his willingness to perform the work at the price originally named by his firm; upon which I gave instructions, and an agreement was prepared. The work went on from that time without any hitch. I heard nothing to disturb my comfort till Messrs. Holmes & Company came down