

(No. 116.)



1880.

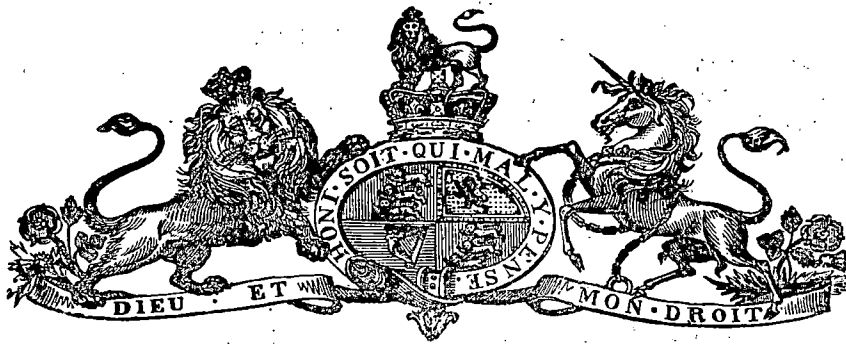
T A S M A N I A.

H O U S E O F A S S E M B L Y

GORDON ROAD CONTRACTORS :

REPORT OF THE SELECT COMMITTEE, WITH EVIDENCE.

Brought up by Mr. Brown ; and ordered by the House to be printed,
October 1, 1880.



*SELECT COMMITTEE appointed 16th September, 1880, to enquire into the
Gordon Road Contractors' Case.*

MEMBERS OF THE COMMITTEE.

MR. BELBIN.
MR. HODGSON.
MR. HART.
MR. MITCHELL.

MR. COX.
MR. PILLINGER.
HON. N. J. BROWN. (*Mover.*)

DAYS OF MEETING.

17th, 24th, and 29th September.

WITNESSES EXAMINED.

M. Whelan.
J. Bowerman.
Geo. Smale.

Jas. Fincham, Esq., Engineer-in-Chief Public Works Department.

C. Keleher.
Walter Young.
Wm. Bowerman.

WITNESSES' EXPENSES.

	£	s.	d.		£	s.	d.
M. Whelan.....	2	10	0	C. Keleher.....	2	10	0
J. Bowerman.....	2	10	0	W. Young.....	2	18	0
G. Smale.....	3	0	0	W. Bowerman.....	2	18	0
					<u>£16</u>	<u>6</u>	<u>0</u>

MINUTES OF THE MEETINGS.

No. 1.

FRIDAY, SEPTEMBER 17, 1880.

The Committee met at 10 A.M.

Present.—The Hon. N. J. Brown (Chairman), Mr. Hart, Mr. Hodgson.

1. Resolution appointing Committee read.
2. Ordered, that Messrs. M. Whelan, J. Bowerman, and Geo. Smale of Hamilton, and Jas. Fincham, Esq., Engineer-in-Chief Public Works Department, be summoned for Friday, 24th inst., at 10 A.M.
3. The Committee adjourned till Friday, 24th inst.

No. 2.

FRIDAY, SEPTEMBER 24, 1880.

The Committee met at 10 A.M.

Present.—The Hon. N. J. Brown (Chairman), Mr. Hart, Mr. Hodgson.

Messrs. M. Whelan, J. Bowerman, G. Smale, C. Keleher attended and were examined.

Ordered, that J. Fincham, Esq., be summoned for Wednesday, 29th inst.

The Committee adjourned till Wednesday, at 10 A.M.

No. 3.

WEDNESDAY, SEPTEMBER 29, 1880.

The Committee met at 10.30 A.M.

Present.—The Hon. N. J. Brown (Chairman), Mr. Cox, Mr. Pillinger.

James Fincham, Esq., and Messrs. Wm. Bowerman and Walter Young attended, and were examined.

The Committee adjourned to prepare Report.

No. 4.

FRIDAY, OCTOBER 1, 1880.

The Chairman brought up a Report, which was adopted, and ordered to be brought before the House.

The Committee adjourned *sine die*.

R E P O R T.

THE Committee having considered the matter submitted to them for consideration, and taken evidence thereupon, recommend that the Contractors should be paid the value of the extra work performed as certified by Mr. Morrison, the officer deputed by the Public Works Department to assess the value thereof.

The Committee are of opinion that the allegation of the Sub-Inspector, George Smale, that he did not directly or indirectly authorise the extra work is not borne out by the evidence before them; and, as it is established that the work originally contracted for would be useless for general traffic without the extra work for which payment is claimed, the Committee, on consideration of all the facts of the case, are of opinion that the Contractors are entitled to the payment recommended, less the amount already paid on account of the extra work performed.

The claim of the Contractors is for £269, less £55 7s. 1d. received on account. The value of the extra work, as certified to by Mr. Morrison, is £112. The Contractors have already received on account £55 7s. 1d., leaving a balance of £56 12s. 11d., which in the opinion of your Committee Messrs. Whelan & Bowerman are entitled to receive.

NICHOLAS J. BROWN, *Chairman*.

1 October, 1880.

EVIDENCE.

FRIDAY, SEPTEMBER 24, 1880.

MICHAEL WHELAN *sworn and examined.*

1. *By Mr. Brown.*—Did you tender for clearing the Gordon Road? Yes, at a price of £240.
 2. What amount of work did you do in excess of your contract? As the work went on we received instructions to do work outside the contract.
 3. From whom were those instructions received? From Mr. George Smales, the inspector.
 4. How much were you paid for the extra work? We were paid for the Florentine Bridge £70, the four-mile peg bridge £50, and six culverts at, I think, £10 each.
 5. When you did this extra work did the inspector show you any written authority? He promised to give me a written authority when the work was completed. My mate, Bowerman, refused to proceed with the work without such authority, but afterwards consented on the inspector's promise to furnish written authority.
 6. With regard to this extra work did you depend entirely for payment on the good faith of the inspector? Entirely; we depended solely on his word. For these extra bridges and culverts for which we were paid we had no other specifications or plans, but worked under the inspector's instructions with one exception—at the four-mile peg bridge. We had none for the culverts or the Florentine Bridge.
 7. Were there no specifications for culverts in the original plans? None. I put in a great many on my own responsibility, as to dimensions and size of timber.
 8. Will you state what occurred between you and the inspector about the work for which you claim £213. For what work do you claim this amount? I have sent a bill to the Public Works Office. When we finished the work previously authorised the inspector went up with me and Bowerman to inspect, and told us to go on with the work and he would write to the Government and get written authority for the work which we now claim payment for.
 9. Who were present when this conversation took place? My mate and some of the men. We had several conversations on the subject, and the inspector pointed out the places where he thought culverts necessary.
 10. Could you name anyone else besides your partner Bowerman who was present? Walter Young was present when the last culvert but one was authorised. Bowerman's son was also present.
 11. Did anyone else hear the inspector authorise this work? Yes, Walter Young's mate, John M'Connell.
 12. Do you state that on the faith of the inspector having the authority to order these extra works you went on with them? Yes, certainly.
 13. Did your partner Bowerman make the same objection to going on with this extra work without written authority as he had made as to the previous extra work? He did object, but afterwards went on with the work.
 14. Was a bill for all this extra work prepared by you? Yes; and I presented it to the inspector, who said it was too much, and that we should take the same price for this work as for all the other extra work, viz., 25s. per foot, instead of 30s. a foot as charged by us, for all culverts and bridges. We agreed to that.
 15. Did you send the bill as amended by the Inspector to the Department? No. The Inspector took the bill with him to Hobart Town to the Lands Office, and when he came back he said the money was all right, but we should have to wait a little while for it.
 16. After that what did you receive on account? £55 odd.
 17. What were you told when you received that amount? I came to town and saw the Engineer-in-Chief, who told me the work was never authorised, and showed me a letter from Smales and the bill as well. The letter stated Smales would not be responsible for what he called the unauthorised work. That was the first time I knew there was any dispute about the work, and thought the delay was caused by there being no money left out of the vote. The Engineer-in-Chief said it was a hard case, and that he would see what could be done in the matter.
 18. Have you applied for the money since then? Yes. The Engineer-in-Chief told us there was £75 left, and I believe he said we could have that, but I refused, and said as there was a dispute I would have all or none. We afterwards accepted £55 on account,—not as a final settlement.
 19. *By Mr. Hodgson.*—What was the original contract? £240.
 20. What is the length of the contract? 29 miles.
 21. What was the contract per foot in the original contract? It was for clearing the track and making it, but no bridges were included. It was not let by the foot.
 22. How was it you wanted to charge 30s. per foot, while the other extra work was charged for at 25s.? On account of the distance to be travelled.
 23. What was the span of the bridge for which you received £70? Nearly 70 feet. The bridge for which we received £55 was about 44 feet.
-

JAMES BOWERMAN *sworn and examined.*

24. *By Mr. Brown.*—Were you a partner with Whelan in doing this work on the road to the Gordon? Yes.

25. Did you do some extra work beyond that contracted for? Yes. We have been paid for some of that extra work. We were ordered by Mr. Smale, the inspector, to do that work. He did not show us any written authority, and I several times objected to do the work without such authority; but we were paid for that extra work although there was no written authority. With reference to the extra work for which we were not paid, the orders to go on with the work were given by Mr. Smale, who said we were to go on until he stopped us. We stopped as soon as we got a letter from him saying the Government did not intend to go on any further with the work. When he told us to do this work my son Wm. Bowerman was present, also Jas. McConnell and Walter Young. Mr. Smale inspected, measured, and valued both the authorised and unauthorised work, and made out the bill.

26. Did the Inspector make any objections to a bill for the unauthorised work being sent in? When we went up to value the work and look through it, we wanted 30s. per foot for the culverts beyond the Florentine as the distance to cart rations was so great, but the Inspector agreed to give us 25s., which was the price of the first tender. When we came down to Hamilton he made out the bill, and brought it into town to the officer himself. Then fault was found by Mr. Fincham that more work was done than was authorised, or than there was money to pay for. After that my partner and I saw the Engineer-in-Chief, who said there was some money in hand, about £70. but not more. We saw the Minister who said the inspector denied having authorised the work. We took instructions from the inspector right through the work in every item. He promised at the last to get us written authority.

27. Have you had legal advice about suing the inspector? No, we were not advised to sue him.

GEO. SMALE *sworn and examined.*

28. *By Mr. Brown.*—I have been employed as Inspector of Works in the Public Works Department. I had charge of the works on the Gordon Road. Some two or three months after the contractors commenced work a proposal was made by me to the department to have more work done than was originally contracted for. This work consisted of some culverts, a bridge at the four-mile peg, and one over the Florentine. I told the contractor to go on with the work when I got authority to do so from Mr. Fincham. They sent in a tender for the extra work. I don't know whether they commenced work before their tender was accepted, but I rather think they did. I pointed out to the department that a certain number of culverts were wanted, and Mr. Fincham told me to see the contractors and ascertain what they would construct them for. Their price at first was too high, but they afterwards reduced it, and I recommended their reduced tender be accepted and forwarded it to Mr. Fincham. The culverts and the bridge at the four-mile peg were tendered for at the same time. I certified to the extra work being done and they were paid. The contractors did not object to going on with the culverts—a work without written authority—but commenced work simply on my instructions. I told them that I had authority from the department, and this work was paid for. With regard to the work for which payment is refused, I found the contractors were putting in more culverts than they were authorised to, and told them that they were putting them in at their own risk, and that I would not be responsible for them to the government. A man named Cornelius Kelcher heard me tell Whelan this. I told them this repeatedly, and wrote to them on one occasion that the government wished to have the contract finished, and told them not to bother with the culverts. I went up to inspect the work.

29. *By Mr. Hodgson.*—How often did you inspect the work? About once a month.

30. *By Mr. Brown.*—With regard to the Florentine Bridge. I represented to the Department that such a bridge was necessary, and on a tender being sent in by the contractors it was accepted. When I went up to inspect the work finally, I inspected all the work both authorised and unauthorised. I do not think there was any difference between me and the contractors as to the price charged for the extra work. I do not remember asking them to reduce their price. I forwarded their bill to the Department without any alteration or reduction. I drew out the list. There was no difference between the amount paid for this work and the amount paid on the former contract. I mean the price they sent in for the disputed work was the same as for the work for which they were paid. I sent in the bill as made out. There was only one bill made out. Specifications for the authorised works were drawn up by the Department.

31. Has any case come under your notice as inspector under the Public Works Department where contractors have done extra work beyond their contract? Work has been done, but it has always been authorised by the Engineer-in-Chief or the Minister of Lands.

32. Do you state positively that you neither directly nor indirectly authorised the contractor to do any of this work? I state positively that I told them they were doing it at their own risk, and I never authorised them to do it.

33. Did you tell them that you would write to the Government recommending the work? Not until they were done did I write recommending that the construction of the culverts should be taken into consideration by the Government.

34. *By Mr. Hart.*—Would the authority to do the work come through you? Yes, all communications would come through me.

35. *By Mr. Hodgson.*—What is the amount of the cost of the unauthorised work? About £260.

36. What was the extent of the unauthorised work? It consisted of various culverts over 20 miles of road.

37. Do you think this work was necessary? Yes, the road was no use without these culverts for cart traffic.

38. How long were they constructing these culverts? I could not say as the culverts were constructed during the completion of their original contract. I reported to the Department that these culverts had been made without authority, but that I considered them necessary, and recommended that the Government should take the matter into consideration.

CORNELIUS KELEHER *examined.*

49. *By Mr. Brown.*—I know the road from Dunrobin to the Gordon. I was on the road while Whelan and Bowerman's contract was being carried on. I was working for them. I heard they undertook more work than they contracted for, but do not know otherwise. I was present when a conversation took place between the inspector and Whelan about this extra work. The conversation was about some culverts beyond the Florentine. I heard the inspector, Mr. Smale, telling Whelan to finish his contract, and not put in any more culverts until he wrote to town to find out if the Government intended going on with the work. The inspector told Whelan if he went on with the culverts he did so at his own risk. I do not know if the contractors were paid for any extra work previous to this. I only speak of what occurred during an hour or two occupied by us in walking 2 or 3 miles along the road from the Florentine to the Gordon. This was all that took place in my presence.

40. *By Mr. Hart.*—Do you know whether they had at that time completed the work? No, they did not finish for a good while after. I do not know what part of the work was contracted for or what part was extra.

WEDNESDAY, SEPTEMBER 29, 1880.

MR. JAMES FINCHAM *examined.*

41. *By the Chairman.*—Will you state to the Committee what you know of the claim of Messrs. Whelan and Bowerman for payment for extra work on the Gordon Road, and the manner in which you were first informed that the extra work had been performed? To the best of my recollection, by a statement handed me by the inspector, and which now is in the possession of the committee.

42. Was that statement handed to you by George Smale? I don't know by whom, it might have been the clerk.

43. As to the former work carried out under Smale's inspection, beyond the amount of the original contract, do you know whether the contractors had done any part of that work before authority had been given to Smale to get it done or not? I do not think it likely, as Mr. Smale knew too well the strict requirements of the Department, as to proper written authority being first obtained.

44. As a matter of fact certain work beyond the original contract was done and paid for, was it not? Yes, after being authorised in the usual manner.

45. Is it within your knowledge that a reduction in the price charged by the contractors in their bill for this disputed work was made by the inspector? Not by Inspector Smale.

46. Can you state positively that he did not revise their bill? I am not aware of it.

47. Has the Inspector Smale certified that this work is well done and useful work? I see he has done so in the paper produced, which is the account furnished for the work for which payment is claimed, and on which Mr. Smale has made this endorsement, "These extra works have been faithfully performed, and the charges are fair and reasonable. (Signed)—Geo. Smale."

48. Have you any other information as to the profit and usefulness of the work beyond that furnished by Mr. Smale? I sent Mr. Morrison to examine the work for which payment was claimed, and he reported that the charges were excessive, and estimated the outside value of the work at about £112, for which £269 is claimed.

49. *By Mr. Pillinger.*—What was the reason of the refusal of the Department to pay for this work? Because the Department had in no way authorised the work, and were in utter ignorance of it.

50. *By the Chairman.*—Does Mr. Morrison say anything about the necessity for this work in his report? No; he was sent down to ascertain the value of the work done.

51. *By Mr. Cox.*—How long has Mr. Smale been an inspector? Off and on for about three years, and should be thoroughly acquainted with the working of the Department.

52. Could he by mistake imagine that he had power to authorise works without reference to the Department? No, he could not, because he took the trouble to apply for authority for the previous extra work.

53. *By the Chairman.*—Has the Department paid anything on account of this extra work? Yes, as a matter of grace, the sum of £55 7s. 1d. was paid.

54. Was that paid because the work was considered to be necessary for the completion of the road? The fact of the work being necessary was taken into account.

55. What were the amounts of the various tenders for the original contract? I hand in the following schedule in reply:—Geo. Todd, £750; Jos. Hills, £800; F. M'Patlan, £14 per mile; Whelan & Co., £240; Harris, £415; Sibley, £310.

56. *By Mr. Cox.*—Do you always have an estimate before accepting tenders? Yes.

57. I see by note to schedule that Mr. Morrison's estimate of the work was £200? Yes, that is £40 less than accepted tender.

58. In a work of uncertainty like this ought not tenderers to make provision for creeks which would have to be crossed? They ought to do so.

59. Would the unauthorised work be of assistance to the persons who did it in carrying out their contract? Without doubt, as they would get tools and provisions up by cart instead of having to pack or carry them.

60. As a matter of fact was a great part of the unauthorised work done before the contract was properly completed? I cannot say. The claim was not sent in until everything else had been settled as far as I remember.

61. It has been stated to the Committee, "With regard to the work for which payment is refused, I found the contractors were putting in more culverts than they were authorised to, and told them that they were putting them in at their own risk and that I would not be responsible for them to the Government. I told them this repeatedly, and wrote to them on one occasion that the Government wished to have the contract finished, and told them not to bother with the culverts." From that would you draw the conclusion the work of the culverts was done before the contract was completed or afterwards? From what you have read I should draw the conclusion that this repudiated work was going on at the same time as the authorised work.

62. It has been stated to the Committee that it is believed the Engineer-in-Chief stated they could have £75 for the unauthorised work. Is that so? I have no recollection of it. I am sure I did not promise the £75.

63. *By Mr. Pillinger.*—Would not some temporary provision for culverts have enabled the contractors to complete their contract without going to the expense of making the culverts? No doubt. Having taken the contract they ought to find out the best means of carrying out the same, and were not bound to make the culverts.

64. Would the road have been of any use for general traffic if these culverts had not been made? No.

65. *By Mr. Cox.*—Would it be advisable in your opinion to let the contractors be the judges as to whether works are necessary or otherwise? Certainly not.

66. *By the Chairman.*—If the claim were recognised would it form a precedent for such unauthorised extra work being undertaken by contractors in future, or are there any special circumstances connected with it which would prevent the recognition of the claim from forming an inconvenient precedent? I look upon it as a dangerous precedent, and can see nothing special to justify payment to the contractors, as they were both men possessed of more than common shrewdness for their class. They must have known perfectly well what they were about.

MR. WALTER YOUNG *examined.*

67. *By the Chairman.*—Were you employed by Whelan and Bowerman on the Gordon Road? Yes.

68. Do you know whether they did any work on the road beyond what they originally contracted for? They put in culverts.

69. How long were you employed on the works? About five or six weeks above the Florentine.

70. During that time did you see the sub-inspector, Mr. Smale, up there? Yes, once.

71. Did you hear any conversation between Whelan and Bowerman and Mr. Smale as to the extra culverts? We were at dinner, Mr. Smale came up and said, "You must put in no more culverts for I have written or am going to write to the Government to ask whether any more are to be put in or not." Whelan said, "What are we to do with those we have got opened?" Smale said, "Finish those as you have got the timber, but do no more till I let you know."

72. Were those culverts finished then? I do not know.

73. Was anyone else present when this conversation took place? Bowerman's son and Jno. M'Connell.

74. At any other time at Hamilton or elsewhere did you hear any conversation between Smale and the contractors? I saw them speaking several times but do not know what was said.

75. Are these culverts which you say Smale told them to finish on the other side of the Florentine? Yes, about two miles on the other side.

76. Do you know whether these culverts form part of the account for which Whelan and Bowerman claim payment? I do not know.

77. *By Mr. Pillinger.*—How many culverts were opened? Two.

78. How many were put in at the other side of the Florentine? I cannot say. I did not count them.

79. *By Mr. Cox.*—Are those two culverts the only ones you saw put in or opened? Yes.

MR. WILLIAM BOWERMAN *examined.*

80. *By the Chairman.*—Is your father James Bowerman one of the contractors on the Gordon Road? Yes.

81. Do you know whether Whelan and Bowerman did any extra work beyond what they originally agreed to do? Yes, some culverts and the Florentine bridge.

82. Were they paid for that work? I can't say what they were paid for.

83. Do you know that for some of it they have not been paid? Yes.

84. Were you at work with them on the road? Yes, from the beginning until the completion.

85. Did you see Mr. Smale the inspector? Yes, a great many times.

86. Did you hear any conversation between him and your father and Whelan? I heard Mr. Smale order them to put in culverts.

87. Did Whelan or your father object to doing the work without written authority? Yes, I heard my father object.

88. Did you hear any conversation between Smale and your father and Whelan about extra culverts beyond the Florentine? Yes, one day we were at dinner, Smale came up and said, "Don't open any more culverts until I get word from the Government whether they will have any more opened." (We had two opened then.) There were no more put in then except the two which had been opened.

89. Did Smale order you to finish those two? Yes, he said, as you have got the timber you may as well finish them.

90. Did you hear any further conversation about the culverts? No; but one day Smale came up and said his horse had fallen through a culvert about 10 miles back from where we were working, and asked why we did not put in the culverts as we went on as the road was impassable without them.

91. Do you know whether that culvert was one for which the contractors have been paid or not? I do not know. It was on this side of Mount Misery, that is on the Hamilton side of the Florentine.

92. Was that culvert put right afterwards? Yes, the contractors had to go back the 10 miles and repair it.

93. *By Mr. Cox.*—How many culverts altogether did the contractors put in beyond the Florentine? I am not sure but I think five.

94. How many of those were put in before Mr. Smale told them not to go on with the contract? Two I think, or three.

95. Was it two or three? Two from the Florentine.

96. Did they put in any more culverts after they were told not to do so? Not in my recollection.

97. Then you say there were three had been finished before the inspector came up, and two others were open which he told them to finish, making five in all beyond the Florentine? Yes.

98. At the time did Mr. Smale ask the contractors why they were putting in more culverts than he had authorised, or did he say that they had done so? I did not hear him complain that too many had been put in.

99. If he had said so would you have heard it? Yes, I was sitting there and must have heard it.

100. *By the Chairman.*—Do you know whether there was any dispute between the contractors and Mr. Smale about the extra work? I do not know.

101. Did you ever hear any conversation between them about the bill and prices charged? No.