

1873.

NEW ZEALAND.

PORT CHALMERS RAILWAY.

DEED OF PURCHASE.

Presented to both Houses of the General Assembly by command of His Excellency.

THIS DEED, made the ninth day of April, one thousand eight hundred and seventy-three, between THE NEW ZEALAND LOAN AND MERCANTILE AGENCY COMPANY, LIMITED, (hereinafter called "The New Zealand Company,") of the first part; DAVID PROUDFOOT and RICHARD OLIVER, two of the persons in the deeds hereinafter recited called "the Contractors," and hereinafter in this Deed called "The Surviving Contractors," of the second part; and Sir GEORGE ALFRED ARNEY, the Officer Administering the Government in New Zealand, for and on behalf and in the name of Her Majesty the Queen, (hereinafter referred to, as "the Governor,") of the third part: Whereas by a deed dated the twenty-fifth day of January, one thousand eight hundred and seventy, and made between James Macandrew, Esquire, Superintendent of the Province of Otago of the one part, and the said David Proudfoot and one John Thomas Chaplin of Dunedin, coach proprietor, of the other part, the said David Proudfoot and John Thomas Chaplin, for the considerations therein mentioned, covenanted and agreed with the said Superintendent that they would, at their own cost, construct, complete, maintain, and work for public traffic, a single line of railway from Port Chalmers in the said Province of Otago to the City of Dunedin in the same Province, with all works, approaches, public and occupation roads, bridges and crossings, sidings, stations, workshops, fixed and rolling stock, and all other works and appliances which might be necessary for the construction and convenience and safe working of the said line, and also all wharves, jetties, and other necessary erections for the purpose of enabling ships and vessels to load and discharge their cargoes, and land and take in passengers from and to such railway, subject to the several provisions, conditions and agreements in the deed now in recital contained, and the said James Macandrew, as such Superintendent as aforesaid, did thereby for himself and his successors, Superintendents of the said Province of Otago, (he the said James Macandrew as such Superintendent, and his successors, being hereinafter and hereinafter called "the said Superintendent,") covenant, promise and agree with and to the said David Proudfoot and John Thomas Chaplin, their executors, administrators, and assigns, in manner following, that is to say, that the said Superintendent would, so soon as the said railway works therein mentioned should have been commenced, set apart by Proclamation in the Provincial Government *Gazette* of the said Province of Otago, or by such other means as he lawfully might, the whole of the moneys thenceforth to be collected and received at or from or by means of the various jetties and wharves in or at the Port of Dunedin, in the Province of Otago, and in or at the Port of Port Chalmers in the said Province, and which were then paid to the Provincial Treasurer of the said Province of Otago, and formed part of the revenue of the said Province; and that from and after the publication of such Proclamation in the said Government *Gazette*, the moneys so collected and received at, from, or by means of the jetties and wharves should be placed to the credit of a separate account in the books of the Provincial Treasury at Dunedin aforesaid, to be called "The Port Chalmers Railway Guarantee Account," and that the moneys so placed to such account should be applied to the payment of the interest thereinafter mentioned, and that he the said Superintendent would thereafter, on the 1st day of April and the 1st day of October in each year, until the said railway should be constructed, and in actual working order, pay to the said David Proudfoot and John Thomas Chaplin, out of the moneys so placed to the credit of the Port Chalmers Guarantee Account, interest upon the amount of the capital which should from time to time have been actually expended or employed by the said David Proudfoot and John Thomas Chaplin in the construction of the said railway, at and after the rate of eight pounds per centum per annum, provided always that the amount upon which interest should be paid as aforesaid should in no case exceed the sum of seventy thousand pounds, whatever the actual capital expended or employed by the said David Proudfoot and John Thomas Chaplin in the construction of the said works might amount to: And also would, after the said railway should have been constructed and in working order, and whilst the same should be regularly worked in accordance with the provisions hereinafter contained for the

carriage of goods and passengers, pay to the said David Proudfoot and John Thomas Chaplin out of the moneys so placed to the credit of the said Port Chalmers Railway Guarantee Account, yearly and every year, on the half-yearly days aforesaid, for the term of fifteen years, to be computed from the date of the completing of the said works, interest at such rate as, when added to the net income derived by the said David Proudfoot and John Thomas Chaplin, from the said railway, would amount in every year to a sufficient sum to increase the interest upon the entire capital, not exceeding the said sum of seventy thousand pounds, employed in the construction of the said railway and other works to the rate of eight pounds per centum per annum: And also, that if the said moneys should not suffice to increase the interest to that rate, then that the Superintendent would from time to time alter and increase the rates and charges payable at such jetties and wharves to a sufficient sum to cover the amount necessary to make up the interest on the said capital to the rate aforesaid, or would otherwise provide for the payment of such interest out of the ordinary revenues of the said Province; but this proviso was not to be held to interfere with or prejudice or affect the security of the said David Proudfoot and John Thomas Chaplin, their executors, administrators, and assigns, in respect of the dues to be received or payable at such jetties and wharves: And by the now reciting deed it was also provided that until the said Superintendent or his successors should have exercised the power of purchase therein contained, the rates and charges then payable at such jetties and wharves should not be reduced.

And whereas by an Ordinance passed in the twenty-seventh Session of the Provincial Council of the Province of Otago, No. 307, and shortly entitled "The Dunedin and Port Chalmers Railway Agreement Validation Ordinance, 1870," and which was afterwards duly ratified by the Governor of the said Colony in Council, the said recited deed of agreement was validated: And whereas by a deed bearing date the nineteenth December, one thousand eight hundred and seventy, and made between the said John Thomas Chaplin of the first part, the said David Proudfoot of the second part, the said James Macandrew (as such Superintendent as aforesaid) of the third part, and the said Richard Oliver and one Thomas Birt Ulph of the fourth part, for the consideration therein mentioned, the said John Thomas Chaplin, with the consent and approbation of the said David Proudfoot, and also of the said James Macandrew (as such Superintendent as aforesaid), absolutely assigned and made over unto the said Richard Oliver and Thomas Birt Ulph, their executors, administrators and assigns, his equal half share and interest in or under the said deed of agreement of the twenty-fifth January, one thousand eight hundred and seventy: And whereas the said David Proudfoot, Richard Oliver, and Thomas Birt Ulph, subsequently to the date of the said last recited deed, entered into partnership, under the style and firm of "Proudfoot, Oliver, and Ulph," in the business of Railway Contractors, and for all purposes and things necessary and requisite to be done to carry out the covenants in the said deed of agreement of the twenty-fifth January, one thousand eight hundred and seventy: And whereas by a lease dated the fourteenth January, one thousand eight hundred and seventy-one, and made between the said Superintendent of the one part, and the said David Proudfoot, Richard Oliver, and Thomas Birt Ulph of the other part, reciting the said deed of agreement, of the twenty-fifth January, one thousand eight hundred and seventy, and the said deed of the nineteenth December, one thousand eight hundred and seventy; and that since the making and signing of the said deed of agreement, an Ordinance of the Superintendent and Provincial Council of the said Province of Otago, the short title whereof was "The Jetties and Wharves Ordinance, 1870," had been passed, and was then in force and operation, by which Ordinances the Superintendent was, with the advice and consent of his Executive Council, empowered to let the tolls, dues, and wharfage of all or any jetties and wharves, the management of which was by "The Jetties and Wharves Ordinance, 1858," or otherwise by whatsoever means vested in him, for such term or terms of years, and upon such terms and conditions, and in such manner in every respect as the said Superintendent, with the advice and consent of his Executive Council, should from time to time think fit, and that the said Superintendent had, with the advice and consent of his Executive Council, and for the purpose of further securing the due payment of the interest payable under the said deed of agreement of the twenty-fifth January, one thousand eight hundred and seventy, agreed with the said David Proudfoot, Richard Oliver, and Thomas Birt Ulph to lease to them, the said David Proudfoot, Richard Oliver, and Thomas Birt Ulph, the tolls, dues, and wharfages of the jetties thereafter mentioned. The said Superintendent, in pursuance and exercise of the several powers and authorities conferred upon him in that behalf by the said "Jetties and Wharves Ordinance, 1870," demised unto the said David Proudfoot, Richard Oliver, and Thomas Birt Ulph, their executors and administrators, the tolls, dues, and wharfages of the several jetties therein mentioned, according to the scale set forth in the several clauses of the schedules thereunder written, or such other scale as should from time to time be fixed by the said Superintendent to be charged at such jetties and wharves, and any or either of them, together with full power and authority for the said David Proudfoot, Richard Oliver, and Thomas Birt Ulph, their heirs, executors, administrators, and assigns, and such person or persons as might be lawfully appointed as collector or collectors under the provisions for that purpose thereafter contained, to collect and receive the same tolls, dues, and wharfages according and subject to the provisions and restrictions of the said Ordinance, and under and subject to such rules, orders, regulations, restrictions, and by-laws as were then lawfully subsisting, or which should at any time or times thereafter be made by the Superintendent, for the time being, of the Province of Otago, and subject to all such Acts, Ordinance, By-laws, and Harbour and other Regulations which then were

or thereafter should or might be in force in the said Province of Otago, to hold the same tolls, dues, and wharfages, and all and singular other the premises thereinbefore expressed to be thereby demised unto the said David Proudfoot, Richard Oliver, and Thomas Birt Ulph, their executors, administrators, and permitted assigns, for and during and until the full end of sixteen years from the first day of January, one thousand eight hundred and seventy-one, at the yearly rental of one shilling, and under and subject to the covenants and conditions therein contained, and on the part of the lessees, their executors, administrators, and assigns to be observed and performed, and including a covenant on the part of the lessees to retain and pay to the persons entitled thereto, under the said deed of agreement, of the twenty-fifth day of January, one thousand eight hundred and seventy, out of the net moneys in their hands as such lessees, the moneys from time to time payable under the said deed as interest upon the capital to be expended in the construction of the said railway and works; and as to the surplus of the said net moneys, to pay the same half-yearly, as therein mentioned, to the Provincial Treasurer of the said Province of Otago, to a separate account called "The Port Chalmers Railway Guarantee Account," yearly, to be applied to the payment of future interest thereafter to accrue under the said deed of agreement of the twenty-fifth January, one thousand eight hundred and seventy:

And whereas the said David Proudfoot, Richard Oliver, and Thomas Birt Ulph (hereinafter called "the Contractors") constructed certain portions of the said railway and works, and acquired certain parts of the land required for the same in pursuance of the said agreement: And whereas a certain company called "The Dunedin and Port Chalmers Railway Company, Limited," was established in England for the purpose of acquiring the rights, interests, and privileges of the Contractors under the said recited deed of agreement and lease, including so much of the said railway and works as had been already constructed or were then in course of construction, and for completing and carrying on the said railway and works in accordance with the said rights and privileges; and by the articles of association of the Railway Company, the Board of Directors thereof were empowered (amongst other things) to acquire for the Company, upon such terms in all respects as they thought fit, from the persons then entitled thereto, the rights, interests, privileges, and property for the acquisition whereof the Company was established, and all such lands and hereditaments in the Province of Otago, in New Zealand, as might be necessary or proper for the purposes of the Company. And also to borrow for the purposes of the Company upon the debentures or mortgage bonds of the Company or otherwise, and upon such terms as to rate of interest or otherwise, and for such periods as the Board might from time to time determine, any sum not exceeding in the aggregate nominal amount the sum of one hundred thousand pounds, and (if they should deem it necessary or expedient so to do) for the purpose of better securing the due payment of the principal moneys and interest payable on such debentures, or mortgage bonds, and providing for the formation of a sinking fund for gradual liquidation and redemption of such debentures or mortgage bonds, to convey, assign and transfer all or any part or parts of the real and personal property, income, and assets of the Company (either with or without the collateral security of any other property or person) to Trustees to be for that purpose nominated by the Board, upon such trusts and with such powers of sale and other powers and provisions as the Board might think fit.

And whereas under the powers so conferred upon them as aforesaid, the Directors of the Railway Company agreed with the Contractors for the absolute purchase of their said rights, interests, and privileges, including the portion of the said railway and works then already constructed or in course of construction, and the lands then already acquired by them as aforesaid, in consideration of the issue to the Contractors or their nominees of eleven thousand nine hundred and seventy-five fully paid-up shares in the capital of the Railway Company, and of the payment by the Railway Company to the Contractors, on or before the thirtieth September, one thousand eight hundred and seventy-one, of such a sum, not exceeding twenty-five thousand pounds, as should be mutually agreed and determined by the Railway Company and the Contractors to be the amount of outlay made by the Contractors on the said railway and works, up to the sixth day of July, one thousand eight hundred and seventy-one. And upon the terms of the Contractors entering into a contract with the Railway Company, in a form for that purpose prepared and approved of by the Railway Company and the Contractors, for the completion of the said railway and works by or before the fourteenth day of March, one thousand eight hundred and seventy-two, for the sum of seventy thousand pounds, less the amount to be paid to the Contractors as last aforesaid, and subject to a stipulation that until the completion by the Contractors of the said railway and works according to the terms of the said contract, eleven thousand seven hundred and seventy-five of the said eleven thousand nine hundred and seventy-five fully paid-up shares, and also the sum of twelve thousand pounds to be provided by the Contractors (together with the rights, interests, and property so purchased by the Railway Company from the Contractors), should be and remain vested in trustees, as security for the due payment of interest at a rate (not exceeding five per cent. per annum), upon debentures or mortgage bonds to be issued by the Railway Company, for sums not exceeding in the aggregate one hundred thousand pounds.

And whereas in further exercise of the powers contained in the said articles of association, at a meeting of the Board of Directors of the Railway Company held on the seventh July, one thousand eight hundred and seventy-one, it was resolved, that upon the Contractors transferring and assigning to the Railway Company the rights, interests, privileges, and property so agreed

to be purchased from them as aforesaid, and executing the said contract for the completion of the said railway and works, and paying to the trustees the said sum of twelve thousand pounds, eleven thousand seven hundred and seventy-five fully paid-up shares in the capital of the Railway Company to be issued to and registered in the names of the trustees, and two hundred like fully paid-up shares to be issued to and registered in the names of the Contractors, or their nominees. And that for the purpose of raising the funds requisite for carrying out the objects of the Company, debentures or mortgage bonds of the Company be issued to the extent of one hundred thousand pounds, such debentures or mortgage bonds, to bear interest half-yearly at five per cent. per annum, and to be for sums not less than one hundred pounds each, and to rank *pari passu* one with the other, and two and a half per cent. at least of the whole of such debentures or mortgage bonds (the numbers thereof to be determined by drawings) to be redeemed and paid off at par in each year, commencing the fifteenth day of June, one thousand eight hundred and seventy-three, and that for better securing the due payment of the said debentures or mortgage bonds, and the interest thereof, upon the above footing, the whole of the property so to be acquired by the Company from the Contractors, and also pending the completion by the Contractors of the said railway and works according to the terms of the said contract, and as security for the payment during such period of the interest of the said debentures, the said eleven thousand seven hundred and seventy-five fully paid-up shares, and the said sum of twelve thousand pounds, should be respectively vested in the trustees, and that a deed of trust, containing all necessary and proper provisions for the above purpose, together with a form of debentures or mortgage bond referring thereto should be prepared and approved of.

And whereas, in pursuance of the said purchase contract, by an indenture bearing date the eleventh day of July, one thousand eight hundred and seventy-one, and made between the Contractors of the one part, and the Railway Company of the other part, the Contractors duly transferred unto the Railway Company, their successors and assigns, for their absolute use and benefit, the said deed of agreement, of the twenty-fifth day of January, one thousand eight hundred and seventy, and the rights, interests, and privileges thereby conceded and secured, and the full benefit and advantage of the covenants, clauses, and conditions therein contained, and all their estate, right, and interest, claim and demand in relation thereto, and likewise conveyed and assured unto the Railway Company, their successors and assigns, for their absolute use and benefit, all the messuages, lands, and hereditaments whatsoever, forming any part of the line of the said intended railway, or situate within the lines of deviation shown on the said Plan "A" mentioned in the said deed of agreement of the twenty-fifth day of January, one thousand eight hundred and seventy, of or to which they the Contractors, or any person or persons in trust for them, was or were seized, possessed, or entitled for any estate or interest, either at law or in equity; and also, so much and such parts of the said railway and works as was or were then constructed or in course of construction, and all erections, buildings, fixtures, and materials and effects whatsoever belonging thereto (other than and except the plant and rolling stock now belonging to and used by the Contractors for the purpose of constructing the said railway and works); and by another indenture, also dated the eleventh day of July, one thousand eight hundred and seventy-one, made between the Contractors of the one part, and the Railway Company of the other part, and indorsed upon the said recited indenture of lease, the Contractors duly assigned unto the Railway Company, their successors and assigns, the tolls, dues, and wharfage rights and hereditaments comprised in and demised by the said indenture of lease: And whereas, in further pursuance of the said purchase contract, the Contractors also executed the said contract for the completion of the said railway and works, and paid to the trustees the said sum of twelve thousand pounds.

And whereas by indenture bearing date the eleventh day of July, one thousand eight hundred and seventy-one, and made between the Railway Company of the first part, the said David Proudfoot, Richard Oliver, and Thomas Birt Ulph (therein called "the Contractors") of the second part, and the New Zealand Company (thereinafter called "the Trustees") of the third part, for the considerations therein mentioned, the said Railway Company did thereby charge by way of mortgage, all and singular, the real and personal estate, property, and effects of the said Railway Company; and especially the property and effects thereafter expressed and intended to be assured, with the payment of all moneys advanced upon, and intended to be secured by the debentures or mortgage bonds to be issued by the said Railway Company, in pursuance of the said recited resolution of the seventh day of July, one thousand eight hundred and seventy-one; not exceeding in the whole the sum of one hundred thousand pounds, together with interest thereon, after the rate of five per cent. per annum, to and in such manner that the said debentures or mortgage bonds should be redeemed and paid off upon the footing and in manner expressed therein respectively. And in further pursuance of the said recited resolution in that behalf, the said Railway Company did thereby grant, convey, assign, and make over unto the Trustees, their successors and assigns, all and singular the rights, interests, and privileges, freehold and leasehold hereditaments, property and effects of whatsoever description, of or to which the Railway Company was then seized, possessed or entitled, for any estate or interest at law or in equity under or by virtue of the two several thereinbefore and hereinbefore recited indenture of even date with the deed now in recital, or either of them, and all the right, title, and interest, claim and covenant of the Railway Company therein and thereto, together with full power and authority to the Trustees, their successors and assigns, and their substitute

or substitutes in that behalf deputed from time to time, to take, use, and adopt and prosecute, in the name of the Railway Company or otherwise, all such acts, steps, and proceedings as they might deem necessary or proper for the purpose of realizing or obtaining full enjoyment of all or any of the said premises, to have, hold, receive, and take all and singular the premises thereby expressed and intended to be assured unto the Trustees, their successors and assigns, for and during the estate, term, and interest therein respectively of the Railway Company; and as to any leasehold premises subject to the covenants and conditions in the respective leases thereof contained, and on the lessees' part thenceforth to be observed and performed, and as to all and singular the premises thereby assured, upon the trusts and for the purposes, and with, under, and subject to the power and provisions thereafter expressed and contained concerning the same. And it was thereby agreed and declared that the Trustees should forthwith lay out and invest the said sum of twelve thousand pounds paid over to them by the Contractors, as in the said indenture now under recital mentioned, upon such securities real or personal, and either English, Foreign or Colonial, as the Board of Directors of the Railway Company should from time to time approve of and direct, and might with the like approval and direction from time to time vary all or any part of such investments, and should stand possessed of the investments for the time being representing the said sum of twelve thousand pounds. And also of the said eleven thousand seven hundred and seventy-five paid-up shares when so registered as aforesaid in the names of the Trustees, and of the income thereof respectively upon trust, when and so soon as the said railway and works should have been fully completed by the contractors, and all loss of money should have been made good by them, to transfer and assign and pay over to the Contractors so much and such parts of the same premises respectively as should not in the meantime have been required and applied for carrying out the trusts and purposes thereafter expressed, and subject as last aforesaid; it was thereby agreed and declared that the Trustees should hold and stand possessed of as well the said sum of twelve thousand pounds and the investments representing the same, and the said eleven thousand seven hundred and seventy-five paid-up shares, as also all and singular the premises thereafter expressed and intended to be assured upon trust, that they the Trustees in the meantime, and until default should be made on the part of the Railway Company in payment at the time and in the manner therein appointed of some part of the principal moneys intended to be secured by the debentures or mortgage bonds therein mentioned or the interest thereof, should permit the Railway Company to retain possession or enjoyment of, and receive the rents and profits, dividends, interest, and income of the same trust premises respectively; but in case of such default, and upon the request in writing of any person or persons legally or equitably entitled to any of the said debentures or mortgage bonds, or without any such default, if and when requested so to do by the Secretary for the time being of the Railway Company, should enter into the possession and enjoyment of the said trust premises, and the receipt of the rents and profits and annual income thereof respectively; and by and out of such rents and profits and annual income, (including incomes to come to their hands in respect of the said railway and works from any receiver and manager to be appointed by them as thereafter provided,) if and so far as the same rents and profits and annual income would suffice for the purpose, and otherwise by demise, mortgage, or sale of the said trust premises, or any part or parts thereof respectively, (except such parts of the said trust premises, the uses and enjoyments whereof should be necessary for the purpose of carrying on the business of the said railway,) or by all or any of the ways and means aforesaid, or by any other reasonable ways or means, should from time to time raise such sum or sums of money as might be required to pay and satisfy the principal sums and interest respectively secured by and become payable upon the said debentures or mortgage bonds, together with all costs and expenses occasioned in relation thereto; and also should from time to time pay and apply the moneys so raised (after retention thereof of the said costs, charges, and expenses), in payment and discharge of the said principal sums and interest; and as to any surplus moneys that might from time to time be remaining in the hands of the Trustees, and might not be immediately required for answering the trusts and purposes aforesaid, should lay out and invest the same in manner as hereinbefore directed with respect to the said sum of twelve thousand pounds, and should hold and apply the investments for the time being representing the said surplus moneys and the income of such investments upon the like trusts and for the like purposes as were thereby declared of and made applicable to the trust premises, from which or from the sale and realization whereof such surplus moneys should have arisen. And further, that subject and without prejudice to the several trusts and purposes thereinbefore declared, and when and so soon as all principal moneys and interest secured by the said debentures or mortgage bonds, and all costs, charges, and expenses incurred in the execution of the said trust, should have been paid and satisfied, the said Trustees should reconvey and retransfer and reassign all and singular the said trust premises, or so much and such parts thereof respectively as might not have been required and applied for the said purposes, to the Railway Company, their successors and assigns, for their absolute use and benefit.

And whereas by deed dated the eleventh day of July, one thousand eight hundred and seventy-one, and made between the New Zealand Company of the one part and the Contractors of the other part, after reciting as is therein recited, it was witnessed that the Contractors did assign and make over unto the New Zealand Company two thousand four hundred of the said eleven thousand seven hundred and seventy-five fully paid-up shares so agreed to be

issued by the said Railway Company to the Contractors, and the remaining nine thousand three hundred and seventy-five of the said fully paid-up shares so agreed to be issued to the Contractors, to take the said shares subject to the charge and security intended to be created thereon in favour of the holders of debentures or mortgage bonds of the said Company, as to the said two thousand four hundred shares for the absolute benefit of the New Zealand Company, and as to the said remaining nine thousand three hundred and seventy-five shares upon trust out of the said sum of twelve thousand pounds in the deed now in recital referred to, and the said nine thousand three hundred and seventy-five shares in the proceeds thereon, and such other moneys as are in the said deed provided, and, subject thereto, in trust for and to pay and transfer the same to the Contractors; and it was in the said deed now in recital agreed between the parties thereto that the New Zealand Company would, when required by the Contractors, use their best endeavours to sell the said eleven thousand seven hundred and seventy-five shares, but that no part of the said two thousand four hundred shares, or (after satisfaction of all moneys owing to the New Zealand Company) of the said nine thousand three hundred and seventy-five shares, should be sold within five years from the date of the said deed now in recital, except upon such terms as should be mutually agreed upon between the said New Zealand Company and the Contractors: And whereas the said Thomas Birt Ulph died, on the fifth day of November, one thousand eight hundred and seventy-one, and all the right, title, and interest of the said Thomas Birt Ulph of and in the said fully paid-up shares and the said contract for completion of the railway, and other the premises aforesaid, has become vested in the said surviving contractors for their own absolute use and benefit: And whereas the whole of the said debentures, to the amount of one hundred thousand pounds, have been issued by the Railway Company, and are now outstanding.

And whereas the said surviving Contractors, on or about the thirty-first day of December last, completed the said railway and other works according to the said contracts of the twenty-fifth day of January, one thousand eight hundred and seventy, made with the said Superintendent of Otago, and the contract of the eleventh day of July, one thousand eight hundred and seventy-one, made with the said Railway Company; and the said Railway Company thereupon commenced to use and work the said railway and other works, and have hitherto continued so to do.

And whereas all interests accrued due on the said debentures pending the completion of the said railway and other works has been paid by the said Railway Company: And whereas all such loss of income as mentioned in the said hereinbefore recited deed, dated the eleventh day of July, one thousand eight hundred and seventy-one, made between the said Railway Company of the first part, the said Contractors of the second part, and the New Zealand Company of the third part, has been made good: And whereas the New Zealand Company and the said surviving Contractors have, in accordance with the stipulations of the hereinbefore recited deed, dated the eleventh day of July, one thousand eight hundred and seventy-one, made between the New Zealand Company and the said Contractors, mutually agreed that the said two thousand four hundred shares, and the said nine thousand three hundred and seventy-five shares, and also one hundred and seventy-five additional shares, making in the whole eleven thousand nine hundred and fifty shares, shall be sold to Her Majesty the Queen, at the price hereinafter expressed: And whereas by "The Railways Act, 1872," authority is given to the Governor of New Zealand, in the name and on behalf of Her Majesty, to purchase the said railway: And whereas by reason of the said railway being vested in the New Zealand Company for securing the payment of the said debentures of the said Railway Company (and which are not yet due), the legal estate in the said railway and other works cannot as yet be acquired by Her Majesty, but it has been agreed by the Governor, in the name and on behalf of Her Majesty, to purchase, and by the New Zealand Company, with the consent of the said surviving Contractors, to sell to Her Majesty, the said eleven thousand nine hundred and fifty fully paid-up shares of the said Railway Company, at or for the price of six pounds five shillings for each share, and in consideration of the covenants and stipulations hereinafter contained: And whereas the Governor has, by and on behalf and in the name of the Queen, purchased of William Smellie Graham, the remaining fifty shares of the twelve thousand shares into which the capital of the said Company was divided, at the said price of six pounds five shillings per share:—

Now this deed witnesseth, that, in consideration of the sum of seventy-four thousand six hundred and eighty-seven pounds ten shillings sterling, paid by the Governor, with the consent of the said surviving Contractors, to the New Zealand Company, out of the revenues of the Colony of New Zealand (the receipt whereof is hereby acknowledged), the New Zealand Company doth, with the consent of the said surviving Contractors, hereby sell to the Governor eleven thousand nine hundred and fifty fully paid-up shares of and in the capital of the said railway company, and doth hereby covenant with the Governor, acting in the name and on behalf of the Queen as aforesaid, to transfer or procure to be transferred according to law, on or before the thirty-first day of December, one thousand eight hundred and seventy-three, to the Queen, or to such person or persons as the Governor of New Zealand for the time being shall appoint, the said eleven thousand nine hundred and fifty fully paid-up shares in the said Railway Company. And the New Zealand Company and the surviving Contractors do jointly and severally covenant with the Governor, on behalf of the Queen, that they and each of them will, so far as they are able, but except as hereinafter mentioned, at the cost of the Governor, assist the Queen in procuring the speedy redemption of all the said bonds, and the dissolution of the said Railway

Company, and a good and perfect title to all that the said recited deed of agreement of the twenty-fifth day of January, one thousand eight hundred and seventy, and the rights, interests, and privileges thereby conceded and secured, and the full benefit and advantages of all and every the covenants and conditions therein contained, and to all the lands and hereditaments whatsoever conveyed or agreed to be conveyed by the Superintendent of Otago to the Contractors for the purposes of the said railway, or the use whereof by the Contractors for the purposes of the said railway is agreed to be allowed by the said Superintendent; and also all such lands and hereditaments, forming any part or parts of the said railway as are situated within the line of fences of the said railway, or on the site of any station of or to which the Contractors or surviving Contractors, or the said Railway Company and the New Zealand Company, or any or either of them, or any person or persons in trust for them respectively, is or are seized, possessed, or entitled for any estate or interest either at law or equity, but not any other lands or hereditaments which have been acquired for the purposes of the said railway and works; and also the said railway and works now constructed, and all erections, buildings, fixtures, materials, and effects whatsoever belonging thereto, other than and except the plant and rolling stock now belonging to and lately used by the surviving Contractors for the purpose of constructing the said railway; and the said hereinbefore-recited deed of lease of the fourteenth day of January, one thousand eight hundred and seventy-one, and all the tolls, dues, and wharfage, rights and hereditaments demised by the said deed of lease for the remainder of the term thereof, subject to the rent, covenants, and conditions therein reserved and contained; and all the estate, right, title, and interest, claim, and demand whatsoever of the Railway Company in, to, and out of all the said premises; together with full power and authority to the Queen or the Governor, or any person appointed by the Governor of New Zealand for the time being in that behalf, from time to time to take, use, and adopt and prosecute, in the name of the Railway Company, or the Contractors or the surviving Contractors, or the New Zealand Company, or any or either of them or otherwise, all such acts, steps, and proceedings as the Governor may deem necessary or proper for the purpose of realizing or obtaining the full enjoyment of the premises: Provided, however, that as to all such lands, hereditaments, and messuages lying between the said fences as shall not at the time of the execution of these presents have been acquired or purchased by the Contractors or the Railway Company, or the New Zealand Company, or some or one of them, the same shall be valued by a valuer or valuers to be appointed as hereinafter provided; and the value so fixed shall be paid by the New Zealand Company to the Queen, on demand made by the Minister for Public Works, but the cost of the proceedings, and the compensation to be paid for requiring the same, shall be paid and borne by the Queen:

Provided also, and it is hereby expressly agreed and declared between and by the parties hereto, that notwithstanding the sale and transfer of the said eleven thousand nine hundred and fifty shares to Her Majesty, or to any other person appointed by the Governor as aforesaid, and notwithstanding also the purchase of the said fifty shares by the Governor as hereinbefore mentioned, Her said Majesty or such person as aforesaid shall not, as the owners of or otherwise by virtue of such shares, or any of them, be or become entitled to any of the moneys or securities for money, goods, or chattels of or belonging to the said Railway Company on the day of the date hereof, except as hereinbefore expressly mentioned, or to any of the lands or hereditaments of the said Railway Company, or held by any person or company in trust for the said Railway Company, except as hereinbefore expressly mentioned; but notwithstanding the transfer of such shares, the said moneys, securities, goods, and chattels, except as aforesaid, and the said lands and hereditaments, except as aforesaid, shall be held by the said Railway Company, or by the person or company in whom the same are now vested, in trust for the said New Zealand Company and the said surviving Contractors in the proportions in which they are now respectively entitled thereto, and which, as between themselves respectively, they do hereby declare to be as follows, (that is to say),—as to one-fifth for the said New Zealand Company, and as to the remaining four-fifths for the said surviving Contractors. And this deed also witnesseth that the New Zealand Company covenants with the Governor on such behalf as aforesaid, that except as expressed and contained in the said hereinbefore recited trust deed, the said Railway Company has not, and that the said New Zealand Company has not assigned, alienated, charged, or encumbered the said agreement of the twenty-fifth day of January, one thousand eight hundred and seventy, or the said lease of the fourteenth day of January, one thousand eight hundred and seventy-one, or the dues thereby demised, or the said railway and works, lands, messuages and hereditaments, buildings, fixtures, plant, rolling and other stock, possession whereof hath on the day of the date hereof been given to and taken by the Governor; and in the providing and making for and to the Queen good titles thereto, it is agreed that the New Zealand Company will, at the cost of the Governor, assist, and that the said Railway Company has not, except so far as is expressed in the said deed of trust, and that the said New Zealand Company has not knowingly done or suffered any act whereby the said Railway Company are prevented or hindered from assigning and conveying the said agreement and lease and premises to Her Majesty the Queen, subject, however, to the said deed of trust: And further, that the New Zealand Company shall and will indemnify the Queen from and against all claims (if any) for injuriously affecting any lands by or by means of the said railway and works which may have been made against the Contractors, or the surviving Contractors, or the said Railway

Company, prior to the day of the date hereof. And this deed also witnesseth that the New Zealand Company and the leasing Contractors jointly and severally covenant with the Governor that they will endeavour to obtain for the Governor, on behalf of the Queen, a good title to all the messuages, lands, and hereditaments, railway works, buildings, fixtures, and effects, specified in the said preceding covenant, possession of which has been so delivered as aforesaid, and that they will not, nor will any or either of them, disturb or interfere with such possession, or do or concur in any act whereby such possession may be disturbed or interfered with, unless default shall be made in the payment of any principal or interest of any of the said debentures, the payment of which has been undertaken or guaranteed by the Governor on such behalf as aforesaid, as hereinafter provided. And this deed also witnesseth that the Governor, on such behalf as aforesaid, covenants with the New Zealand Company, that he will immediately on demand pay to the New Zealand Company, on behalf of the Railway Company, such sum as shall be equal to one-half the amount fixed by fair valuation, to be made by a person or persons appointed as hereinafter provided, as the value of so much of the plant, rolling and other stock, articles, and things now used in the working and management of the said railway, whether now in or about the said railway or not, over and beyond the following articles and things, that is to say:—

Two locomotives.

Five covered goods trucks.

Two first-class carriages.

Fifteen open goods trucks.

Six second-class carriages.

Two break vans.

Which said last specified articles are not to be included in such valuation, but are to be delivered to the Governor as aforesaid free of charge: Provided, however, that the Governor shall not be bound to pay as such half of such valuation, any sum in excess of two thousand five hundred pounds, but notwithstanding that such half of the said valuation shall be in excess of that sum, all the said plant, rolling and other stock, articles, and things, shall be delivered to the Governor or Minister as aforesaid free of any other payment. And this deed also witnesseth that the Governor, on such behalf as aforesaid, covenants with the New Zealand Company to pay to the New Zealand Company, on behalf of the Railway Company, immediately on demand, such sum as shall be fixed by fair valuation, to be made by a person or persons to be appointed as hereinafter provided, as the value of such timber, iron, and other material as shall have been procured for the purposes of the said railway, and the extension of the wharf, and for other works connected with the said railway, and not yet affixed or used in the construction or extension of such railway and works and wharf, whether such timber, iron, and other material be now lying in, upon, or about the said railway or not; but this covenant shall not apply to timber ordered from Western Australia, or from Newcastle in New South Wales, for the purpose of such railway wharf, and not yet delivered; and all such timber, iron, and other materials so to be valued as aforesaid, shall be delivered to the Governor or the Minister aforesaid before such demand be made.

And this deed also witnesseth that the New Zealand Company and the surviving Contractors jointly and severally covenant with the Governor on such behalf as aforesaid, to assign, on demand, to the Governor, or any person he appoints to receive such assignment, all contracts so far as now executed between the said Railway Company, or the Contractors, or surviving Contractors, or any person or persons on their behalf, on the one part, and any other person or persons on the other part, for the supply of timber from Western Australia and New South Wales for the construction or extension of any works in connection with the said railway, the Governor on such behalf as aforesaid paying to the Contractors, the Railway Company, or the New Zealand Company respectively, any sums of money which have been already paid by them respectively on account or in respect of any and every such contract, and covenanting to pay the person or persons contracting to import or supply such timber the contract price or the balance of the contract price thereof, according to the terms of such contract, and to indemnify the Contractors, the Railway Company, and the New Zealand Company respectively, against any demands in respect of any such prices: Provided always that the Governor shall not be liable or called upon under this provision to repay to the said Railway Company, or to the Contractors, or the surviving Contractors, or to the New Zealand Company, any moneys which may have been paid by them or any or either of them, for or on account of any goods actually delivered at Dunedin aforesaid, or at Port Chalmers aforesaid, under any such contract as aforesaid, prior to the day of the date hereof: And this deed also witnesseth that the Governor, on such behalf as aforesaid, covenants with the New Zealand Company as follows:—

1. That the Governor will observe and perform all arrangements made between the Railway Company and any other person or persons for the carriage of goods and passengers at special rates during the currency of such arrangements, not exceeding one year from the making thereof.

2. That the Governor will observe and perform certain arrangements made by the said Railway Company with Messrs. McLandress, Hepburn, and Company, for the carriage to and from the township of St. Leonards of passengers being householders residing there, and of building materials to be used there in building houses and other buildings, at reduced rates.

3. That the Governor will observe, perform, and carry out certain promises, contracts, or arrangements for the establishment and maintenance of three stations, the sites of which are as yet undefined.

4. That the Governor will indemnify the said Railway Company, the surviving Contractors, and the New Zealand Company, and each of them against a certain alleged claim made by the

North-East Valley Road Board for encroaching or interfering with a road or road reserve alleged to be in the North-East Valley Road District, and all other claims by any Road Board, Corporation or individual for encroaching upon, or interfering with any road or street by means of the said railway and works or otherwise.

5. That the Governor will observe and perform the provisions in certain leases or agreements made between the Railway Company or the surviving Contractors of the one part and certain other persons of the other part, for the letting of certain rooms and places connected with the said railway as refreshment rooms at Dunedin and at Port Chalmers respectively, so far as the same are expressed to be performed by or on behalf of the said Railway Company or the said surviving Contractors.

6. The Governor or the Postmaster-General will immediately on the execution of these presents, cancel a certain contract existing between the said Railway Company and the Governor or Postmaster-General, for the carriage of mails on the said railway.

7. That neither the Queen, nor any one on her behalf, shall or will, at any time hereafter, have or make any claim or demand against the said surviving Contractors or the said Railway Company or the New Zealand Company for or by reason of any defect in the construction of the said railway or works, but the same shall, after delivery shall be given, be deemed to have been and to be constructed in accordance with the terms of the said contract of the twenty-fifth day of January, one thousand eight hundred and seventy, made with the said Superintendent of Otago, for the construction of the said railway, and in accordance with the terms of the said contract, dated the eleventh day of July, one thousand eight hundred and seventy-one, made between the Contractors and the said Railway Company for the completion of the said railway.

And this deed also witnesseth, and it is hereby agreed and declared by and between the Governor on such behalf as aforesaid of the one part, and the surviving Contractors of the other part, that if the Governor, or the Minister of Public Works on his behalf, shall elect to purchase all or any of the plant, tools, or implements used by the said surviving Contractors in, for, or about the construction of the said railway, and not forming part thereof, and not belonging to the said Railway Company, or the New Zealand Company the said surviving Contractors will sell and deliver to the same to the Governor or the said Minister at or for such price as shall be fixed by valuation as hereinafter provided; but the Governor shall not be bound to purchase, or take the whole or any part or parts of such plant: Provided, however, that if the Governor, or the said Minister elect not to purchase such plant, tools, or implements, or any of them, then as to so much and such parts as he elects not to purchase, the Governor shall permit the said surviving Contractors to leave the same at their risk, on such part of the land within the fences as shall be mutually convenient, for the period of not more than twelve months from the delivery of possession of the said railway to the Governor, free of charge to the said surviving Contractors. And it is hereby also agreed and declared by and between the parties hereto, that all valuations which are according to the provisions hereinbefore contained to be made, shall be made either by one person, to be from time to time agreed upon by the New Zealand Company and the Minister for Public Works for the time being, or if the New Zealand Company and the Minister cannot agree upon such one person, then by three persons, one to be appointed by the New Zealand Company, and another to be appointed by such Minister, and a third to be appointed by the two valuers so appointed before commencing the valuation, and the valuation made by such three persons, or any two of them, shall be binding on all the parties hereto. And whereas the said surviving Contractors some time since reclaimed from the sea for the said Railway Company a certain parcel of land situate near to the entrance to the railway tunnel at Port Chalmers, comprising half an acre or thereabouts, on part of which the said Railway Company afterwards erected an iron shed, now used in connection with but not forming part of the said railway and works, and which said land and shed the said Railway Company had prior to the negotiations with the Governor, agreed with the New Zealand Company to lease to them for a term of six years at a peppercorn rent for the purposes of a wool store: It is agreed between the New Zealand Company and the Governor, on such behalf as aforesaid, that if the Governor or the Minister for Public Works shall require such land and shed, and shall signify to the New Zealand Company, within three months from the taking of such possession as aforesaid, his desire that such land shall be retained by the Queen for the purposes of such railway, then such piece of land and shed shall, as between all the parties to these presents, be deemed to belong to Her Majesty discharged from the said agreement; and in such case the Governor shall, within six months from the day of the date hereof, reclaim or purchase or otherwise acquire, and shall demise at the yearly rent of one peppercorn to the New Zealand Company, in exchange therefor, for the term of six years from the date of so reclaiming, purchasing, or acquiring the same, some other piece of land suitable for the site of a wool store, and to the satisfaction of the New Zealand Company, of equal area, situate at Port Chalmers, and near to the terminus of the said railway; and the New Zealand Company shall, as soon as may be after the election of the Governor to retain possession of the same, be entitled to be paid by the Governor for such iron shed such sum as shall be fixed by valuation to be made as hereinbefore provided. And at the expiration of the said term of six years, the New Zealand Company shall also be entitled to be paid by the Governor such sum as shall be fixed by valuation to be made as aforesaid of any buildings to be erected on the said land so to be demised to them by the Governor as aforesaid, unless the Governor shall, at least twelve months before the said period of six years, decide to issue a free grant of the freehold and inheritance of the said land to the New Zealand Company in lieu of paying such valuation, and of

such decision shall give notice to the New Zealand Company, and a provision to the effect aforesaid shall be contained in the said demise. And until the expiration of the said period of three months, the Governor, on behalf of the Queen, shall be entitled to hold possession and use the said piece of land and shed without charge; and unless the Governor shall decide to retain possession of the said land and shed, the New Zealand Company shall be entitled to occupy and enjoy the same for the term of six years from the expiration of the said period of three months according to the said before-mentioned agreement with the said Railway Company, and at the expiration of such period of six years shall be entitled, either to the full value, to be ascertained in manner hereinbefore provided, of all buildings then standing and being on the said piece of land, and to the sum of eighty-one pounds thirteen shillings, in full of the cost of the reclamation of the said piece of land, or to a free grant of the freehold and inheritance thereof in like manner in every respect as is hereinbefore provided in case the Governor shall reclaim, purchase, or acquire a piece of land and demise the same to the New Zealand Company.

And it is hereby also agreed between the Governor, on such behalf as aforesaid, and the New Zealand Company, that whether the Governor shall decide to retain possession of the said land and shed as aforesaid, and to demise to the New Zealand Company another parcel of land in lieu thereof as aforesaid, or shall decide to leave the said parcel of land and shed in the possession of the New Zealand Company, and not to take possession of the same until the expiration of the said period of six years, the said New Zealand Company shall have and be allowed such means of access and egress from and to the said railway wharf and the parcel of land and premises they may occupy for the purposes of their said wool store, as they may reasonably require. And this deed also witnesseth that the Governor, on behalf of the Queen, covenants with the New Zealand Company, that the Governor will pay to all persons, being the holders of any of the said debentures, all moneys from time to time after the thirtieth day of June, one thousand eight hundred and seventy-three, accruing due as principal or interest of, upon, or in respect of such debentures: Provided that, with regard to all such interest as accrues due on such debentures on the thirtieth day of June, one thousand eight hundred and seventy-three, the Governor shall not be bound to pay the same, but shall pay to the New Zealand Company only such sum as shall be proportionate to the period elapsing between the eighth day of April, one thousand eight hundred and seventy-three, and the said thirtieth day of June, one thousand eight hundred and seventy-three. And the Governor, on such behalf as aforesaid, covenants to indemnify the New Zealand Company against the payment of all sums hereby covenanted to be paid by the said Governor. And this deed lastly witnesseth, that the New Zealand Company covenants with the Governor, on such behalf as aforesaid, that all debts and other liabilities of the Railway Company existing on the day of the date hereof, except such as are hereinbefore expressly provided for, other than the liability in respect of the said debentures and the contracts for timber not yet delivered, herein mentioned, shall be paid and satisfied by the New Zealand Company.

In witness whereof these presents have been executed by or on behalf of the several parties hereto on the day and year first above written.

Sealed with the Official Seal of the New Zealand Loan and Mercantile Agency Company, Limited, by Charles John Taylor, David Limond Murdoch, and Frederick Battley, in the presence of

(L.S.)

WALTER F. LAWRY, Clerk, Auckland.

We certify that the Official Seal of the New Zealand Loan and Mercantile Agency Company, Limited, was affixed to the above-written deed by the undersigned Charles John Taylor, David Limond Murdoch, and Frederick Battley, at Auckland, in the Colony of New Zealand, on the 4th day of July, 1873, by order of the Colonial Board of Directors of the said Company, at a meeting held on the 4th day of July, 1873.

CHARLES J. TAYLOR.

D. L. MURDOCH.

FRED. BATTLE.

DAVID PROUDFOOT.

(L.S.)

RICHARD OLIVER.

(L.S.)

Signed, sealed, and delivered by the said David Proudfoot and Richard Oliver in the presence of

B. C. HAGGETT, Solicitor, Dunedin.

Sealed with the Seal of the Colony, and signed by the Officer Administering the Government thereof, in the presence of

G. A. ARNEY.

(L.S.)

WILLIAM REYNOLDS, Colonial Secretary.

JOHN BATHGATE, Minister of Justice.