

1856-7.

VICTORIA.

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# RAILWAY EXPENDITURE.

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RETURN to an Order of the *Legislative Assembly*,  
Dated the 24th February, 1857, for—

1. Copies of any Minutes, Orders, or Instructions, purporting to be the authority under which the sum of £100,000 was remitted to England during the present Session of Parliament.
2. Copy of the letter or letters advising such remittance, and directing the disposal of the amount.
3. Copies of any communications with, or opinions of the Law Officers, as to the power of the Executive to dispose of the public money without the authority of this House.
4. Copies of the regulations or instructions intended to ensure the observance of the 55th clause of the New Constitution, as applicable to the department of the Treasurer, and all others having custody of, or control over the Consolidated Revenue.

(*Mr. Hughes.*)

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*Ordered by the Legislative Assembly to be printed, 29th May, 1857.*

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By Authority:

JOHN FERRES, GOVERNMENT PRINTER, MELBOURNE.

SCHEDULE of Papers furnished in accordance with Mr. Hughes's motion, relative to the remittance of the sum of £100,000 in January, 1857, for Railway purposes.

No.	FROM	To	SUBJECT.
1	Secretary to Railway Department	The Treasurer ...	Forwards application on Form D. for amount required to meet engagements for January and February.
2	...	...	Form D enclosed in the above, submitted for sanction of His Excellency in Council by the Treasurer, and approved.
3	Under-Secretary ...	Colonial Agent-General	Forwards for the information and guidance of the Colonial Agent-General, copy of the contract entered into with Messrs. De Pass Brothers and Co., for the supply of Railway Plant.
4	...	...	Copy of Contract forwarded in the above-mentioned letter.
5	Under-Secretary ...	Colonial Agent-General	Forwards Bills of Exchange for £100,000 sterling, on account of the purchase of Railway materials under the above-mentioned contract.
6	...	...	Statement relative to the communications with Law Officers on the subject.

[COPY.]

57 | 23.

SIR,

Railway Department, Melbourne, 15th January, 1857.

I have the honor to forward herewith, by the instructions of the Railway Trustees, the accompanying form D, containing an estimate of the amount which will be required by this Department during the months of January and February, 1857, to meet current engagements.

In the arrangement of this estimate as also in the re-adjustment of the expenditure on Railways to the 31st December, 1856, I have conferred with Mr. Gudemann, and propose continuing to do so until the latter point is satisfactorily disposed of.

The amount estimated for Salaries and Allowances includes all office and field expenses, except those which we now propose to range under "Preliminary Railway Surveys," instead of as heretofore "Railway Surveys."

In the amount estimated for Contingencies, there is included Expenditure on Stores, Stationery, Furniture, Advertising, Printing, and any other expenditure which may become necessary, and not included in the other items of this account.

In the estimated amount for remittance to England, I have included £2,000 the premium on £100,000 at the present rates of Exchange.

The amount estimated for "Works in Progress," and for "Land Compensation," will also be required, the former amount to pay demands on current contracts, the latter to pay awards long overdue.

In conclusion, I am instructed to request that you will be pleased to obtain His Excellency's authority for the whole of the expenditure included in this estimate at as early a period as possible.

I have the honor to be, &amp;c.,

(Signed)

RICHARD WOOLLEY,

The Honorable the Treasurer.

Secretary.

[COPY.]

No. 7.

VICTORIA.

D.—[CLAUSE 24 OF REGULATIONS.]

APPLICATION for Authority to incur the following Expenses in the Department of RAILWAYS, during January and February, 1857.

Particulars.	Engineer's Office.		Secretary's Office.		Permanent Surveys, Mount Alexander Railway.		Permanent Surveys, Geelong and Ballarat Railway.		TOTAL.	
	£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.
Salaries and Allowances ... ..	2,500	0 0	500	0 0	4,500	0 0	2,500	0 0	10,000	0 0
Contingencies ... ..	...	...	...	...	...	...	...	...	2,000	0 0
<b>MELBOURNE &amp; MOUNT ALEXANDER RAILWAY.</b>										
Remittance to England for Plant, including premium on Bills ... ..	...	...	...	...	...	...	...	...	51,000	0 0
Works in Progress ... ..	...	...	...	...	...	...	...	...	6,000	0 0
<b>WILLIAMSTOWN BRANCH RAILWAY.</b>										
Remittance to England for Plant, including premium on Bills ... ..	...	...	...	...	...	...	...	...	51,000	0 0
Works in Progress ... ..	...	...	...	...	...	...	...	...	20,000	0 0
Land Compensation ... ..	...	...	...	...	...	...	...	...	10,000	0 0
Contingencies ... ..	...	...	...	...	...	...	...	...	2,000	0 0
<b>TOTAL...</b> ... ..	...	...	...	...	...	...	...	...	152,000	0 0

Signature of Head of Department—

Approved,

(Signed)

AN. CLARKE.

N.B. This document is to be accompanied by an explanatory letter.

No. 5808.

Victoria, Chief Secretary's Office,  
Melbourne, 26th August, 1856.

SIR,

I transmit for your information and guidance, copy of the contract entered into between De Pass Brothers, and Co., of Melbourne, and the Railway Trustees, for the importation of locomotives and rolling stock generally, and other articles required for the Williamstown Railway; also a printed copy of the conditions upon which the contract is based and the schedules referred to therein.

Similar copies will be forwarded to the Secretary of State for the Colonies by an early opportunity. I am directed to request that you will call the particular attention of the inspecting officer to the necessity of insisting on the utmost care being observed in packing the general articles comprised in the contract, and to the fact that he is precluded from making payments on account during the progress of their manufacture.

His attention should also be solicited to clauses 4 and 12, by the former of which he will perceive that the contractors' agents or correspondents will be unable even to advertise for tenders in England until the inspecting officer has supplied them with necessary drawings and specifications; and as by the latter clause, the contractors are bound to deliver the whole of the goods in Victoria, before the 1st of September, 1857, under a severe penalty he will see the necessity of using every diligence to supply the contractor with these data.

I am desired to request that a copy of the enclosed letter from the Engineer-in-chief may be also forwarded for the inspecting officer's perusal.

I have the honor to be, &amp;c.,

Edward Barnard, Esq., &c.,  
London.

(Signed) J. MOORE.

[COPY.]

## ARTICLES OF AGREEMENT

Made and entered into the twenty-third day of August in the year of our Lord One thousand eight hundred and fifty-six, between John DePass and Michael Mitchell, carrying on business in the city of Melbourne, in the Colony of Victoria, under the name, style, or firm of "DePass Brothers and Company," hereinafter designated "Contractors" of the one part, and Charles Pasley, Esquire, the present Commissioner of Public Works, and Andrew Clarke, Esquire, the present Surveyor General of Victoria, the trustees on behalf of and for the use and benefit of the Government of Victoria, and hereinafter designated "Trustees" of the other part.

WHEREAS the said trustees advertised in the public papers on the thirty-first day of July last, for tenders for the supply to them of locomotives, rolling stock generally, and other articles required by them for the use of their proposed railways, and the said John DePass and Michael Mitchell (amongst other persons) tendered for the supply of the same, and such tender was duly accepted by the trustees with the sanction and approval of the Executive Council of the said Colony, and whereas it has been agreed between the said several parties hereto that the following contract embodying the terms and conditions of such advertisement and of the said tender under the same shall be entered into and executed by and between the said parties hereto: Now, therefore, these presents witness, and it is mutually covenanted, declared, and agreed by and between the said John DePass and Michael Mitchell the said contractors, and the said Charles Pasley and Andrew Clarke the said trustees on the behalf and for the use of the said Government of Victoria, in manner following (that is to say), and first, the said contractors in consideration of the sum of money hereinafter covenanted to be paid to them by the said trustees do hereby severally and respectively covenant, promise, and agree with the said trustees and other the trustees for the time being of railway works on the behalf and for the use of the Government of Victoria in manner following, that is to say:—

*First.*—That they the said contractors shall and will deliver to the said Charles Pasley and Andrew Clarke or other the trustees for the time being, on behalf and for the use of the Government of Victoria, all the locomotives, rolling stock generally, and other articles which are or shall be required by the said trustees for the use of their railway works according to the particulars of the same set forth and described in the schedule hereunder written, and in accordance in every respect with the plans and specifications which shall be supplied to them, the contractors, their agents or correspondents in England by the inspecting officer appointed by or acting on the behalf of the Government of Victoria in England; and shall and will deliver the whole of the same to such trustees on or before the first day of September, which shall be in the year One thousand eight hundred and fifty-seven, at Melbourne, Williamstown, or Sandridge, as they shall be thereunto required in writing by such trustees or their secretary or agent for the time being, in the same manner and in the like good order and condition as the same were respectively in when shipped on board any ship or vessel to be exported to this Colony, as mentioned in the seventh clause; perils of the sea and all risks covered by the policy of insurance only excepted.

*Second.*—That they the said contractors shall and will purchase the whole of the said several articles before enumerated, and as are set forth and described in the said schedule hereunder written, and in accordance with the several plans and specifications which will be supplied and delivered to the agents or correspondents of the said contractors as aforesaid, and such purchase shall be made by tender under advertisement inserted in such newspaper or newspapers in England or Scotland, or both, to such extent and in such manner as the inspecting officer for the time being of the said trustees in England shall direct, and shall and will deliver or cause to be delivered to such inspecting officer the whole of the tenders which shall or may be received under such advertisements unopened.

*Third.*—That as soon as such inspecting officer shall give notice in writing to any one member of the firm or correspondents of the said contractors that any one particular tender is accepted, the said contractors shall and will forthwith enter into and complete a contract with the party or parties whose tender may be so accepted for the delivery to them of the several articles mentioned or described in such tenders.

*Fourth.*—That the said contractors shall and will from time to time as soon as such several articles so tendered and contracted for shall be delivered or be ready for delivery to them, give notice in writing to the inspecting officer appointed by the authority of the Government of Victoria that the same are ready for inspection and examination, in order that such inspecting officer or his deputy for the time being appointed for that purpose, may examine the same and be satisfied that such several articles are strictly in accordance in every respect with the requisitions contained in the said several plans and specifications thereof.

*Fifth.*—That immediately upon and after receiving the certificate in writing of the said inspecting officer, that the said several articles are strictly in accordance in every respect with the requisitions contained in the said several plans and specifications, they the said contractors or their agents or correspondents in England, shall and will cause the whole of the several articles which in such certificate shall be expressed to be approved of by such inspecting officer, to be shipped on board some good and seaworthy ship, bound direct from the most eligible and convenient port in England or Scotland to Hobson's Bay, in the port of Melbourne, and upon their being so shipped shall and will deliver to the Colonial Agent acting for and on the behalf of the trustees in England, and their inspecting officer in England, and each of them, a bill of lading of the said several articles which shall from time to time be so shipped, and by the first following post forward also another bill of lading thereof to the said trustees, and immediately upon such shipment being made shall and will insure the articles so shipped in some respectable Marine Insurance Office or with some Underwriters to the full amount of the English cost price thereof, and all charges thereon.

*Sixth.*—That they the said contractors shall and will pay the whole of the cost price of the several articles purchased and supplied by them to the said trustees under this contract, together with the costs and charges of the shipment thereof, and of advertisements, insurances, and all other expenses necessarily incurred by them in connection with and in carrying out and fulfilling the terms of this contract, together also with the expenses of discharging and delivering the same to the said trustees in the Colony of Victoria; and immediately upon the shipment of each separate quantity of goods, shall and will deliver to the Colonial Agent-General in England, with the bill of lading, a true and correct statement in triplicate of the monies so paid and expended by them the said contractors for and on the behalf of the said trustees, together with the receipts and vouchers for such payments, and a certificate by the said inspecting officer for the time being of the said trustees that the same is and are correct.

*Seventh.*—That they the said contractors shall and will pay to the said trustees or other the trustees for the time being, of railways for the said Government, the sum of One hundred pounds per day for every day beyond the said first day of September, One thousand eight hundred and fifty-seven, during which any part of this contract shall remain unfulfilled, and the said articles or any part of them be not delivered, except only as hereinafter is provided for.

And the said Charles Pasley and Andrew Clarke as such trustees on the behalf and for the use of the Government of Victoria in respect of the said railway, do hereby covenant, promise, and agree with and to the said contractors in manner following, that is to say:—

(1st.) That they and the other trustees for the time being of the said railway, shall and will duly appoint or cause to be appointed and continue from time to time, some person or persons in England as their inspecting officer or officers in connexion with carrying out and fulfilling the terms of this contract, and during the continuance thereof.

And that such inspecting officer shall and will from time to time upon being requested in writing by the said contractors or their agents or correspondents in England so to do, duly examine and inspect the various articles which under this contract shall from time to time be ready for shipment to the Colony of Victoria.

(2nd.) That the Colonial Agent-General, acting on the behalf of the said trustees in England, shall and will from time to time upon receiving from the said contractors or their agent or correspondent in England a true and correct statement as before-mentioned of the monies laid out and expended by them under this contract in respect of each shipment, with receipts and vouchers for the same, together with a certificate by the inspecting officer for the time being, of the said trustees in England verifying the same, pay to the agent or correspondent for the time being, of the said contractors in England, a sum equal to £75 per cent. upon the whole amount of the payments contained in each such statement; and also shall and will, upon receiving delivery of each separate shipment of goods under this contract, pay to the said contractors or their agents in Melbourne the costs and expenses attending the discharging and delivery of the various articles and goods, and incidental thereto.

(3rd.) That when and so soon as the whole of the several articles or goods which shall be required by the said trustees under this contract shall be duly shipped by the said contractors or their agent or correspondent on board any ship or vessel for the purpose of being conveyed to the port of Melbourne, and the inspecting officer for the time being of the said trustees in England shall have given his certificate in writing that the said contractors have wholly and satisfactorily performed and fulfilled their part of the terms and conditions of this contract, and in every respect in accordance with the said plans and specifications, then that the Colonial Agent-General in England shall pay to the agent or correspondent of the said contractors in England the remaining sum of £25 per cent. upon the whole amount of the payments which shall have been from time to time made by the said contractors, their agent or correspondent in England, under or in respect of this contract, and as shall be included or appear from time to time in the statement hereby required to be given upon each and every shipment of articles or goods, together with the commission of ten shillings per cent. upon the amount of the gross outlay, which amount is to represent the *bond fide* net cost of the articles purchased and delivered, and the actual charges of freight, insurance, lighterage and cartage in England and in Victoria.

Provided always, and it is hereby declared and agreed by and between the said parties hereto, that in the event of any unforeseen accident or occurrence taking place, by means whereof the said contractors may be hindered or delayed in delivering to the said trustees the whole of the several articles under this contract, on or before the 1st day of September, 1857, as hereby required then, and in such case provided the inspecting officer for the time being of the said trustees in England shall certify in writing that such hindrance or delay did not arise from any act, omission, or neglect on the part of the said contractors, their agents, or correspondent, and that the same was beyond their control, or should any delay occur in the appointment of any inspecting officer by or for the trustees in England, or any delay be caused by any inspecting officer refusing or omitting duly to act or to deliver to the agent or correspondent in England of the said contractors the plans and specifications hereinbefore referred to

them, the said contractors shall have such a period of time beyond the 1st day of September, 1857, as shall be equal to the period of time during which such hindrance or delay may have so continued. Provided further, and it is also declared and agreed by and between the said parties hereto, that inasmuch as the said Charles Pasley and Andrew Clarke are trustees only on behalf and for the use of the Government of Victoria, nothing herein contained shall authorise, enable, or allow the said contractors or any or either of them to commence or prosecute any action, suit or proceeding against the said Charles Pasley and Andrew Clarke or either of them in respect of any or either of the covenants herein contained, with the view of or so as to charge them individually or in their private capacity or otherwise than as nominal defendants, and that if any such action, suit or other proceeding is so commenced or prosecuted, these presents shall and may be pleaded in bar thereof. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written.

(Signed) JOHN DE PASS.  
 ,, M. MITCHELL.  
 ,, C. PASLEY.  
 ,, ANDREW CLARKE.

Signed, sealed, and delivered by the said several persons parties hereto, in the presence of—

(Signed) RICHARD WOOLLEY,  
 Secretary to the Railway Trustees.

N.B.—Attached to the contract of which this is a copy, is a schedule of the railway plant required.

No. 384.  
 SIR,

Victoria, Chief Secretary's Office,  
 Melbourne, 27th January, 1857.

With reference to my letters of the 26th August last (5808), I am directed to transmit Bills of Exchange for the sum of One hundred thousand pounds sterling, on account of the purchase of railway materials for the trustees of the Melbourne and Mount Alexander Railway.

Edward Barnard, Esq., &c.,  
 London.

I have the honor to be, &c.,  
 (Signed) J. MOORE.

Copies of any communications with or opinions of the law officers as to the power of the Executive to dispose of the public money without the authority of the Legislative Assembly:

No communication or opinion on the subject has been issued by the law officers.

Copies of the regulations or instructions intended to ensure the observance of the 55th clause of the New Constitution Act, as applicable to the department of the Treasurer, and all others having custody of or control over the consolidated revenue.

The Act itself is the rule by which all public officers are guided. No regulations or instructions supplementary to this clause of the Act have been issued.