

1892.

VICTORIA.

BEULAH TO HOPETOUN RAILWAY.

RETURN to an Order of the *House*,
Dated 26th July, 1892, for—

A COPY of the Agreement between Edward Harewood Lascelles, of Geelong, and the Board of Land and Works, for the construction of a line of Railway from Beulah to Hopetoun.

(*Mr. Outtrim.*)

Ordered by the Legislative Assembly to be printed, 26th July, 1892.

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ARTICLES OF AGREEMENT made the twenty-first day of July, 1892, between Edward Harewood Lascelles, of Geelong, stock and station agent (hereinafter referred to as the "Promoter") of the one part, and the Board of Land and Works (hereinafter referred to as the "Board"), for and on behalf of Her Majesty's Victorian Government, of the other part.

WHEREAS the Promoter is the proprietor of certain leasehold estates in the parishes of Gutchu, Carori, and Goyura, in the county of Karkaroc, and as such is desirous that a railway should be constructed from the township of Beulah, in the parish of Galaquil, to the township of Hopetoun, in the parish of Goyura, both of which parishes are in the county of Karkaroc, and has applied to Her Majesty's Victorian Government for leave to construct the same, and Her Majesty's Government has, subject to the assent of Parliament being obtained, agreed to grant such leave on the terms and conditions hereinafter appearing; and the Promoter has, for the considerations hereinafter stated, accepted such terms and conditions as witnessed by his executing these presents: Now this Agreement witnesseth—That the Promoter, for himself, his heirs, executors, and administrators, covenants and agrees with the Board as follows (that is to say) :—

1. That the Promoter will, after a copy of this Agreement has lain upon the table of both Houses of Parliament for fourteen days, and if no vote of either House has during that period been carried withholding its consent to this Agreement forthwith acquire the necessary land, and commence to construct a line of railway from the township of Beulah, aforesaid, to the said township of Hopetoun, upon the lands coloured red on the map hereunto annexed, with all proper ways, sidings, stations, buildings, works, and conveniences (all of which are hereinafter referred to under the term of the "railway"), subject to any deviation from such line to which the Board may in writing consent.

2. That the Promoter will, after commencing to construct the said railway, complete the same within two years from the date of this Agreement.

3. That the Promoter will construct and complete the said railway under the supervision and in accordance with the directions of the Engineer-in-Chief of Victorian Railways for the time being, or of such other officer as the Board may from time to time nominate in that behalf (such Engineer-in-Chief or other officer being hereinafter referred to as the Inspecting Officer).

4. That the Promoter will, in the construction of such railway, use materials to be approved of by the Inspecting Officer, and will conform in the construction of such railway to such specifications and conditions as the Inspecting Officer may prescribe or direct, the same not to be more onerous than the specifications and conditions used at the date of this Agreement for a similar class of work done in connexion with the Victorian Railway Department.

5. That the Promoter will, within the time aforesaid have completed the said railway to the satisfaction of the Inspecting Officer, fully equipped for and furnished with all necessary rolling-stock and appliances to run trains thereon, such rolling-stock and appliances to be approved of by the Inspecting Officer. Whenever the Promoter hires for use on the railway any truck or trucks the property of the Board, or the Victorian Railways Commissioners, or any other body or person for the time being controlling or managing the Government railways, the price to be charged to him for the hire of each such truck shall not exceed for the first twenty-four hours, or for any less time of such hiring, a sum of One shilling and threepence, and for each and every subsequent period of twenty-four hours after the first twenty-four hours the further sum of Two shillings and sixpence, provided that any less time than twenty-four hours after any complete period of twenty-four hours shall be paid as and for a period of twenty-four hours. Every truck hired hereunder having a carrying capacity of more than ten tons shall be reckoned as two trucks, and paid for accordingly. For the purpose of computing the payment to be made under any such hiring, the time from which payment is to commence to run shall be that when the truck or trucks is or are at the disposal of the Promoter, and of which he might have obtained possession by the use of due diligence, whether in fact he has actually obtained such possession or not. Provided always that nothing hereinbefore contained shall be construed as creating any obligation whatever on the Board, or the Victorian Railways Commissioners, or upon any other body or person as aforesaid, to let any truck or trucks to the Promoter, or to give him any right to hire the same.

6. That upon the completion of the said railway, the Promoter will thenceforward at all times keep open and maintain the said railway, rolling-stock, and appliances in good order and repair to the satisfaction of the Inspecting Officer.

7. That the Promoter will at all times, after the opening of the said railway, run each way from Beulah to Hopetoun and from Hopetoun to Beulah not less than one train for the carriage of passengers and goods each week day, and for the carriage of live stock on such days as the Board may from time to time direct, provided that the Board, on being at any time satisfied that the traffic on such railway is insufficient to warrant a train each way each day, may from time to time consent to vary the conditions of this clause on the request of the Promoter, and such consent shall be liable to be revoked at any time by the Board, whereupon the conditions of this clause shall revive until again varied by a like consent, and so on from time to time on the occurrence of each revocation.

8. The decision of the Inspecting Officer shall be final and conclusive in all matters under this Agreement up to the completion and opening of the railway.

9. That if the Promoter fail or neglect to complete the railway within the time hereinbefore limited, or to construct the same in accordance with the terms hereof, or be otherwise, in the opinion of the Board, in default in respect of any of the covenants or agreements herein contained, the Board may, on the occurrence of any such failure, neglect, or default, forthwith without notice to the Promoter, enter upon the lands, railway, and works, and take possession of the same for and in the name and on behalf of Her Majesty, and thereupon all the rights and privileges of the Promoter under this Agreement shall absolutely cease and determine, and the Promoter shall,

upon request, do and perform all acts, matters, and things, and execute all assurances necessary or expedient to vest the said land, railway, and works, and the absolute property therein in the Board, or in such other body or person as the Board may direct, for the benefit of Her Majesty. Provided always that nothing herein contained shall or shall be deemed to impose any obligation, in the case of any such entry, on Her Majesty or on the Board, or on any other body or person to complete such railway, or to run trains thereon.

10. The fares to be charged by the Promoter for the carriage of passengers and the rates to be charged by him for the carriage of goods or live stock shall be such as the Board may from time to time approve, but no more. Provided that the Promoter shall not be required to accept lower fares or rates than those known as "Local Rates" for the time being ruling on the Government railways for the carriage of passengers or for similar classes of goods or for the carriage of live stock; and provided further that nothing herein contained shall prevent the Promoter making special agreements, with the previous written consent of the Board, with any body or person for the carriage of its or his goods for any sum that may be mutually agreed upon, if in the opinion of the Board such agreement is made *bonâ fide* and not with the intention or result of giving an undue preference to the body or person concerned to the detriment of any other person or body using such railway.

11. In the event of the Board entering upon the railway under the powers hereinbefore conferred in that behalf the Board, if it think fit, may work the said railway and run such trains upon the same as it may deem necessary. All costs, charges, and expenses incurred by the Board in connexion with the working of such line and running any trains thereon (including the cost of providing, maintaining, repairing, and renewing the permanent way, station buildings, conveniences, fixtures, fittings, rolling-stock, and appliances when necessary) shall, after deducting any profits made by the Board in connexion with the working of the railway, be a debt accruing due from day to day by the Promoter to the Board, and as such recoverable from time to time as any other debt may for the time being be recoverable.

12. That the Promoter will at any time, after the expiration of six calendar months after notice in writing from the Board so requiring him, convey and assign to the Board or to such person or body as the Board may direct, free from encumbrances, the said railway and the absolute property therein, with all land, stations, buildings, conveniences, fixtures, fittings, rolling-stock and appliances, furniture and stores appurtenant thereto or used in connexion therewith, upon payment to him of the actual cost incurred by him in connexion with the survey of and of the construction, or for advertising for tenders in relation thereto, of the said railway, railway stations, buildings, conveniences, fixtures, fittings, furniture, rolling-stock, appliances, stores, or the purchase or acquisition of the same, subject to a deduction of such sum for depreciation as may be agreed upon between the Promoter and the Board. Provided that the amount to be paid under this clause shall not in any event as regards the price to be paid on account of the construction of the permanent way (under which term is included as well the permanent way proper as all stations, buildings, platforms, fences, fixtures, appliances and fittings, and other matters and things whatsoever connected with the railway which are not habitually movable)

exceed the sum of £32,000, or as regards the price to be paid on account of the rolling-stock (which term includes as well rolling-stock properly so called as all fittings, furniture, appliances, stores, matters, and things connected with the said railway and the user thereof not included in the term permanent way as above defined) the sum of £5,000. Provided further no charge shall be made or claimed by the Promoter in computing the sum to be paid hereunder for the price paid by him for or in connexion with the purchase or acquisition of any land used in connexion with the said railway, or in connexion with any compensation paid by the Promoter to any body or person in respect of any land injured, severed, or prejudicially affected by the construction of the said railway, it being the full intention and meaning of the parties hereto that the land so acquired or purchased by the Promoter shall, on the acquisition of the railway hereunder by the Board, be transferred without any payment whatsoever either to the Promoter or to any other person whomsoever. Provided lastly that in the event of the six months hereinbefore limited for the notice requiring the promoter to convey and assign expiring between the first day of December in one year and the thirty-first day of May in the following year the Board shall not be entitled to claim possession and control of the railway and premises until the first day of June next after the day when the six months aforesaid expire, anything hereinbefore contained notwithstanding.

13. In addition to the price or sum to be paid to the Promoter by the Board on its acquiring the said railway under the last preceding clause, such Promoter shall be entitled to be paid a further sum by way of simple interest at the rate of five pounds per centum per annum on all sums advanced or paid by him to any person or body by way of progress payments or otherwise before the expiration of two years from the date hereof on any contract for the construction of the permanent way of the said railway, or the purchase of the permanent-way material for the same, calculated from the date of such payment to such body or person up to the date of the completion of the said railway under the provisions hereinbefore contained; and in this clause "permanent way" shall have a like meaning as that assigned to the term in the last preceding clause.

14. In the event of any dispute or difference as to the amount of any depreciation or the price or sum either for purchase money or interest or otherwise to be paid to the Promoter by the Board, such dispute or difference shall be determined by a County Court Judge to be appointed by the Governor in Council in that behalf; and the award or decision of such Judge shall be final and conclusive.

15. In the event of the illness, resignation, absence, death, or incapacity of any Judge so appointed as aforesaid before giving an award the Governor in Council may appoint some other County Court Judge to decide the matter in dispute, and so on from time to time until an award has been given; and such award when given shall be final and conclusive.

16. The Minister of Railways shall within fourteen days of the next sitting of the Legislative Council and the Legislative Assembly lay or cause to be laid on the table of the said Council and Assembly respectively a copy of this Agreement, and will endeavour to have passed during the current session of Parliament an Act to validate this Agreement and to authorize the Promoter to lawfully construct the said railway.

17. In the event of an Act being passed validating this Agreement, the Board will upon the request of the Promoter resume where it lawfully may and transfer when so resumed to the Promoter any land forming part of any Crown lease or licence subject to be resumed under such lease or licence for railway purposes as may be necessary for the construction of any part of the said railway. Provided that in the event of any lessee or licensee being entitled under his lease or licence to be paid compensation, on such resumption the Promoter shall pay to the Board the amount of such compensation, and such payment shall be a condition precedent to the right of the Promoter to claim the benefit of this clause.

18. Nothing herein contained shall be construed as relieving the Promoter from the provisions of any law now or hereafter to be in force regulating the construction or use of private railways.

19. In the event of Parliament refusing or failing to ratify this Agreement during the current session this Agreement shall, or in the event of its imposing any terms more onerous than or materially different from those herein contained, this Agreement, at the Promoter's election, may be determined. In the latter event the Promoter shall within one calendar month after the passing of the Act imposing such terms give a written notice to the Board of such election. In default of such notice the Promoter shall, at the expiration of one calendar month from the passing of such Act, be deemed to have elected to accept and shall be bound by this Agreement as altered by such Act.

20. The Promoter shall not assign charge or mortgage his interest under this Agreement or introduce any new party or parties without the written consent of the Board. But the Board will not arbitrarily withhold such consent in the case of a responsible person or persons or of a company registered under the *Companies Act* 1890, but such consent shall be conditional on the person or persons or company to be substituted or introduced entering into an agreement under seal to be bound by all the terms and conditions hereinbefore contained, subject to such alterations and additions (if any) as may be prescribed by the Legislature by any Act passed during the current session of Parliament, and also conditional on the Promoter entering into a guarantee satisfactory to the Board that such person or persons or company will observe and perform all the terms and conditions and covenants of this Agreement, subject to such alterations and additions (if any) as may be prescribed by the Legislature by any Act passed during the current session of Parliament. Provided that the Promoter may at any time within two years from the date of this Agreement raise, by debentures on the security of the railway, a sum not to exceed in the whole the sum of £16,000. No such debenture shall be for a longer period than five years from the date thereof, and the interest reserved shall not in any case exceed the sum of £5 for every £100 secured thereby. In the event of the Board exercising its power of acquiring the railway by notice as hereinbefore provided during the currency of any such debenture, there shall be deducted from the amount to be paid to the Promoter under the provisions hereinbefore contained the amount of all debentures then current as well as any interest due or accruing due, calculated from the date of the last payment of interest thereon up to and inclusive of the day when the Board or body or person aforesaid obtained actual possession of the railway and premises under such notice, and also the amount of the residue of the interest above the rate of Four pounds per centum per annum which shall become payable on such debentures after

the day upon which the Board or body or person aforesaid obtained actual possession of the railway and premises under such notice. And from the date of so obtaining possession the liability of the Promoter on any current debenture whether for principal or interest shall cease, and shall thenceforward be and be deemed a debt due by the Board to the person or persons legally entitled to such debenture or debentures.

21. The Board, the Victorian Railways Commissioners, or any other body or person or persons for the time being by law intrusted with the management or control of the Victorian Government Railways shall at all reasonable times be entitled to run its, his, or their engines, carriages, and trucks over, along, or across all or any part of the railway of the Promoter, and to use such railway without payment to the Promoter of any toll or charge for so doing, with full and free right and liberty from time to time on the land of the Promoter to do, make, and perform all things, works, acts, matters, and things necessary or convenient for the purpose of connecting any Government railway or railways with the said railway of the Promoter, or otherwise for the beneficial enjoyment of the privileges or rights hereinbefore conferred, or of any of them, without payment. Provided that the Promoter shall be entitled to receive from the Board annually such sum (if any) as the Inspecting Officer may certify to be a fair and reasonable recompense for the extra cost of maintenance caused by such use.

In witness whereof the said Edward Harewood Lascelles has hereunto set his hand and seal, and the Board of Land and Works its Common Seal, on the day and year first above written.

Signed sealed and delivered by the said }
Edward Harewood Lascelles in the } E. H. LASCELLES.
presence of—

E. J. D. GUINNESS,
Crown Solicitor, Melbourne.

The Common Seal of the Board of Land }
and Works was hereunto affixed in }
the presence of—

A. R. OUTTRIM, V. President.
GEO. GRAHAM, Member.