



# DUNEDIN AND PORT CHALMERS RAILWAY AGREEMENT VALIDATION ORDINANCE 1870.

IN THE THIRTY-THIRD YEAR OF THE REIGN OF HER MAJESTY  
QUEEN VICTORIA.

SESSION XXVII. No. 307.

## ANALYSIS.

Title.  
Preamble.

1. Short Title.
2. Agreement in Schedule Validated.

3. Superintendent may by Proclamation set apart moneys collected at wharves and jetties at Dunedin and Port Chalmers for purposes of agreement.  
Schedule.

AN ORDINANCE *to validate a certain agreement made between James Mac-*<sup>Title.</sup>  
*andrew Esquire Superintendent of the Province of Otago of the one*  
*part and David Proudfoot of Dunedin in the said Province Contractor*  
*and John Thomas Chaplin of the same place Coach Proprietor of the*  
*other part relative to the construction of a Railway between Dunedin*  
*and Port Chalmers and other works connected therewith.*

[13TH JUNE 1870].

WHEREAS the Provincial Council of Otago in Session assembled did<sup>Preamble.</sup>  
on the eleventh day of May 1869 adopt the following resolutions  
that is to say: "1st That in the opinion of this Council the construction  
of a Railway between Dunedin and Port Chalmers should be proceeded with  
without delay 2nd That to place the Government in a position to provide  
for such work being carried out power should be given to the Superinten-  
tendent with the advice and consent of his Executive to enter into an  
agreement with a company formed for the purpose to hand over to such  
company jetty dues to an amount annually not exceeding eight per cent.  
of the capital required to be employed as a fund to encourage the invest-  
ment of a sufficient amount of capital 3rd That to place at the disposal of  
the Government further facilities for enabling the necessary capital to be  
raised a block of land should be set apart as a reserve to be used if necessary  
as a security for raising money" And whereas in pursuance of the said reso-  
lutions His Honor James Macandrew as and being such Superintendent of  
the Province of Otago as aforesaid entered into the agreement with the said  
David Proudfoot and John Thomas Chaplin set forth in the Schedule here-  
unto annexed And whereas doubts are entertained as to the power of the  
Superintendent to enter into the said agreement And it is expedient to set  
such doubts at rest and to validate the said agreement:

BE IT THEREFORE ENACTED by the Superintendent of the Province of  
Otago by and with the advice and consent of the Provincial Council thereof  
as follows:—

Short Title.

I. The short title of this Ordinance shall be the "Dunedin and Port Chalmers Railway Agreement Validation Ordinance 1870."

Agreement in Schedule Validated.

II. The said agreement so made and entered into by the said James Macandrew as and being such Superintendent as aforesaid and a copy of which agreement is set forth in the schedule to this Ordinance annexed shall be and be deemed to have been from the time of the making thereof as valid and effectual to all intents and purposes as if the said Superintendent had prior to making the said agreement been expressly authorised by an Ordinance of the Superintendent and Provincial Council of the Province of Otago to enter into the said agreement and all the clauses and provisions thereof.

Superintendent may by Proclamation set apart moneys collected at wharves and jetties at Dunedin and Port Chalmers for purposes of agreement.

III. It shall be lawful for the Superintendent of the Province of Otago and he is hereby authorised to set apart by proclamation in the Government *Gazette* of the said Province as soon as the railway works in the said agreement mentioned shall have been commenced the whole of the moneys thenceforth to be collected or received at or from or by means of the various jetties or wharves in or at the Port of Dunedin in the said Province and in or at the Port of Port Chalmers in the said Province and which were at the date of the said agreement paid or payable to the Provincial Treasurer of the said Province of Otago and formed part of the revenue of the said Province and such proclamation shall notwithstanding the same has not been made prior to the commencement of the present session of the said Council be deemed valid and effectual for the intents and purposes in the said agreement set forth.

#### SCHEDULE.

THIS DEED made the twenty-fifth day of January one thousand eight hundred and seventy between James Macandrew Esquire Superintendent of the Province of Otago of the one part and David Proudfoot of Dunedin in the Province of Otago and Colony of New Zealand contractor and John Thomas Chaplin of the same place coach proprietor of the other part *Whereas* the making and maintaining a railway from Port Chalmers in the said Province of Otago to the City of Dunedin in the same Province and the construction of 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 would be of great public utility and highly beneficial to the said Province of Otago *And whereas* the said David Proudfoot and John Thomas Chaplin have proposed to the Superintendent of the Province of Otago to make and maintain such a railway and to construct wharves jetties and other necessary erections in connection therewith and to provide the necessary capital therefor *And whereas* it has been deemed advisable by the Provincial Government of Otago to encourage the investment of an amount of capital sufficient for the making and maintaining of the said railway and the construction of such wharves jetties and other necessary erections as aforesaid *And whereas* the Provincial Council of Otago in Session assembled did on the eleventh day of May one thousand eight hundred and sixty-nine adopt the following resolutions namely—

- 1st. "That in the opinion of this Council the construction of a railway between Dunedin and Port Chalmers should be proceeded with without delay."
- 2nd. "That to place the Government in a position to provide for such work being carried out power should be given to the Superintendent with the advice of his Executive to enter into an agreement with a company formed for the purpose to hand over to such company jetty dues to an amount annually not exceeding eight per cent. of the capital required to be employed as a fund to encourage the investment of a sufficient amount of capital."
- 3rd. "That to place at the disposal of the Government further facilities for enabling the necessary capital to be raised a block of land should be set apart as a reserve to be used if necessary as a security for raising money."

*And whereas* the said David Proudfoot and John Thomas Chaplin have applied to the said James Macandrew as such Superintendent as aforesaid to enter into an agreement with them to hand over or secure to them the jetty dues henceforth to be collected at the several jetties in the Ports of Dunedin and Port Chalmers so as to form a fund out of which payment of interest at and after the rate of eight pounds per centum per annum on the amount of the capital required to be employed by the said David Proudfoot and John Thomas Chaplin in carrying out and constructing the said works and in connection therewith may be secured to them the said David Proudfoot and John Thomas Chaplin *And whereas* the said James Macandrew as such Superintendent as aforesaid by and with the advice and consent of his Executive Council (as he the said James Macandrew doth hereby testify and declare) has consented and agreed to enter into such agreement and to execute the covenants on his part hereinafter contained.

*Now this deed witnesseth* that for the purposes aforesaid and in consideration of the premises and of the covenants by and on behalf of the said David Proudfoot and John Thomas Chaplin which are herein contained he the said James Macandrew as such Superintendent of the Province of Otago as aforesaid and so as to bind himself as Superintendent and his successors in office so far as he lawfully may or can do so but not so as to charge himself as heirs executors or administrators or his or their own proper lands tenements goods or chattels with or for the performance of all or any of the covenants conditions or agreements herein contained doth hereby for himself and his successors Superintendents of the Province of Otago (he the said James Macandrew as such Superintendent and his successors being 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 he the said Superintendent will so soon as the railway works hereinafter mentioned shall have been commenced set apart by Proclamation in the Government Gazette of the said Province of Otago or by such other means as he lawfully may the whole of the moneys thenceforth to be collected or received at or from or by means of the various jetties and wharves in or at the Port of Dunedin in the said Province and in or at the Port of Port Chalmers in the said Province and which are now paid to the Provincial Treasurer of the said Province of Otago and form 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 or received at from or by means of the said jetties and wharves shall 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 shall be applied to the payment of the interest hereinafter mentioned And that he the said Superintendent will thereafter on the first day of April and the first day of October in each year until the said railway shall 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 Railway Guarantee Account" interest upon the amount of the capital which shall 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 shall be so paid as aforesaid shall 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 may amount to And also will after the said railway shall have been constructed and shall be in working order and whilst the same shall 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 completion of the said works interest at such a rate as when added to the nett income derived by the said David Proudfoot and John Thomas Chaplin from the said railway will 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 per cent per annum And also that if the said moneys will not suffice to increase the interest to that rate then that the said Superintendent shall 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 will otherwise provide for the payment of such interest out of the ordinary revenues of the said Province but this proviso is not to be held to interfere with or be held to 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 Provided always that until the said Superintendent or his successors shall have exercised the power of purchase hereinafter contained the present rates and charges payable at such jetties and wharves shall not be reduced Provided always and it is hereby expressly agreed by and between the said parties hereto that until the said Superintendent or his successors shall have exercised the power of purchase hereinafter contained no toll dues and wharfages shall be levied under the provisions of the "Jetties and Wharves Ordinance 1858" or any other Law or Ordinance now in force or which hereafter during the continuance of these presents may be in force on any goods that may arrive at the Port of Otago whether landed at Port Chalmers or Dunedin or any other intermediate place between Port Chalmers and Dunedin and which shall be carried by over or upon the said railway without the previous consent in writing of the said David Proudfoot and John Thomas Chaplin their executors administrators or assigns first had and obtained And further that he the said Superintendent will do or cause to be done all acts matters and things necessary and proper for obtaining and paying the said interest and every part thereof when and so often as the same shall become payable under and by virtue of this deed And further that he the said Superintendent will do or cause to be done all acts matters and things necessary to authorise and empower the said David Proudfoot and John Thomas Chaplin to construct a railway wharf at Port Chalmers aforesaid and will use his best endeavours to obtain for the said David Proudfoot and John Thomas Chaplin any authority or permission which may be required for that purpose And further that he the said Superintendent will use every endeavour to have passed by the said Provincial Council of Otago at and during the Session of the said Provincial Council which shall be held next after the making of such Proclamation setting apart the said monies so to be collected and received at the said jetties and wharves as aforesaid an Ordinance validating the aforesaid Proclamation and making provision for setting apart and payment of the money collected and received at on or by means of the various jetties and wharves at the Ports of Dunedin and Port Chalmers as hereinbefore covenanted and agreed to be set apart and paid And further that if at any time hereafter the said David Proudfoot and John Thomas Chaplin shall for the purposes of the making and construction of the said Railway and other works as aforesaid require any land theretofore granted by the Crown in the said Province and shall signify such desire to the said Superintendent and shall also require him the said Superintendent to cause an Ordinance to be passed by the said Provincial Council of Otago under the authority of "The Provincial Compulsory Land Taking Act 1866" authorizing the compulsory taking of such land then that he the said Superintendent will use every endeavour to procure to be passed at and during the then present or next Session of the said Provincial Council of Otago an Ordinance authorising the said David Proudfoot and John Thomas Chaplin to take compulsorily such land as may be so required as aforesaid And will thereafter immediately use every endeavour to obtain to such Ordinance the assent of the Governor of New Zealand for the then time being And that he the said Superintendent will so often as the said David Proudfoot and John Thomas Chaplin shall for the purpose of the making and construction of and as a part of the site of the said railway or other works require any lands already vested or which may be hereafter vested in the Superintendent of the Province of Otago (and whether such lands be situate above high water mark or be situate on the shore of the Otago Harbor in the said

Province below high water mark or be altogether covered by the waters of the said Harbor) use his best endeavors to get passed at the then present or next Session of the said Provincial Council of Otago an Ordinance authorising the free grant and conveyance to the said David Proudfoot and John Thomas Chaplin of the said lands so granted and will thereupon immediately use every endeavor to obtain the assent of the said Governor to the said Ordinance and thereupon will convey to the said David Proudfoot and John Thomas Chaplin all such lands the subject of the said Ordinance free of all purchase money costs charges and expenses *And further* that he the said Superintendent will pay to the said David Proudfoot and John Thomas Chaplin their executors administrators or assigns for any term not exceeding three months during which the sum of five thousand pounds shall remain in the hands of the Provincial Treasurer as hereinafter mentioned interest at and after the rate of eight pounds per centum per annum on the said sum of five thousand pounds required to be deposited by the said David Proudfoot and John Thomas Chaplin as hereinafter mentioned *And further* that he the said Superintendent will at all times hereafter at the costs and charges of the said David Proudfoot and John Thomas Chaplin make do and cause to be done every act deed matter and thing necessary and proper for effectuating all and every the ends intents and purposes hereinbefore mentioned or referred to and will use every endeavor to procure all and every such further Ordinance or Ordinances to be passed by the said Provincial Council of Otago at all and every time or times hereafter when occasion shall require and to obtain the assent to such Ordinance or Ordinances of the said Governor (when necessary) and generally to do or cause to be done every other act matter and thing requisite and necessary in and about the premises *And further* that the said Superintendent will not hereafter assist any person or persons company or corporation who may undertake the construction of a line of railway between Dunedin and Port Chalmers to the prejudice of the said David Proudfoot and John Thomas Chaplin their executors administrators or assigns by guaranteeing the payment of interest to such person company or corporation upon the whole or any part of the capital necessary to be employed in the construction of such line *Provided always and it is hereby expressly agreed and declared* between and by the parties hereto that nothing herein contained shall extend to charge the person of the said James Macandrew as such Superintendent as aforesaid or the heirs executors or administrators of the said James Macandrew or any of his or their own proper lands tenements goods or chattels with or for the performance of all or any of the covenants conditions or agreements in these presents contained on the part of the said James Macandrew as such Superintendent as aforesaid or his successors in office to be observed and performed.

*And this deed also witnesseth* that in consideration of the premises and of the covenants by and on behalf of the said Superintendent which are hereinbefore contained the said David Proudfoot and John Thomas Chaplin for themselves their heirs executors administrators and assigns do and each of them doth hereby covenant promise and agree with and to the said Superintendent as follows (that is to say) The said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns will 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 may be necessary for the construction and convenient 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 And that the commencing point of the said railway shall be a point in the harbor of Port Chalmers particularised on the plan marked with the letter "A" and signed by the said parties hereto And that the point of termination of the said railway shall be a point in the site reserved for a central railway station at Dunedin aforesaid consisting of two acres and indicated by a red color on the said plan marked "A" and that an engineer to be appointed by the Superintendent shall have and exercise a general supervision and control on behalf of the Province in all matters relating to the construction maintenance and general management and working of the said line of railway and who is hereinafter referred to by the title of "Inspecting Engineer" *And* that the line of the said intended railway shall be within the lines of deviation shewn on the said plan *And further* that the said David Proudfoot and John Thomas Chaplin will forthwith deposit with the Provincial Treasurer for the time being of the Province of Otago aforesaid the sum of five thousand pounds to be held by the said Provincial Treasurer and his successors in office or other the person or persons for the time being having the custody or control of the public funds of the said Province as and by way of security for the due completion by the said David Proudfoot and John Thomas Chaplin of the said railway and other works in accordance with these presents such sum to be returned to the said David Proudfoot and John Thomas Chaplin so soon as the said Inspecting Engineer shall certify to the said Superintendent that the said David Proudfoot and John Thomas Chaplin have performed works upon and constructed the said line to the extent in value of five thousand pounds but to be absolutely forfeited to the said Superintendent unless such works to the extent of five thousand pounds shall not be so constructed within eighteen months from the day of the date hereof *And further* that the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns will commence the works in connection with the construction of the said line of railway within six weeks from the day of the date hereof and will from the time of the commencement of the said works uniformly and regularly carry on the same and will complete the same to the satisfaction of the Inspecting Engineer and will obtain a certificate from him that the whole length of the said railway is completed and provided with rolling stock and is ready and fit to be used for public traffic within one year and six months from the commencement of the said works It being expressly agreed that unless the said works shall be so completed as aforesaid within the said term of one year and six months all payments of guarantee shall cease until the Inspecting Engineer shall have certified that the whole length of the railway is completed and provided with rolling stock and ready and fit to be used for public traffic *And further* that the said David Proudfoot and John Thomas Chaplin their executors administrators and assigns shall and will make construct and finish the said works in accordance in every respect with the specification contained in the Schedule hereto annexed and shall and will for each and every case for which the said specifications do not make provision or for which the provision made is insufficient or improper submit to the Inspecting Engineer working drawings and specifications describing the mode in which the different works are proposed to be constructed and will procure the written approval of the Inspecting Engineer to the same before the commencement of any of the several works to which the drawings and specifications specially relate and that duplicates of all documents submitted for approval shall be forwarded therewith and may be retained by the Inspecting Engineer *And further* that the gauge of the said railway shall be four feet eight and a half inches and no gradient in the said line shall be steeper than one in sixty and no curve sharper than ten chains radius and that

the works on the said railway shall be substantially constructed and the whole of the materials workmanship plant and appliances provided shall be of the best and most approved description and the whole railway shall be completed in the most workmanlike manner and properly provided and equipped with all necessary and contingent works and appliances *And further* that the said David Proudfoot and John Thomas Chaplin their executors administrators or assigns will acquire at their own cost the land required for the said line of railway and also all lands required for sidings stations or other contingent works or purposes other than the lands hereinbefore mentioned or referred to and except the Dunedin terminus of the said railway which they shall be allowed to use and occupy free of charge *And further* that the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns will secure by and permanently enclose and protect throughout with good and substantial fencing constructed and erected so as to form a legal fence for great and small cattle under the provisions of the laws in the Province of Otago aforesaid for the time being in force relating to fencing the whole line of the said railway and works *And further* that the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns will at their own cost provide for the said line a sufficient quantity of rolling stock for the convenient and safe working of the traffic on the said railway *And further* that the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns will at all times during the continuance of the guarantee on the part of the Superintendent hereinbefore contained keep and maintain the said line of railway and all works stations buildings machinery and plant connected therewith in thorough good order and repair and will at all times during the term aforesaid regularly work the said railway for public traffic under such provisions and regulations as shall be approved of by the Superintendent and will run at least six trains each way per day throughout the whole length of the line at a rate of not less than fifteen miles per hour including stoppages *Provided* that if in the opinion of the Inspecting Engineer the traffic upon the said line shall from time to time or at any time not be sufficient to require six trains per day to be run then the said David Proudfoot and John Thomas Chaplin their executors administrators or assigns shall run such lesser number of trains each way per day as shall in the opinion of the Inspecting Engineer be sufficient during such time or times as shall from time to time be fixed by the said Inspecting Engineer by writing under his hand *And further* that the said David Proudfoot and John Thomas Chaplin will charge such rates of fares and charges for passengers and for goods and other things conveyed as the said Superintendent with the advice and consent of his Executive Council may from time to time by Proclamation in the Provincial Government *Gazette* fix and approve of and no other rates whatsoever *Provided* that the charges for general merchandise shall not be reduced below four shillings and sixpence per ton and the rates of fares and charges for passengers below one shilling and sixpence for a single and two shillings and sixpence for a return ticket for first-class passengers and one shilling for a single and one shilling and sixpence for a return ticket for second class passengers without the consent in writing of the said David Proudfoot and John Thomas Chaplin first obtained for that purpose *And further* that the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns will from the time of the due completion of the said line after deducting out of the income arising from the said railway all reasonable expenses payable thereout and the cost of the maintenance of the said line and other works apply the clear surplus of such income if sufficient and if insufficient then so far as the same will extend in payment of interest at the rate of eight pounds per centum per annum on the entire capital not exceeding seventy thousand pounds employed in the construction of the said railway and other works so as to reduce as far as possible the amount payable by the said Superintendent under the guarantee hereinbefore contained *And further* that the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns shall one calendar month at least before each half yearly day of payment of interest as hereinbefore is mentioned make out and submit to the said Superintendent a statement in writing of the receipts and expenditure on account of income for the current half year and shall at the same time notify in writing to the said Superintendent the amount required to be applied out of the said "Port Chalmers Railway Guarantee Account" to pay or make up the deficiency of the surplus income of the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns for payment of the interest then becoming payable and the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns will from time to time when required by the said Superintendent furnish to him proper statements and accounts to enable him to ascertain the position of the affairs of the said David Proudfoot and John Thomas Chaplin their executors administrators or assigns and in verification thereof will at all reasonable times produce their account books for inspection by the said Superintendent or any person authorized by him in that behalf and will properly vouch such statements if required so to do *Provided always and it is hereby mutually agreed and declared* that no surplus or deficiency shall be carried from the accounts of one year to those of another but that should the nett income in any one year exceed the amount of the guarantee the surplus income shall belong to the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns but should the nett income in any year be less than the amount of the guarantee the Superintendent shall be liable under these presents for an amount equal to the difference between the amount of the nett income and the amount of the guarantee but should the expenditure in any year be greater than the receipts so as to show a loss the Superintendent shall be liable only to the extent of the guarantee *Provided also and it is hereby also agreed and declared* that should the said David Proudfoot and John Thomas Chaplin their executors administrators or assigns at any time during the continuance of these presents cease to work the said railway for the carriage of goods and passengers according to the provisions herein contained all payments of guarantee under these presents shall cease during any time or times the said railway shall not be worked in accordance with such provisions *And for the considerations aforesaid* the said David Proudfoot and John Thomas Chaplin for themselves their heirs executors administrators and assigns doth hereby further covenant promise and agree with and to the said Superintendent that they the said David Proudfoot and John Thomas Chaplin their executors or administrators will not assign transfer or otherwise part with their interest in the said railway and works or in this agreement without the consent in writing of the said Superintendent first had and obtained for that purpose except upon and subject to the terms of this agreement and more especially to the covenant hereinafter contained *And further* that if the said Superintendent shall at any time after the expiration of five years from the date upon which the said railway and other works shall have been formed and constructed as aforesaid be desirous of purchasing from the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns at the then marketable value the interest of the said David Proudfoot and John Thomas Chaplin their executors administrators and assigns in the said railway and other works and under this agreement and of such desire shall give twelve months notice to the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns either personally or by leaving the same at their usual or last known place

of business or abode in the Province of Otago aforesaid then and in such case the marketable value of the interest of the said David Proudfoot and John Thomas Chaplin their executors administrators and assigns in the said railway and other works and under this agreement shall be ascertained by three competent persons one to be chosen by the said Superintendent and another by the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns and the third by the two arbitrators so chosen And the said arbitrators in making their said valuation shall take into consideration the value of the improvements made by the said David Proudfoot and John Thomas Chaplin their executors administrators and assigns upon all lands which shall have been conveyed to them by the Superintendent or his successors free of charge or which shall at the time of such valuation be held by them or him of the said Superintendent or his successors in office and shall not take into their consideration the value of such lands And the award of the said arbitrators or of any two of them shall be conclusive as to such value and the costs of such valuation shall be borne equally by the said Superintendent and the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns And the value awarded shall be paid within three calendar months after notice of the award shall be given by the said Superintendent and upon payment of such valuation the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns shall well and effectually convey and assure all the lands hereditaments and premises upon which the line of railway shall be constructed and which shall be held in connection therewith and the inheritance thereof in fee simple together with the said railway and other works and shall assign and transfer all rolling and other stock plant and effects of the said railway or of the said David Proudfoot and John Thomas Chaplin their heirs executors administrators or assigns used in connection therewith unto the said Superintendent or as he shall direct *Provided also and it is hereby further declared and agreed* that in case any question shall at any time arise between the said parties hereto touching the construction of these presents or any clause matter or thing herein contained or any other matter or thing arising out of or under these presents such question difference or dispute shall be referred to the arbitration of two indifferent persons one to be named by the said Superintendent and the other by the said David Proudfoot and John Thomas Chaplin and the award of such arbitrators or in case they disagree of an umpire to be chosen by them before they shall proceed in such reference shall be final conclusive and binding upon them *And* in case either of the parties hereto or their respective representatives shall neglect or refuse to appoint or name an arbitrator in his or their behalf for the space of fourteen days after he or they shall have been required to do so by notice in writing from the other so to do (such notice to be served personally or to be left for him or them or sent by post to his or their usual or last known place of business or abode in the Province of Otago) it shall be lawful for the party so requiring such nomination to appoint an arbitrator on the part of the party so neglecting or refusing and the decision or award of such two arbitrators or of such umpire shall be binding and conclusive on the parties to these presents and their respective representatives *And* it is hereby declared that such submission and reference shall at the instance of either of the said parties be made a Rule of the Supreme Court of New Zealand *In witness* whereof James Macandrew Esquire as such Superintendent of the Province of Otago as aforesaid hath hereunto set his hand and caused the Public Seal of the said Province to be hereunto affixed and the said David Proudfoot and John Thomas Chaplin have hereunto set their hands and seals the day and year first before written.

THE SCHEDULE ABOVE REFERRED TO.

Specification and particulars of the several descriptions of work to be performed in the construction of the Dunedin and Port Chalmers Railway :—

*Earthwork.*

All the cuttings shall be at least 10 feet in clear width at formation level with slopes in ordinary soil of 1 to 11 but if in rock a less slope may be made.

Embankments shall be at least 12 feet in width at formation level with slopes of 1½ horizontal to 1 vertical excepting in any portion of the line in which the contractor may elect to retain them by walls of masonry when the slope can be reduced to suit the nature of the ground and the foundations to be obtained.

Sidings and portions of the line partly in cutting and partly in embankment shall be 11 feet in width at formation level the slopes being the same as in the two former clauses.

*Culverts.*

Culverts shall be of stone brick or iron If in stone of good substantial bluestone rubble masonry set in Oamaru lime mortar above the line of high water spring tides and in Portland cement below that level The lime mortar to be in the proportion of 1 of lime to 2 of clean sharp sand and the cement to be used in the proportion of 1 to 3 of clean sharp sand All the culverts above 2 feet opening to be arched with coursed and radiating stones springing from proper skewbacks.

The inverts shall also be of coursed and radiated stones set and grouted in cement.

If in brickwork they shall be built with the best kiln-burnt hard stock bricks set in mortar or cement of the description and in accordance with the foregoing clause The arches of culverts in brickwork shall be semicircular and the inverts shall be set and grouted with cement.

The ends of culverts shall be faced and wing walls carried out in rubble masonry or brickwork.

The aprons to be rough pitched and grouted.

*Bridges, &c.*

Bridges and viaducts shall be of timber of the several sizes required for the different spans They shall be in all cases strongly and substantially erected being firmly strapped braced framed and strutted in every part and securely bolted where required.

The timber used shall be either totara black pine or manuka All the ironwork shall be of the best description with clean cut screws and nuts and well forged heads to all bolts.

*Wharves, &c.*

The wharf at Port Chalmers shall be of sufficient length to give berthing room for six (6) vessels of a carrying capacity of 1000 tons each.

This shall be extended from time to time as the increase of traffic may demand.

The portion of wharf next the shore shall be formed with a strong timber retaining face the area within being reclaimed.

The portion extending into the harbor shall be of timber of the several sizes required and shall be substantially and strongly built in every part.

The timber and iron work shall be the same as described for bridges.

All the piles shall be shod with iron and driven until a firm and solid bottom is obtained.

The timber face of reclamation shall have ground piles driven on shore and to be tied in with iron tie rods. The wharf to be provided with all necessary mooring and fender piles.

*Tunnels.*

The tunnels shall be lined with stone or brick work in mortar as before described should the nature of the ground require such a course to be adopted either in the entire length or any portion of them The entrances of tunnels shall be faced with stone or brick work.

*Stations.*

The stations sheds &c. shall be all of timber and iron plainly and substantially built of the necessary sizes to provide for the traffic and provided with passenger and goods platform offices &c.

*Rails.*

Weight of rails shall not be less than 55lbs. (fifty-five pounds) per lineal yard.

All roads or streets crossed or interfered with by the said David Proudfoot and John Thomas Chaplin shall be restored by them to as good condition as they were in before they commenced operations Any alterations of line or levels thereof and all bridges or other crossings shall be done to the satisfaction of the several Local Boards Corporations or other parties having charge of such roads the said David Proudfoot and John Thomas Chaplin to provide accommodation for the traffic along these roads during the operations and to be responsible for any accident or damage to person or property caused by that accommodation being insufficient.

The cost of the maintenance of the line and works shall not for any purpose connected with this specification or the agreement hereto annexed include the cost of repair of any damage or injury to works arising from insufficient material construction or foundations.

Signed by the said James Macandrew Esquire as such Superintendent of the said Province of Otago and sealed with the public seal of the said Province in the presence of B. C. HAGGITT, Solr., Dunedin.

J. MACANDREW,  
Supt.

Signed sealed and delivered by the said David Proudfoot and John Thomas Chaplin the alterations and interlineations opposite to which the said David Proudfoot and John Thomas Chaplin have set their initials in the margin having been previously made in the presence of H. D. MADDOCK, Solr., Dunedin.

DAVID PROUDFOOT.  
JOHN THOMAS CHAPLIN.

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DUNEDIN, NEW ZEALAND :

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