

THE RAILWAY LAWS

OF THE

REPUBLIC OF HAWAII

AND THE

CHARTER AND CONTRACT

BETWEEN THE

OAHU RAILWAY & LAND CO.

AND THE

REPUBLIC OF HAWAII.

HONOLULU :

PRINTED BY THE HAWAIIAN GAZETTE COMPANY,
1898.

ENCOURAGEMENT OF RAILWAYS

IN THE

REPUBLIC OF HAWAII.

The Oahu Railway and Land Company respectfully submit the following Copy of the Legislature Enactments of 1878, 1888 and 1890, relating to promoting the Construction of Railways.

Following the above named "Acts" will be found the "Contract" duly authorized by the laws of 1878 and 1888, and especially provided for in Section 1 of the laws of 1878; signed December 4th, 1888, by the four members of the Cabinet.

Next in order will be found the *Charter* granted under date of February 4th, 1889. It will be seen that all the *Powers, Rights and Privileges* granted to the Oahu Railway and Land Company in this instrument are fully authorized by the laws above referred to.

It may be observed that the powers, rights and privileges granted under the General Rail Road Act of 1878 to "Any association of persons who may associate themselves together under the General Corporation Act," are almost unlimited; special attention is therefore called to the last section of that Act, which clearly defines the distinction between railways of private and public utility, and shows that the *Powers, Rights*

and *Privileges* of that Act are granted only to Railways of public utility such as the Oahu Railway and Land Company. Section 31 of the General Rail Road Act reads as follows:

“And be it further enacted, that the aid by this Act contemplated, shall be only extended to railroads of public utility, and not to railroads of mere private or *limited* convenience.”

AN ACT

TO PROMOTE THE CONSTRUCTION OF RAILWAYS.

WHEREAS, good roads are absolutely necessary to develop the resources of many parts of the Kingdom, and railroads are essential to bring produce to safe ports; therefore,

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled:

SECTION 1. Power and authority is hereby given to the Minister of the Interior, by and with the consent of His Majesty in Privy Council, to enter into contract with any association of persons who may associate themselves together under the General Corporation Act of this Kingdom, and by the general law in relation to corporations and subject to all the provisions thereof, for the purpose of building and operating a railroad or railroads in any part of this Kingdom.

SECTION 2. And said Minister, with the consent of His Majesty in Privy Council, shall have power and authority to grant a right of way through all Government lands, and to grant such Government lands as may be necessary for their build-

ings, water stations, depots, and stores, or *other structures*, and also the free use of water, to any corporation as aforesaid for the purpose of building such railroad or railroads.

SECTION 3. For the purposes and subject to the provisions and restrictions of this Act, the corporation may, from time to time, exercise any of the following powers:

It may enter upon any lands which may adjoin upon the line of any railway which may be authorized by charter to be made, and may bore, dig, cut, trench, embank and drain, and may remove or lay, take, carry away, and use any earth, gravel, stone, timber or other things dug or obtained therein or otherwise in the execution of any powers hereafter given, and which may be proper for the making, maintaining, altering, repairing, or using any railway lawfully authorized, or which may obstruct the making, maintaining, altering, repairing, or using of the same.

It may make, in, upon, across, under or over any such lands, or any street, roads, ways, railroads, tramways, hills, valleys, rivers, canals, water courses, or waters, such temporary or permanent inclined planes, tunnels, cuttings, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, fences, and other works and conveniences as it thinks proper.

It may alter the course of any rivers, not navigable, canals, brooks, streams or water courses during such time as is necessary for constructing or maintaining tunnels, bridges, or other works over, under, or affecting the same; and may temporarily or permanently alter the course of any such rivers or streams, or raise or sink the level of any such rivers or streams, streets, roads or ways, in order the more conveniently to carry the same over or under or by the side of any railway.

It may make drains or conduits into, through, or under any lands adjoining the railway for the purpose of conveying water

from or to the railway, and upon the railway, or any lands adjoining or near thereto.

It may make such piers, jetties, stations, sidings, *wharves*, warehouses, toll-houses, and other houses, yards, engines, machinery, signal posts and other apparatus, works and conveniences whatsoever connected with the railway as the corporation may think proper, and may from time to time, alter, repair, or discontinue any such apparatus, works and conveniences, and substitute others in their stead.

It may fell or remove any timber or other trees being within two hundred feet from either side of the railway which, by their liability to fall or otherwise, might obstruct or injure the railway.

It may also fell or cut down and remove any trees or wood, whether timber or other trees, or scrub or underwood, which, by reason of the line making a curve or otherwise, may obstruct or impede a view of any signal post from any portion of the line which shall be within one mile in a right line from any such signal post.

It may enter upon and use any existing private road, being a road graveled or formed with stones or other hard material, and not being an avenue or approach to any dwelling house.

It may enter upon and take, purchase and hold all such lands, tenements and hereditaments as may be required for the purposes of the railway and works connected therewith.

It may do all other things necessary or convenient for making, maintaining, altering, or repairing and using the railway.

SECTION 4. In the exercise of the powers mentioned in the last preceding section, the corporation shall do as little damage as can be; and shall make full compensation in manner in this Act provided, to all parties interested for all damage sustained by reason of the exercise of such power.

SECTION 5. The lands to be taken or used for the line of any railway lawfully authorized, shall not exceed one hundred feet in width, except where greater width is necessary for engines or carriages to turn, stand in, or pass each other, or for stations, or for raising embankments, or for crossing valleys or low grades, or for cutting through high grounds, or for the erection or establishment of any fixed or *permanent wharf*, warehouse, toll-house, machinery or other building or erection, or for excavating, removing or depositing earth or other material.

SECTION 6. Subject to the restrictions hereinafter mentioned, the corporation may, without previous payment, tender or deposit, enter upon and use any lands adjoining or lying near the railway for the purpose of taking earth or soil by side-cuttings therefrom, or of depositing, working or manufacturing upon such lands any earth, clay, stones, brick, slates, timber, lime or other materials, or of obtaining materials therefrom for the construction or repair of the railway or works, or for making temporary roads or approaches to or from the railway or works, or for any other purpose necessary to the construction and maintenance of the railway.

SECTION 7. Before it makes such temporary use of any such lands, the corporation shall give twenty-one days' notice of such intention to the owners or occupiers of such lands, except in the case of accident, the railway requiring immediate reparation, or where the owners cannot be ascertained; and shall separate, by sufficient railings or fences, so much of the lands as is required to be so used from the other lands adjoining thereto.

SECTION 8. The corporation shall not make such temporary use of any such lands lying at a greater distance than one hun-

dred feet within a town, or three hundred feet elsewhere from the railway, or make bricks, or place a steam engine upon any of such lands at any place not distant at least five hundred yards from any dwelling house, without the consent of the owner or occupier thereof.

SECTION 9. The corporation shall, until any land taken by it for temporary use, be given up to the owner, or purchased by it under the provision hereinafter in this Act contained, pay to the owner, half yearly, reasonable compensation for the use of such land and for any damage or injury done to the crop or to the surface of the land or otherwise; and such compensation shall be settled—if the corporation cannot agree with the owner—as in the case of disputed compensation; but in determining the amount of said compensation no payment or allowance shall be made for the earth, gravel or other materials taken, further or otherwise than as the removal or taking thereof shall or may have injuriously affected the value of the land or the occupation or enjoyment thereof.

SECTION 10. Except in the case of such accident as aforesaid, no stone quarry which, for the period of twelve months immediately preceding, shall have been commonly worked or used for getting materials for the purpose of selling the same shall, without the consent of the owner and occupier thereof respectively, be taken or used for any of the purposes hereinbefore mentioned.

SECTION 11. The compensation to be paid for any lands to be purchased or taken from any person under any disability and not having power to sell and convey or release such lands, except under this Act, and the compensation to be paid for any damage or injury to any such lands, may be agreed on between the corporation and such persons.

SECTION 12. When the corporation gives notice of its intention to take any lands for railway purposes, and failing to agree as to the compensation to be paid in respect thereof, the compensation is to be determined as in cases of disputed compensation, if the corporation deem it expedient to pay the amount of compensation so determined, the corporation may, within twenty days after notice to it, of the amount of compensation so determined, withdraw the said first mentioned notice.

SECTION 13. In every case of disputed compensation for lands required for railway purposes, the person claiming the compensation shall deliver to the corporation a statement in writing of the estate or interest or of the damage or injury in respect of which he claims compensation and of the amount which he is willing to accept in full for such compensation; and every such statement so delivered shall be preserved by the corporation, and every such dispute may, by agreement, between the claimant and the corporation, be referred to the arbitration of two persons, one of whom shall be appointed by the corporation and the other by the person claiming the compensation; and in case of difference between them, of some person to be appointed by the other two before entering upon the reference.

SECTION 14. In every case of disputed compensation not so referred to arbitration, either of the parties in difference, and in every case in which the person entitled to compensation is absent from this Kingdom or is not known to the corporation, or cannot after diligent inquiry be found, or an agreement as to compensation is not come to, then the corporation may apply in the case of a claim against it to any Justice of the Supreme Court, to nominate some persons to determine the amount of compensation to be paid to the person claiming or entitled to compensation; and the persons so nominated shall

determine and award on the matter as the sole arbitrator thereon.

SECTION 15. Before making any such application, either party shall give at least fourteen days' notice to the other of the intention to make such application, or where the person interested in the compensation is absent from this Kingdom, or is not known to the other party in difference, or cannot, after diligent inquiry, be found, notice of such intention shall be given by advertisement in two newspapers, published in Honolulu, fourteen days at least, before making such application; and every such notice shall describe the land in respect of which compensation is to be assessed, and shall specify the time and place at which such application will be made.

SECTION 16. The nomination by any Justice of a person to be such sole arbitrator, shall be made in writing, and in duplicate, and shall be delivered to each party, if known, and resident within this Kingdom.

SECTION 17. In determining the value of the land taken, and the damage (if any) to be sustained by reason of the severing of the lands taken from other lands of the same owner, or of such other lands being otherwise injuriously affected by the exercise of the powers of this Act, the enhancement of the value of such other lands by railways, or otherwise shall be taken into consideration in the reduction of the amount which would be otherwise awarded.

SECTION 18. Every award in cases of disputed compensation, shall state whether there are any lands of the same owner adjoining the lands taken or to be taken; and if there be any such adjoining lands, what allowance (if any) has been made

for the enhanced value of the same; and if no such allowance is intended to be made, the award shall so state; and if any award shall omit any statement hereby required to be made, the same shall be void. And every such award may be made a rule of the Supreme Court, and enforced accordingly.

SECTION 19. Where lands are acquired by the corporation under the provisions of this Act, but are not required for the purposes thereof, the corporation, within the prescribed period, or if no period be prescribed, within ten years after the expiration of the time limited by the Charter for the completion of the works, shall absolutely sell and dispose of all such superfluous lands and apply the purchase money arising from such sale to the purpose of the Charter, and in default thereof, all such superfluous lands remaining unsold at the expiration of such period, shall thereupon vest in and become the property of the owners of the lands adjoining thereto in proportion to the extent of their lands respectively adjoining the same.

SECTION 20. Before the corporation dispose of any such superfluous lands, they shall, unless such lands be situated within a town, or be lands built upon, or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot, after diligent inquiry, be found, then the like offer shall be made to the person, or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and when more than one such person shall be entitled to such right of pre-emption, such offer shall be made to such persons in succession, one after another, in such order as the corporation shall think fit.

SECTION 21. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the corporation; or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a Justice by some person not interested in the matter in question, stating that such offer was made and was refused or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not, after diligent inquiry, be found, or were not capable of entering into a contract for the purchase of such lands, shall, in all Courts, be sufficient evidence of the facts therein stated.

SECTION 22. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the corporation do not agree to the price thereof, then such price shall be ascertained by arbitration; and the costs of such arbitration shall be in the discretion of the arbitrators.

SECTION 23. The corporation shall fence in the line of railway with a good and sufficient legal fence.

SECTION 24. The corporation may, from time to time, make by-laws and regulations for the management and control of the railway, and for regulating the traffic thereon; and such by-laws and regulations on being approved by the King in Cabinet Council, shall have the force of law. Provided the corporation shall, at all times, cause a copy of such by-laws and regulations to be posted and exhibited at the principal stations on the line of railway.

SECTION 25. Any person violating any by-law or regulation approved as aforesaid, shall be subject to a fine not exceeding twenty-five dollars and costs; and in default of payment, shall be imprisoned for any term not exceeding three months.

SECTION 26. Police and District Justices shall have jurisdiction to hear and determine all cases arising under this statute or the by-laws and regulations made under the authority thereof.

SECTION 1. That Section 27 of Chapter 29 of the laws of 1878, being an Act entitled "An Act to promote the construction of Railways," approved August 1st, A. D. 1878, be and the same is hereby amended so as to read as follows:

SECTION 27. And be it further enacted that the said Minister is hereby authorized to guarantee to any corporation that shall undertake any such railroad or railroads a subsidy of not more than two thousand five hundred dollars per mile of railroad actually constructed, equipped, and in complete running order, such completion to be evidenced by a certificate in writing of the Surveyor-General, which certificate shall be filed in the office of said Minister.

SECTION 2. That Section 28 of said Chapter 29 be and the same is hereby amended so as to read as follows:

SECTION 28. And be it further enacted that the Minister of Finance is hereby authorized and required to pay on the certificate of the Minister of the Interior, to the corporation or corporations in this Act contemplated such sums of money as may be ascertained to be due by virtue and authority of the preceding section, but not in any case to exceed two thousand five hundred dollars per mile of railroad constructed, out of any moneys which may at the time be in the Public Treasury not

otherwise appropriated. Provided, that should such moneys available not be sufficient at any time to meet such demand or demands, the said Minister of Finance, by and with the consent of the King, may issue in lieu of money bonds or other evidence of indebtedness, which shall bear interest at the rate of seven per cent. per annum until paid.

SECTION 3. That Section 29 of said Chapter 29 be and the same is hereby repealed.

Approved this 13th day of August, A. D. 1880.

SECTION 30. And be it further enacted that any corporation which may be organized, and undertake the building of any railroad or railroads, in pursuance of the authority of this Act, and in accordance with it, may issue bonds to raise money for the construction of such railroad or railroads, in such sums as may be convenient.

SECTION 31. And be it further enacted, that the aid by this Act contemplated, shall be only extended to railroads of public utility, and not to railroads of mere private or limited convenience.

Approved this 1st day of August, A. D. 1878.

KALAKAUA R.

AN ACT

TO AUTHORIZE AND PROMOTE THE CONSTRUCTION
OF STEAM RAILROADS ON THE ISLAND OF OAHU.

*Be it enacted by the King and the Legislature of the Hawaiian
Kingdom:*

SECTION 1. Power and authority are hereby given to the Minister of the Interior, by and with the consent of the Cabinet to contract with B. F. Dillingham, his associates and successors and their assigns, or such corporation as shall be formed and organized by him or them under the laws of this Kingdom, providing for the establishment of private corporations for the constructing and operating on the Island of Oahu a steam railroad or railroads of not less than three feet gauge, for the carriage of passengers and freight:

Provided, however, that if said Benjamin F. Dillingham, his associates and successors, or their assigns, or such corporation, shall fail, within eighteen months from the passage of this Act, to give satisfactory guarantees to the Government that he or they are able to and will construct and put in operation within three years from the approval of this Act, a steam railroad connecting Honolulu with Pearl River Lagoon. The said Minister may contract with any Hawaiian corporation for the construction and operation of any steam railroad in this Act authorized upon the terms and conditions herein expressed.

SECTION 2. The said Minister may, by such contract as aforesaid, confer upon Benjamin F. Dillingham, his associates and successors and their assigns, or any such corporation as shall be formed or organized by him or them as aforesaid

(hereinafter referred to as such company) all such rights and privileges as to the acquisition of rights of way and other privileges for the construction, maintenance and operation of such roads, together with all depots, stations, yards, crossings, *wharves* and equipments as are set forth in an Act entitled "An Act to Promote the Construction of Railways," being Chapter XXIX. of the Laws of 1878, as amended by Chapter XLI. of the Laws of 1880, except as the same are modified by the provisions of this Act. Such contract shall secure to said company the exclusive right for twenty years from the date of this Act, to maintain and operate a steam railroad or railroads between such points as they shall, within three years from the passage of this Act, connect by such railroad, provided such railroad shall not be less than fifteen consecutive miles in length; and further provided that such exclusive right shall not apply to the District of Kona, in said Island of Oahu.

SECTION 3. Such company shall be authorized to construct, maintain and operate a steam railroad or railroads on the Island of Oahu, from and between such points thereof as shall be expressed in such contract with said Minister and in its Charter of Incorporation, subject to the conditions and restrictions in this Act contained: Provided, that the speed of any such company's rolling stock upon any street or thoroughfare of said island, except in crossing the same, shall not exceed the rate of four miles an hour under penalty of five hundred dollars, to be paid by such company to the Hawaiian Government for each violation of this condition.

SECTION 4. The location, maps and charts and plans for the construction and equipment of all roads hereby authorized shall be submitted to the Cabinet for their approval, and such approval shall be certified by the signatures of a majority of the members of the Cabinet.

SECTION 5. Not more than six cents per mile for first-class and four cents per mile for second class passengers shall be charged as fare upon any road hereby authorized.

SECTION 6. Such company may enter upon, lease, purchase and hold any and all such lands, tenements, hereditaments and easements as shall be required for the construction, maintenance and operation of its road, after the location of such road has been approved by the Cabinet, but subject to the provisions hereinafter contained.

SECTION 7. The lands to be taken for the line of such road shall not exceed forty feet in width, unless a greater width shall be required for embankments, cuttings, gravel pits, sidings, stations, yards and like purposes.

SECTION 8. No land, easements or other property right shall be taken by such company until it shall have given at least thirty days' notice in writing to the occupant, and also to the owner and lessee (if any) of such land (if such owner or lessee can be found), of its intention to take such land, describing it, for the purposes of its road. For the purposes of receiving such notice, the Minister of the Interior shall be deemed the owner of all Government land.

SECTION 9. In addition to such notice as aforesaid, such company shall publish in at least four successive issues of two weekly newspapers published in Honolulu, one of which newspapers shall be printed in the Hawaiian, and one in the English language, a notice of its intention to take such land or other property right for the purposes of its road. Such notice shall describe with reasonable accuracy and detail the land or other property right which is proposed to be acquired, and shall contain the names of all parties beneficially interested

in such land as owners, lessee, occupant, or the like, where the names of such interested parties, or any of them, are known to such company.

SECTION 10. Where the land or other property right sought to be acquired is in the possession or control of the agent, attorney, trustee, guardian or other representative of the owner thereof, such representative shall receive notice of the intention of such company to acquire the same, in manner as provided in Section 8 hereof.

SECTION 11. Such company shall pay to the owner of any land or other property right so taken by it, or to his legal representative, the full value of the same, to be computed as of the time when such notice of intention to take the same is served. In case of a disagreement as to such value, such company shall tender to such owner or his representative, if an owner or his representative can be found, such amount as it shall deem such land or other property right to be worth.

SECTION 12. If such owner or his representative is dissatisfied with the amount so tendered by such company, he may, within twenty days from the date of such tender, demand of such company to have such land or other property right appraised by three disinterested appraisers, one of whom shall be chosen by each of the parties, and the third by the two so chosen. And such company, before entering upon such land, or appropriating such other property right shall tender to the owner thereof or his representative the amount appraised upon the same by a majority of such appraisers, and shall pay the costs of appraisal if the amount so found is greater than the amount first tendered, but otherwise may deduct the costs of appraisal from the amount so found. If such owner or representative shall refuse to receive the amount so found and

tendered, the same shall be paid into the Supreme Court, subject to the order of such owner or representative, before such company shall take possession of such land or other property right.

SECTION 13. If such owner or representative shall fail to demand an appraisal as hereinbefore provided, or having demanded, shall for ten days refuse to accept the amount found by and upon such appraisal, such company may at once thereafter enter upon and occupy such land or other property right, without liability to pay as damages any amount exceeding the value thereof at the time of the service of the notice first herein mentioned, unenhanced by any value such road may confer thereon, but nothing herein contained shall be construed to prevent the recovery from such company, of damages for any act of trespass in excess of the just demand of its enterprise, nor any damages resulting from its failure to fence its line, (without any obligation upon contiguous owners to assist in building or contribute to the building of such fences) within six months of the date of its taking possession thereof, or its failure to keep closed, or to construct effectual cattle guards upon all gaps made by it in the fences of property through which its line shall pass, from the time of its taking possession of the same.

SECTION 14. If the owner of such land or other right of property which such company shall wish to acquire for the purposes of its road shall be non-resident in this Kingdom, and his place of residence shall not be known, and he shall have no legal representative, attorney or agent in this Kingdom, or if such owner is not known or cannot be found or is incompetent to make a contract such company shall deposit in the Hawaiian Postal Savings Bank, to the credit of such owner, an amount equal to a fair valuation of such land or

property right, and may thereupon at once take possession of the same. Such owner or his representative may, at any time, within twenty years after the taking of such possession, demand such appraisal or otherwise enforce the collection of the true value of his property so taken as herein provided.

SECTION 15. Nothing in this Act, nor in said Chapter XXIX. of the Laws of 1878, amended as aforesad, shall be construed to deprive any person of the right to maintain an action at law against any railroad company or corporation, for the value of any land or property which shall be taken by such company or corporation under the powers conferred by this Act and used for railroad purposes.

SECTION 16. Such company shall be bound to accept and convey, for a reasonable compensation, all traffic of any and all other connecting railroads or other common carriers. In case of a disagreement as to the amount of such compensation, each party may appoint an arbitrator, the Minister of the Interior shall be the third arbitrator, and such arbitrators or a majority of them may fix a tariff upon any kind or class of traffic submitted to them. Such tariff schedule shall be final and binding upon all parties in interest until the same shall be revised or amended by the same or other arbitrators thereto duly appointed, such arbitrators may, from time to time, add to such schedule any kind or class of traffic not included therein, but no revision of rates shall be made within one year after the same shall be so fixed. Other arbitrators may be, from time to time, appointed for the purpose of revising or extending such schedule, except as herein above provided, and the said Minister shall be a member of any board of arbitrators so appointed.

SECTION 17. Such contract as herein authorized may contain a provision for the remission of all or any portion of the taxes upon the property of such company for any period

not to exceed twenty years; provided that no taxes shall be so remitted upon any property not fairly necessary to the reasonable construction, maintenance and operation of the road of such company.

SECTION 18. It shall not be competent for said Minister by such contract to pledge the Government to the payment of any subsidy to the constructors of any railroad herein authorized.

SECTION 19. As to any points upon said Island which shall not be connected by the railroads of such company within three years from the passage of this Act, and as to all and any points within said district of Kona, said Minister may contract with any Hawaiian corporation for the construction of any railroad hereinabove authorized upon the terms and conditions herein expressed.

SECTION 20. No franchise issued or granted under or by virtue of this Act shall be sold, conveyed or transferred to; nor shall any railroad constructed under or by virtue of this Act be sold or conveyed to, or owned, operated or controlled in whole or in part by any corporation not organized under the laws of this Kingdom. Any violation of this provision shall operate as a revocation and forfeiture of the franchise so sold, conveyed or transferred, and of the franchise authorizing the construction and operation of the railroad or any portion thereof which shall be so sold or conveyed to, or owned, operated or controlled by such foreign corporation.

SECTION 21. This Act shall take effect from and after the date of its approval. All laws and parts of laws in conflict with the provisions of this Act are hereby, for the purpose of giving effect to this Act, but for no other purpose, repealed.

(Session Laws of 1890.)

AN ACT

TO FURTHER PROMOTE THE CONSTRUCTION OF
RAILWAYS ON THE ISLAND OF OAHU.

Be it enacted by the King and the Legislature of the Hawaiian Kingdom:

SECTION 1. The time granted for the construction of steam railroads on the Island of Oahu, as prescribed by Section 2, Chapter LXII. of the Laws of 1888, is hereby extended to five years from the date of the passage of this Act, and the time of the exclusive franchise therein named to fifty years from the date of the passage of said Act. Provided that such extension of exclusive franchise shall apply only to such portions of railroad as said company shall construct in the Districts of Waianae, Waialua, Koolauloa and Koolaupoko, or any of said Districts.

SECTION 2. For each mile of the main track hereafter constructed under this Act, after the completion of the Pearl River Division by the said Oahu Railway and Land Company, the Hawaiian Government shall pay a subsidy of seven hundred dollars each year, until the expiration of five years from the date of construction thereof.

SECTION 3. In order that the Hawaiian Government may be from time to time apprised of whatever amounts shall, or might become payable hereunder, the said Oahu Railway and Land Company shall after the close of each quarter-year make a written statement or exhibit of the number of miles

of railroad by it constructed ready for operation during the quarter-year next preceding. Such statement or exhibit shall be sworn to and filed with the Minister of the Interior; and said Minister, or some person appointed by him, shall have the right at all times to examine and inspect the books of the company.

SECTION 4. The Minister of Finance is hereby authorized and directed to pay whatever amounts may become due and payable to the Oahu Railway and Land Company under the provisions of Section 2 of this Act. Such payments shall be made to the Oahu Railway and Land Company or such persons as it may designate upon the draft of the Minister of the Interior. Before payment of such subsidy reasonable guarantees may be required that the main track has been duly constructed, finished and equipped.

SECTION 5. Nothing herein contained shall be held to interfere with the right of said Oahu Railway and Land Company to exercise all of the rights, powers and privileges granted by said Chapter LXII. of the Laws of 1888, or by the general railway law of the Kingdom, except as to exemption from taxes, provided however that nothing in this Act shall be deemed to authorize the Minister of the Interior to guarantee or pay any subsidy to said Company under Sections 27 and 28 of the general railway law of the Kingdom.

SECTION 6. This Act shall take effect and become law from and after the date of its approval.

Approved this 15th day of September, A. D. 1890.

CHARTER

OF THE

OAHU RAILWAY AND LAND CO.

To all unto whom these presents shall come, I, Lorrin A. Thurston, Minister of the Department of the Interior of the Hawaiian Islands, send greeting:

WHEREAS, Benjamin F. Dillingham, and Mark P. Robinson, residing in Honolulu, on the Island of Oahu, have filed in the office of the said Department of the Interior a petition with accompanying certificates and proofs in accordance with the laws of the Hawaiian Islands, praying that a Charter of Incorporation be granted them, their associates, successors and assigns, under the name of the Oahu Railway and Land Company, for the purpose of constructing, maintaining and operating a line, or lines of railway on said Island of Oahu, and of purchasing, owning, leasing, improving, selling and otherwise dealing with lands in connection with, and along the line or lines of said railway or railways, for the purpose of inducing settlement and increase of population along or near said railways, and on said Island, and of all business incidental to or connected with such objects, now therefore,

Know ye that I, Lorrin A. Thurston, Minister of Interior as aforesaid, in accordance with the powers in me vested by law, do hereby make, constitute and create the said Benjamin F. Dillingham and Mark P. Robinson, their associates and successors and assigns, a body corporate for the term of Fifty Years from the day of the date hereof, under the corporate name and style of the "Oahu Railway and Land Company," to have and to hold and to enjoy all of the rights, privileges and immunities which are now or may hereafter be conferred by law upon joint stock associations or corporations and subject to all the provisions of existing laws.

Said Corporation shall have succession by its corporate name for the period of fifty years; it may sue and be sued; implead and be impleaded in such name in all the Courts of the Kingdom; it may use a common seal, and alter the same at its pleasure.

The purposes for which this Charter is granted to said Company are:

The construction, maintenance and operation of a steam railway or railways on the Island of Oahu, under and in accordance with the terms of an Act entitled an "Act to Authorize and Promote the Construction of Steam Railroads on the Island of Oahu," being Chapter LXII. of the Laws of 1888, and also in accordance with the General Railway Laws of the Hawaiian Islands where not specifically covered by said special act, and for the purchase, owning, development, selling, leasing or otherwise dealing in lands on the said Island of Oahu, along and near the line or lines of the railway which may be constructed by said Corporation hereunder and in connection therewith and for the purpose of inducing the settlement of population along or near said line or lines of railway and on the Island of Oahu.

It may also own or charter such steam or other vessels as may be necessary for the purposes of the Corporation in col-

lecting or distributing passengers or freight upon, over, or across any of the bays, harbors, inlets, rivers or streams on the said Island of Oahu, and it may construct and own all *wharves, docks, piers* and *appurtenances* necessary for the enjoyment of such right.

It shall also have the power to create and maintain water works in connection with such lands.

Provided, however, that such right to so acquire and deal in lands shall be held to extend and apply only to such lands as shall be at the date of this Charter of an agricultural, pastoral or waste character, and to such "made land" so called as said Company shall fill in or reclaim from the sea or other places.

The Capital Stock of said Corporation shall be the sum of Seven Hundred Thousand Dollars divided into Seven Thousand shares of the par value of One Hundred Dollars each, with the right to extend the same from time to time by the issue of new shares not to exceed in all the sum of Five Million Dollars.

The authority for such subsequent increase shall be by vote of the holders of the majority of the stock at any regularly convened meeting of the Corporation.

Notice of such subsequent extensions, together with a duly certified extract or extracts from the minutes of such meeting showing the methods and facts of its being convened, the names of the stockholders present and voting upon such proposed extension, number of shares voted by them respectively, and also showing upon which side of such proposition stockholders voted, shall be filed forthwith in the office of the Department of the Interior.

Said Corporation shall have power to hold real estate and other property not to exceed at any time double the amount of its Capital Stock as the same may from time to time be increased; to elect officers and to appoint such subordinate

officers and agents as shall from time to time be required, to make by-laws for the management and control of its affairs not inconsistent with existing laws, and the same to alter or amend at its pleasure.

It shall also furnish water through any water works which shall be constructed hereunder at such rates as may from time to time be deemed proper.

Whenever complaints shall be made to the Minister of the Interior that such water rates are unjust for any reason, they shall be adjusted from time to time by a board of three persons, one of whom shall be appointed by said Minister, one by the Corporation, and the third shall be appointed by the two others.

All of the property of the Corporation shall be liable for the just debts thereof, but no stockholder of the Company shall be liable for any debt of the same beyond any amount which may be due upon the par value of the several shares of said stock held by such stockholders.

The said Corporation may, from time to time, borrow money for the constructing, finishing, equipping and maintenance of any steam railway or railways built or operated hereunder and for the purchase of real property for the purposes of the Corporation or for water works in the development of such lands, and may secure the payment of the money so borrowed by the issues of mortgage bonds, the lowest denomination whereof shall not be less than Twenty-five Dollars, and as security for said bonds with the interest thereon not to exceed the rate of ten per cent. per annum, the Corporation may pledge all of its property and profits.

Issues of bonds may also be made to cancel or consolidate any former issue.

The issue of bonds for the construction, building, completing, equipping or maintenance of any specified steam railroad or the purchase of any real property or the construction of

any such water works, may specify the particular property secured for the payment of such bonds.

Full notice of the proposed issue of the bonds for any purpose and of their issue, withdrawal or cancellation thereof, shall be filed forthwith in the office of the Department of the Interior.

The officers of said Corporation shall be President, not more than three Vice-Presidents, Secretary, Treasurer, Auditor, and such other officers as may from time to time be deemed necessary by the Corporation.

Officers need not, of course, be stockholders; more than one officer may be united in the same person, except that the Treasurer and Auditor shall always be distinct.

Notice of the election of officers shall be forthwith filed in the office of the Department of the Interior; such notice shall also be published not less than once a week for three weeks in some newspaper of general circulation.

The Charter officers and not more than four persons, to be elected each year by the Corporation, shall constitute a Board of Directors who shall have control, subject to direction by the stockholders at any regularly convened meeting of the affairs of the Company.

There shall be an annual meeting of the Corporation for the election of the above-named officers, and for the yearly statements of the affairs of the concern.

It shall be convened in the city of Honolulu at such time as the by-laws shall direct.

Meeting of the Corporation may be called by the President whenever business requires, and shall be so called upon the written request of stockholders holding not less than one-fifth of the outstanding stock of the concern.

There shall, at all times, be maintained an office of the Corporation in Honolulu.

Service of process and all notices shall be made upon the

President, Secretary, or Treasurer of the Corporation, and may be made upon the General Superintendent or local agents for proceedings in District, Police, or other Courts not of record.

All service made as herein described shall be deemed sufficient service on the Corporation.

Given under my hand and the seal of the Hawaiian Government this 4th day of February, 1889.

(Signed) L. A. THURSTON,
Minister of the Interior.

Approved:

W. L. GREEN,
Minister of Finance,

JONA. AUSTIN,
Minister of Foreign Affairs,

CLARENCE W. ASHFORD,
Attorney-General.

CONTRACT

Memorandum of Agreement made and entered into this 4th day of December, in the year of Our Lord, One Thousand Eight Hundred and Eighty-eight, by and between Lorrin A. Thurston, Minister of the Interior of the Hawaiian Kingdom for and on behalf of the Hawaiian Government, party of the first part, and Benjamin F. Dillingham of Honolulu, on the Island of Oahu, one of the Hawaiian Islands, party of the second part.

WHEREAS the said party of the second part is now engaged in perfecting plans for the construction, maintenance and

operation on the Island of Oahu of a steam railroad for the carriage of passengers and freight.

AND WHEREAS by an act entitled "An Act to authorize and promote the construction of steam railroads on the Island of Oahu" approved the eleventh day of September, A. D. 1888, the said party of the first part is authorized by and with the consent of the Cabinet to contract with the said party of the second part or with others for the constructing and operating on the Island of Oahu a steam railroad or railroads of not less than three feet gauge for the carriage of passengers and freight.

AND WHEREAS the said party of the second part is willing to undertake the construction and operation of such steam railroad or railroads in accordance with the terms of said Act.

NOW THEREFORE THIS AGREEMENT WITNESSETH:

First. That the said party of the first part for and on behalf of the Hawaiian Government, acting by and under the authority of the Act aforesaid, by and with the consent of the Cabinet, and for and in consideration of the premises, and of the covenants and conditions hereinafter expressed, to be performed, fulfilled and observed by and on the part of the said party of the second part, doth by these presents confer upon the said party of the second part, his associates and successors, and their assigns, and upon such Hawaiian corporation as shall be formed or organized by them or him, within the terms and for the purposes expressed in said Act, the exclusive right for twenty years from the date of the act aforesaid, except as hereinafter otherwise expressed, to construct, maintain and operate a steam railroad or railroads between the city of Honolulu and the Districts of Ewa, Waianae, Wai-
 alua, Koolauloa and Koolaupoko, or between said Honolulu and any of said Districts or any point or points in any of said

Districts, on the Island of Oahu, as they shall, within three years from the passage of said Act connect by such railroad.

Provided said railroad shall not be less than fifteen consecutive miles in length, and of not less than three feet gauge.

And further provided that such exclusive right shall not apply to the District of Kona on the Island of Oahu.

And provided further that if the said party of the second part, his associates and successors and their assigns or such Corporation as shall be so organized as aforesaid, shall fail within eighteen months from the passage of said Act to give guarantees satisfactory to the said Government that he or they are able to and will construct and put into operation within three years from the approval of said Act a steam railroad connecting Honolulu with Pearl River Lagoon, the said party of the first part may contract with any Hawaiian corporation for the construction and operation of any steam railroad in the said Act authorized upon the terms and conditions therein expressed, and the exclusive right and privilege herein expressed shall, upon such failure to give such guarantees as aforesaid, lapse and become void.

And provided further that the speed of the rolling stock of any such railroad upon any street or thoroughfare of said Island of Oahu, except in crossing the same shall not exceed the rate of four miles per hour under penalty of \$500 which sum is hereby agreed upon and liquidated damages to be paid by such company to the Hawaiian Government for each violation of this condition.

Second. That the said party of the first part does by these presents confer upon said party of the second part, his associates and successors and their assigns or any such corporation as shall be organized by him or them as aforesaid, all such rights and privileges as to the acquisition of rights of way and other privileges for the construction, maintenance

and operation of such roads together with all *depots, stations, yards, crossings, wharves and equipments* as are set forth in an Act entitled "An Act to promote the Construction of Railways" being Chapter XXIX. of the Laws of 1878, as amended by Chapter XLI of the Laws of 1880, except as the same are modified by the provisions of the said Act of the eleventh day of September, 1888.

Third. That the said party of the first part, does by these presents covenant and agree to and with the said party of the second part, his associates and successors and their assigns, and to and with such Corporation as shall be formed or organized by him or them as aforesaid, that no taxes shall be levied by the Hawaiian Government for the period of twenty years from the date hereof, upon the property of the party of the second part, his associates and successors or such Company, which shall be fairly necessary to the reasonable construction, maintenance and operation of the said steam railroad or railroads.

Fourth. And the said party of the second part, for himself, his executors, administrators, associates, assigns, and such Corporation as shall be formed or organized by him or them as aforesaid doth hereby covenant and agree that he, his executors, administrators, associates and assigns and such Corporation as shall be formed or organized by him or them as aforesaid, will and shall punctually observe, fulfill and perform all and every the terms and conditions imposed by the said Act of September eleventh, 1888, upon him, it or them, concerning the construction, maintenance and operation of any and all railroad or railroads which shall be built by virtue of these presents or of the Act last aforesaid, it being the intent and purpose of these presents to carry into effect the Act last aforesaid, and that only such rights, privileges and exemptions are or shall be hereby granted by said party of the first part as are by the said Act authorized and as

the same are herein limited or conditioned: While all obligations by said Act made incumbent upon the grantee or grantees of said rights, privileges and exemptions or any of them, are hereby assumed by said party of the second part for and on behalf of himself, his executors, administrators, associates and assigns, and of such corporation as shall be formed or organized by him or them as hereinbefore expressed.

IN WITNESS WHEREOF the said party of the first part has hereunto and to another Instrument of like tenor and even date set his hand and affixed the seal of the Department of the Interior of the Hawaiian Government, and the said party of the second part has hereunto, and to another Instrument of like tenor and even date set his hand and seal the day and year first above written.

(Signed)

L. A. THURSTON,
Minister of the Interior.

(Signed)

B. F. Dillingham.

The undersigned Members of His Hawaiian Majesty's Cabinet do by these presents consent to and express their concurrence in the execution by the Minister of the Interior of the foregoing contract of 3 pages.

(Signed)

W. L. GREEN,
Minister of Finance.

(Signed)

JONA. AUSTIN,
Minister of Foreign Affairs.

(Signed)

CLARENCE W. ASHFORD,
Attorney-General.