



ANNO QUINQUAGESIMO ET QUINQUAGESIMO
PRIMO

VICTORIÆ REGINÆ.

A.D. 1887.

No. 397.

An Act to confirm an Agreement made between the Commissioner of Crown Lands, on behalf of Her Majesty's Government, and George Chaffey and William Benjamin Chaffey, with respect to certain Crown Lands and Irrigation Works.

[Assented to, November 16th, 1887.]

WHEREAS it would be a great advantage to the Province of Preamble.
South Australia to secure the application of private capital towards the construction of irrigation works and the establishment of a system of instruction in practical irrigation: And whereas, for the purpose of securing the above objects, the Commissioner of Crown Lands of the said province, for and on behalf of Her Majesty's Government of the Province of South Australia, has entered into an agreement, copy whereof is set out in the Schedule hereto, bearing date the fourteenth day of February, one thousand eight hundred and eighty-seven, with George Chaffey and William Benjamin Chaffey, therein described as of Toronto, in Canada, and made subject to the sanction of the Parliament of the said province being obtained to such disposition of Crown lands and water rights as may be necessary for the purposes of the said agreement: And whereas it is desirable that such sanction of the said Parliament should be granted and that the said Parliament should confirm the said agreement—Be it therefore Enacted by the Governor of the said province, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

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Interpretation.

1. In this Act, unless the context otherwise requires the term, "the Government" means the Governor of South Australia, or administrator of the Government of South Australia, by and with the advice of the Executive Council thereof.

Short title.

2. This Act may for all purposes be cited as "The Chaffey Brothers Irrigation Works Act, 1887."

Agreement declared valid, and Government empowered to dispose of Crown lands and water rights, and do all acts necessary for carrying into effect the agreement.

3. The said agreement entered into as aforesaid, copy whereof is set out in the Schedule hereto, and the execution thereof by the Commissioner of Crown Lands of the said province, for and on behalf of Her Majesty's Government of South Australia, are hereby sanctioned and confirmed, and declared to be lawful and valid and of full force and effect from the day of the making thereof: And the Government may, for the purpose of carrying into effect the said agreement, dispose of and set apart the Crown lands or any part thereof referred to in the said agreement, and may grant such water rights and licences, and may issue and accept such grants in fee simple of any lands, and generally may do, execute, and perform all such acts, deeds, and things, and may exercise all such powers, rights, and discretions as may be necessary with respect to the carrying into effect or may be exerciseable with regard to the said agreement.

Government may make regulations.

4. The Government may, from time to time, make, alter, and rescind regulations in respect of all matters not specially provided for in the said agreement, and for the carrying the said agreement into full force and effect.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. C. F. ROBINSON, Governor.

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THE SCHEDULE REFERRED TO.

AGREEMENT entered into, the fourteenth day of February, 1887, between the Honorable James Henderson Howe, Commissioner of Crown Lands, of the Province of South Australia, for and on behalf of Her Majesty's Government of the Province of South Australia, of the one part, and George Chaffey and William Benjamin Chaffey, of Toronto, in Canada, hereinafter designated "Messrs. Chaffey," of the other part: Whereas it would be a great advantage to the province that the agreement hereinafter contained to secure the application of private capital to the construction of irrigation works and the establishment of a system of instruction in practical irrigation should be carried into effect.

1. This agreement is made subject to the sanction of Parliament being obtained to such disposition of Crown lands and water rights as may be necessary, and the Government will endeavor to procure such sanction.

2. In the construction of this agreement the following terms and words shall, if not inconsistent with, or repugnant to, the context, have the following meanings hereby assigned to them, that is to say—The term "Government" shall be deemed to mean the Governor of South Australia, or Administrator of the Government of South Australia, by and with the advice of the Executive Council thereof. The term "Irrigation works and substantial and permanent improvements," shall be deemed to mean and include the construction of irrigation works, fruit canneries, timber, working, and other plants, the erection of an agricultural college or colleges, and the construction and fixing of the necessary machinery used to work the same, the making of roads, railways, tramways, canals, water-races, drains, bridges, making and laying pipes or other conduits, clearing, fencing, planting, and growing fruit trees, or vines, or olive trees, or other agricultural or horticultural products, and preparing the ground for such planting, the erection of substantial and habitable dwellings, and the erection of substantial buildings for the purposes of the operations to be carried on upon the said land, and all to the satisfaction of the Government, and subject to the approval of the Government, the actual expenses incurred by Messrs. Chaffey in securing settlement upon the said block may be included within the term of substantial and permanent improvements.

3. It is agreed that the Government will set apart, as hereinafter provided, the block of land, about 250,000 acres, upon or adjacent to the River Murray, as shown upon the plan hereto annexed, and therein marked "A" and "B," and colored respectively blue and purple.

4. That the full value of all improvements upon any part of the 250,000 acres to be set apart under this agreement shall be paid by Messrs. Chaffey to the Government when and as soon as the Government become liable to make to the holders of existing leases of the said lands any payment in respect of the same improvements, and the value, as ascertained in the ordinary and usual way between the Government and the pastoral lessees of the said lands shall, for the purposes of this agreement, be deemed to be the true value of such improvements.

5. That the Government reserve full power, notwithstanding the issue of any such licence as is in this agreement contemplated, to lay out and declare over and out of the lands comprised in such licence such roads and such reserves for travelling stock, and such water reserves, and such other reserves for public purposes as the Government shall from time to time think fit: Provided that it shall be competent for the Government and Messrs. Chaffey to agree to the substitution for the water reserves reserved by the Government, or for any of them, of artificial water reserves to be constructed by Messrs. Chaffey on the course of irrigation channels.

6. That Messrs. Chaffey shall have the right to construct works upon any part of the

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the block of land, which shall be set apart under this agreement for conserving and distributing waters for the purpose of irrigating the said block, and also for the purpose of supplying water for domestic purposes within the area of the said block of land, and such works shall be subject to the approval of the Government.

7. Messrs. Chaffey hereby agree to expend in constructing the irrigation works mentioned in clause 6 of this agreement, and in making substantial and permanent improvements and works to be approved by the Government on the said block of land during the term of twenty years from the date hereof, the sum of £300,000 in the following instalments, that is to say—

During the first five years of the said term, £35,000.
 During the second five years of the said term, £140,000.
 During the third five years of the said term, £75,000.
 During the fourth five years of the said terms, £50,000.

And Messrs. Chaffey hereby covenant that they shall expend the said sum of £300,000 within the respective periods and in manner hereinbefore mentioned.

8. The Government will cause a licence to be issued to Messrs. Chaffey, giving them a right to occupy 30,000 acres (to be defined in such licence), part of the said block and marked A and colored blue in the plan hereto annexed, for the term of twenty years. One of the provisions of such licence shall be that Messrs. Chaffey will, to the satisfaction of the Government, immediately after the granting of such licence, commence to destroy, and will continue to destroy, in or on the licensed lands, all rabbits and all other animals and birds which by law are or may be declared to be vermin. Also a provision that Messrs. Chaffey will keep the irrigation works and substantial and permanent improvements constructed on the said licensed land in good repair and condition.

9. That the licence, which is to be granted, shall contain a condition reserving to the Government the right to resume possession of any portion of the lands for the purposes of making railways, roads, tramways, canals, reservoirs, races, drains, upon giving compensation to the licensees for any irrigation works and substantial and permanent improvements constructed by them thereupon not exceeding the actual cost expended thereon, and in case of difference between the Government and the licensees such cost to be determined by arbitration. The licence shall also contain a condition giving to the holder of a miner's right, who shall have obtained the written permission of the Commissioner of Crown Lands, power to enter upon and to mine for gold and silver in the licensed land, such miner first making compensation to the licensees for surface damage, such compensation to be determined by a warden of goldfields or other person to be appointed by the Government. Also the licence shall contain a provision that so soon as the licensees shall have expended in the construction of irrigation works and substantial and permanent improvements a sum of money equal to £4 per acre on any portion of the said lands, in respect of which such licence shall have been issued, and if the Government be satisfied that Messrs. Chaffey intend to carry on this agreement in good faith and in a satisfactory manner the Government will cause a grant in fee simple of any portion of such lands being one acre for every £4 so expended to be issued to the licensees without further consideration being given for such portion. The Government not to be bound to issue any grant for less than 500 acres, and the Government to determine the metes and bounds of all portions of land to be granted under such provision: Provided that no grant shall issue under this agreement of any land unless and until water has been led to some point in and suitable for the irrigation of each 500 acre area of the land proposed to be comprised in such grant.

10. That the Government will also cause to be issued to Messrs. Chaffey a licence to take water under the authority of the Government, so far as the Government can authorise them to do so, in such quantity and under such conditions as the Government may hereafter determine. Messrs. Chaffey to covenant that the water so to be obtained shall be gathered and distributed by the irrigation works to be constructed by Messrs. Chaffey.

11. During any portion of the period hereinbefore limited for the expenditure by Messrs. Chaffey of the sum of £300,000 on irrigation works, and substantial and permanent improvements on the said block of land, but not before the first day of July, 1895 (unless the Messrs. Chaffey make arrangements with the lessees in occupation for an earlier date to which the Government will consent) the Government will, if satisfied that Messrs. Chaffey intend to carry out this agreement in good faith and in a satisfactory manner from time to time, issue a licence or licences to Messrs. Chaffey to occupy the remainder of the said block of 250,000 acres or any portion thereof

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thereof being not less than 20,000 acres in any one licence for a period of twenty years, subject to the like covenants, conditions, and provisions which, as herein stipulated, are to be contained in the licence mentioned in clause 8, except that the provision as to issue of grants when a sum of money equal to £4 an acre shall have been expended on irrigation works and substantial and permanent improvements shall not apply to more than 50,000 acres inclusive of the 30,000 acres comprised in the said licence mentioned in clause 8. Such licence shall contain, in addition to such covenants and conditions, a provision that so soon (during the period of the licence) as the licensees shall have expended on irrigation works and substantial and permanent improvements a sum of money equal to £1 per acre on any portion of the said remainder of the said block of 250,000 acres not exceeding in the whole 200,000 acres, and so soon as they shall have paid to the Government the sum of £1 for every acre of such portion the Government will, if the Government are satisfied that the Messrs. Chaffey intend to carry out this agreement in good faith and in a satisfactory manner, cause a grant in fee simple of such portion of the said land in respect to which the said sum of £1 per acre shall have been paid to be issued to Messrs. Chaffey, but the Government not to be bound to issue any grant in fee simple of such portion for less than 500 acres. The Government also to determine the metes and bounds of all portions of land to be granted under such provision: Provided that until grants have issued for a total of 125,000 acres no grant shall issue under this agreement of any land unless and until water has been led to some point in and suitable for the irrigation of each 500 acre area of the land proposed to be comprised in such grant.

12. Messrs. Chaffey shall cause all engines and machinery, pipes and manufactured articles required to be placed on the said block of 250,000 acres of land, or to be used in connection with any works or operations to be carried on thereon to be made in the Province of South Australia, save and except such models, patterns, or machines as the Government may allow them to import from abroad.

13. That a condition shall be inserted in every grant in fee simple of any portion of the land which shall be issued in accordance with this agreement to Messrs. Chaffey that they shall not, unless with the consent of the Government, sell or dispose of such land except in parcels of not more than eighty acres if such parcels are planted and prepared for fruit growing, and in parcels of not more than 160 acres if such parcels are prepared for growing other products, and that they shall not sell or dispose of more than one parcel to the same person, and it shall be a further condition that in every sale, disposition, or transfer of such land by Messrs. Chaffey, or anyone claiming through them, a sufficient water right shall be secured to the purchaser to be held with and run with such land as a perpetual easement.

14. That Messrs. Chaffey shall not at any time have or retain in their own possession, or that of their agents, except with the consent of the Government, more than 5,000 acres of land out of the lands granted to them in fee simple under and in accordance with this agreement.

15. That Messrs. Chaffey will erect bridges over all channels, races, and drains intersected by public roads or thoroughfares whenever required by the Government; also, that they will form, make, and, during the continuance of the licence, or respective licences, maintain all roads which the Government shall set out or direct Messrs. Chaffey to set out and make for the use of the public.

16. That Messrs. Chaffey shall give every reasonable facility (including access for stock over the licensed land to watering places on the line of their channels for the time being most convenient to the lands adjoining the licensed lands) for supplying other persons through their channels, if required, with water at such price as may be agreed upon; but in case of dispute as to the price such price shall be settled by a valuator or valutors appointed by the Government.

17 That Messrs. Chaffey will use all reasonable exertions to establish on the land to be granted under this agreement, within the period of five years from the date of the licence mentioned in clause 8, the business or industries of fruit drying, preserving, and canning, and Messrs. Chaffey will, during the remainder of the term of the said licence, carry on such businesses or industries.

18. That Messrs. Chaffey will set apart one-twentieth part of all the irrigated land which shall be granted to them by the Crown with a sufficient water right attached thereto for the purpose of endowing an agricultural school or college, but the said land so to be set apart shall not be in one block, but shall consist of one parcel of either eighty acres or 160 acres or less out of every twenty parcels of eighty acres or 160 acres or less, as the case may be, Messrs. Chaffey to convey such land free from encumbrances to the Commissioner of Crown Lands, or to such person

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or coporation as the Government shall from time to time direct, and such land so set apart and conveyed shall be held in trust for the maintenance of the said agricultural school or college, with full power to sell or lease the same together or in parcels for any time or at any reasonable rent, and such lands or the proceeds thereof shall be held upon such other trusts as the Government shall determine and so soon as 100 families are residing upon the land or any part thereof referred to in this agreement. Messrs. Chaffey will institute and establish an agricultural school or college in a suitable building to be erected by them on the land to be conveyed upon trust as aforesaid for instructing persons as to the best mode of constructing irrigation works and to profitably apply the same, and for teaching persons as to the best mode of growing and cultivating fruit trees and preserving and drying the fruit, and for instructing persons in agriculture and horticulture.

19 It is further agreed between the parties hereto that, upon any breach by Messrs. Chaffey of any provision in this agreement, or of any covenant, condition, or provision contained in any grant or licences issued under this agreement, the Government may, within three calendar months of the discovery by the Government of such breach, give a notice of complaint to Messrs. Chaffey of such breach, and require them to show cause why such breach should be permitted or to rectify the cause or complaint, within a time to be fixed in such notice of complaint, and if sufficient cause shall not have been shown to the satisfaction of the Government, or if the cause of complaint shall not have been rectified within the time fixed in such notice of complaint, then it shall be lawful for the Government either to rectify the cause of complaint at the expense of Messrs. Chaffey, which expense Messrs. Chaffey hereby agree to defray and repay to the Government, or if, in the opinion of the Government, the breach is a sufficiently serious one to render it in their opinion desirable to do so, to determine the agreement and to resume possession of all land granted in fee simple to Messrs. Chaffey, except as hereinafter excepted, or land licensed under this agreement, and to take possession of all irrigation works and substantial and permanent improvements upon the land so resumed, but, nevertheless, Messrs. Chaffey, or the persons lawfully claiming under them, shall be entitled to recover from the Government a sum equal to 80 per cent. on the value of the irrigation works and substantial and permanent improvements then existing upon any part of the land of which possession shall be resumed, such sum, if the parties cannot agree, to be fixed by arbitration.

20. A condition embodying the matters contained in the last paragraph shall be inserted in every Crown grant in fee simple or licence issued in pursuance of these presents, but such condition shall not apply to any land granted in fee simple to Messrs. Chaffey, and afterwards *bona fidè* sold, disposed of, or transferred by them for valuable consideration in accordance with the terms of this agreement.

21. If any dispute arise as to the amount of permanent and substantial improvements the amount shall be fixed and settled by arbitration.

22. For the carrying into force of this agreement both parties shall execute all necessary deeds and documents required, and the Government shall have power from time to time to make, alter, and rescind regulations in respect of all matters herein not specially provided for, and for carrying this agreement into full force and effect, and such regulations will be binding on Messrs. Chaffey.

23. The 250,000 acres may be set apart by the Government, and the 30,000 acres part thereof referred to in clause 8 defined forthwith, and the Government will, immediately upon the said 30,000 acres being defined, permit Messrs. Chaffey to enter upon such defined lands, and proceed with the proposed irrigation works. And in the event of Parliament refusing to sanction this agreement, Messrs. Chaffey hereby acknowledge themselves to be the tenants at will of the Government of any lands upon which they may have then entered. And the Government shall refund to Messrs. Chaffey the value of all such irrigation works, and substantial and permanent improvements (other than engines, pumps, machines, and other machinery), as shall then have been made and effected by Messrs. Chaffey upon the land, and as shall constitute in themselves an efficient system of irrigation; such value, in case of difference, to be determined by arbitration: Provided that the Government may elect to take or not to take the engines, pumps, machines, and other machinery placed by Messrs. Chaffey upon the land, and if the Government take the same they shall pay the value thereof, to be ascertained, in case of difference, by arbitration to Messrs. Chaffey; and if the Government do not take such engines, pumps, machines, and other machinery, Messrs. Chaffey may remove the same from the said land, and the Government shall pay to Messrs. Chaffey compensation for the actual expense incurred by Messrs. Chaffey in placing and removing the same upon and from the land,

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land, and interest at 5 per cent. per annum upon the actual prime cost of the said engines and other machinery, from the date of purchase of the same, for the purposes of carrying out this agreement, until a day thirty days after the date upon which the Government shall notify to Messrs. Chaffey their intention not to take such engines, pumps, machines, and other machinery: Provided that the total amount payable by the Government under this present clause 23, shall in no case exceed £10,000.

24. By "arbitration" in this agreement is meant a reference to two arbitrators, one to be appointed by the Government and one by Messrs. Chaffey; or to an umpire to be chosen by the arbitrators before entering on the consideration of the matters referred to them; and every such reference shall be deemed an arbitration within the "Supreme Court Procedure Act, 1855," and be subject to the provisions as to arbitration contained in the said Act.

J. H. HOWE,
GEO. CHAFFEY.
W. B. CHAFFEY.

Witness—G. S. WRIGHT.

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