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THE BOLIVIA RAILWAY COMPANY

AND

CENTRAL TRUST COMPANY OF NEW YORK,
Trustee.

Supplement to First Mortgage.

1909?



1909/40

THIS INDENTURE dated the fourteenth day of January, 1909, between THE BOLIVIA RAILWAY COMPANY, a corporation organized under the laws of the State of Connecticut, in the United States of America, (hereinafter termed the Railway Company) of the first part and CENTRAL TRUST COMPANY OF NEW YORK, a corporation duly created and existing under the laws of the State of New York (hereinafter termed the Trustee), as Trustee under the First Mortgage of the Railway Company hereinafter mentioned, of the second part.

By an indenture of Mortgage and Deed of Trust bearing date the 26th day of October, 1907 (herein termed the First Mortgage), the Railway Company mortgaged and conveyed in trust to the Trustee the lines of railway and property therein particularly described, in trust, to secure the payment of bonds of the Railway Company (hereinafter termed First Mortgage Bonds) to the aggregate authorized amount of £3,750,000, maturing the 1st day of January, 1927, and bearing interest at the rate of five per cent. per annum, payable semi-annually on the first days of January and July in each year, with the right, however, on the part of the Railway Company, as provided in the First Mortgage, to issue additional bonds entitled to the equal security of the First Mortgage to the face amount of £2,000,000 and bearing interest at a rate not exceeding six per cent. per annum. For the precise terms of the First Mortgage reference is made thereto. At the date hereof, First Mortgage Bonds, part of said £3,750,000 Five Per Cent. Bonds reserved under Section 1 of Article Two of the First Mortgage, have been issued to the face amount of £920,000.

Part of the property embraced in the First Mortgage consisted of certain lines of railroad in the Republic of Bolivia to be constructed, described in Subdivision First of the Granting Clause of the First Mortgage as follows:

(a) A line of railway extending from Oruro to Viacha and a branch line to the River Desaguadero to connect with the Arica Railway:

(b) A line of railway extending from Oruro to Cochabamba :

(c) A line of railway extending from Oruro to Potosí :

(d) A line of railway extending from Potosí to Tupiza :

(e) A line of railway extending from Uyuni to Potosí :

(f) A line of railway extending from La Paz to Puerto Pando :

The First Mortgage also embraces the concession described in Subdivision Fifth of the Granting Clause thereof, granted by the Republic of Bolivia by the Contract and Concession dated May 22nd, 1906, between said Republic and The National City Bank of New York and Speyer & Co. for the construction, maintenance and operation of the lines of railway described in this recital.

By Section 1 of Article Two of the First Mortgage it is provided that said £3,750,000 Five Per Cent. First Mortgage Bonds shall be used only to defray expenditures for the acquisition, construction and equipment of said lines of railway described in said Subdivision First of the Granting Clause of the First Mortgage and the appurtenances of said lines, under the limitations in the First Mortgage set forth.

It is provided by Section 1 and Section 3 of Article Eight of the First Mortgage that the Railway Company shall be entitled to obtain in accordance with the provisions of said Sections respectively, subject to the conditions and limitations in said Sections respectively prescribed, releases of the mortgaged property forming the subject of such Sections, *provided* that thereby, in the cases in that behalf in said Sections specified, the continuity of the main line of the Railway Company from Viacha to Oruro be not broken, and it is also provided by Section 5 of Article Eight of the First Mortgage that the Railway Company may from time to time make

any changes or alterations in or modifications of said concession to construct, own, operate and exploit its said system of railways in the Republic of Bolivia, granted by the Contract and Concession of May 22nd, 1906, between said Republic and The National City Bank of New York and Speyer & Co., *provided* that thereby the continuity of the main line of the system of the Railway Company from Viacha to Potosi be not broken, and may consent to, and make, any changes or alterations in, or modifications of said Contract and Concession.

The Railway Company has practically finished the construction of its said line of railroad from Viacha to Oruro. It has also done construction work upon its line from Oruro to Potosi to the amount of not exceeding £20,000 and, under the terms of the First Mortgage, it is entitled in respect of such expenditures, so far as the authentication and delivery of First Mortgage Bonds has not already been obtained in respect thereof, to obtain, under the limitations in that behalf in the First Mortgage set forth, the authentication and delivery of First Mortgage Bonds reserved under Section 1 of Article Two of the First Mortgage.

The Republic of Bolivia and the Railway Company have deemed it expedient to make certain changes in the location of said lines, so that the location of the lines which the Railway Company is to construct shall be as stated in Article 4 of this Supplement and the concession granted by the Contract and Concession of May 22nd, 1906, has been modified or is to be modified by said Republic so as to cover such changes in the location of the lines of the Railway Company, and said Contract and Concession has also, by agreement with said Republic and with the consent of the Railway Company, been modified in other respects.

The Railway Company is about to deliver to The Antofagasta (Chili) and Bolivia Railway Company, Limited, hereinafter termed the Lessee, a lease of its lines of railway and property for the term of 99 years from the first day of January,

1909. For the precise terms of said lease which is hereinafter termed the Lease and a copy of which has been filed with the Trustee, reference is made thereto. The Lease, various covenants in which are expressed to be made not only for the benefit of the parties thereto but as well for the benefit of the holders of the First Mortgage Bonds and of the Trustee under the First Mortgage, provides among other things by Clause 5 thereof, that the Lessee making the advances and loans called for by said Clause, shall be subrogated, and so long as it is not in default under the Lease or its guaranty to be made in pursuance of the Lease of the payment of the interest on the First Mortgage Bonds at any time issued under Section 1 of Article Two of the First Mortgage, be entitled, as assignee of the holders of said First Mortgage Bonds, to all the rights of the holders of said First Mortgage Bonds under the guaranty by the Republic of Bolivia in pursuance of the Contract and Concession of the interest on said First Mortgage Bonds, to obtain the payment by the Republic of Bolivia and out of any funds by the Contract and Concession applicable toward meeting the obligations of the Republic of Bolivia under said guaranty by said Republic, of said loans made by the Lessee pursuant to said Clause 5 of the Lease.

For a valuable consideration, it is agreed as follows :—

1. The Railway Company declares that the First Mortgage Bonds of the face amount of £920,000 heretofore issued and now outstanding, have been duly issued pursuant to the provisions of Section 1 of Article Two of the First Mortgage.

2. Simultaneously with the execution and delivery by it of this Supplement, the Railway Company will produce, or cause to be produced, to the Trustee each of the First Mortgage Bonds heretofore issued, to be stamped by the Trustee substantially as follows :

“ This Bond is subject to the Supplement to the First Mortgage, dated January 14, 1909, to which for the provisions thereof reference is made.”

and, on presentation thereof to the Trustee accordingly, the Trustee shall so stamp all of the outstanding First Mortgage Bonds.

3. Every First Mortgage Bond hereafter issued pursuant to any of the provisions of the First Mortgage, shall, at the time of issue, be also stamped by the Trustee substantially as aforesaid.

4. The Railway Company, for the purpose of securing the payment of the First Mortgage Bonds at any time and from time to time issued under the First Mortgage and outstanding and of the coupons appertaining thereto according to the tenor and effect of the First Mortgage Bonds and of said coupons, grants, bargains, aliens, releases, conveys, assigns, transfers and sets over to the Trustee, its successors in the trust, and its and their assigns forever :

ALL and singular the following lines of railway in the Republic of Bolivia constructed and to be constructed, being the lines of railway which, as so relocated in accordance with said amendment and modification of the Contract and Concession of May 22nd, 1906, the Railway Company has been authorized by said concession granted by the Contract and Concession of May 22nd, 1906, as so amended and modified, to construct, operate and maintain in said Republic :

(A) A line of railway extending from Viacha to Oruro with a branch line to the River Desaguadero.

(B) A line of railway extending from Oruro to Cochabamba.

(C) A line of railway extending from some point on the Antofagasta Railway between Oruro and Uyuni to Potosí.

(D) A line of railway extending from Uyuni to Tupiza.

(E) A line of railway extending from La Paz to Puerto Pando.

TOGETHER with all the appurtenances of the above-mentioned lines of railway and the concession for the construc-

tion, maintenance and operation thereof granted by the Republic of Bolivia by the Contract and Concession of May 22nd, 1906, as modified and amended.

TO HAVE AND TO HOLD all and singular the said railways, properties real and personal, rights, franchises, estates and appurtenances unto the Trustee, its successors in the trust and its and their assigns forever ;

IN TRUST, nevertheless, for the common and equal use, benefit and security of all and singular the person or persons, firm or firms, bodies politic or corporate, who shall from time to time be holders of any of the First Mortgage Bonds or coupons, and without preference of any of said bonds over any of the others by reason of priority in the time of issue or negotiation thereof, or otherwise howsoever ; subject to the terms, provisions and stipulations in the First Mortgage Bonds contained, and for the uses and purposes and upon and subject to the terms, conditions, provisos and agreements in the First Mortgage and in this Supplement expressed and declared.

5. The Railway Company shall be entitled to obtain, under Article Two of the First Mortgage and in the amounts and subject to the limitations and restrictions therein declared, and in all respects as though the lines of railway as so relocated and as described in Article 4 of this Supplement, had been so described in Subdivision First of the Granting Clause of the First Mortgage, the authentication and delivery of First Mortgage Bonds to defray expenditures for the acquisition, construction and equipment, as well as for the other purposes in connection therewith in said Article Two of the First Mortgage set forth, of its lines of railway described in Subdivision First of the Granting Clause of the First Mortgage as relocated in accordance with Article 4 of this Supplement, and as therein described, and of the appurtenances of said lines.

6. The Railway Company shall be entitled to obtain the authentication and delivery of First Mortgage Bonds under Section 1 of Article Two of the First Mortgage in respect

of said construction work done upon said line from Oruro to Potosí and in the amounts and otherwise subject to the limitations and restrictions therein declared. For the purposes of Section 1 of Article Eight of the First Mortgage, the First Mortgage Bonds so issued in respect of construction on said line, shall be deemed to be issued for the construction of the line from Viacha to Oruro, as described in Subdivision A of Article 4 of this Supplement.

7. The Railway Company shall be entitled to obtain in accordance with the provisions of Section 1 and Section 3 of Article Eight of the First Mortgage respectively, but otherwise subject to the conditions and limitations in said Sections respectively prescribed, releases of the mortgaged property forming the subject of such Sections notwithstanding that, in the cases in that behalf in said Sections specified, by such release, the continuity of the main line of railway of the Railway Company between Viacha and Potosí contemplated in the First Mortgage and in Subdivision First of the Granting Clause thereof described, may be broken, *provided* that, in the cases aforesaid, by such release, the continuity of the main line of railway of the Railway Company between Viacha and Oruro as described in Subdivision A of Article 4 of this Supplement shall not be broken.

8. The Railway Company may make any changes or alterations in or modifications of said concession to construct, own, operate and exploit its system of railways in the Republic of Bolivia granted by the Contract and Concession of May 22nd, 1906, between the said Republic and The National City Bank of New York and Speyer & Co. notwithstanding that thereby the continuity of the main line of the system of the Railway Company from Viacha to Potosí, contemplated in the First Mortgage and in Subdivision First of the Granting Clause, thereof described, be broken, *provided* that thereby the continuity of the main line from Viacha to Oruro described in Subdivision A of Article 4 of this Supplement be not broken.

9. For all the purposes of the First Mortgage, the lines of



railway, described in Subdivision First of the Granting Clause of the First Mortgage shall be deemed to be from and after the delivery of this Supplement said lines of railway as relocated in accordance with Article 4 of this Supplement and as therein described in all respects as though the lines of railway as so relocated and described had been described in Subdivision First of the Granting Clause of the First Mortgage; and in respect of all matters arising under the First Mortgage subsequent to the delivery of this Supplement, the First Mortgage shall be so construed. But nothing contained in this Supplement shall affect the right of the Railway Company to obtain, and the Railway Company shall, notwithstanding the delivery of this Supplement, be entitled to obtain, the authentication and delivery of First Mortgage Bonds under Article Two of the First Mortgage and in the amounts and subject to the limitations and restrictions therein declared, to defray expenditures, whether made before or after the delivery of this Supplement, for the acquisition, construction or equipment prior to the delivery of this Supplement of the lines of railway, or any of them, described in Subdivision First of the Granting Clause of the First Mortgage, and of the appurtenances of said lines.

10. Except as in this Supplement provided, the First Mortgage shall continue in full force and effect notwithstanding the execution and delivery of this Supplement; and this Supplement shall not be construed to take away, modify or affect any right or remedy by the First Mortgage conferred on the Trustee or on any of the holders of the First Mortgage Bonds or modify or change the terms on which any such right may be exercised or any such remedy enforced.

11. The holders of the First Mortgage Bonds shall be deemed to consent that the Lessee, making the advances and loans called for by Clause 5 of the Lease, shall be subrogated, and so long as it is not in default under the Lease or its guaranty of the payment of the interest on the First Mortgage Bonds issued under Section 1 of Article Two of the First

Mortgage, be entitled, as assignee of the holders of said First Mortgage Bonds, to all the rights of the holders of said First Mortgage Bonds under the guaranty by the Republic of Bolivia in pursuance of the Contract and Concession of the interest on said First Mortgage Bonds, to obtain the payment by the Republic of Bolivia and out of any funds by the Contract and Concession applicable toward meeting the obligations of the Republic of Bolivia under said guaranty by said Republic of the interest on said First Mortgage Bonds, of said loans made by the Lessee pursuant to said Clause 5 of the Lease.

12. The recitals in this Supplement are made by and on behalf of the Railway Company solely.

IN WITNESS WHEREOF, The Bolivia Railway Company has caused its corporate seal to be hereunto affixed and this Supplement to the First Mortgage to be signed by its president and by its secretary, and Central Trust Company of New York, the Trustee under the First Mortgage, has caused its corporate seal to be hereunto affixed and this Supplement to be signed by its vice-president and by its assistant secretary, the day and year first above written.

THE BOLIVIA RAILWAY COMPANY,
by
J. G. METCALFE,
President.

A. W. CLARK,
Secretary.

[SEAL]

As to The Bolivia Railway Company }
in the presence of :

W. I. INNES,
CARL EHLERMANN, JR.

CENTRAL TRUST COMPANY OF NEW YORK,
Trustee.

by
E. FRANCIS HYDE,
Vice-President.

M. FERGUSON,
Assistant Secretary.

As to Central Trust Company of New }
York in the presence of :

JAMES M. STALL,
R. C. ROETGER.

[SEAL]

IN THE CITY, COUNTY AND STATE OF NEW YORK, UNITED STATES OF AMERICA, this fifteenth day of January, 1909, before me, Aloysius C. Gahan, Notary Public in and for the County of New York, having an office at No. 5 Nassau Street in said City and County, personally appeared :

Jacob G. Metcalfe, who is of lawful age, married, railway president, residing in the Village of Lakewood, in the State of New Jersey ;

Arthur W. Clark, who is of lawful age, married, railway secretary, residing at No. 500 West 143d Street, in the Borough of Manhattan, in the City of New York, in the State of New York ;

E. Francis Hyde, who is of lawful age, married, banker, residing at No. 36 West 58th Street, in the Borough of Manhattan, in the City of New York, in the State of New York ; and

Milton Ferguson, who is of lawful age, married, banker, residing at No. 53 Marlborough Road, in the Borough of Brooklyn, in the City of New York, in the State of New York ; all of whom I certify to be personally known to me, and all of whom are, in my judgment, legally competent to execute the foregoing indenture.

And the said Metcalfe and Clark, being by me, the Notary, duly sworn, deposed and declared :

That they are respectively the president and secretary of the corporation known as The Bolivia Railway Company, the corporation described in and which executed the foregoing indenture ; that they reside, the said Metcalfe in the Village of Lakewood, in the State of New Jersey, and the said Clark, in the Borough of Manhattan, in the City of New York, in the State of New York ; that said indenture was signed by the said Metcalfe and Clark in the name and on behalf of said The Bolivia Railway Company, by authority of its By-laws and in compliance with resolutions of the Board of Directors of said The Bolivia Railway Company, that the

said Metcalfe and Clark know the corporate seal of The Bolivia Railway Company and that the seal affixed to said indenture is such corporate seal, and that it was thereto affixed by order of the Board of Directors of The Bolivia Railway Company; and that said Metcalfe and Clark signed the said indenture by like order as aforesaid and as their voluntary act and deed. And the said Metcalfe and Clark acknowledged to me that said corporation executed said indenture, and that the same was signed, sealed and delivered as the free and voluntary act of The Bolivia Railway Company for the uses and purposes therein expressed.

I, THE NOTARY, CERTIFY: That said The Bolivia Railway Company, as appears by duly legalized copy of the Certificate of Incorporation which I have before me, is a corporation legally constituted under and by virtue of the laws of the State of Connecticut, United States of America, and that said The Bolivia Railway Company is authorized to execute and deliver an indenture in the form of the foregoing,

I FURTHER CERTIFY: That the stockholders of The Bolivia Railway Company, by resolutions adopted at a meeting duly held January 12, 1909, and which appear in the minutes of said meeting now before me, duly authorized the execution and delivery by said Railway Company of an indenture in form of the foregoing, and I certify that under the Certificate of Incorporation of The Bolivia Railway Company and under its By-laws, the Board of Directors of said Railway Company has the power to resolve upon the execution and delivery of such an indenture, and that the resolution of said Board of Directors authorizing such indenture and which empowers the said Metcalfe and Clark to execute said indenture, appears in the Minutes of the Board of Directors of The Bolivia Railway Company, and was adopted at the meeting of said Board of Directors held January 11, 1909, which said minutes and resolution I have before me.

I FURTHER CERTIFY : That at the meeting of the Board of Directors of said The Bolivia Railway Company, held April 28, 1908, said Metcalfe was elected president of said corporation, and said Clark was elected secretary of said corporation, as appears by the minutes of said meeting which I have before me.

And said E. Francis Hyde and Milton Ferguson having been duly sworn by me, the Notary, deposed and declared :

That they are respectively vice-president and assistant secretary of the corporation known as Central Trust Company of New York, which is the Trustee described in and which executed the foregoing indenture ; that they reside in the City of New York, in the State of New York ; that said indenture was signed by said Hyde and Ferguson in the name and on behalf of said Central Trust Company of New York by authority of its By-laws and of its Board of Trustees ; that said Hyde and Ferguson know the corporate seal of said Central Trust Company of New York, and that the seal affixed to said indenture is such corporate seal, and that it was affixed thereto by authority of the Board of Trustees of said Central Trust Company of New York, and that said Hyde and Ferguson signed said indenture of trust by virtue of like order, as aforesaid, and as their voluntary act and deed.

And the said Hyde and Ferguson acknowledged to me that said Central Trust Company of New York executed the said indenture and that the same was signed, sealed and delivered as the free and voluntary act of said Central Trust Company of New York, for the uses and purposes therein expressed.

And I, THE NOTARY, CERTIFY : That said Central Trust Company of New York, as appears by duly legalized copy of the Charter which I have before me, is a corporation legally constituted under and by virtue of the laws of the State of New York, and is authorized to accept an indenture in the form of the foregoing :

I FURTHER CERTIFY : That the aforesaid Central Trust Company of New York, by resolution adopted by the Executive Committee of the Board of Trustees at a meeting held January 15, 1909, as appears by resolution contained in the minutes which I have before me, resolved to accept an indenture in form of the foregoing; and that by aforesaid resolution of the Executive Committee said Hyde and said Ferguson were authorized to execute the foregoing indenture in the name and in behalf of said Central Trust Company of New York,

I FURTHER CERTIFY : That at the meeting of the Board of Trustees of said Central Trust Company of New York, held January 16, 1908, said Hyde was elected vice-president of said corporation, as appears by the Minutes of the Board of Trustees which I have before me, and that at a meeting of said Board of Trustees held October 29, 1907, said Ferguson was appointed assistant secretary of the corporation as appears by the Minutes of the Board of Trustees, which I have before me.

I, THE NOTARY, CERTIFY : That the parties appearing, all of them having full knowledge of the contents of said foregoing indenture and of this notarial declaration, through having read the said indenture and declaration in the English language, which is the language of all of said parties, and with which I am also familiar, have signed, ratified and affixed the respective seals of the two companies named unto the said foregoing indenture in both the English and Spanish languages, before me the subscribing Notary, and the subscribing witnesses present, who are residents and legally competent to act as such, I, the Notary, carefully explaining to all of the parties that the text of said indenture as contained in the two instruments in the English and Spanish languages thus executed, is identical in meaning, the said English and Spanish texts being correct translations of each other.

And, finally, I, THE NOTARY, CERTIFY that I am familiar with the English and the Spanish languages, and that the English and Spanish versions of said indenture which the parties appearing execute in this act, are faithful and correct translations of each other in all of their parts.

To all of which I, THE NOTARY, CERTIFY.

J. G. METCALFE,
A. W. CLARK,
E. FRANCIS HYDE,
M. FERGUSON.

Before me:

ALOYSIUS C. GAHAN,
Notary Public,
New York County,
N. Y.

[SEAL]

