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MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No. 3927	Press Mis.
390-91	
Dated 19 12	1867.

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*Proceedings of the Madras Government, Public Works Department,
19th December 1867.*

No. 390. Read the following letter from the Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 14th December 1867, No. 807 :—

Dated 5th December 1867, and made on letter from Consulting Engineer for Railways to Government, of 3rd idem, No. 332.

1. I have the honor to acknowledge the Order of Government noted in the margin, with its enclosures, requesting the Advocate General's opinion as to the right of Government, under the terms of their Agreement with the Indian Tramway Company, to call upon the Company to restore to the Mirassidars of Konary Coopum, a free passage to the water of their tank for the irrigation of their fields; and as to the power of Government, in the event of the Company refusing to do so, to enforce compliance, by prohibiting the running of the trains over that portion of the line which has cut off the tank.

2. I laid the papers before the Advocate General for his consideration, and,

3. I now forward a copy of his opinion, and return the order and enclosures above noted.

—
OPINION.

1. I am clear that the Government has no power to act in the present instance under the 30th Section of the Agreement with the Tramway Company. The "rights and safety of the public," therein alluded to, are the rights and safety of the travelling public, who are on the railway. The "public" would be far more damnified than benefited by the closing of the railway. Thousands might be made to suffer for the injury done to a comparatively very small section of the public, the ryots or Mirassidars entitled to have their forty acres watered by the channel which the Tramway Company has cut off or blocked up. In fact, the Mirassidars are not the public, though they are a *general* body: and the distinction between *public* and *general* rights is perfectly well known, and very reasonable.

2. The same remarks apply to Section 7 of the Agreement, to which attention has not been drawn.

3. But, though the plan suggested may not be the proper way of compelling the Tramway Company to do the ryots justice, it may still well be that they have received injury, and must therefore have a remedy.

4. I am of opinion that the parties injured have a right of action against the Tramway for obstructing their easement of water flow. It may be, as the Engineer of the Tramway remarks, that they have been some time in finding out their grievance, or more probably in seeking redress; but by Clause 12 of Section 1 of Act XIV of 1859, the Limitation Act, they have twelve years within which to bring their action.

5. Whether, under all the surrounding circumstances of this case, the Government will remit the ryots to their action, or have the necessary works done for them, is a matter for the discretion of Government.

6. I observe that the Agreement is dated 3rd August 1867. It recites that there was no previous Agreement executed; that the Tramway Company had completed their line in anticipation of an Agreement; that the line was opened on the 1st August 1865, such line and all belonging to it "having been duly inspected

"by the Consulting Engineer for Railways, acting on behalf of the Government, and found to be well and substantially constructed and fit to be opened for traffic."

7. The whole proceeding appears to have been very loosely conducted on both sides. I am not aware whether there was any general undertaking on the part of the Tramway Company to construct sufficient water-ways for existing channels, which the Government could compel them to abide by. But I question very much whether, after the inspection of the works by the Government Engineer, his report on them, the Government's adoption of that report, and its embodiment in the Agreement, it is now open to the Government to say that the line has not, in all respects, been properly constructed.

8. Nor do I know under what circumstances the land was taken up, whether under Act XX of 1852, or whether the owners have ever been paid for their property. A consideration of these matters may probably weigh with the Government in deciding whether or no to assist the ryots. The relations in which the Government and the Tramway Company stand to each other may possibly make it undesirable to leave the Company to be sued by the Mirassidars. At the same time, it is impossible to say what similar acts may have been committed by the Tramway Company. The present application may be merely tentative, with the view of establishing the liability of Government; after which other and more formidable claims might make their appearance.

9. It can hardly, however, be that such a state of things can occur again. I presume that, before any further undertakings of this character are sanctioned or begun, binding Agreements will be executed, specifying precisely what the Company is to do, and for what it shall be liable.

(Signed)* J. B. NORTON,

Advocate General.

10th December 1867.

No. 391. ORDER THEREON, 19th December 1867, No. 3,927.

RAILWAY, No. 27.

Recorded, with reference to the
Order of the 19th instant, No. 3,920.

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,

Secretary to Government.

Articles of Agreement

made and entered into this Twenty-third day of August One thousand eight hundred and sixty-seven Between THE SECRETARY OF STATE in Council (hereinafter called "The Government") of the one part and THE INDIAN TRAMWAY COMPANY Limited (hereinafter called "The Company") of the other part WHEREAS the Company in or about the year One thousand eight hundred and sixty-four entered into negotiations with the Government with a view to obtaining from the Government certain aid and concessions to and in respect of a line of light Railway with a gauge of three feet six inches from the Arconum Station on the Madras Railway to the town of Little Conjeveram a distance of eighteen miles and sixty-five chains or thereabouts which the Company then proposed to construct and work. AND WHEREAS the Company afterwards and with the sanction of the Government but before the terms and extent of such aid and concessions as aforesaid had been finally determined and agreed upon commenced and proceeded with the construction of the said proposed line of Railway. AND WHEREAS the Company afterwards completed the construction of the said line of Railway together with all necessary stations sidings engine houses store houses and other buildings and erections at the several places hereinafter named that is to say Arconum Pulloor, Chengleayroyen's Choultry and Little Conjeveram and such line of Railway stations sidings engine houses store houses and other buildings and erections having been duly inspected by the Consulting Engineer for Railways acting on behalf of the Government and found to be well and substantially constructed and fit to be opened for traffic the said line of Railway was on or about the First day of August One thousand eight hundred and sixty-five opened for traffic throughout the whole distance between the said Arconum Station on the Madras Railway and the said town of Little Conjeveram. AND WHEREAS the Company with the consent of the Government but at the cost the Company made and constructed the said line of Railway for the distance of fourteen miles and twenty-two chains commencing from the said Arconum Station along and upon one-half of the Government road leading from Arconum aforesaid to Conjeveram aforesaid and the remainder of the said line of Railway being a distance of four miles and forty-three chains together with the said stations sidings engine houses store houses and other buildings were made and constructed by and at the cost of the Company upon land taken up by and at the cost of the Government and made over to the Company free of charge. AND WHEREAS the Government in consideration of the Company's having made and constructed the said line of Railway and of the Covenants and Agreements on the part of the Company hereinafter contained have agreed to grant and enter into such Concessions and Covenants as are hereinafter contained. NOW THEREFORE THESE PRESENTS WITNESS that in consideration of the premises the said SECRETARY OF STATE in Council doth hereby for himself and his Successors covenant with the said Company their Successors and Assigns. AND the said Company do hereby for themselves and their Successors covenant with the said SECRETARY OF STATE in Council his Successors and Assigns in manner following that is to say

1. ALL land in addition to that which the Government has already placed at the disposal of the Company and which the Government shall from time to time consider necessary for the purposes of the Company shall be taken up by the Government and made over to the Company for their use.

2. ALL land so to be taken up by the Government and made over to the Company shall be paid for by the Company.

3. THE Company shall submit to the Government whenever required so to do drawings and descriptions of all works machinery rolling stock buildings and other appurtenances of the Railway which have been already erected made and purchased for the use of the Company and shall also from time to time submit to the Government drawings and descriptions of all other works machinery rolling stock buildings and other appurtenances which shall at any time hereafter be required to be erected made or purchased for the use of the Company in such manner as shall from time to time be required by the Government.

4. THE Company will at all times hereafter maintain and keep the fences on each side of the said line of Railway already erected and will also at all times hereafter erect all such additional fences as may be required or directed by the Government. If at any time after the Company is or shall have been placed in possession of the land for the Railway any ordinary public road (not being a Rail-road or Tramroad) shall be constructed crossing the Railroad the necessary gates fences and masonry and other works connected with and incidental to such crossing shall be maintained by and at the cost of the Company. If at any time after the Company is or shall have been so placed in possession as aforesaid any Railroad Tramroad or private ordinary road shall be constructed crossing the Railway all the gates fences and masonry and other works connected with and incidental to such last mentioned crossing shall be maintained by the Company but at the cost of the promoters of such Railroad Tramroad or private ordinary road.

5. THE Electric Telegraph already erected by and at the expense of the Company shall at all times hereafter be maintained and kept by the Company at their own expense in good and complete repair and working order and capable of signalling the arrival and departure of trains in a satisfactory manner and the Company shall also keep and maintain in good working order and complete repair all signals already erected by the Company and required for working the traffic and all additional signals which shall from time to time be required for working the traffic shall be made and erected subject to the approval of the Government.

6. THE position of all Stations which the Company shall at any time hereafter propose to erect shall be subject to approval by the Government and no Station shall be commenced without such approval.

7. THE Company shall at all times make such alterations in and additions to their works or rolling stock as shall be declared by the Government to be necessary to ensure the safety or convenience of the public.

8. THE Company shall at all times hereafter maintain in good order the whole of the earth-work on the Government road one-half whereof is now occupied by the said Railway together with all the masonry works appertaining to the whole of the said Government road and the Railway constructed thereon with all its works rolling stock and appurtenances.

9. THE Government so long as it shall think fit to maintain the half of the roadway not occupied by the Railway as a metalled road shall pay for all charges on account of such maintenance and the Company shall only be responsible for the charges on account of the earth-work and masonry works as aforesaid but not for the metalling.

10. If it will be found at any time hereafter necessary to make any additions or alterations to the earth-works or to the masonry or timber bridges or culverts on any portion of the said road upon one-half of which the said line of Railway has been constructed the said additions or alterations not being such as would have been fairly included in or incident to the maintenance of the road had it been used as an ordinary carriage road only all such alterations and additions shall be at the cost and risk of the Company alone but no such alterations or additions shall be made without the consent of the Government being first obtained.

11. ALL engines carriages and waggons of all sorts which shall from time to time be required to be used on the said line shall be of good and solid construction and shall be subject to survey and approval by a Government Officer before they are permitted to be used on the opened line.

12. THE Company shall at all times provide for the service of the line all such establishments of Clerks, Engine Drivers, Guards, Signalmen, Pointsmen, Gatesmen, Police, Porters and other servants and workmen as shall be necessary for the working of the traffic and the security of the public.

13. ALL Bye-laws and Regulations of the Company affecting the public use of the Railway shall be submitted for approval to the Government before they are put in force.

14. THE Company shall run at least one train with passenger carriages of all classes each way every day along the whole of the line and at an average speed of not less than twelve miles an hour including stoppages.

15. ALL passenger carriages used on the said Railway shall be covered over head there shall be at least two classes of such carriages and those of one class shall be closed with glass windows.

16. THE Company shall be at liberty and they are hereby authorized to fix the tariff of charges on the said line of Railway as the Company shall think fit for such time and until the net profits or declared dividends of the Company shall be at the rate of ten per centum per annum or upwards on the Capital of the Company for two years or five per cent. per half-year for four half-years consecutively and thereupon and immediately after the expiration of such two consecutive years or four consecutive half-years as the case may be the tariff of the charges of the Company shall not be higher than the lowest tariff of charges which shall or may be in use on the Madras Railway at the time of the expiration of the said two consecutive years or four consecutive half-years as the case may be and the classifications of passengers and goods and the general subsidiary rules under which the charges are made shall thereupon and thenceforth in all respects be as nearly as possible similar to those which may then be in force for the Madras Railway.

17. PROVIDED always and it is hereby expressly agreed and declared that from time to time and at any time or times thereafter any other tariff of charges and any other rules for classification and general subsidiary rules than those hereinbefore specified which shall first have been submitted to and approved by the Government in that behalf shall and may be substituted for the tariff of charges mentioned and fixed in the last preceding clause of these Presents.

18. THE Company shall from time to time submit to the Government a complete Statement of the tariff of charges of all descriptions and be bound to correct anything in the tariff not authorized by the conditions herein contained.

19. A list of all fares and tolls duly certified by a responsible Officer of the Company shall be exhibited at every station where such fares or tolls shall be payable.

20. On the payment of the proper fares or tolls all persons or Companies shall be entitled to use the Railway to travel thereon to send goods thereby and to run properly constructed engines and carriages thereon under suitable regulations to be from time to time approved by the Government and the fares and tolls shall be levied (excepting as hereinafter provided) at the same rates on all persons whatever using the Railway and unless with the sanction of the Government no special advantages not conceded to the public generally shall be given directly or indirectly to any one individual or firm in any form.

21. On the completion of the works on any portion of the line being certified by the Government Officer deputed or authorized to inspect them the Government shall pay to the Company a sum of money equivalent to the amount which shall or may have been paid for the import duty upon such portions of the permanent way material as shall consist of rails chairs and fixings and which shall be actually used in and placed upon the said line or any portion thereof on the public opening thereof and such sum of money shall be calculated at the rates of duty charged for such portions of permanent way material as aforesaid at the date or dates when the same were respectively imported to be ascertained from the Custom House Receipts and upon the actual quantity of such material as shall or may be certified to be in place by a Government Officer deputed or authorized to ascertain the same.

22. THE Government shall for the period of twenty years commencing from the First day of August One thousand eight hundred and sixty-five pay to the Company a subvention of two thousand three hundred and fifty-one Rupees and nine Annas being at the rate of one hundred and twenty-five Rupees per mile (exclusive of sidings) of the measured length of the said line of Railway now open for traffic such subvention to be paid annually reckoning from the date of the opening of the line for public traffic as a contribution towards the cost of maintenance of the said road as provided by Clause 9 of these Presents.

23. OFFICERS and Soldiers and their families and Camp followers and Police and their Prisoners shall be carried on the requisition of a proper authority at fares reduced by a deduction of one-third on the ordinary fares on the line and the Government shall declare who is a proper authority within the meaning of this Clause.

24. ALL public baggage stores arms ordnance ammunition and the like also Government horses and cattle despatched under proper authority also the regulated amount of private baggage belonging to any Officers Soldiers or Police travelling under proper authority shall be carried at rates reduced in like manner by a deduction of one-third on the general charges for conveying similar stock and goods on the proposed line so far as practicable Troops and Police travelling on the line shall be bound to assist in the loading and unloading of baggage and stores transported with them or for their use.

25. THE Government shall be entitled to claim the use of the whole of the means of transport of the Company for the conveyance of Troops or Police on an

emergency to be duly declared by proper authority at the above named rates (such authority to be certified as proper authority by Government as provided in Clause 23.)

26. THE Company shall carry free of charge by every train all Mails committed to their care. Also all persons in charge of the Mails. The Company shall also provide without charge after due notice a vehicle or portion of a vehicle to be approved by the Government properly fitted up for the special use and business of the Post Office. But all accommodation for the Post Office at Stations on the line shall be provided by the Government.

27. THE Company shall permit the Government to erect at any time and to maintain a line of Telegraph within the land made over to the Company for the Railway without any payment for compensation for the use of such land.

28. THE Company shall give all reasonable facilities and information to Officers appointed by the Government to inspect the line and rolling stock and also all stations and other buildings and also all accounts matters and things connected with the working of the Railway.

29. On the report of a Government Inspector that any thing has been done or has been omitted to be done by the Company or their Agents contrary to the special conditions herein contained the Government may call upon the Company to make good the defect stated in such report within such reasonable time as the Government may appoint and any neglect to comply with a requisition so made shall be held to be a specific breach of Covenant on the part of the Company.

30. In the event of a Government Inspector reporting that the line or any part of it or any building or any part of the rolling stock or any other thing connected with the working of the Railway cannot continue to be used with proper regard to the rights or the safety of the public the Government may prohibit the use thereof and the Company shall immediately thereupon abstain from the use of anything the use of which has been so prohibited.

31. THE concession of the half road-way and of all the land made over to the Company for its use free of cost shall be and continue for the term of Ninety-nine years commencing from the said First day of August One thousand eight hundred and sixty-five and extending to and inclusive of the Thirty-first day of July One thousand nine hundred and sixty-four.

32. On the expiry of the above named term (unless the Railway shall sooner have become the property of the Government) the whole of the property in the Railway including moveables and immoveables of every description and all things used for the working of the traffic shall pass from the Company to the Government and the Company shall thereupon give up to the Government in a thorough state of repair the line and its appurtenances with a sufficient quantity of all engines and of rolling stock tools and other appurtenances required for the maintenance of the works and the efficient working of the traffic and such quantity shall be calculated on the average stock of the Company during the last five years of the term.

33. PROVIDED always and it is hereby declared and agreed that on the expiration of the above named term the Company shall have the option of purchasing back the Railway from the Government for a further term of Ninety-nine years and so on again at the end of such further term for a sum or sums of money to be determined on a valuation by Arbitrators or their Umpire to be appointed as hereinafter in Clause 43 of these Presents is provided such valuation to be reckoned on the then present value of the land occupied by the Railway and

its appurtenances and of the works forming the roadway with the permanent way thereon but exclusive of all buildings structures and machinery erected thereon other than works being part of the Railway and also exclusive of the telegraph posts and wires affixed thereto and the fences gates and the like and the value of all buildings works and appurtenances thus excluded shall not be reckoned or taken into account on the said valuation and on the payment by the Company to the Government of the sum or sums so determined the Company shall be entitled to retain possession of the Railway and all its works and appurtenances for a further term of Ninety-nine years. PROVIDED that if the Company desire to claim a renewal of the term of their grant under this Clause they shall be bound to give notice to that effect six months before the expiration of the original or subsisting term. PROVIDED also that the full sum or sums of money determined on such valuation as aforesaid shall be paid by the Company to the Government within twelve months after the Arbitrators or their Umpire shall have published their or his valuation or award and that in default of such payment the provisions of the preceding Clause 32 shall immediately come into operation.

34. At any time after the expiry of twenty years from the commencement of the term the Government on giving one year's notice of their intention may purchase from the Company the Railway with its engines rolling stock tools and other appurtenances and the Company shall thereupon give into the possession of the Government in a thorough state of repair the line and its appurtenances with a sufficient quantity of all engines and rolling stock tools and other appurtenances required to the maintenance of the works and efficient working of the traffic and such quantity shall be calculated on the average stock of the Company during the five years next preceding the date of the said notice.

35. THE payment to be made by the Government for the Railway if thus taken shall be at the option of the Company as follows namely either the total sum expended by the Company for the construction of the line and the provision of rolling stock &c. and properly carried to the Capital Account of the Company together with five per centum on that total sum or an annuity for the remainder of the term equal to the average of the profits of the five years next preceding the period of purchase or an annuity for the remainder of the term equal to the profits of the last year of those five.

36. At any time within the period of five years from the said First day of August One thousand eight hundred and sixty-five the Company may on giving six Calendar months' previous notice in writing to the Government withdraw from the further working of the line or with the assent of the Government from the further working of any portion thereof and the Company may in either of such cases remove all the rolling stock tools and other appurtenances used for the traffic or maintenance of the works also all stores and moveables all machinery and permanent way material but not ballast whether fixed to the soil or otherwise also all telegraph posts or wires or the like. But all buildings all masonry brick and earth-works all bridges and culverts of whatever description appertaining to the Railway also all land occupied by the Company and provided by the Government free of cost with all buildings or structures erected thereon permanent or otherwise and all fences gates and the like shall thereupon pass to and become vested in the Government absolutely. PROVIDED also that the Government shall have the option of claiming at any time within six months from the receipt of the notice of the Company to purchase at a valuation anything which the Company would otherwise have been

entitled under this Clause to remove and nothing so claimed shall be removed or disposed of by the Company.

37. If at any time hereafter default shall be made in the maintenance or working of the line as agreed under the special conditions herein contained and if the Government shall require the Company to remedy the default or to maintain or work the line as agreed upon and if the Company shall not within six months from the receipt of such requisition fully comply with the terms thereof. Or if the Company shall commit any specific breach of Covenant as defined in Clause 29 of these Presents and shall continue to commit such breach of Covenant or shall not remedy the consequences thereof within six months after they have been required by the Government to cease from such breach or to remedy the consequences thereof or if the Company shall commit an act of Bankruptcy then and in any of such cases the Government may enter and take possession of the line and of all the works and of all rolling stock brought on to the line and of all things whatsoever appertaining to the Railway belonging to the Company and being on land made over to the Company by the Government free of cost.

38. THE whole Agreement between the Company and the Government and the conditions under which the Company shall be placed in occupation of any land by the Government and under which it shall carry on its business in connection with the said Railway are and shall at all times be subject to all Acts of the Indian Legislature now existing or hereafter to be passed. And the Company shall have no claim against the Government in respect of the Agreement by reason of any thing ordered or permitted or prohibited by any such Act or Acts.

39. THE Government shall not be liable in any way to make good to the Company any loss or damage sustained by the Company arising out of the present Agreement or connected with the maintaining or working the said line of Railway and the entire risk shall rest on the Company alone.

40. THE Company shall appoint an Agent to reside at some place in the Presidency of Madras to be approved by the Government by whom all notices or communications shall be received on behalf of the Company and who shall be duly authorized by the Company to act in their behalf in all things concerning the said line of Railway so far as relates to the present Agreement.

41. THE Government if called on by the Company so to do shall appoint an Auditor to audit the accounts of the Company on the understanding that all actual expenses incurred in such audit shall be paid by the Company.

42. THE Company shall not lease sell or otherwise alienate in any manner the said line of Railway or any part of it to any person or Company unless such person or Company shall agree to be bound by all the conditions herein contained and unless the Government shall consent to such lease sale or transfer and no such lease sale or transfer shall be valid unless with the assent of the Government.

43. THAT the valuation hereinbefore in Clause 33 of these Presents provided to be made and all questions and accounts arising out of or relating to the same shall be referred to the arbitration of two indifferent persons as Arbitrators one of such two indifferent persons to be chosen by or on behalf of the said Government and the other by the Company within one Calendar month after either of them the said Government and the said Company shall have made to the other a requisition to that effect and that if either of the said parties to these Presents shall in writing require the other of them to refer the said valuation and questions and accounts to arbitration and to name an Arbitrator and if the party to whom such requisition

is made shall for one Calendar month after such requisition neglect or refuse to comply therewith or shall name a person who shall neglect or refuse to act as Arbitrator it shall be lawful for the person chosen Arbitrator on behalf of the party making such requisition by writing under his hand to appoint some person to act as Arbitrator on behalf of the other party and such two persons shall thereupon proceed with the arbitration. But in case the said Arbitrators shall not agree in their award the said valuation and all questions and accounts arising out of or relating to the same or so much and so many and such part or parts thereof as the case may be touching which the said Arbitrators shall not agree shall be referred to the Arbitrament Umpirage final end and determination of the Secretary to the Government of Fort Saint George in the Department of Public Works for the time being or the Officer or Officers who for the time being shall hold the Office equivalent to the said Office of Secretary to the Government of Fort Saint George in the Department of Public Works and the said Arbitrators or their Umpire shall determine and award concerning the matters and things referred to them or him and (if they or he shall see fit) require the aid and take the opinion of any Accountants Counsel or other persons and adopt such other measures as shall appear to them or him expedient. And the said parties to these Presents and all persons claiming through them respectively shall in all things obey abide by and perform the award of the Arbitrators or their Umpire and shall if required by the said Arbitrators or their Umpire attend and produce to and deposit with them or him all deeds letters papers writings and entries relative to the matters or things referred to Arbitration and do all other things which the said Arbitrators or their Umpire shall require. In witness whereof Major General WILLIAM ERSKINE BAKER and WILLIAM URQUHART ARBUTHNOT ESQUIRE being two Members of the Council of India have hereunto set their Lands and seals and the said INDIAN TRAMWAY COMPANY Limited have caused their Common Seal to be affixed the day and year first above written.

Signed Sealed and Delivered by the above-mentioned WILLIAM ERSKINE BAKER and WILLIAM URQUHART ARBUTHNOT being two Members of the Council of India in the presence of

(Signed) T. A. BARRETT,
Draper's Hall, London.

(Signed) W. E. BAKER.

(Signed) W. U. ARBUTHNOT.

The Common Seal of the INDIAN TRAMWAY COMPANY Limited hereunto affixed in the presence of

(Signed) M. R. SCOTT, Secretary,
Indian Tramway Company, Limited.

Ed. T. O'Connor.

Opinion.

1. I am clear that the Government has no power to act in the present instance under the 30th section of the agreement with the Tramway Company. The "rights and safety of the public" therein alluded to are the rights and safety of the travelling public, who are the Railway. The "public" would be far more diminished than benefited by the closing of the Railway. Thousands might be made to suffer for the injury done to a comparatively very small section of the Public - the Ryots or manufacturers entitled to have their access watered by the channel which the Tramway Co. has cut off or blocked up. In fact, the manufacturers are not the Public, though they are a general body: and the distinction between public and general rights is perfectly well known, and very reasonable.
2. The same remarks apply to Sec 7 of the agreement to which attention has not been drawn.
3. But, though the plan suggested may not be the proper way of compelling the Tramway Company to do the Ryots justice, it may still well be that they have received injury, and must therefore have a remedy.
4. I am of opinion that the parties injured have a right of action against the Tramway for obstructing their easement of water flow. It may be, as the Engineer of the Tramway remarks, that they have been some time in finding out their grievance, or more probably in seeking redress; but by clause 12 of Sec: 1 of act XXIV of 1854, the Limitation act, they have 12 years within which to bring their action.
5. Whether under all the surrounding circumstances of the case the Government will permit the Ryots to their action, or leave the necessary work done for them, is a matter for the discretion of Government.
6. I observe that the agreement is dated 3rd Aug: 1867. It recites that there was no previous agreement executed; that the Tramway Co. had completed their line in anticipation of an agreement; that the line was opened

on the 1st August 1865, such line and all belong-
ing to it "having been duly inspected by the Consulting
Engineer for Railways, acting on behalf of the Govt.,
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7. The whole proceeding appears to have been very
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Govt. could compel them to do by law. But I question
very much whether, after the inspection of the works
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adoption of that report, and its embodiment in the
Agreement, it is now open to the Govt. to say that the
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The relations in which the Govt. and the Tramway Co.
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mitted by the Tramway Company. The present
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after which other and more formidable claims
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state of things can occur again. I presume that,
before any further undertakings of this character
are sanctioned or begun, binding agreements will
be executed, specifying precisely what the
Company is to do, and for what it shall be liable.

Signed John Bruce Norton
Attest: Genl

10 Decr. 1867

(True Copy)

A. J. Maclean

Government Solicitor

No: 807

Madras 14th December 1867

From. Mr. J. Brockman.
Government Solicitor, Madras

To. Col. A. D. R. C.
Secretary to Govt. F. W. D. Madras.

Sir,

I have the honor to acknowledge the order of Government noted in the margin, 1867 & am aware in the letter from the Hon. Secy. to Govt. F. W. D. Madras, of 3rd Decr. 1867, which its enclosures, requesting the advocate's opinion as to the rights of Government, under the terms of their agreement with the Indian Tramway Company, to call upon the Company to restore to the shareholders of Honary Company, a free passage to the water of their tank for the irrigation of their fields; and as to the power of Government, in the event of the Company refusing to do so, to enforce compliance, by prohibiting the running of the trains over that portion of the line, which has cut off the tank.

I laid the papers before the
2. advocate

10th Decr. 1867.

Mr. J. Brockman.

1867/12/14

The right of Govt. under the terms of their agreement with the Indian Tramway Company, to call upon the Company to restore to the shareholders of Honary Company, a free passage to the water of their tank for the irrigation of their fields; and as to the power of Government, in the event of the Company refusing to do so, to enforce compliance, by prohibiting the running of the trains over that portion of the line, which has cut off the tank.

(See letter from Mr. J. Brockman dated 14th Decr. 1867. 2. 1867.)

Advocate General for his consideration, and
3. I now forward, a Copy of his
opinion, and return the order and enclosures
above noted.

I have the honor to be,
Sir,
Your Obedient Servant
A. S. Brockman
Government Solicitor

Recorded with

reference to the order of

The 19. Instant, 1892. —

28th
enclosed.

2

which has cut off the traffic

Walt de Babel

44-390-391