3865.

Govt. of 18 Madras.

PUBLIC WORKS.

Dated

Rcvd.

Encl.

G.O. 28th April 1890 No. 571-2R

Nilgiri Railway Company

Orders that the Govt of India be urged to state further the arrangement [illegible] by the — with Mr Woolley & by ~~Mr Gutteridge~~ with the Union Line Company the draft [illegible] sinking Subscription Capital of the Company

Railway Company

Thanks & to what further [illegible] proposed by Mr Woolley be [illegible] to the Union [illegible]

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Railway.

Read again the following papers :—

G.O., dated 17th April 1890, No. 530 R., Public Works.

From Messrs. COWDELL and WINTERTON, Solicitors to the Nilgiri Railway Company, to the Secretary to Government, Public Works Department, Railway Branch, dated Ootacamund, 10th April 1890.

re *The Nilgiri Railway Company.*

We have just received from the Solicitors in England, Messrs. Paine Son and Pollock, who arranged and carried out the present scheme, a copy of the "Case for counsel," with the opinion of Mr. Charles H. Sargant, whom they consulted in reference to various points, and the proposed scheme generally. We have extracted from this case and opinion such portions as bear upon the questions raised by the Government Solicitor.

ENCLOSURE.

Extract.

The Nilgiri Railway Company, Limited—Case for Counsel's opinion.

"There are sent herewith memorandum and articles of association of the above-named Company together with print of proposed alterations in such articles, agreement of 30th September 1885 between the Secretary of State for India and the Nilgiri-Rigi Railway Company, Limited, with annexed agreement of 26th February 1886 between the Secretary of State for India and the Nilgiri Railway Company, Limited, agreement of 29th June 1888 between the Secretary of State and the Nilgiri and Nilgiri-Rigi Railway Companies modifying certain provisions in the agreement of 26th February 1886, and copy of a proposal made by Mr. R. Woolley to the Union Debenture Company, Limited.

"In view of the proposal which has been made to them by Mr. Woolley, the Union Debenture Company desire to be advised by counsel upon certain points arising out of the documents.

"The proposal is roughly speaking as follows:—

"That upon Mr. Woolley entering into a contract with the Railway Company for the construction and equipment of their line, the Union Debenture Company should provide him with the sum of £ 200,000 wherewith to apply and pay for the whole of the share capital of the Nilgiri Railway Company and that thereupon the Railway Company shall issue to Mr. Woolley £ 200,000 4 per cent. debentures. The money is to be paid in the instalments set out in the copy memorandum herewith and subject to the allowances therein stated for expenses and commissions. It is proposed that the debentures as soon as received by Mr. Woolley shall be handed by him to some bank or person in London in trust as the monies are from time to time paid over to him by the Union Debenture Company to release and hand over to them an equivalent amount of debentures without of course making any deduction from the latter in respect of the agreed expenses and commissions. By way of further consideration for the advances and of bonus therefor Mr. Woolley will undertake to transfer to the Union Debenture Company, as soon as the same are fully paid, 6,000 shares in the Railway Company.

"It has been pointed to the Union Debenture Company that, pending the completion of the line, it is practically impossible for the Railway Company to give a debenture of any real value and that, until that date, the Debenture Company are in fact advancing money on the faith of Mr. Woolley's responsibility and of his being in a condition to carry out his contract with the Railway Company; and arrangements will therefore be made for Mr. Woolley to give the Union Debenture Company, pending the completion of the line, some additional security by the

deposit of title-deeds to a portion of his property or otherwise. It will therefore be essential that the contract for the construction of the works between Mr. Woolley and the Company should contain stringent provisions for the due completion and equipment of the line and that in some way or other the Union Debenture Company shall be put into a position to enforce and take the benefit of these provisions in case of any default on Mr. Woolley's part.

"Upon the proposal itself counsel's attention is directed to the following points:—

"(1) Under article 94, sub-clause (*c*), as amended, it will be provided that the Railway Company have power to pay for any services or property either wholly or partly in shares, debentures or other securities. Should not this power have been contained in the memorandum of association?

"Counsel is requested to advise the Union Debenture Company—

"(1) Upon the several points in 1, 2 and 3 above stated.

"(2) Generally as to the legality and feasibility of the proposal.

"If counsel's opinion be favorable upon the above points, it is proposed to carry out the arrangement roughly as follows:—

"The first moneys will be remitted by the Union Debenture Company to their Agents at Coonoor with instructions for them to hand same over to Mr. Woolley (1) upon being satisfied that the proposed amendments of the articles of association have been duly carried out, (2) that the Nílgiri-Rigi Railway Company has been duly paid out and the agreement of 26th February 1886 duly executed by the Secretary of State handed over to the Nílgiri Railway Company, (3) that the works contract in the form approved by them has been duly executed and exchanged between the Company and Mr. Woolley, (4) upon receiving debentures of the Company to the amount of £ 200,000 for transmission to some person to be agreed upon in trust as above-mentioned, such debentures being duly secured by a trust deed executed by the Company containing a covenant by them to mortgage the lease of the Railway when granted to the trustees as further security for the debentures.

"It will be necessary to provide either under the agreement between the Union Debenture Company and Mr. Woolley, or otherwise, that the former, if not actually made parties to the works contract between Mr. Woolley and the Railway Company, shall have power to enforce and to take the benefit of such provisions in their own name. Possibly this can be better done in the Debenture Trust Deed, the Company assigning the benefit of their contract with Mr. Woolley to the trustees for the debenture holders.

"Counsel is requested to settle draft agreement between the Union Debenture Company and Mr. Woolley upon the above lines."

"14, ST. HELEN'S PLACE, E.C.,
22nd October 1889."

Opinion.

"(1) In my opinion the omission of the words in question does not prevent the Company from having the requisite powers. I do not think that the power of a Company to pay for services in *shares* (if this point arises here) has ever been questioned. And it is almost as common for companies to pay for services in *debentures* and such a power seems implied in the ordinary power in the memorandum of association of this and other companies 'to borrow and raise money ..... by the issue of debentures' (see Inns of Court Hotel Company, 6, eq. 82, and the remarks of Blackburn, J. in Webb *v.* Herne Bay Commissioners, L.R. 52, B. at p. 654)."

Order—dated 17th April 1890, No. 530 R., Public Works.

Communicated to the Government Solicitor, Madras, in continuation of Proceedings, No. 492 R., dated 11th April 1890.

(Signed) R. R. E. DRAKE-BROCKMAN, Lt.-Col., R.E.,
Ag. Secy. to Govt., P.W.D.

To the Government Solicitor, Madras.

Read also the following papers:—

From Major M. C. BRACKENBURY, R. E., Under-Secretary to the Government of India, Public Works Department (Railway Construction), to the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, dated Calcutta, 28th March 1890, No. 292 R.C.

I am directed to acknowledge the receipt of your No. 361 R. of 13th March 1890, forwarding, for information and instructions, copy of correspondence regarding certain proceedings on the part of the Nílgiri Railway Company, whose concession was to lapse on the 1st January 1890, if the Company's capital was not raised by that

time, and promising a further letter on receipt of the Company's reply to a communication which the Government of Madras has addressed to them in pursuance of the advice of the law officers.

2. In reply, I am directed to say that the further communication promised will be awaited, as it is not quite clear on what points instructions are asked for. If the advice of the Government of India is required, I am to add that a full statement of the case should be prepared, the particular points on which opinions are required being clearly specified.

From E. BARCLAY, Esq., Government Solicitor, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 21st April 1890, No. 201.

With reference to the Proceedings of Government, dated, respectively, 11th instant, No. 492 R., and 17th instant, No. 530 R., I have laid the question contained in the first mentioned proceedings before the Advocate-General, and I forward, herewith, a copy of his opinion thereon.

OPINION.

1. The question is—Has the Nílgiri Railway Company complied with the terms of the contracts of the 30th September 1885 and the 29th June 1888?

2. I think that it must be conceded that *primâ facie* the Company has complied with the terms of those contracts. It has an Indian domicile, a nominal capital of not less than Rs. 25,00,000, possesses powers sufficient to carry out the scheduled contract mentioned in the contract of the 30th September 1885, and that capital was fully subscribed before the 1st January 1890, the date specified in the contract of the 29th June 1888.

3. The Government Solicitor is of opinion that the Company raised its share capital by the issue of debentures, and that it could not do so under the terms of para. 3 (*o*) of the memorandum and articles of association. He contends that the practical effect of this proceeding of the Company is that Mr. Woolley raised money on the Company's debentures to pay for his own shares. He therefore maintains that the capital has not been fully subscribed within the true meaning of the contract of the 29th June 1888, and that the Company has started in debt in order to raise its capital.

4. I do not agree with the Government Solicitor. It must be admitted that the Company could legally issue debentures in order to raise money to carry on the construction of the line and for all other legitimate purposes of the Company. By its contract with Mr. Woolley, dated the 20th December 1889, the Company undertook to create and issue debentures to the extent of £ 220,000 at 4 per cent. and to pay Mr. Woolley Rs. 25,00,000 in cash in consideration of (*a*) Mr. Woolley's entering into a contract for the construction of the line, (*b*) subscribing or procuring substantial subscriptions for the whole of the share capital before the 31st December, and paying up the same as the Directors shall (in accordance with the terms of the indenture of the 26th February 1886) require and (*c*) undertaking to provide the Company with such sums of money as shall, in addition to that supplied by the Secretary of State for interest, be sufficient to pay all interest accruing on debentures. Mr. Woolley accepted these terms, and he is legally entitled to the consideration—whether money, shares, debentures or anything else—agreed upon. He undertook to enter into a contract for construction, and to finance the Company in consideration of receiving these debentures. He did enter into the contract for construction, and he arranged with the Union Debenture Company in London to supply him with all moneys required by him to carry out his contract with the Nílgiri Railway Company. Relying on his arrangement with the Union Debenture Company, he applied for all the remaining shares of the Nílgiri Railway Company, and paid the usual deposit on application. The shares were allotted to him on his paying Rs. 2,49,900. It is immaterial to the Nílgiri Railway Company or Government where Mr. Woolley raised this money. He is bound, of course, to pay up his subscriptions for the remaining calls on his shares. It ought not to be assumed that he will be unable to do so, and it is perfectly immaterial how or from what source he obtains the necessary funds. By his help the Company is in a position to execute the indenture, and deliver the same to the Secretary of State as required by contract of the 30th September 1885. By his help the Company is in a position to begin the work of construction of the line. By his help the capital was fully subscribed within the prescribed time. I think that the issue of the debentures under the contract of 20th December 1889 was an issue for the purpose of raising money for the legitimate purposes of the Company, and was, therefore, within the powers conferred by

para. 3 (*o*) of the memorandum and articles of association. Mr. Woolley has to finance the Nílgiri Railway Company and construct the line under his contract. As a shareholder he must pay the balance due by him on his shares when and as called upon to do so. As consideration for contracting to construct he is entitled to the debentures. On the security of these debentures he obtains money from the Union Debenture Company to enable him to carry out his contract with the Nílgiri Railway Company. I fail to see why the issue by that Company of these debentures is *ultra vires* because Mr. Woolley uses some of the money obtained by him from the Union Debenture Company in paying for the shares allotted to him.

(Signed) J. H. SPRING BRANSON,
Advocate-General.

19th April 1890.

ORDER—dated 28th April 1890, No. 571 R., Public Works.

Ordered that the Government of India be addressed.

(Here enter No. 572 R., dated 28th April 1890.)

(True Extract.)

(Signed) SIDNEY SMITH, Major, R.E.,
Under-Secy. to Govt., P.W.D.,
Railway Branch.

LETTER—to the Secretary to the Government of India, Public Works Department, Simla, dated Ootacamund, 28th April 1890, No. 572 R.

With reference to your letter, No. 292 R.C., dated 28th March 1890, I am directed to state that the point on which the orders of the Government of India are desired is whether the arrangements effected by the Nílgiri Railway Company with Mr. Woolley and by that gentleman with the Union Debenture Company are to be accepted as constituting subscription of the capital of the Company. They were completed before the expiry of the concession, viz., before 31st December 1889, and if they are to be accepted the Company must be so informed, the further measures contemplated by the contract will have to be taken, and the liabilities to the payment of interest, &c., therein provided will accrue. I am to say that the Government of Madras is unable to furnish a fuller statement of the case than that contained in the letter of the Government Solicitor, Madras, dated 4th March 1890, already transmitted, and that copies of all the documents bearing upon the question have been furnished to the Government of India.

2. I am directed to point out that this Government cannot proceed in the matter without definite orders from the Government of India, the interests involved being exclusively imperial and not provincial in any degree. I am now to transmit copy of further papers, including opinion by the Advocate-General, Madras, to the effect that the subscription of the capital is complete and not open to question, and I am to request that the decision of the Government of India may be intimated by wire at the earliest possible date.

(Signed) R. R. E. DRAKE-BROCKMAN, Lt.-Col., R.E.,
Ag. Joint Secy. to Govt., P.W.D.

Exd. A. Aubert.
Spare Copies.

RAILWAY.

Govt. of {1890} Madras.

PUBLIC WORKS.

Dated April, 28th.

Read. *Encl.*

G.O., 28th Apr. 1890, Nos. 571 R., 572 R.

APRIL.

Nilgiri Railway Company

Requesting orders as to whether the arrangements effected by the — with Mr. Woolley and by him with the Union Debenture Company are to be accepted as constituting subscription of the capital of the Company.

Extract

"The Nilgiri Railway Company Limited

"Case for Counsels Opinion

"There are sent herewith Memorandum and Articles "of Association of the above named Company together "with point of proposed alterations in such Articles — "Agreement of 30th September 1885 between the Secretary "of State for India and The Nilgiri Rigi Railway "Company Limited with annexed Agreement of 26th "February 1886 between the Secretary of State for India and "the Nilgiri Railway Company Limited Agreement of "29th June 1888 between the Secretary of State and the "Nilgiri and Nilgiri Rigi Railway Companies modi- "fying certain provisions in the Agreement of 26th Febru- "ary 1886 and Copy of a proposal made by Mr. R. Woolley "to the Union Debenture Company Limited"

"In view of the proposal which has been made "to them by Mr. Woolley the Union Debenture Company "desire to be advised by Counsel upon certain points — "arising out of the documents."

"The proposal is roughly speaking as follows: — "That upon Mr. Woolley entering into a Contract with "the Railway Company for the construction and —

part of the Nilgiri Railway Company

whose concession was to lapse on the

1st January 1890, if the Companys — —

Capital

"equipment of their line the Union Debenture Company
"should provide him with the sum of £ 200,000 wherewith
"to apply and pay for the whole of the Share Capital of
"the Nilgiri Railway Company and that thereupon
"the Railway Company shall issue to Mr Woolley
"£ 200,000 4% Debentures. The money is to be paid in
"the instalments set out in the Copy Memorandum
"herewith and subject to the allowances therein stated
"for expenses and Commissions. It is proposed that
"the Debentures as soon as received by Mr Woolley shall
"be handed by him to some Bank or person in London
"in trust as the monies are from time to time paid
"over to him by the Union Debenture Company to
"release and hand over to them an equivalent amount
"of Debentures without of course making any deduction
"from the latter in respect of the agreed expenses and
"commissions. By way of further consideration for the
"advances and of loans therefor Mr Woolley will undertake
"to transfer to the Union Debenture Company as soon as
"the same are fully paid 6000 Shares in the Railway
"Company."

"It has been pointed out to the Union Debenture
"Company that pending the Completion of the line it is
"practically impossible for the Railway Company to give
"a Debenture of any real value and that until
"that date the Debenture Company are in fact advancing
"money on the faith of Mr Woolley's responsibility and
"of his being in a condition to carry out his contract
"with the Railway Company; and arrangements
"will therefore be made for Mr Woolley to give the
"Union Debenture Company pending the completion
"of the line some additional security by the deposit of
"title deeds to a portion of his property or otherwise.
"It will therefore be essential that the Contract
"for the Construction of the works between Mr Woolley
"and the Company should contain stringent provisions
"for the due completion and equipment of the line and
"that in some way or other the Union Debenture Coy
"shall be put into a position to enforce and take the benefit
"of these provisions in case of any default on Mr Woolley's
"part."

"Upon the proposal itself Counsel's attention is
"directed to the following points:—

"(1) Under Article 94 Sub Clause C as amended
"it will be provided that the Railway Company
"have power to pay for any services or property either
"wholly or partly in Shares, Debentures or other Securities.
"Should not this power have been contained in the
"Memorandum of Association?"

"Counsel is requested to advise the
"Union Debenture Company"

"(1) Upon the several points in 1, 2 and 3 above
"stated."

Requesting orders as to whether the arrangements effected by the — with Mr. Woolley and by him with the Union Debenture Company are to be accepted as constituting subscription of the capital of the Company.

part of the Nilgiri Railway Company whose concession was to lapse on the 1st January 1890, if the Company's —

Capital

"(2) Generally as to the legality and
" feasibility of the proposal."

"If Counsels opinion be favorable upon the above points
" it is proposed to carry out the arrangement roughly
" as follows:"—

"The first moneys will be remitted by the Union
" Debenture Company to their Agents at Coonoor
" with instructions for them to hand same over to
" Mr. Woolley (1) upon being satisfied that the proposed
" amendments of the Articles of Association have
" been duly carried out (2) that the Nilgiri Rigi
" Railway Company has been duly paid out and
" the Agreement of 26th February 1886 duly executed
" by the Secretary of State handed over to the Nilgiri
" Railway Company (3) that the Works Contract in the
" form approved by them has been duly executed
" and exchanged between the Company and Mr. Woolley
" (4) upon receiving Debentures of the Company to the Amount
" of £ 200,000 for transmission to some person to be agreed
" upon in trust as above mentioned such debentures
" being duly secured by a Trust Deed executed by the
" Company containing a covenant by them to mortgage
" the lease of the Railway when granted to the Trustees
" as further security for the Debentures."

"It will be necessary to provide either under
" the Agreement between the Union Debenture Company

(4)

Requesting orders as to whether the arrangements effected by the — with Mr. Woolley and by him with the Union Debenture Company are to be accepted as constituting subscription of the capital of the Company.

" and Mr Woolley or otherwise that the former if not
" actually made parties to the Works Contract between
" Mr Woolley and the Railway Company shall have
" power to enforce and to take the benefit of such
" provisions in their own name. Possibly this can be
" better done in the Debenture Trust Deed the Company
" assigning the benefit of their Contract with Mr Woolley
" to the Trustees for the Debenture holders."

"Counsel is requested to settle draft
"Agreement between the Union Debenture
"Company and Mr Woolley upon the above
lines".

" 14 St Helens Place E.C. 22nd October 1889."

Opinion

" (1) In my opinion the omission of the words in question
" does not prevent the Company from having the requisite
" powers. I do not think that the power of a Company to
" pay for services in Shares (if this point arises here)
" has ever been questioned. And it is almost as common
" for Companies to pay for services in debentures and
" such a power seems implied in the ordinary power
" in the Memorandum of Association of this and other
" Companies "to borrow and raise money ... by the issue
" of debentures" (see Inns of Court Hotel Company L.R. 39
" 82, and the remarks of Blackburn J. in Webb v. Herne
" Bay Commissioners L.R. 5 Q.B. at p. 654)"

End D.D.
" Rails

(5)

regarding certain proceedings on the
part of the Nilgiri Railway Company
whose concession was to lapse on the
1st January 1890, if the Company's ——
Capital

P. w Encl
3619/90

Requesting orders as to whether the arrangements effected by the — with Mr. Woolley and by him with the Union Debenture Company are to be accepted as constituting subscription of the capital of the Company.

COWDELL & WOOLLEY
OOTACAMUND.

Ootacamund
10th April 1890.

From
Messrs Cowdell & Winterton.
Solicitors to the Nilgiri Railway Company
Ootacamund.

To
The Secretary to Government for Railways
Madras.

Encl.

Sir

re The Nilgiri Railway Company.

We have just received from the Solicitors in England Messrs Paine Son & Pollock who arranged and carried out the present scheme a copy of the "Case for Counsel" with the Opinion of Mr Chas H. Sargant, whom they consulted in reference to various points and the proposed scheme generally. We have extracted from this Case and Opinion such portions as bear upon the questions raised by the Government Solicitor.

We have the honor to be
Sir
Your most obedient servants.
Cowdell & Winterton

regarding certain proceedings on the part of the Nilgiri Railway Company whose concession was to lapse on the 1st January 1890, if the Companys ——

Capital

B
No. 530 R of 17th April 1890

Communicated to
the Government Solicitor Madras
in continuation of Progs. No. 492 R
dated 11th April 1890.

Recd
17-4-90
pm R

P W. C No. 3619

Rd 14-4-90
Enc 1.

Gt. 492 R dy 11.4.90
with draft Govt to
Press. 16.4.90
D.O

B
No. 530 R of 17th April 1890

To
The Government Solicitor, Madras.
Despd 17.4.90
O
14/4/90

Nilgiri Railway Company

Requesting orders as to whether the arrangements effected by the — with Mr. Woolley and by him with the Union Debenture Company are to be accepted as constituting subscription of the capital of the Company.

All communications should be addressed to the Secretary.

No. 292 R. C

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

RAILWAY Construction.

To
The Joint Secretary to the Government of Madras
(Railway Branch)
Public Works Department,
Railway Branch.

SS/
5/4/90

Calcutta, the 28th March 1890.

Sir,

I am directed to acknowledge the receipt of your No 361. R. of 13th March 1890, forwarding for information and instructions copy of correspondence regarding certain proceedings on the part of the Nilgiri Railway Company, whose concession was to lapse on the 1st January 1890, if the Company's —— Capital

In Press
10-4-90
Returned from
Press 15-4-90

Pub. 3381

capital was not raised by that time,
and promising a further letter on receipt
of the Company's reply to a communica-
-tion which the Government of Madras
has addressed to them in pursuance of
the advice of the law officers.

Rec'd 5-4-90

2. In reply I am directed to
say that the further communication
promised will be awaited, as it is not
quite clear on what points instructions
are asked for. If the advice of the Govern-
-ment of India is required, I am to add
that a full statement of the case should be
prepared, the particular points on which
opinions are required being clearly specified.

I have the honour to be,
Sir,
Your most obedient servant,

W Mackenzie Major R.E.
Under Secretary.

Rec'd 11-4-90

Documents accompanying
Nil.

98
22/4/90

Print

No 201

Madras 21st April 1890

From,

Ernest Barclay,
Government Solicitor,
Madras.

To,

The Joint Secretary to Government,
Public Works Department,
Railway Branch.

Sir,

With reference to the Proceedings of Government dated respectively 11th instant No 492 R and 17th instant No 530 R I have laid the question contained in the first mentioned proceedings before the Advocate General, and I forward herewith a copy of his opinion thereon

I have the honor to be,
Sir,
Your Obedient Servant,
Ernest Barclay
Government Solicitor.

P. Aus 492-93 R 11.4.90
. . 361 R 13.2.90
. . 360 R 13.3.90

P. W. C No 3865

Rd 22-4-90
Encl.

Print

98.8

Opinion

1. The question is- Has the Nilgiri Railway Co. complied with the terms of the contracts of the 30th Septr., 1885, & the 29th June, 1888 ?

2. I think that it must be conceded that prima facie the company has complied with the terms of those contracts. It has an Indian domicile, a nominal capital of not less than Rs 2500000, possesses powers sufficient to carry out the - Scheduled contract mentioned in the contract of the 30th Septr 1885, and that capital was fully subscribed before the 1st - January, 1890, the date specified in the contract of the 29th June, 1888.

3. The Government Solicitor is of opinion that the - Company raised its share capital by the issue of debentures, and that it could not do so under the terms of para 3 (a) of the Memorandum and Articles of Association. He contends that the practical effect of this proceeding of the Company is that Mr Woolley raised money on the Company's debentures to pay - for his own shares. He, therefore, maintains that the capital has not been fully subscribed within the true meaning of the contract of the 29th June, 1888, and that the Company has - started in debt in order to raise its capital.

4 I do not agree with the Government Solicitor. It - must be admitted that the Company could legally issue debentures in order to raise money to carry on the construction - of the line and for all other legitimate purposes of the - Company. By its contract with Mr Woolley, dated the 20th - December 1889, the Company undertook to create and issue -

debentures to the extent of £ 220000 @ 4 %, and to pay Mr - Woolley Rs 2500000 in cash in consideration of (a) Mr Woolley's entering into a contract for the construction of the line (b) subscribing or procuring substantial subscriptions for the - whole of the share capital before the 31st December, and paying up the same as the Directors shall (in accordance with - the terms of the Indenture of the 26th February 1886) require, and (c) undertaking to provide the Company with such sums of money as shall, in addition to that supplied by the Secretary of State for interest, be sufficient to pay all interest accruing on debentures. Mr Woolley accepted these terms, and he is legally entitled to the consideration- whether money- shares debentures or anything else, agreed upon. He undertook to enter into a contract for construction, and to finance the Company in consideration of receiving these debentures. He did enter into the contract for construction, and he arranged with the Union Debenture Company in London to supply him with all - monies required by him to carry out his contract with the - Nilgiri Railway Co. Relying on his arrangement with the - Union Debenture Company, he applied for all the remaining - shares of the Nilgiri Railway Company, and paid the usual - deposit on application. The shares were allotted to him on his paying Rs 249900. It is immaterial to the Nilgiri Railway Co. or Government where Mr Woolley raised this money. He is bound, of course, to pay up his subscriptions for the remaining calls on his shares. It ought not to be assumed that he will be unable to do so, and it is perfectly immaterial how or from what source he obtains the necessary funds. By his help

2

the Company is in a position to execute the Indenture, and deliver the same to the Secretary of State as required by - contract of the 30th September, 1885. By his help the Company is in a position to begin the work of construction of the line By his help the capital was fully subscribed within the prescribed time. I think that the issue of the debentures under the contract of 20th December1889, was an issue for the purpose of raising money for the legitimate purposes of the Company, and was, therefore, within the powers conferred by para 3 (o) of the Memorandum and Articles of Association. Mr - Woolley has to finance the Nilgiri Railway Co. and construct the line under his contract. As a shareholder he must pay - the balance due by him on his shares when and as called upon to do so. As consideration for contracting to construct he is entitled to the debentures. On the security of these - debentures he obtains money from the Union Debenture Company to enable him to carry out his contract with the Nilgiri Railway Company. I fail to see why the issue by that Company of these debentures is ultra vires because Mr Woolley uses some of the money obtained by him from the Union Debenture Company in paying for the shares allotted to him

19th April 1890

(Signed) J H Spring Branson,
Advocate General

(True Copy)

Ernest Barclay
Government Solicitor

P. W. Encl
3865/90.

No 571 R

PUBLIC WORKS DEPARTMENT,

RAILWAY BRANCH.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

UNDER date the 28th April 90.

again
READ the following

Progs: of the Madras Govt. P. W. Depto:— } Ack. No. 530 R dy 17th April 90

Read also the following:-

Letter from the Govt: of India P. W. Depto: } Ack. No. 292 R. C dy 28th March 90

Letter from the Govt: Solicitor Madras — } Ack. No. 201 dy 21st April 1890

Ordered that the Govt: of India be addressed.-

—

Ack. No 572 R dy 28th April 1890

Rued

A

No. 571-72 R. dated 28th April 1890.

No. 572 R

Government of Madras.

PUBLIC WORKS DEPARTMENT,

RAILWAY BRANCH.

To

The Secretary to the Govt. of India

P. W. Department

Simla

28th April 1890.

SIR,

With reference to your letter No. 292 R. C. dated 28th March 1890, I am directed to state that the point on which the orders of the Government of India are desired is whether the arrangements effected by the Nilgiri Railway Company with Mr. Woolley and by that gentleman with the Union Debenture Company are to be accepted as constituting subscription of the Capital of the Company.— They were completed before the expiry of the concession, viz. before 31st December 1889, and if they are to be accepted the Company must-

must be so informed, the further measures contemplated by the Contract will have to be taken, and the liabilities to the payment of interest as therein provided will accrue.- I am to say that the Government of Madras is unable to furnish a fuller statement of the case than that contained in the letter of the Government Solicitor, Madras, dated 4th March 1890 already transmitted, and that copies of all the documents bearing upon the question have been furnished to the Govt. of India.-

2. I am directed to point out that this Government cannot proceed in the matter without definite orders from the Government of India, the interests involved being exclusively imperial and not provincial in any degree.- I am now to transmit copy of further papers, including opinion by the Advocate General Madras to the effect that the Subscription of the Capital is complete and not open to question and I am to request that the decision of the Government of India may be intimated by wire at the earliest possible date.-

Rec'd
28.4.90 W
pm R

P C dd
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No. 542 R 928. Arnold & Co.