Public Works (1890) Department.

RAILWAY BRANCH.

G.O., No. 2015 Rys.

DATED 16th December

[Despatch Abstract.]

Power of Attorney.—Letter from the Secretary and agent, Nilgiri Railway Company, forwarding copy of the—granted to him, recorded.

Indexed.

[P. W. Ry. 500—8-5-00.]

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

25TH OCTOBER 1890, No. 1616 R., PUBLIC WORKS.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Railway.

Read again the following paper :—

G.O., dated 31st July 1890, No. 1110 R., Public Works.

Telegram from the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Secretary to the Government of India, Public Works Department, Simla, dated 28th April 1890, No. 48-D.

Your letter No. 292 R.C. Orders of India desired whether arrangements made by Nílgiri Railway Company are to be accepted as constituting subscription of capital. Madras Government cannot give fuller statement of case than that already. Am now sending opinion Advocate-General, Madras, stating that subscription is complete. If India agrees Company must be informed accordingly.

Telegram from the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Secretary to the Government of India, Public Works Department, Simla, dated 19th May 1890.

My letters 361 R. and 572 R., thirteenth March and twenty-eighth April last, Nílgiri Railway. Please wire early orders.

G.O., dated 2nd June 1890, No. 755 R., Public Works.

From the Honorary Secretary, Nílgiri-Rigi Railway Company, Limited, to the Chief Secretary to Government, dated Coimbatore, 27th May 1890.

I have the honor to enclose a memorial addressed to His Excellency the Governor by the Directors and Shareholders of the Nílgiri-Rigi Railway Company, Limited, and beg you will be good enough to submit it to His Excellency at an early date, with a request that it may be forwarded to the Supreme Government for final disposal as soon as possible.

From the Secretary, Nílgiri Railway Company, Limited, to the Chief Secretary to the Government of Madras, dated Woodcote, Coonoor, 27th May 1890.

Under instructions from the Directors of the Company, I have the honor to send herewith a memorial to His Excellency the Viceroy in Council from the Directors and Shareholders of the Nílgiri Railway Company, Limited, and to request that it may be forwarded to the Chief Secretary to the Supreme Government with as little delay as possible.

Order— dated 2nd June 1890, No. 755 R., Public Works.

Ordered that the following letter be forwarded to the Government of India.

(Here enter No. 756 R., dated 2nd June 1890.)

(True Extract.)

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

Letter from the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Secretary to the Government of India, Public Works Department, dated 2nd June 1890, No. 756 R.

With reference to correspondence ending with my letter No. 572 R., dated 28th April 1890, I am directed to forward two memorials from the Directors and Shareholders of the Nílgiri Railway Company, one addressed to His Excellency the Right Honorable the Governor and the other to His Excellency the Right Honorable the Governor-General in Council on the subject of the Nílgiri Railway.

Telegram from the Secretary to the Government of India, Public Works Department, to the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, dated Simla, 5th June 1890, No. C 51.

Vide your letter numbered and dated as follows: 572, 28th April last. *Vide* your telegram of 19th May last. Nílgiri Railway case has been referred to Advocate-General and Standing Counsel for early opinion.

Telegram from the Secretary to the Government of India, Public Works Department, to the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, dated Simla, 20th June 1890, No. C 63.

Referring to my telegram dated 5th June last, C 51. Advocate-General and the Standing Counsel are of opinion that capital of Nílgiri Railway Company was properly subscribed within the meaning of the agreement. The Company must be allowed to proceed with construction of the Railway. Letter follows.

From the 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 Simla, 23rd June 1890, No. 555 R.C.

In continuation of the telegram marginally quoted, I am now directed to forward a copy of the joint opinion of the Honorable the Advocate-General of Bengal and of the Standing Counsel regarding the questions submitted in your letter No. 361 R., dated 13th March 1890, and subsequent correspondence, whether, under the arrangements effected by the Nílgiri Railway Company with Mr. R. Woolley and by that gentleman with the Union Debenture Company, the capital for the Nílgiri Railway was subscribed before the 1st January 1890 within the meaning of the contracts between the Secretary of State and the Nílgiri Railway Company.

Public Works Department No. C. 63 of 20th June 1890.

"Referring to my telegram dated 5th June 1890, C. 51. Advocate-General and Standing Counsel are of opinion that capital of Nílgiri Railway Company was properly subscribed within the meaning of the agreement. The Company must be allowed to proceed with construction of the Railway. Letter follows."

2. The Government of India accepts the opinion of the Advocate-General and the Standing Counsel, and considers that, in accordance with that opinion, the Company must be allowed to proceed with the construction of the Nílgiri Railway under the terms of the agreements made by it.

3. The memorial from the Nílgiri Railway Company to His Excellency the Governor of Madras, received with your letter No. 756 R., dated 2nd June 1890, is returned herewith.

ENCLOSURES.

Questions submitted to the Honorable the Advocate-General and the Standing Counsel.

1. Whether Government has any concern with the arrangements in regard to the debentures effected by the Company.

2. Whether the capital of the Company was subscribed before the 1st January last in terms and within the meaning of the agreement with Government, and whether the arrangements effected by the Company with Mr. Woolley and through and by that gentleman with the Union Debenture Company affect the question.

3. Can Government insist upon the whole of the capital being actually paid up before it carries out the terms of the agreement entered into with this Company.

4. And generally as to the course Government should follow having regard to the obligations under which it lies.

Opinion.

The substantial point in this case is whether a forfeiture clause has come into effect whereby the Secretary of State was empowered to determine a contract of February 29th, 1886, so that thereupon every article, clause and thing therein should absolutely cease and determine, without prejudice nevertheless to any rights which should have accrued or should accrue to the Secretary of State prior to or by reason of any such breach. The only condition which need be considered is worded as follows—"in case the said capital of Rs. 25,00,000 shall not be fully subscribed for by the 1st January 1890." It is a well known principle of construction that such a clause should be construed strictly against the forfeiture. We do not think it is possible successfully to contend that the capital was not fully subscribed for by the 1st January 1890 and any other contention as to the arrangement by which the subscription was brought about or as to the validity of the debentures, if open to the Government, would be of no avail on the question of forfeiture. Nor do we think that the principles upon which the case recently decided in the Privy Council and not yet reported between the Maharaja of Durbhungah and the Municipality of Durbhungah where the transaction was held to be a colorable evation of the Land Acquisition Act, and therefore to have conferred no title, can be held applicable to this case.

It seems to us that in order to support the view of the Government Solicitor of Madras one would be driven to admit that if the seven original subscribers of the memorandum and articles had subscribed each for one-seventh of the total shares, but under arrangements precisely similar to those entered into by R. Woolley, the whole thing would have been a nullity, that there would have been no subscription of the memorandum, and no Company at all formed. Here the shares have been applied for, the shares have been allotted, the deposit (a large amount) has been already paid, and the balance appears to be ready for payment. We do not think Mr. Woolley would be listened to were he to attempt to repudiate the allotment of shares on the ground that the debentures were not valid. We may add that it is not easy to see what the Government will lose, or run a substantial risk of losing, if this contract is carried out, or what on the other hand they will gain should the contract be now determined. No doubt this particular mode of complying with the condition was not foreseen by any of the parties at the time the contract was entered into, and had it been foreseen by the Government, no doubt the condition would have been differently framed. Finally we would point out the desirability that the Government of Madras should be informed with the least possible delay of the views of the Government of India, as the damages claimable must be already large and must be increasing from day to day.

We therefore give our opinion upon the several points submitted to us as follows:—

(1) They have no concern.
(2) The capital was so subscribed. These arrangements do not affect the question.
(3) No, there is no such condition.

(Signed) G. C. PAUL.
(„) L. P. PUGH.

13th June 1890.

Memorial from the Directors and Shareholders of the Nílgiri-Rigi Railway Company, to His Excellency the Governor of Fort St. George and President in Council.

Your memorialists are Directors and Shareholders of the Nílgiri-Rigi Railway Company, Limited, whose head office is at Coonoor in the District of Nílgiris, in the Madras Presidency.

2. This Company was formed in the year 1880 for the purpose of ascertaining the best route and system, and for surveying a line of railway from Mettupálaiyam to the Nílgiri plateau and for eventually forming a company to construct the line to Coonoor.

3. A sum of Rs. 15,000 was subscribed, chiefly by planters and those interested in the Nílgiris, and under their arrangement, and at their expense, Monsieur Riggenbach came from Switzerland to survey the line and frame estimates.

Since his preliminary survey the Company has obtained a detailed sectional survey for a line on the Rigi principle at considerable expense.

4. Your petitioners have for a long time been endeavouring to form a company with the necessary capital to construct the line, but till lately failed in getting the capital subscribed in consequence of the stipulation by Government that the money should not be raised in the United Kingdom.

5. In June 1884 your petitioners entered into a provisional agreement with Mr. Woolley for the sale to a company of the Nílgiri-Rigi Railway Company's concessions, plans and surveys on terms which met with the approval of the Government and which were embodied in an agreement, dated the 30th September 1885, between the Secretary of State and the Nílgiri-Rigi Railway Company.

6. Since that date the Company believe that Mr. Woolley has spared himself no trouble or expense in endeavouring to form a company with the necessary capital to carry out the project. The projected Company (called the Nílgiri Railway Company) was formed prior to March 1886, as provided by the last mentioned agreement, but various difficulties were met with in raising the capital, the terms of the concession not being considered good enough whilst the conditions proved prohibitive.

7. As the result of several visits to England, and after obtaining further concessions from the Secretary of State, and the withdrawal of the prohibition against raising the capital in the United Kingdom, Mr. Woolley succeeded in raising the capital of the Nílgiri-Railway Company which was subscribed at the close of last year.

8. On the 20th December 1889, your petitioners released to the new Company its concessions for the sum arranged and approved by Government, viz. :—

Rupees 30,000 payable to the shareholders in full for their shares.
Rupees 7,500 payable to various creditors for work done in connection with the survey, the cost of which was in excess of the subscribed capital.

9. These sums Mr. Woolley undertook to pay as soon as the Company should be in a position to pay cash and the Government sanction be obtained. The document of release was duly forwarded to the Government by the Nílgiri-Rigi Railway Company at the end of last year, with a view to the money being paid over to this Company, but as yet no acknowledgment or order has been received. The Nílgiri Railway Company also, as your memorialists are informed, applied for sanction to pay the money, but your memorialists after waiting four months for payment understand that the Government has not passed any orders thereon.

10. They therefore pray that your Excellency will be pleased to sanction payment at once of the sums of Rs. 30,000 and Rs. 7,500 due to your petitioners under the agreement above referred to, together with interest on the same, as they maintain; that these payments should not have been so long delayed, but should have been made not long after the 1st January last.

And your petitioners will ever pray, &c.

From the Directors of the Nílgiri Railway Company, to the Chief Secretary to Government, dated Coonoor, 24th June 1890.

[*Re* Nílgiri Railway Company.]

With reference to the recent interview which a deputation of this Company had with His Excellency the Governor, the Honorable Mr. Stokes and *yourself*, we now have the honor to ask that you will lay before His Excellency the appended form of recommendation and request His Excellency to favorably consider and direct the same to be forwarded to the Supreme Government.

P.S.—Mr. Woolley has requested us to inform you that he *will* hand to us for transmission to you the terms upon which he would be willing to transfer his position to the Government, or otherwise as they may desire, if he were sure, as he believes, from what was said at the interview above referred to, that his doing so would be acceptable to the Government.

ENCLOSURE.

Form of Recommendation.

The Nílgiri Railway Company urge that they and their predecessors in title, including Mr. Woolley, who acted for many years as the unpaid Agent of the Company and is now largely interested in its success, have strong claims to the support of this Government.

Firstly.—Because they were encouraged to form a company, raise the capital, and construct the railway on the express or implied promise of this support.

Secondly.—Because after much labour and expense they have achieved success, and everything is and has been ready since the beginning of the year for proceeding with the work, and so far as they have been made aware there is no reason why they should not now be carrying out the work.

Thirdly.—Because the present position has only been achieved by a considerable expenditure of time, trouble, and money.

Fourthly.—Because the contracts contain clauses for the ample protection of the Government, and the money will be spent, and the work done under their control, whilst they may hereafter acquire the railway in the mode provided, and

Lastly.—Because the express or implied assurances of the Government ought not to be disregarded or remain any longer in abeyance, even though circumstances may have changed and their policy as regards railways generally have undergone a change.

(Signed) COWDELL AND WINTERTON.

From the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Secretary, Nílgiri Railway Company, Woodcote, Coonoor, dated 24th June 1890, No. 344 D.

With reference to your letter of the 24th December 1889, I am directed to request that a copy of the agreement between Mr. Woolley and the Union Debenture Company of London may be furnished for the information of Government.

Letter from R. WOOLLEY, Esq., dated Coonoor, 27th June 1890.

From the Secretary, Nílgiri Railway Company, Limited, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Woodcote, Coonoor, 2nd July 1890.

In reply to your No. 344 D. of the 24th ultimo, I am instructed by the Directors to say that they presume the application to this Company for the agreement mentioned in yours under reply has been made by mistake as the document concerns only the Union Debenture Company and Mr. Woolley.

2. The Directors therefore regret that they are unable to comply with your request for a copy.

From the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Secretary to the Government of India, Public Works Department, Simla, dated 4th July 1890, No. 371 D.

I am directed to forward the following copy of a telegram which has been this day despatched to you.

ENCLOSURE.

Telegram from the Government of Madras, Public Works Department, to the Secretary to the Government of India, Public Works Department, Simla, dated 4th July 1890.

Your letter 555 R.C., 23rd June 1890. A few days ago one of the Directors of the Nílgiri Railway Company showed a Member of Council a copy of an agreement executed between Mr Woolley and the Union Debenture Company, in which it is agreed that a total sum of £ 40,000 is to be deducted by the Company from the five instalments in which the £ 220,000 borrowed from them is to be paid to cover expenses of various kinds. We have asked the Directors for a copy of this deed, but they have refused to give us one. We consider that this deduction seriously affects the amount of the capital of the Company, and also the question whether under these circumstances the capital of the Company can be considered to be fully subscribed for or paid up. Are we therefore to act on the instructions contained in your letter above quoted or not.

Telegram from the Secretary to the Government of India, Public Works Department, to the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, dated Simla, 14th July 1890, No. C 75.

Your telegram of 4th instant, Nilgiri Railway. Government of India does not consider it necessary to reconsider decision conveyed in my letter numbered 555 R.C., 23rd ultimo, in consequence of facts now reported, of which moreover you do not appear to have any official knowledge.

From the Under-Secretary to the Government of India, Public Works Department (Railway Construction), dated Simla, 5th July 1890, No. 588 R.C.

G.O., dated 19th July 1890, No. 1040 R., Public Works.

From the Officiating Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Government Solicitor, Madras, dated 19th July 1890, No. 491 D.

1. G.O., Nos. 360-61 R., dated 13th March 1890.
2. G.O., „ 492-93 R., „ 11th April „
3. Public Works Department, No. 48 D., dated 28th April 1890.
4. G.O., No. 571 R., dated 28th April 1890.
5. G.O., „ 572 R., „ 28th „ „
6. Telegram to Works, Simla, dated 19th May 1890.
7. G.O., Nos. 755-56 R. dated 2nd June 1890.
8. Telegram from Works, Simla, No. C 51, dated 5th June 1890.
9. G.O., Nos. 797-98 R., dated 7th June 1890.
10. Telegram from Works, Simla, No. C 63, dated 20th June 1890.
11. Letter from the Government of India, No. 555 R.C., dated 23rd June 1890, with two enclosures.
12. Letter from Directors of the Nilgiri Railway Company, dated 24th June 1890 with enclosure.
13. Public Works Department No 344 D., dated 24th June 1890, with three demi-officials.
14. Demi-official letter from Mr. R. Woolley, to the Hon. Mr. Garstin, dated 27th June 1890.
15. Letter from Secretary, Nilgiri Railway Company, dated 2nd July 1890.
16. Public Works Department, No. 371 D., dated 4th July 1890.
17. Demi-official letter from Mr. Rees, dated 12th July 1890 with enclosure.
18. Demi-official letter from Mr. Rees, dated 13th July 1890, with two enclosures.
19. Telegram from Works, Simla, No. C 75, dated 14th July 1890.
20. Letter from the Government of India, No. 588 R.C., dated 5th July 1890, with reply No. 1040 R., dated 19th July 1890.

In forwarding the marginally-noted documents in connection with the Nilgiri Railway, I am directed to state that the Government of Madras has been informed by the Government of India that it is bound to acknowledge the validity of the subscription by the shareholders of the Nilgiri Railway Company.

2. I am therefore to request that you will be good enough to draft a letter for my signature to the shareholders of the Company acknowledging this but safe-guarding the Government against any possible liability beyond that which it has bound itself in the agreement between the Government and the Company for the construction of the Railway. Your very early attention to this matter is requested as the Government has incurred and is incurring large liabilities daily.

3. The return of the documents (herewith forwarded) with your reply is solicited.

From the Government Solicitor, Madras, to the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 23rd July 1890, No. 350.

I beg to acknowledge receipt of your letter of the 19th instant, No. 491 D., with its enclosures as enumerated therein, and which I return herewith.

2. The only thing to be done now is, I understand, for Government to admit that the capital of the Nilgiri Railway Company, Limited, viz., Rs. 25,00,000, has been subscribed for within the meaning of the agreements of 30th September 1885 and 29th June 1888, and I accordingly enclose draft of a letter, to be signed by you, addressed to the Secretary of the Nilgiri Railway Company, Limited, making such admission. The Secretary of the Company is the person to whom such letter should be addressed.

3. I do not see any object in mentioning in the letter that Government is not to be liable for anything beyond that to which it has bound itself by the agreements and the schedule contract. Those documents speak for themselves; and, whatever liabilities Government has thereby undertaken; but no more must remain, whatever may be said in your letter to the Secretary of the Company, and there is nothing in that letter, as drafted by me, which can enhance those liabilities. A necessary preliminary to incurring those liabilities was the subscription of the capital, that Government admits has been subscribed, and, at present, there is nothing more to be said.

Order—dated 31st July 1890, No. 1110 R., Public Works.

Ordered that the following letter be addressed to the Secretary, Nilgiri Railway Company.

(Here enter No. 1111 R., dated 31st July 1890.)

(True Extract.)

(Signed) T. GRACEY, Lieut.-Colonel, R.E.,
Offg. Joint Secy. to Govt., P.W.D.,
Railway Branch.

Letter from Lieut.-Colonel T. GRACEY, R.E., Officiating Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Secretary, Nilgiri Railway Company, Limited, Woodcote, Coonoor, dated 31st July 1890, No. 1111 R.

I am instructed to inform you that Government on behalf of the Secretary of State for India in Council admits that the capital of two millions five hundred thousand rupees stipulated for in the agreement, dated 30th September 1885, between the Secretary of State of the one part and the Nilgiri-Rigi Railway Company, Limited, of the other part, and in the agreement of 29th June 1888 between the Secretary of State of the first part, the Nilgiri Railway Company, Limited, of the second part, and the Nilgiri-Rigi Railway Company, Limited, of the third part, as the capital of the Nilgiri Railway Company, Limited, has been subscribed for within the meaning of those agreements.

Read also the following papers :—

From the Solicitors to the Nilgiri-Rigi Railway Company, Limited, to the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, Madras, dated Ootacamund, 5th August 1890.

We have the honor to remind you of our letter of the 30th December last in reference to the money due to the Nilgiri-Rigi Railway Company, Limited, and to request that payment to this Company may now be sanctioned. There are a number of shareholders who have been anxiously expecting to receive this money and who naturally consider that they are losing interest by its being withheld.

2. As all doubts and difficulties appear to have been removed, we have the honor to request that this money may be paid over with as little delay as possible. The cheque should be made payable to the Directors of the Nilgiri-Rigi Railway Company, Limited.

From the Secretary and Agent, Nílgiri Railway Company, Limited, to the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, dated Coonoor, 6th August 1890, No. 2.

I have the honor of placing before you a few observations on some points which were discussed at our interview on the 23rd ultimo, and trust they will be found useful.

2. As then suggested, I have the honor of forwarding a copy of the Company's agreement with Mr. R. Woolley for the construction of the Nílgiri Railway. I have compared it with the Company's copy and vouch for its accuracy.

3. I have also to inform you that the Registered Office of the Company is at Coonoor, and that the Directors at their meeting to-day have appointed an Agent of the Company, under clause 43 of the Concession, as you are informed by a letter herewith.

4. I would respectfully repeat my request of the 31st December last, addressed to the Secretary to Government, Railway Department, that the usual authority may be sent to the Company as soon as practicable to enable its surveyors to enter upon public and private lands so as to complete the necessary surveys for the proposed railway. I may add that the special object of the surveyors employed will be to fix a route with a workable gradient or gradients and to avoid, as much as possible, interference with private property and the new ghât road. Previous surveys and examinations of the country to be attacked afford good reason to believe that such a route will be obtained.

5. The Company would be obliged if the Government would approve of the Agra Bank at Madras becoming "the other Bank in Madras" mentioned in clause 22 of the Concession. The Agra has the largest paid-up capital of any Bank at Madras, viz., a million sterling with a reserve fund of more than £100,000. It is therefore a safe Bank in which to place the Company's funds, and, being an exchange Bank, it can facilitate the Company's business in several ways. The Company therefore trusts that its wishes in this matter will be agreed to.

6. With reference to clause 23 of the Concession, I am instructed to inform you that the Company is quite prepared to comply with any routine which may be usual in this matter, and the contractor is willing to prepare, or have prepared, a schedule of rates, as soon as it can be done, by which the expenditure of one advance may be explained when another is asked for.

7. Lastly I have the honor to acknowledge the receipt of your letter No. 1111 of the 31st ultimo.

ENCLOSURE.

An Agreement made the twentieth day of December 1889 between The Nílgiri Railway Company Limited a Company registered under the Indian Companies Act (No. VI of 1882) and having its Registered Office at Coonoor in the Presidency of Madras in the Empire of India of the one part and Richard Woolley of Woodcote Coonoor aforesaid Esquire (hereinafter referred to as "The Contractor") of the other part WHEREAS by an Agreement dated the 30th September 1885 and made between the Secretary of State in Council of India (hereinafter referred to as "The Secretary of State") of the one part and the Nílgiri-Rigi Railway Company Limited of the other part provision was made for the registration of a Company with a view to the construction of a Railway and other works in accordance with a draft intended contract which was scheduled to the Agreement now in recital AND WHEREAS the Nílgiri Railway Company Limited (hereinafter referred to as "The Company") was incorporated by registration on the 26th February 1886 under the Indian Companies Act No. VI of 1882 with a nominal capital of two million five hundred thousand rupees in twenty-five thousand shares of one hundred rupees each and with powers for the construction of a Railway and other works in India AND WHEREAS the Company is the intended Company referred to in the said Agreement of the 30th September 1885 AND WHEREAS by an Indenture dated the 26th February 1886 and made between the Secretary of State on the one part and the Company of the other part (being a copy of the contract scheduled to the said Agreement of the 30th September 1885) it is provided that the Company shall on land to be provided by the Secretary of State and on a route selected by him construct the Railway therein mentioned with all necessary incidental works and shall maintain

the said Railway when open for traffic AND IT IS FURTHER provided amongst other things (clause 22) that the Company shall pay into the Bank of Madras or such other Bank or Banks in Madras as may be approved of by the Secretary of State to the account of the Government of Madras the sum of two million five hundred thousand rupees by such instalments and at such times as the Secretary of State and the Company shall agree to be requisite to ensure the due prosecution and completion of the said Railway with all necessary incidental conveniences and works and to ensure the said Railway being adequately supplied with engines, carriages, rolling-stock, plant and machinery and being duly opened for the conveyance of passengers and goods throughout AND (clause 25) that the Secretary of State will for the first three years during which the said Railway shall be in course of construction or until the said Railway shall be sooner completed and opened for traffic throughout which shall first happen pay and advance to the Company in Madras half-yearly on the first day of January and the first day of July such sum of money as shall be equivalent to 3 per cent. interest on the capital of the Company for the time being actually paid up and paid by the Company into the Bank of Madras or such other Bank or Banks as aforesaid as therein before provided PROVIDED ALWAYS that nothing therein contained shall render the Secretary of State liable to pay any such interest on any larger sum than two million five hundred thousand rupees in the whole or for a longer period than three years in the whole AND the interest on each individual sum shall commence from the time when the same shall have been paid into the Bank of Madras or such other Bank or Banks as aforesaid AND WHEREAS by an Agreement dated the 29th June 1888 and made between the Secretary of State of the first part the Company of the second part and the said Nílgiri-Rigi Railway Company of the third part the provisions of the said recited Indenture of the 26th February 1886 were modified in various respects and it was thereby expressly agreed and declared by and between the parties thereto that if there had been or should be any breach of either of certain conditions therein mentioned or in case the said capital of two million five hundred thousand rupees should not be fully subscribed by the 1st January 1890 then and in either of such cases it should be lawful for the Secretary of State on ascertaining that there had been such breach or at any time after the said 1st day of January 1890 as the case may be to forthwith determine the contract contained in the said hereinbefore recited Indenture of the 26th February 1886 and also the agreement now in recital and thereupon every article clause and thing therein respectively contained on the part of the Secretary of State should absolutely cease and determine without prejudice nevertheless to any rights which should have accrued or should accrue to the Secretary of State prior to or by reason of any such breach AND WHEREAS with the exception of the shares taken by the subscribers to the memorandum and articles of association of the Company no shares have been taken or agreed to be taken or allotted in the capital of the Company and the Company has been unable to raise any of its share capital AND WHEREAS the Company has not borrowed any moneys or created any mortgage or charge upon its undertaking and assets or any part thereof AND WHEREAS the said recited Indenture of the 26th February 1886 and Agreement of the 29th June 1888 and each of them and the provisions therein contained in favor of the Company are valid and enforceable but the said indenture is liable to be determined on the 1st January 1890 in the event of the said share capital of the Company not being fully subscribed before such day AND WHEREAS the Company has applied to the contractor first to enter into a contract for the construction and equipment of the said Railway and works pursuant to the said Indenture of the 26th February 1886 and secondly to subscribe or procure subscriptions for the whole of the said share capital of two million five hundred thousand rupees (except the shares taken by the subscribers to the memorandum of association) before the 1st January 1890 which the contractor has agreed to do upon and subject to the terms and provisions hereinafter contained NOW IT IS HEREBY AGREED as follows that is to say

1. THE Company shall forthwith apply to the Secretary of State to provide the land which shall be required for the said Railway and for the works connected therewith and use its best endeavours forthwith to obtain and give possession thereof to the contractor.

2. THE contractor will upon receiving possession from the Company of the land required for the said Railway and for the works connected therewith or a substantial part thereof forthwith commence thereon the construction pursuant to the terms of the said Indenture of the 26th February 1886 of the said Railway and other works as therein mentioned and shall thereafter with diligence with a sufficient number of workmen and staff of officials and with all necessary plant and materials proceed with the same without interruption or delay (excepting only such if any as may arise from strikes unforeseen accidents and other causes not reasonably within the powers of the persons constructing the said Railway and works to have prevented) and will within the period of three years from the date when he shall receive possession from the Company of the land required for the said Railway or a substantial part thereof complete the said Railway and works fit for public traffic throughout and deliver over the same to the Company properly and fully constructed and supplied fit for opening with a good and sufficient stock of engines carriage wagons plant and machinery for opening the same to the satisfaction and approval of the said Secretary of State as provided in the said Indenture of the 26th February 1886 when and so soon as the said Railway shall have been completed fit for conveyance of passengers and goods

From the Secretary and Agent, Nílgiri Railway Company, Limited, to the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, dated Coonoor, 6th August 1890, No. 2.

I have the honor of placing before you a few observations on some points which were discussed at our interview on the 23rd ultimo, and trust they will be found useful.

2. As then suggested, I have the honor of forwarding a copy of the Company's agreement with Mr. R. Woolley for the construction of the Nílgiri Railway. I have compared it with the Company's copy and vouch for its accuracy.

3. I have also to inform you that the Registered Office of the Company is at Coonoor, and that the Directors at their meeting to-day have appointed an Agent of the Company, under clause 43 of the Concession, as you are informed by a letter herewith.

4. I would respectfully repeat my request of the 31st December last, addressed to the Secretary to Government, Railway Department, that the usual authority may be sent to the Company as soon as practicable to enable its surveyors to enter upon public and private lands so as to complete the necessary surveys for the proposed railway. I may add that the special object of the surveyors employed will be to fix a route with a workable gradient or gradients and to avoid, as much as possible, interference with private property and the new ghât road. Previous surveys and examinations of the country to be attacked afford good reason to believe that such a route will be obtained.

5. The Company would be obliged if the Government would approve of the Agra Bank at Madras becoming "the other Bank in Madras" mentioned in clause 22 of the Concession. The Agra has the largest paid-up capital of any Bank at Madras, viz., a million sterling with a reserve fund of more than £ 100,000. It is therefore a safe Bank in which to place the Company's funds, and, being an exchange Bank, it can facilitate the Company's business in several ways. The Company therefore trusts that its wishes in this matter will be agreed to.

6. With reference to clause 23 of the Concession, I am instructed to inform you that the Company is quite prepared to comply with any routine which may be usual in this matter, and the contractor is willing to prepare, or have prepared, a schedule of rates, as soon as it can be done, by which the expenditure of one advance may be explained when another is asked for.

7. Lastly I have the honor to acknowledge the receipt of your letter No. 1111 of the 31st ultimo.

ENCLOSURE.

An Agreement made the twentieth day of December 1889 between The Nílgiri Railway Company Limited a Company registered under the Indian Companies Act (No. VI of 1882) and having its Registered Office at Coonoor in the Presidency of Madras in the Empire of India of the one part and Richard Woolley of Woodcote Coonoor aforesaid Esquire (hereinafter referred to as "The Contractor") of the other part WHEREAS by an Agreement dated the 30th September 1885 and made between the Secretary of State in Council of India (hereinafter referred to as "The Secretary of State") of the one part and the Nílgiri-Rigi Railway Company Limited of the other part provision was made for the registration of a Company with a view to the construction of a Railway and other works in accordance with a draft intended contract which was scheduled to the Agreement now in recital AND WHEREAS the Nílgiri Railway Company Limited (hereinafter referred to as "The Company") was incorporated by registration on the 26th February 1886 under the Indian Companies Act No. VI of 1882 with a nominal capital of two million five hundred thousand rupees in twenty-five thousand shares of one hundred rupees each and with powers for the construction of a Railway and other works in India AND WHEREAS the Company is the intended Company referred to in the said Agreement of the 30th September 1885 AND WHEREAS by an Indenture dated the 26th February 1886 and made between the Secretary of State on the one part and the Company of the other part (being a copy of the contract scheduled to the said Agreement of the 30th September 1885) it is provided that the Company shall on land to be provided by the Secretary of State and on a route selected by him construct the Railway therein mentioned with all necessary incidental works and shall maintain

the said Railway when open for traffic AND IT IS FURTHER provided amongst other things (clause 22) that the Company shall pay into the Bank of Madras or such other Bank or Banks in Madras as may be approved of by the Secretary of State to the account of the Government of Madras the sum of two million five hundred thousand rupees by such instalments and at such times as the Secretary of State and the Company shall agree to be requisite to ensure the due prosecution and completion of the said Railway with all necessary incidental conveniences and works and to ensure the said Railway being adequately supplied with engines, carriages, rolling-stock, plant and machinery and being duly opened for the conveyance of passengers and goods throughout AND (clause 25) that the Secretary of State will for the first three years during which the said Railway shall be in course of construction or until the said Railway shall be sooner completed and opened for traffic throughout which shall first happen pay and advance to the Company in Madras half-yearly on the first day of January and the first day of July such sum of money as shall be equivalent to 3 per cent. interest on the capital of the Company for the time being actually paid up and paid by the Company into the Bank of Madras or such other Bank or Banks as aforesaid as therein before provided PROVIDED ALWAYS that nothing therein contained shall render the Secretary of State liable to pay any such interest on any larger sum than two million five hundred thousand rupees in the whole or for a longer period than three years in the whole AND the interest on each individual sum shall commence from the time when the same shall have been paid into the Bank of Madras or such other Bank or Banks as aforesaid AND WHEREAS by an Agreement dated the 29th June 1888 and made between the Secretary of State of the first part the Company of the second part and the said Nílgiri-Rigi Railway Company of the third part the provisions of the said recited Indenture of the 26th February 1886 were modified in various respects and it was thereby expressly agreed and declared by and between the parties thereto that if there had been or should be any breach of either of certain conditions therein mentioned or in case the said capital of two million five hundred thousand rupees should not be fully subscribed by the 1st January 1890 then and in either of such cases it should be lawful for the Secretary of State on ascertaining that there had been such breach or at any time after the said 1st day of January 1890 as the case may be to forthwith determine the contract contained in the said hereinbefore recited Indenture of the 26th February 1886 and also the agreement now in recital and thereupon every article clause and thing therein respectively contained on the part of the Secretary of State should absolutely cease and determine without prejudice nevertheless to any rights which should have accrued or should accrue to the Secretary of State prior to or by reason of any such breach AND WHEREAS with the exception of the shares taken by the subscribers to the memorandum and articles of association of the Company no shares have been taken or agreed to be taken or allotted in the capital of the Company and the Company has been unable to raise any of its share capital AND WHEREAS the Company has not borrowed any moneys or created any mortgage or charge upon its undertaking and assets or any part thereof AND WHEREAS the said recited Indenture of the 26th February 1886 and Agreement of the 29th June 1888 and each of them and the provisions therein contained in favor of the Company are valid and enforceable but the said indenture is liable to be determined on the 1st January 1890 in the event of the said share capital of the Company not being fully subscribed before such day AND WHEREAS the Company has applied to the contractor first to enter into a contract for the construction and equipment of the said Railway and works pursuant to the said Indenture of the 26th February 1886 and secondly to subscribe or procure subscriptions for the whole of the said share capital of two million five hundred thousand rupees (except the shares taken by the subscribers to the memorandum of association) before the 1st January 1890 which the contractor has agreed to do upon and subject to the terms and provisions hereinafter contained NOW IT IS HEREBY AGREED as follows that is to say

1. THE Company shall forthwith apply to the Secretary of State to provide the land which shall be required for the said Railway and for the works connected therewith and use its best endeavours forthwith to obtain and give possession thereof to the contractor.

2. THE contractor will upon receiving possession from the Company of the land required for the said Railway and for the works connected therewith or a substantial part thereof forthwith commence thereon the construction pursuant to the terms of the said Indenture of the 26th February 1886 of the said Railway and other works as therein mentioned and shall thereafter with diligence with a sufficient number of workmen and staff of officials and with all necessary plant and materials proceed with the same without interruption or delay (excepting only such if any as may arise from strikes unforeseen accidents and other causes not reasonably within the powers of the persons constructing the said Railway and works to have prevented) and will within the period of three years from the date when he shall receive possession from the Company of the land required for the said Railway or a substantial part thereof complete the said Railway and works fit for public traffic throughout and deliver over the same to the Company properly and fully constructed and supplied fit for opening with a good and sufficient stock of engines carriage wagons plant and machinery for opening the same to the satisfaction and approval of the said Secretary of State as provided in the said Indenture of the 26th February 1886 when and so soon as the said Railway shall have been completed fit for conveyance of passengers and goods

and equipped as aforesaid all liabilities and obligations of the contractor under this agreement shall wholly cease and determine without prejudice nevertheless to any claim in respect of any breach of obligation or liability already incurred.

3. The Company will duly observe and perform the obligations on its part contained in clause 22 of the said Agreement of the 26th February 1886.

4. As part consideration for the obligations undertaken by the contractor the Company shall create and issue debentures to the amount of two hundred and twenty thousand pounds to bear interest at the rate of four per cent. per annum and to be and rank *pari passu* as being a first charge on the undertaking and assets of the Company (including uncalled capital if and so far as the Company now is or at any time hereafter during the continuance of this agreement shall be able to validly charge its uncalled capital or any part thereof) and to be secured by a mortgage to trustees or otherwise as shall be required by the contractor such debentures to be a floating charge so far as they affect the chattels of the Company Provided always that neither the said debentures nor the said mortgage shall until some default on the part of the contractor enabling the Company to determine this agreement hinder or affect the power of the Company to call up during construction its uncalled capital and to expend or cause to be expended the same in the construction and equipment of the line in accordance with the obligations on the part of the Company herein contained or prevent the Company either during or after construction from dealing with its undertaking assets and property in the ordinary course of business but so that no mortgage or charge shall be made thereon or on any part thereof in priority to the said debentures and the mortgage securing the same without the consent of the trustees of such mortgage Provided also that the said debentures and mortgage shall be in such form and contain such provisions in all respects as the contractor shall reasonably require.

5. The said debentures shall be issued to the contractor or as he shall direct and the said mortgage shall be executed respectively upon or immediately after the execution hereof and in any event prior to the 21st day of December 1889 And the Company will from time to time if and when required by notice in writing by the contractor and as quickly as possible and not exceeding two months after such notice offer for public subscription or permit any respectable person firm or company nominated by the contractor to offer for public subscription the whole or any part of the said debentures or the said share capital of the Company and upon such terms and conditions being consistent with the said recited Indenture of the 26th February 1886 and Agreement of the 29th June 1888 and the memorandum and articles of association of the Company as the contractor may reasonably desire Provided that if the issue shall be made use of or published in the prospectus inviting subscriptions for the same the reasonable approval of the Board of Directors of the Company shall be obtained to the name of the person firm or Company issuing the capital and to the terms of the said prospectus other than the price of issue and the terms of payment.

6. As further part of the said consideration the Company shall pay to the contractor or as he shall direct the sum of two million five hundred thousand rupees cash and the same shall be paid to him at such times and in such manner as is provided for by clause 23 of the said Indenture of the 26th February 1886.

7. Upon the said debentures being duly issued to the contractor or as he shall direct before or on the 21st day of December 1889, the contractor will himself before or on the 31st day of December 1889 subscribe or procure substantial subscriptions for the whole share capital of two million five hundred thousand rupees of the Company (exclusive of the shares taken by the subscribers to the memorandum of association) and will pay up the same or cause the same to be paid up by such instalments and in such manner (including the amount payable on application for the said shares) as the Directors of the Company shall in accordance with the provisions of the said Indenture of the 26th day of February 1886 require.

8. The contractor will during the construction of the Railway provide the Company from time to time with such sums of money as shall in addition to the sums provided by the Secretary of State for interest during construction be sufficient to pay and keep down all accruing interest which the Company shall be required to pay on the said debentures.

9. The Company on its part will at its own expense execute do and concur in all acts matters and things which may be reasonably necessary or advisable to enable the contractor his transferees or representatives to effectuate this agreement and to have the benefit of the provisions herein contained in his favor according to the true spirit and intent of the parties hereto and will in particular allow him and them on giving proper indemnity to use the name of the Company in any legal proceedings or otherwise to enforce or preserve any rights or benefits hereunder.

10. In case the contractor shall after receiving possession of the necessary land or a substantial part thereof make any unreasonable delay in the commencement of the said Railway and works or after having commenced the same shall fail to prosecute the same to the satisfaction of the Secretary of State with due diligence or in a proper and workmanlike manner the Company shall forthwith thereafter give notice to the contractor specifying the obligations and liabilities which he has so failed to perform and of which it complains and if the same shall still

be capable of performance requiring the contractor to perform the same and if the contractor fails within the space of two months after the receipt of such notice to do so or in case the contractor shall be declared bankrupt or become insolvent or take any proceedings for liquidation or composition then and in any of the said cases the Company or its assigns may take the works ouf of the hands of the contractor and may take possession of all plant materials stores and articles of all kinds on the works and may use the same and may proceed to complete the works in such manner and either by the employment of other contractors or otherwise as the Company or its assigns shall think fit and at the expense of the contractor And the Company or its assigns shall be entitled to recover from the contractor any expense that they may incur in so completing the works over and above any part of the said sum of two million five hundred thousand rupees which may not have been paid out to the contractor and which may remain or be available for the completion of the works and shall have a lien for such expense on any debentures or shares then belonging to the contractor. Provided always that the provisions herein contained as to taking possession of the works and completing the contract shall not vitiate the contract or prevent the Company from claiming and recovering any further damages or compensation from the contractor.

11. The contractor may assign this agreement in whole or in part to any competent contractor or other person whose pecuniary position and experience shall be such as to enable him satisfactorily to discharge the obligations hereunder of the contractor and in case of the death of the contractor his legal personal representatives may within two months after his death by notice in writing to the Company elect and shall thereupon be entitled in the stead of the contractor to take the benefit of and they or he shall thereupon become subject to the obligations of this agreement.

12. If any dispute or difference shall at any time arise or happen between the Company their successors or assigns and the contractor his executors administrators or assigns concerning anything herein contained or relating to or the construction of any of the clauses herein contained or to any act or thing to be made done or performed in pursuance hereof such dispute or difference shall be forthwith referred to two arbitrators one to be appointed by the Company their successors or assigns and the other to be appointed by the contractor his executors administrators or assigns or to an umpire to be chosen by the arbitrators before entering on the consideration of the matters referred to them and every such reference shall be deemed an arbitration within the provisions of the Statute or Statutes for the time being in force in India regulating or affecting references to arbitration or of the common Law Procedure Act 1854 or the Arbitration Act 1889 or any then subsisting Statutes relating to arbitrations and awards as the case may be.

In witness whereof the said Nilgiri Railway Company (Limited) has hereunto caused its common seal to be affixed and the said Richard Woolley has hereunto set his hand and seal the day and year first above written.

The common seal of the Nilgiri Railway Company (Limited) was in pursuance of a Resolution of the Board of Directors hereunto affixed in the presence of

The Nilgiri Railway Company (Limited).

(Signed) N. G. BENSON,
(") J. G. FINDLAY,
(") PERCY W. WOOLLEY,
Secy., N. Ry. Co. (Ld.).

Signed sealed and delivered by the above-named Richard Woolley in the presence of } (Sd.) R. WOOLLEY.

(Signed) T. N. KOTHENDA ROW,
Second-class Magistrate,
Coonoor.

20th December 1889.

Subordinate Magistrate, Coonoor.

(True Copy)

(Signed) PERCY W. WOOLLEY,
Secy., Nilgiri Railway Company (Limited).

Woodcote,
4th August 1890.

From the Directors, Nílgiri Railway Company (Limited), to the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, dated Coonoor, 6th August 1890, No. 3.

We have the honor to inform you that, at a meeting of the Directors of this Company held to-day, it was resolved to appoint Mr. P. W. Woolley Agent for the Company in terms of clause 43 of the concession.

Telegram from the Officiating Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Secretary to the Government of India, Public Works Department, dated 19th August 1890.

Nílgiri Railway Company ask permission to lodge money payable under clause 22 of Agreement to credit of Government of Madras in Agra Bank where interest is given on deposits. May permission be granted.

From the Officiating Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to Messrs. COWDELL AND WINTERTON, dated Madras, 19th August 1890, No. 650 D.

With reference to your letter, dated 5th August, I am directed to point out that your request should be addressed to the Directors, Nílgiri Railway Company.

From the Officiating Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Government Solicitors, dated Madras, 19th August 1890, No. 651 D.

I am directed to forward the following papers:—

(1) An agreement, dated 29th June 1888, between the Secretary of State, the Nílgiri Railway Company and the Nílgiri-Rigi Railway Company.

(2) An agreement, dated 30th September 1885, between the Secretary of State and the Nílgiri-Rigi Railway Company.

(3) Indenture referred to in above.

(4) Letter from Messrs. Cowdell and Winterton, dated 30th December 1889, enclosing an agreement, dated 20th December 1889, between the Nílgiri-Rigi Railway Company and the Nílgiri Railway Company.

(5) Contract * between the Nílgiri Railway Company and Mr. R. Woolley for the construction of a railway from Mettupálaiyam to Coonoor.

(6) Letter, dated 5th August 1890, from Messrs. Cowdell and Winterton.

(7) Letter from Government of Madras to Messrs. Cowdell and Winterton.

* Return requested.

2. I am to inquire—

(*a*) Should the Government of Madras give its consent to the payment of Rs. 30,000 + Rs. 7,500 = Rs. 37,500 to the Nílgiri-Rigi Company by the Nílgiri Company or should the former only receive Rs. 30,000 in fully paid-up shares as mentioned in Nos. 1, 2 and 3 of the documents forwarded. It will be observed that the Government of Madras is a party to Nos. 1, 2 and 3, but not to 4 or 5.

(*b*) Does the agreement (No. 5) with Mr. Woolley fully provide for the grant of 3,000 fully paid-up shares or the payment of Rs. 37,500 in cash, as the case may be, to the Nílgiri-Rigi Railway Company out of the Rs. 2½ millions of capital to be subscribed by the share-holders of the Nílgiri Railway Company.

(*c*) Is there anything in the agreement, dated 20th December 1889, or in Mr. Woolley's contract with the Nílgiri Railway Company, which should cause the Government of Madras to refuse to accept either as legal or binding documents.

From Messrs. COWDELL AND WINTERTON, Solicitors to the Nílgiri-Rigi Railway Company (Limited), to the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, dated Ootacamund, 20th August 1890.

With reference to your letter, No. 650 D., dated 19th instant, we have the honor to point out that, as the Nílgiri-Rigi Railway Company are parties to the agreements both of the 30th day of September 1885 and of the 29th day of June 1888 made with the Government, they are apparently in order in addressing the Government on the subject. We quote overleaf from the agreement of the 30th day of September 1885. Our letter of the 30th December, of which we enclose a copy, will also show that we have a direct interest in addressing the Government on the subject.

(EXTRACT.)

"And shall on or prior to the said 1st day of March 1886 deliver to the Secretary of State the said indenture in duplicate duly and formally executed by the Company he the said Secretary of State will at any time afterwards at the request of the Nílgiri-Rigi Railway Company (Limited) to be testified by some writing under its common seal execute and deliver the same indenture which shall thereupon become binding upon the parties thereto And these presents further witness and the said Nílgiri-Rigi Railway Company (Limited) in consideration of the premises do hereby for themselves their successors and assigns covenant with the said Secretary of State his successors and assigns that upon the formation and establishment of such a Joint Stock Company as hereinbefore mentioned the said Nílgiri-Rigi Railway Company (Limited) shall and will accept for the purchase of the survey plans and sections of and the concessions granted to such last mentioned Company by the Secretary of State and for the outlay incurred by such last mentioned Company in and about the survey of and otherwise in connection with the line of railway to which the scheduled contract refers fully paid up shares in such Joint Stock Company representing the sum of 30,000 rupees."

From Messrs. COWDELL AND WINTERTON, Solicitors to the Nílgiri-Rigi Railway Company (Limited), dated Ootacamund, 30th December 1889.

From the Officiating Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Secretary and Agent, Nílgiri Railway Company, dated 22nd August 1890, No. 663 D.

I am directed to acknowledge the receipt of your No. 2, dated 6th August, forwarding copy of an agreement with Mr. R. Woolley for the construction of the Railway from Mettupálaiyam to Coonoor and to state in reply.

2. That the Government of Madras approve of the registered office of the Company being at Coonoor for the time being.

3. The necessary notification giving the Company power to enter on lands for the purpose of making surveys is under issue.

4. Reference has been made to the Government of India to ascertain if there is any objection to the proposal made by the Company that the funds of the Company should be paid into the Agra Bank to the credit of the Government of Madras.

5. The schedule of rates referred to in your para. 6 is awaited.

From the Officiating Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Directors, Nílgiri Railway Company, dated 22nd August 1890, No. 664 D.

I am directed to acknowledge the receipt of your No. 3, dated 6th August, and to request that a certified copy of the registered power-of-attorney granted to Mr. P. W. Woolley may be forwarded as early as convenient.

From the Directors, Nílgiri Railway Company (Limited), to the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, dated Coonoor, 6th August 1890, No. 3.

We have the honor to inform you that, at a meeting of the Directors of this Company held to-day, it was resolved to appoint Mr. P. W. Woolley Agent for the Company in terms of clause 43 of the concession.

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* Return requested.

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(*a*) Should the Government of Madras give its consent to the payment of Rs. 30,000 + Rs. 7,500 = Rs. 37,500 to the Nílgiri-Rigi Company by the Nílgiri Company or should the former only receive Rs. 30,000 in fully paid-up shares as mentioned in Nos. 1, 2 and 3 of the documents forwarded. It will be observed that the Government of Madras is a party to Nos. 1, 2 and 3, but not to 4 or 5.

(*b*) Does the agreement (No. 5) with Mr. Woolley fully provide for the grant of 3,000 fully paid-up shares or the payment of Rs. 37,500 in cash, as the case may be, to the Nílgiri-Rigi Railway Company out of the Rs. 2½ millions of capital to be subscribed by the share-holders of the Nílgiri Railway Company.

(*c*) Is there anything in the agreement, dated 20th December 1889, or in Mr. Woolley's contract with the Nílgiri Railway Company, which should cause the Government of Madras to refuse to accept either as legal or binding documents.

From Messrs. COWDELL AND WINTERTON, Solicitors to the Nílgiri-Rigi Railway Company (Limited), to the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, dated Ootacamund, 20th August 1890.

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(EXTRACT.)

"And shall on or prior to the said 1st day of March 1886 deliver to the Secretary of State the said indenture in duplicate duly and formally executed by the Company he the said Secretary of State will at any time afterwards at the request of the Nílgiri-Rigi Railway Company (Limited) to be testified by some writing under its common seal execute and deliver the same indenture which shall thereupon become binding upon the parties thereto And these presents further witness and the said Nílgiri-Rigi Railway Company (Limited) in consideration of the premises do hereby for themselves their successors and assigns covenant with the said Secretary of State his successors and assigns that upon the formation and establishment of such a Joint Stock Company as hereinbefore mentioned the said Nílgiri-Rigi Railway Company (Limited) shall and will accept for the purchase of the survey plans and sections of and the concessions granted to such last mentioned Company by the Secretary of State and for the outlay incurred by such last mentioned Company in and about the survey of and otherwise in connection with the line of railway to which the scheduled contract refers fully paid up shares in such Joint Stock Company representing the sum of 30,000 rupees."

From Messrs. COWDELL AND WINTERTON, Solicitors to the Nílgiri-Rigi Railway Company (Limited), dated Ootacamund, 30th December 1889.

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3. The necessary notification giving the Company power to enter on lands for the purpose of making surveys is under issue.

4. Reference has been made to the Government of India to ascertain if there is any objection to the proposal made by the Company that the funds of the Company should be paid into the Agra Bank to the credit of the Government of Madras.

5. The schedule of rates referred to in your para. 6 is awaited.

From the Officiating Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Directors, Nílgiri Railway Company, dated 22nd August 1890, No. 664 D.

I am directed to acknowledge the receipt of your No. 3, dated 6th August, and to request that a certified copy of the registered power-of-attorney granted to Mr. P. W. Woolley may be forwarded as early as convenient.

From the Officiating Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Secretary to the Government of India, Public Works Department, dated Ootacamund, 22nd August 1890, No. 670 D.

I am directed to invite your attention to the contract between the Secretary of State and the Nílgiri Railway Company and to ask the advice of the Government of India on certain points connected therewith.

2. The circumstances in connection with the formation of the Nílgiri Railway Company and the subscription of the capital were forwarded to you with this office No. 361 R., dated 13th March 1890, and subsequent correspondence, and, from these papers, it will be seen that Mr. R. Woolley owns 24,991 shares in the Company and all the other subscribers 9 amongst them. It also appears that the Directors of the Company have let a contract to the same Mr. R. Woolley for the construction of the railway for a lump sum of Rs. 25 lakhs, which is the total subscribed capital of the undertaking. It is known that the Directors of the Company have but little knowledge of railway construction, and it is clear from the share list that they have but little interest in looking after the Company's concerns. It may, therefore, be taken for granted that Mr. R. Woolley is proprietor, managing director, contractor and everything else in the Nílgiri Railway. Moreover, Mr. R. Woolley is an acute man of business, who has not taken all this upon himself for nothing.

3. Under the circumstances stated above and looking to the responsibilities which the Secretary of State has assumed under the contract, I am to ask what powers the Government of Madras should assume under clauses 22 and 23 of the contract. Under clause 22 the money for the construction of the line is to be lodged by the Company to the credit of the Government of Madras in any bank that the latter may appoint and under clause 23 the money may be drawn out by the Company "in such sums as shall, from time to time, be shown to the satisfaction of the Government to be necessary * * *." In the latter portion of the clause, it is stated that the Company must give ten days' notices of every draft, but the meaning of this is not clear, as the Company would appear to have no power to draw cheques against money placed to the credit of the Government of Madras. Should the Government of Madras call upon the Directors of the Company to prepare a schedule of rates upon which payments would be made from time to time through the Directors to Mr. Woolley, or should advances be placed from time to time at the disposal of the Directors to make payments to Mr. Woolley with the possibility in the latter case that a fair equivalent of work may not be obtained for the money paid, I am to add that Rs. 6¼ lakhs have been paid up by the Company and are now lodged in the Agra Bank, Madras, to the credit of the Company.

4. The Government of Madras would be glad to receive such advice as will assist it in carrying through the agreement with the Nílgiri Railway Company satisfactorily.

Telegram from the Secretary to the Government of India, Public Works Department, to the Officiating Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, dated Simla, 22nd August 1890, No. 160 A.

Yours 19th, Nílgiri Railway. Permission cannot be granted. Adhere strictly terms contract. Capital must be paid Bank of Madras to credit of Government.

From E. BARCLAY, Esq., Government Solicitor, to the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 23rd August 1890, No 407.

I beg to acknowledge receipt of your letter, dated 19th instant, No. 651 D., with its enclosures, which I return herewith.

2. With regard to the first question put in your letter under reply, viz., whether Government should consent to the payment of Rs. 30,000 + Rs. 7,500 = Rs. 37,500 to the Nílgiri-Rigi Railway Company by the Nílgiri Railway Company, or whether the former should only receive Rs. 30,000 in fully paid-up shares, I would observe that, by the agreement of 30th September 1885 between Government and the Nílgiri-Rigi Railway Company, that Company covenanted with the Secretary of State, in consideration of the premises mentioned in such agreement, that, upon the formation and establishment of such a Joint Stock Company as therein mentioned, the Nílgiri-Rigi Railway Company *would accept* for the purchase of the survey plans and sections of, and the concessions granted to that Company by the Secretary of State, and for the outlay incurred by that Company in and about the survey of and otherwise in connection with the line of railway to which the scheduled contract referred fully *paid-up shares in such Joint Stock Company representing the sum of Rs.* 30,000.

3. Now "the premises," which formed the consideration for this covenant, were the undertaking by the Secretary of State with the Nílgiri-Rigi Railway Company that, if, prior to the 1st March 188[illegible] (subsequently extended to 31st December 1889), a Joint Stock Company should be duly registered under the provisions of the Indian Companies Act, 1882, &c., with an Indian domicile, a nominal capital of Rs. 25,00,000 and powers sufficient for the purpose of the scheduled contract, and, if the Company should prior to 1st March 1886 (extended as above) duly and formally execute, in duplicate, an indenture, identically in the words and figures of the scheduled contract with the additions mentioned in the agreement, and should on, or prior to 1st March 1886 (extended as above), deliver to the Secretary of State the said indenture in duplicate duly and formally executed by the Company, he, the Secretary of State, would, at any time thereafter, at the request of the Nílgiri-Rigi Railway Company, execute and deliver the same indenture which should thereupon become binding upon the parties thereto.

4. It will thus be seen that one of the main objects of the undertaking by the Secretary of State with the Nílgiri-Rigi Railway Company was that a company should be formed with a nominal capital of not less than Rs. 25,00,000; and, in consideration of the undertaking by the Secretary of State, the Nílgiri-Rigi Railway Company covenanted with the Secretary to take shares representing Rs. 30,000 in the Company to be formed with that nominal capital.

5. The Company contemplated by the agreement of 30th September 1885 came into existence under the name of "the Nílgiri Railway Company (Limited)" with a nominal capital of Rs. 25,00,000. By clause 22 of the scheduled contract, which was executed by the Nílgiri Railway Company and by Government, pursuant to the agreement of 30th September 1885, after providing for the payment by the Nílgiri Railway Company into the Bank of Madras of the Rs. 25,00,000 in such instalments as the Secretary of State and the Company should agree to be requisite for the purposes mentioned, it was provided that fully paid-up shares representing Rs. 30,000 to be allotted to the Nílgiri-Rigi Railway Company for the purchase by the Nílgiri Railway Company of the surveys, plans and sections of and the concessions granted to the Nílgiri-Rigi Railway Company by the Secretary of State and for the *outlay incurred by such last-mentioned Company in and about the survey of and otherwise in connection with the said line of railway* should be deemed to be included in and form part of the said sum of Rs. 25,00,000 so agreed to be paid into the Bank of Madras, &c., and to have been so paid in.

6. The agreement of 29th June 1888 between the Secretary of State and the two Companies does not affect the present question.

7. By an indenture, dated 20th December 1889, and made between the Nílgiri-Rigi Railway Company (Limited) of the one part and the Nílgiri Railway Company (Limited) of the other part, after reciting that in 1880 the Nílgiri-Rigi Railway Company was formed for the purpose of ascertaining the best route and the best method of construction and system with a view to making a railway from Mettupálaiyam to Coonoor or Ootacamund, and that to that end preliminary surveys were made and an estimate of the cost of the proposed line obtained, that the Nílgiri-Rigi Railway

Company also procured supplemental plans and a sectional survey of the proposed line and that the preliminary survey estimate and plans were made and prepared at the expense of that Company and that concessions were obtained by them from the Secretary of State; and, reciting an agreement of 4th January 1884, between Messrs. Stanes and Company on behalf of the Nílgiri-Rigi Railway Company and Mr. R. Woolley, whereby (amongst other things) he undertook that the Company he was to form, as soon as it might be in a position to allot shares to the public and make payments in cash, should hand over to Messrs. Stanes and Company or to their order in Coonoor or London at the option of the new Company, fully paid-up shares in such Company, equal in value to Rs. 30,000 and cash to an amount not exceeding Rs. 8,000, and the said Nílgiri-Rigi Railway Company should then transfer the concession, rights and privileges belonging thereto, and all plans, sections, &c.; and, reciting the agreement of 30th September 1885, that the Nílgiri Railway Company (Limited) was registered on 26th February 1886 and that, on the same date, the scheduled contract was executed by such Company and the Secretary of State; and, reciting an agreement of 18th February 1886, between the Nílgiri-Rigi Railway Company and Mr. R. Woolley and the agreement of 29th June 1888 and that, under the arrangements made and contemplated, the Nílgiri Railway Company proposed to pay to the Nílgiri-Rigi Railway Company Rs. 30,000 in cash in lieu of fully paid-up shares representing such sum, and also Rs. 7,500 in cash, being the amount due to Messrs. Stanes and Company and others or their assigns as provided in the agreement of 4th January 1884, and that the Nílgiri-Rigi Railway Company had agreed to accept such sums in full payment of all sums due by the Nílgiri Railway Company or Mr. Woolley and to release in favor of the Nílgiri Railway Company the survey plans and sections and the concessions granted by the Secretary of State, it was witnessed that, in consideration of Rs. 30,000 and Rs. 7,500 *then* paid, the Nílgiri-Rigi Railway Company released all right over the concessions or the scheduled contract in favor of the Nílgiri Railway Company.

8. Government was no party to the agreement of 4th January 1884 or to the indenture of 20th December 1889 and is, of course, in no way bound by either of those deeds.

9. As regards the sum of Rs. 30,000 it seems to me that it will make very little difference to Government whether that sum is paid to the Nílgiri-Rigi Railway Company out of the capital of the Nílgiri Railway Company, or fully paid-up shares are allotted to the former Company and so much the less capital is paid into the Bank of Madras by the latter Company, as, under clause 22 of the scheduled contract, the fully paid-up shares representing Rs. 30,000 were to be deemed to be included and to form part of the Rs. 25,00,000 to be paid into the Bank, and to have been so paid in. At the same time, Government is not, in my opinion, bound to pay to the Nílgiri Railway Company such sum of Rs. 30,000 out of the capital already paid in by that Company; and I see no reason why, instead of making such payment, Government should not inform Messrs. Cowdell and Winterton that the amount can be deducted from the next, or some subsequent instalment of capital to be paid into the bank by the Nílgiri Railway Company. Strictly speaking the covenant by the Nílgiri-Rigi Railway Company contained in the agreement of 30th September 1885 has not so far been performed, for that Company has not taken up shares of the Nílgiri Railway Company representing Rs. 30,000, and it is very questionable whether the fact of the Nílgiri-Rigi Railway Company being party to a deed such as the indenture of 20th December 1889 does not amount to an actual breach by that Company of its covenant with Government. But, even if there has been such a breach, I do not see how Government has or can sustain any damage thereby.

10. With regard to the Rs. 7,500 I do not understand at all on what principle that sum is claimed by Messrs. Cowdell and Winterton on behalf of the Nílgiri-Rigi Railway Company. From the indenture of 20th December 1889 it appears that this sum represents a debt due by the Nílgiri-Rigi Railway Company to Messrs. Stanes and Company; but why that should be paid out of the capital of the Nílgiri Railway Company, whose capital is, according to all the documents to which Government is a party, to be Rs. 25,00,000, less only the Rs. 30,000, is not apparent. Under clause

22 of the Scheduled Contract the capital of Rs. 25,00,000 (less the Rs. 30,000) is to be paid into the Bank by such instalments and at such times as the Secretary of State and the Nílgiri Railway Company may agree to be requisite to ensure the due prosecution and completion of the railway, &c., and not to pay old debts of the Nílgiri-Rigi Railway Company, and the Rs. 30,000, or the shares representing the same, were to be accepted by the Nílgiri-Rigi Railway Company for (*inter alia*) the outlay incurred by that Company in and about the survey of *and otherwise in connection with the line of railway*. In my opinion Government has no power or authority to pay away this sum of Rs. 7,500 as claimed, and the payment of which would, *pro tanto*, reduce the capital paid in by the Nílgiri Railway Company. It is true that, under clause 23 of the Scheduled Contract, it is provided that, as often as any money shall be required by the Company, *i.e.*, the Nílgiri Railway Company, for purposes to which the same is *properly* applicable under that contract, the same may be drawn by that Company in such sums as shall from time to time be shown to the satisfaction of Government to be necessary; but, in his letter of 21st December last, the Secretary of the Nílgiri Railway Company requests sanction to draw the Rs. 7,500 as payable to the Nílgiri-Rigi Railway Company under the agreement of 4th January 1884, and Messrs. Cowdell and Winterton's letter of 30th December last is written by them as Solicitors of the Nílgiri-Rigi Railway Company and apparently encloses the Secretary's letter. In my opinion clause 23 of the Scheduled Contract must be read with clause 22, and the drawings under clause 23 must be for the purposes mentioned in clause 22. I am also of opinion that, under the agreement of 30th September 1885, the fully-paid up shares representing Rs. 30,000 were intended to cover all expenditure the Nílgiri-Rigi Railway Company might have incurred in connection with the proposed railway.

11. As regards your second question whether the agreement of 20th December last between the Nílgiri Railway Company and Mr. Woolley for the construction of the railway fully provides for the grant of 3,000 fully-paid up shares or the payment of Rs. 37,500 in cash to the Nílgiri-Rigi Railway Company out of the Rs. 25,00,000 of capital to be subscribed by the shareholders, I do not see any direct reference in that document to the subject. There is a sort of indirect reference to it in clause 3 of the agreement, where the Company undertakes to duly observe and perform the obligations on its part contained in clause 22 of the agreement of 26th February 1886, the Scheduled Contract; but that clause can hardly be said by itself to impose an obligations on the Nílgiri Railway Company to grant 3,000 fully-paid up shares or to pay off Rs. 30,000 (still less Rs. 37,500) in cash to the Nílgiri-Rigi Railway Company. I have already fully commented on this clause of the Scheduled Contract. It is the indenture of 20th December last, made between the two Railway Companies, which provides for the payment by the Nílgiri Railway Company to the Nílgiri-Rigi Railway Company of Rs. 37,500, presumably as to the Rs. 30,000, out of the capital, as the payment is to be made in lieu of the issue of shares, though the document is, except in the recital of the agreement of 4th January 1884, silent as to where the Rs. 7,500 were to come from. It was, according to the last-mentioned agreement, to be paid as soon as the Nílgiri Railway Company should be in a position to allot shares to the public and make payments in cash, so probably it was intended that this sum should also be paid out of capital.

12. With regard to your third question whether there is anything in the agreement of 20th December 1889 or in Mr. Woolley's contract with the Nílgiri Railway Company which should cause the Government of Madras to refuse to accept either as legal and binding documents, I would point out that Mr. Woolley's contract is the agreement of 20th December 1889. If you refer in your question to the indenture or release of 20th December 1889 between the two Railway Companies, and to Mr. Woolley's contract of same date for the construction of the railway, I would point out that Government is not a party to either of these instruments and is in no way bound by them or either of them, that, as to the release, I have already fully commented thereon, and that, as to Mr. Woolley's contract, I do not see how it is open to Government to take exception to anything contained in it. However, if there are any specific matters in either of these instruments as to which you wish for my opinion, and if you will let me know what they are, I shall be happy to advise on them.

From the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, to the Secretary and Agent, Nílgiri Railway Company (Limited), dated Madras, 23rd August 1890, No. 674 D.

With reference to para. 4 of your letter No. 2, dated 6th August 1890, and in continuation of this office No. 663 D., dated 22nd August 1890, I am directed to forward copy of a notification which will appear in the next issue of the *Fort St. George Gazette*, in accordance with which the Nílgiri Railway Company will be empowered to enter upon lands and survey, and to state that a further notification will be published embodying the villages, &c., through which the line will pass as soon as the route can be decided upon.

ENCLOSURE.

NOTIFICATION.

Under the provisions of section 4 of Act X of 1870, His Excellency the Right Honorable the Governor in Council of Fort St. George hereby declares that land is likely to be needed in the Coimbatore and Nílgiri districts for a public purpose, viz., the construction of a railway from Mettupálaiyam to Coonoor.

(Signed) T. GRACEY, Lt.-Col., R.E.,
Offg. Joint Secy. to Govt., P.W.D.,
Railway Branch.

From the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, to the Secretary and Agent, Nílgiri Railway Company, dated Madras, 26th August 1890, No. 689 D.

In continuation of this office No. 674 D., dated 23rd August 1890, I am directed to inform you that the Government of India has ordered that the capital of the Company is to be at once paid into the Bank of Madras to the credit of the Government of Madras in accordance with clause 22 of the contract. The Bank of Madras have been directed to receive the money.

2. I am to request that you will be good enough to notify to me that the capital has been paid in accordingly.

From the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, to the Secretary and Treasurer, Bank of Madras, dated Madras, 26th August 1890, No. 690 D.

I am directed to forward copy of a letter No. 689 D., dated 26th August 1890, to the Secretary and Agent, Nílgiri Railway Company, and to request that you will be good enough to receive the capital of the Company not exceeding Rs. 25 lakhs in all as paid over to you, crediting the same to the Government of Madras under a separate account and informing the Government from time to time what sums have been paid in.

2. Further instructions concerning this account will be sent to you as soon as certain matters connected with it have been finally decided.

From the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, to Messrs. COWDELL AND WINTERTON, dated Madras, 28th August 1890, No. 710 D.

With reference to your letter of the 20th August, I am desired to inform you that the Government of Madras were aware of the existence of the documents you quote when the letter No. 650 D., dated 19th instant, was written.

From the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, to the Secretary and Agent, Nílgiri Railway Company, Coonoor, dated Madras, 13th September 1890, No. 789 D.

I am directed to request the favor of an early reply to para. 2 of this office letter No. 689 D., dated 26th August 1890, in which you were asked to notify that the capital of the Nílgiri Railway Company has been paid into the Bank of Madras in accordance with the terms of clause 22 of the contract.

From the Secretary and Agent, Nílgiri Railway Company (Limited), to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Coonoor, 15th September 1890, No. 6.

I have the honor to inform you that I duly received your No. 689 D., of the 26th ultimo, and yesterday I received your No. 789 D., of the 13th current.

2. I regret the unavoidable delay which has occurred in replying to the former.

3. My Directors are always pleased to have an opportunity of fulfilling any of the Company's obligations to the Secretary of State, but they regret to have to inform you that they cannot find in the concession any clause which supports the order conveyed in yours under reply. They therefore are unable to comply with it.

4. Clause 22 (to which you refer) runs thus: "The Company shall pay into the Bank of Madras, &c., to the account of the Government of Madras, the sum of Rs. 25,00,000 by *such instalments* and at *such times* as the *Secretary of State* and *the Company* shall *agree to be requisite* to ensure the due prosecution and completion of the said railway;" and to emphasize this mode of paying the capital of the Company into the Bank of Madras, if the Secretary of State should prefer that Bank to any other in Madras, clause 25 provides that "the interest on each individual sum shall commence from the time when the same shall have been paid into the Bank of Madras."

5. It seems evident, therefore, that the Company cannot be asked to pay any portion of its capital into the Bank of Madras until the Government and the Company have *agreed* upon the amount and the time at which such payment should be made.

6. My Directors consider that two lakhs of rupees would be more than sufficient for the requirements of the Company for the remainder of this year, and they are willing to pay that amount to the credit of the Government at the Bank of Madras, if the Government should be agreeable to this proposal and will undertake to pay interest thereon at the rate of 3 per cent. per annum on the dates mentioned in clause 25 of the concession.

From the Secretary to the Government of India, Public Works Department (Account —Railway), to the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, dated Simla, 16th September 1890, No. 480 A.R.

I am directed to acknowledge the receipt of your letter No. 670 D., of the 22nd ultimo, asking what powers the Government of Madras should assume under clauses 22 and 23 of the contract with the Nílgiri Railway Company, and for such advice as will assist the local Government in carrying through the agreement with that Company satisfactorily.

2. As regards clause 22, any money paid in by the Company must, under the terms of Public Works Department telegram No. A. 160, of the 22nd August 1890, be paid to the credit of Government in the Bank of Madras, and the provisions of the contract in this respect should be strictly adhered to.

3. With regard to clause 23, I am to say that all moneys required for the purposes of the railway must from time to time be placed at the disposal of the Directors. The possibility of money being paid to Mr. Woolley without a fair equivalent of work done need, it is thought, hardly be considered, as, under proper

arrangements, such a contingency is not likely to arise. The Government of India is of opinion that the interests of the State will be sufficiently protected if the control over the affairs of the Nílgiri Railway is assimilated, as far as the contract will allow, to the control which is now exercised over the affairs of the Madras and South Indian Railways. Under the procedure in force on Guaranteed Railways, the Directors would apply to Government before the 20th of each month for the funds required to meet outlay during the following month. This application would be passed by the Consulting Engineer and then, on the application of the Examiner, a letter of credit for the amount required would be issued in favor of the Company on some Government Treasury. Under clause 23 of the contract, the Company can only draw such sums "as shall from time to time be shown to the satisfaction of the Government of Madras to be necessary." The Consulting Engineer for Railways, Madras, can therefore regulate credits according to the progress of work, and it is presumed that the Company will raise no objection to this procedure.

4. It will be necessary to appoint an officer as Government Director under clause 42, and a Government Auditor under clause 36 of the contract, the Company paying for the cost of the necessary audit. With regard to the latter, I am to suggest that the Examiner of Guaranteed Railway Accounts, Madras, be placed in charge of the audit. It will be necessary to consider what accounts are to be submitted and in what forms they should be prepared. I am to invite an expression of the views of the Government of Madras on these points.

5. As regards a Government Director, I am to say that it would be well if an officer acquainted with railway construction could be nominated, as such a nomination would offer Government some assurance that the estimates are scrutinized by a disinterested expert, and that the demand for monthly credits will bear a true relation to the expenditure on the line. It may, however, be difficult to secure in Madras the services of such an officer outside of the Consulting Engineer's office, and the Consulting Engineer ought to be an independent check. If the difficulty anticipated is a real one, I am to suggest the appointment of an experienced Engineer of the Public Works Department.

6. The position of Mr. Woolley as owner of 24,991 out of 25,000 shares, and as contractor for the line for 25 lakhs (*i.e.*, the whole capital of the Company, none being reserved for open line maintenance) is a peculiar one. It is well to consider the dangers to be anticipated from it. As far as the Government of India can see there appears to be no danger of Mr. Woolley drawing out money without executing a fair equivalent of works, for the money is his own. His interest lies in constructing the line as cheaply as possible, making what profit he can out of the 25 lakhs, but still constructing the line as a going and dividend-bearing concern. He will naturally desire to spend as little as he can out of the 25 lakhs, but to spend enough to have a working railway and to earn the dividends which the railway will bring in, the Government guarantee of 4 per cent. being the minimum amount receivable by him. His temptation will therefore be to make the line as light and cheap as is consistent with satisfactory working for a short period of time and it is to the prevention of any such substitution of light inferior temporary work for permanent and solid work that the Government of Madras should chiefly devote itself. This will, in the opinion of the Government of India, be best achieved by having a Government Director, who is a skilled Engineer—a Railway Engineer if possible, and by careful inspection on the part of the Consulting Engineer.

From the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, to the Secretary and Agent, Nílgiri Railway Company, Coonoor, dated Madras, 18th September 1890, No. 794 D.

With reference to your letter No. 6, dated 15th September 1890, I am directed to inform you that you have misapprehended the tenor of my letter No. 689 D., dated 26th August 1890, in which you were requested to report, for the information of Government, that the capital of the Nílgiri Railway Company has been paid into the Bank of Madras in accordance with the terms of clause 22 of the contract. Your proposal to pay two lakhs into the Bank of Madras as the first instalment is accepted and you are requested to intimate to this office the date of the payment.

From the Secretary and Agent, Nílgiri Railway Company (Limited), to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Coonoor, 22nd September 1890, No. 11.

I have the honor to acknowledge the receipt of your No. 794 D., of the 18th current, and to inform you that this Company will cause two lakhs of rupees to be paid to the credit of the Government of Madras at the Bank of Madras on the 1st proximo.

2. At the same time I have been instructed to ask you to be good enough to request the Bank of Madras to send to me, on the receipt of the money, a cheque book to enable the Directors and me to draw on the account in terms of clause 23 of the concession.

From the Accountant-General to the Government of Madras, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Fort St. George, 4th October 1890, No I.B.G.—174.

I have the honor to forward, herewith, for instructions, letter, in original, from the Secretary and Treasurer, Bank of Madras, No. 626, dated 1st October 1890, together with its enclosure, inquiring to whom payments should be made on account of the Nílgiri Railway Company (Limited). It will be seen from the endorsement thereon, No. 1464, dated 4th October 1890, that the Examiner of Guaranteed Railway Accounts, Madras, is not able to furnish the necessary information.

Rupees 2 lakhs have been received as yet with reference to your letter to the Secretary and Treasurer, Bank of Madras, No. 690 D., dated 26th August 1890.

ENCLOSURES.

From the Deputy Secretary and Treasurer, Bank of Madras, to the Accountant-General to the Government of Madras, dated Madras, 1st October 1890, No. 626.

With reference to your letter No. I.B.G.—142, dated 29th August, I have the honor to inform you that the Secretary and Agent, Nílgiri Railway Company (Limited), has this day remitted Rs. 2,00,000 by cheque on Agra Bank (Limited), and requests us to supply him with a cheque book to enable him and the Directors of the Company to draw against the same.

2. Please inform me if a cheque book may be supplied, and, if so, who will operate on the account, as we are instructed only to receive sums on account of the capital of the Company not exceeding Rs. 25 lakhs in all.

3. Letter dated 30th September 1890, received from the Secretary and Agent, Nílgiri Railway Company (Limited), is herewith forwarded for your perusal and return.

From the Secretary and Agent, Nílgiri Railway Company (Limited), to the Manager, Bank of Madras, dated Coonoor, 30th September 1890.

By agreement with the Officiating Joint Secretary to Government, Railway Branch, I beg to enclose a cheque for Rs. 2,00,000, for account of the Government of Madras, on behalf of the Nílgiri Railway Company.

I shall feel obliged by your sending me as soon as you can a cheque book to enable the Directors and me to draw on the account in terms of clause 23 of the Company's concession.

From the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, to the Secretary and Agent, Nílgiri Railway Company, dated Madras, 14th October 1890, No. 4152 C.

I am directed to inform you that the following procedure should be followed when funds are required by the Directors of the Nílgiri Railway Company.

2. An application should be made to the Government of Madras not later than the 15th of each month for the funds required during the succeeding month. The application having been passed by the responsible officer of Government as reasonable the money will be placed to the credit of the Directors in the Government Treasury at Madras or Coimbatore as may be most convenient to the Company.

From the Officiating Joint Secretary to Government, Public Works Department, Railway Branch, to the Accountant-General, dated Madras, 14th October 1890, No. 4153 C.

I am directed to forward, for your information, an extract, para. 3, from a letter, No. 480 A.R., dated 16th September 1890, from the Government of India and to inform you that it is proposed to adopt the following procedure in raising credits in favor of the Directors of the Nílgiri Railway Company.

2. An application will be sent to Government by the Directors of the Company not later than the 15th of any month for the funds required during the succeeding month. This application, after scrutiny by the Consulting Engineer as to the reasonableness of the demand, and by the Examiner, Guaranteed Railway Accounts, as to the funds being available, will be passed on to you in order that you may grant the credit certified to by the Consulting Engineer and Examiner either in the Madras or Coimbatore Treasury as may be required.

3. I am to request that you will be good enough to report what order it is now necessary to give to the Bank of Madras concerning the Rs. 2 lakhs lodged by the Company therein on the 1st October and also for the disposal of further sums when lodged from time to time by the Company in accordance with the terms of their contract.

Copies, together with copy of paragraph referred, to the Consulting Engineer and Examiner, Guaranteed Railway Accounts, for information and guidance.

From the Officiating Joint Secretary to Government Public Works Department, Railway Branch, to the Collector of Nílgiris, Government Director, Nílgiri Railway Company, dated Madras, 14th October 1890, No. 4154 C.

I am directed to bring to your notice that the Nílgiri Railway Company have entered into a contract with Mr. R. Woolley for the construction of the railway from Mettupálaiyam to Coonoor for a lump sum of Rs. 25,00,000 and have thus hypothecated the whole of their resources.

2. The Company have also appointed a Secretary and Agent and an Engineer, and I am to request that you will be good enough to ascertain and report how they propose to pay the salaries of these officers and from what source the requisite funds are to derived.

3. In this and all similar cases inquiry should be made in your capacity as Director and without any reference to any Government order asking for the information.

4. I am also directed to forward to you, for your information and to be treated as a strictly confidential communication, a copy of the letter from the Government of India, dated 16th September 1890, No. 460 A.R., and to invite your particular attention to para. 6 thereof.

No. 4155 C.

Letter from the Government of India, Public Works Department, dated 16th September 1890, No. 480 A.R.

Paragraph 4 of the letter read above is referred to the Examiner, Guaranteed Railway Accounts, Madras, for favor of opinion as to how the accounts should be kept and the audit conducted. The cost of the audit should, it is presumed, be limited to Rs. 100 per month at the outside.

(Signed) T. GRACEY, Lt.-Col., R.E.,
Offg. Joint Secy. to Govt., P.W.D.,
Railway Branch.

14th October 1890.

To the Examiner, Guaranteed Railway Accounts.

From the Secretary and Agent, Nílgiri Railway Company (Limited), Coonoor, to the Joint Secretary to Government, Public Works Department, Railway Branch, Madras, dated Coonoor, 15th October 1890.

I have the honor to acknowledge the receipt of your No. 4152 C. of yesterday, and in reply beg to inform you that my Directors will require one lakh of rupees next month ; and they will be pleased to hear that three-fourths of that amount has been placed to their credit at Madras and one-fourth at Coimbatore.

2. On receipt of an intimation that this request has been complied with, I will send the signatures of the Directors, any two of which, with mine, will be attached to all cheques drawn by the Company.

3. My Directors are obliged to you for offering to place funds to their credit at Coimbatore as well as Madras, and would feel obliged by your informing me in what form they are to draw upon both accounts.

From the Accountant-General, Madras, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Fort St. George, 18th October 1890, No. I.B.G.—177.

With reference to para. 3 of your letter No. 4153 C., dated 14th October 1890, in connection with payments on account of the Nílgiri Railway, I have the honor to state that no further instructions are required. Payment orders will issue from this office on receipt of the application of the Directors of the Nílgiri Railway Company for credits from the Examiner of Guaranteed Railway Accounts, Madras. I have only to suggest that your present letter may be communicated to the Directors and the Examiner.. The Examiner of Guaranteed Railway Accounts should control the receipts and payments and see that balance at credit is not overdrawn if there is provision to that effect in the contract.

ORDER—dated 25th October 1890, No. 1616 R., Public Works.

Public Works Department letter No. 4152 C., dated 14th October 1890, to the Secretary and Agent, Nílgiri Railway Company, and the reply thereto, will be communicated to the Consulting Engineer for Railways, for transmission to the Examiner, Guaranteed Railway Accounts, for necessary action in accordance with the procedure laid down in Public Works Department letter No. 4153 C., dated 14th October 1890, to the Accountant-General, Madras, copy of which has already been furnished.

2. The Public Works Department will supply the Nílgiri Railway Company with cheque books to draw against their credits. The Examiner, Guaranteed

Railway Accounts, should be advised of this and the Secretary and Agent of the Company informed accordingly.

3. The Secretary and Agent of the Nílgiri Railway Company should be requested to submit duplicate originals of the signatures of the parties who will draw cheques in order that the Treasury officers at Madras and Coimbatore may be supplied with them.

(Here enter No. 1617 R., dated 25th October 1890.)

(True Extract.)

(Signed) T. GRACEY, Lieut.-Colonel, R.E.,
Offg. Joint Secy. to Govt., P.W.D.,
Railway Branch.

To the Consulting Engineer for Railways
,, Examiner, Guaranteed Railway Accounts.

Exd. P. L. Pereira.
Spare Copies

RAILWAY.

Govt. of {1890} Madras

PUBLIC WORKS.

Dated October, 25th.

Recd. *Encl.*

G.O., 25th Oct. 1890, No. 1616 R.

OCTOBER.

Nilgiri Railway Company

Arrangements for placing the — in funds, ordered, and the necessary instructions issued.

Stamp 5/=

To all to whom these presents shall come Whereas by an Agreement made the Thirtieth day of September One thousand eight hundred and eighty five between The Secretary of State in Council of India (thereinafter referred to as "the Secretary of State") of the one part and the Nilgiri Rigi Railway Company Limited of the other part after reciting that the said Nilgiri Rigi Railway Company Limited contemplated the immediate formation and establishment of a Joint Stock Company with an Indian domicile and a nominal capital of not less than Two Millions five hundred thousand Rupees and powers sufficient to enable it to undertake carry out and fulfil all the works duties and liabilities under which the Indenture set out in the Schedule to the now reciting Agreement and thereinafter called "The Scheduled Contract" would have to be exercised carried out and performed by the Company party thereto it was witnessed that the Secretary of State did thereby undertake with the said Nilgiri Rigi Railway Company Limited in certain events therein particularly mentioned to execute and deliver an Indenture identically in the words and figures of the Scheduled Contract with the addition thereto only of the names of the person executing the Indenture on behalf of the Secretary of State the name of the said Company executing the Indenture the names of the Directors of the said Company signing the said Indenture and the date of the Indenture

And whereas the Nilgiri Railway Company Limited (thereinafter

/

RAILWAY.

Govt. of {1890} Madras

PUBLIC WORKS.

Dated October, 25th.

Read. *Encl.*

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And whereas the Nilgiri Railway Company Limited (herein

P W 8/11754/90

Dated 5th December 1890

The Nilgiri Railway

Company Limited

—to—

P. W. Woolley Esqr.

Copy of

Power of Attorney

to act as Attorney Agent and

Secretary of the Company

Constable & Winterton
Lithographers

No. 51

The Nilgiri Railway Company, Ltd.,

Coonoor, 6th December 1890.

From

The Secretary and Agent,

Nilgiri Railway Company, Ltd.,

Coonoor.

8/11754/90

To The Offg: Jt Secretary to Govt.

P. W. D. Railway Branch

Madras

Sir.

G.O. 1616 R
7 25-10-90

As requested in your No 664 D of 22 Augt I have the honor to enclose a copy of the Power of attorney granted to me by the Directors, duly sealed and attested

I have the honor to be

Sir

Your most Obedient Servant

Percy P. W. Woolley.

Secretary and Agent,
Nilgiri Railway Co., Ltd.

1 Enclo:

No. 51...

The Nilgiri Railway Company, Ltd.,

Coonoor, 6th December 1890.

FROM

THE SECRETARY AND AGENT,

NILGIRI RAILWAY COMPANY, LTD.,

COONOOR.

To The Offg: Sr. Secretary to Govt.

P. W. D. Railway Branch

Madras

Sir.

As requested in your No 664 D of 22 Augt
G.O. 1616 R
d/25-10-90
I have the honor to enclose a copy of the
Power of Attorney granted to me by the Directors,
duly sealed and attested

I have the honor to be

Sir

Your most Obedient Servant

Percy D. Woolley.

Secretary and Agent,
Nilgiri Railway Co., Ltd.

1 Enclo:

P.W. 11752/90

Dated 5th December 1890

The Nilgiri Railway

Company Limited

—to—

P. W. Woolley Esqr.

Copy of

Power of Attorney

to act as Attorney Agent and

Secretary of the Company

P.W. 11754/90

Dated 5th December 1890

The Nilgiri Railway

Company Limited

—to—

P. M. Woolley Esqre

Copy of

Power of Attorney

to act as Attorney Agent and

Secretary of the Company

Constable & Winterton
Solicitors

The Nilgiri Railway Company, Ltd.,

No. 51

Coonoor, 6th December 1890.

From

The Secretary and Agent,
Nilgiri Railway Company, Ltd.,
Coonoor.

8/12/90

To The Offg: Jt Secretary to Govt
P.W.D. Railway Branch
Madras

Sir.

G.O. 1616 R
dt 25-10-90

As requested in your No 664 D of 22 Augt I have the honor to enclose a copy of the Power of Attorney granted to me by the Directors, duly sealed and attested

I have the honor to be
Sir
Your most Obedient Servant

Percy M. Woolley.

Secretary and Agent,
Nilgiri Railway Co., Ld.

1 Enclo:

Recd from the Governor

P. W. C. No. 11754

B.

No 2015 R dy 16th Dec/90.

14/12/90

Recorded with

Rd 8/12/90
Encl.

reference to Progs: No: 1616R

dated 25th October 1890.

Read
11/12/90

Mr

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25.10.90 - 1616 R

No. 2015 R dy 16th Dec/90.

Coroddle & Workington Intercommunt.

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B

No 2015 R Dy 16 Dec/90.

L.W.C. Colo: 11754

14/12/90

Recorded with

Rd 8/12/90
Encl.

reference to Progs: No: 616R

dated 25th October 1890.

Mcash
11/12/90

Mr

Mg: R

B

25.10.90 - 616R

No 2015 R Dy 16 Dec/90.

Coordell & Winterton
Deputation

Dec 26/12.

H.G. 11 XII
R16. XII. 90

R