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No 16.

Madras

From, *the*

Ernest Barclay,

Government Solicitor,

Madras.

To,

The Joint Secretary to Government,

Public Works Department,

Railway Branch.

Sir,

1 I beg to acknowledge receipt of your docket dated 8th instant No 95 C with the papers accompanying same, which I return herewith.

2 By the agreement of 29th June 1888 it is provided that,

(1) the Nilgiri Railway Company Limited have not obtained and shall not obtain or seek to obtain any domicile other than a British Indian domicile, and have not, and shall not have or seek to have their registered office elsewhere than in British India.

(2) the Nilgiri Railway Company Limited have not and shall not have or keep any register of the shareholders of that company at any place other than the registered

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~~Office of the Company,~~

(3) the Nilgiri Railway Company have not issued and shall not issue to any person or persons, Company or Companies, - Corporation or Corporations or association or associations any document evidencing the right or title of the holder thereof to any shares, scrip or stock of the Nilgiri Railway Company, Limited, or to become proprietor of shares, - scrip or stock of such Company elsewhere than in British India,

3 It was further expressly provided by the agreement that if there had been or should be any breach of either of the last mentioned conditions or, in case the capital of Rs 2500000 - should not be fully subscribed for by 1st instant, it should be lawful for the Secretary of State, on ascertaining that there had been such breach, or at any time after the 1st instant as - the case might be, to forthwith determine the Schedule Contract.

4 With regard to the first of the above conditions, the agreement of 29th June 1888 itself recites that the Nilgiri - Railway Company Limited was duly registered under the provisions of the Indian Companies Act 1882 on the 26th February 1886, and I have verified the date by searching the records of the -

Registrar of Joint Stock Companies. This would give the Company a British Indian domicile and there is nothing before me to suggest that the Company has committed a breach of any of the other terms of this condition.

5 As to the second of the above conditions I find, on - searching the records of the Registrar of Joint Companies, that - the balance sheets from time to time filed by the Company show that 7 shares of Rs 100 each have been subscribed for, but, that the capital payable in respect of same has not been called up. The last balance sheet I found was that of 31st Jan'y 1889. I also find that the Company has from time to time filed lists of its members, the latest being up to 30th September 1889, showing 7 shareholders viz

1	Mr Richard Woolley	} holding 1 share each
2	" C W Wilson	
3	" H C King	
4	" N G Benson	
5	" J G Findlay	
6	" P W Woolley	
7	" C T C Gray	

I also find that the registered office of the Company was - originally at Messrs Arbuthnot & Co's office in Madras, but, - that it was subsequently, by notice of 19th April 1887, to the

Registrar, removed to "Woodcote" Coonoor.

6 As to the 3rd condition it is impossible for me to ascertain whether the Company has issued any document of title to shares, stock or scrip elsewhere than in British India. All I can say is that, presumably, certificates for such shares as have been issued would have been issued from the registered office of the company, and there is nothing before me to suggest that any document of title to any share, stock or scrip has been issued elsewhere than in British India, unless it be the Debenture Trust Deed referred to later on.

7 As regards the provision in the agreement of 29th June 1888 that the capital of Rs 2500000 should be fully subscribed for by the 1st instant, the facts are not very clear. In the Release of 20th December 1889 from the Nilgiri Rigi Railway Company, Limited, to the Nilgiri Railway Company, Limited, it is recited that the whole of the capital has been or is, about to be subscribed for. It is difficult to understand how there could have been any doubt upon such a very important point as this. Either the whole of the capital had been subscribed for on 20th December 1889 or it had not; but reading this recital as it stands, the only conclusion one can come to is that, on that date, the whole of the capital had not been subscribed for, or why should it be said that if it was not already subscribed for it was about to be? The Nilgiri Railway Company must have known perfectly well whether the whole of the capital had been subscribed for or not.

8 However, on the 24th December last the Secretary of the Company wrote to you informing you that the Company had issued a debenture loan at 4% per annum and in support of such issue had executed a

Debenture Trust Deed in favor of the Union Debenture Company, of London, who had undertaken to finance Mr Woolley, the modus operandi being, the issue of Debentures upon the security of which and security provided by Mr Woolley the money necessary for the completion of the Government contract will be advanced. The Secretary also says that, as officially noted in a separate letter of this date, the first instalment has already been paid. There is no other letter of 24th December last from the Secretary to you before me, but, in his letter of 28th idem, the date of which has clearly been altered, the Secretary gives notice to Government that the capital of the Company has been fully subscribed, and that the amount to be paid on application viz Rs 250000 has been received by the Company and lodged in the Agra Bank, Madras.

9. It looks to me very much as if the Secretary had thought that if Government understood, as one would naturally understand from the letter of 24th December, that it was on borrowed capital that the Company was about to start, Government might and, no doubt, would, take the objection that the capital of Rs 2500000 had not been subscribed for within the meaning of the agreement of 29th June 1888. Reading the letters of 24th and 28th December together the conclusion at which I arrive is that, unless the statements contained in the latter letter are altogether untrue, the capital of the Company has been subscribed for, but has not been called up, and, that instead of calling it up, the Company has decided to borrow the money from the Union Debenture Company upon the security of the uncalled capital, probably also on the security of the line buildings, and other property of the Company, and on the security provided by Mr Woolley. Probably not a single shareholder has contributed to the Rs 250000 mentioned by Mr Woolley in his letter of 24th ultimo, as the first instalment of the Debenture loan and in his letter of 28th idem as the amount payable on application for the shares.

10. I am not however prepared to say that even if I am right

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in the conclusion at which I have arrived, the Company has not complied with the condition as to the subscription for capital contained in the agreement of 29th June 1888, but, before acting on the Secretary's letters, I would suggest that I allowed to instruct my firm's Assistant at Ootacamund, Mr David, to inspect, and, having inspected, to demand a copy of the register of shareholders of the Company - Under Section 47 of the Indian Companies' Act 1882, every Company under that Act is bound to keep a register of its members with their names addresses and occupations, and a statement of the shares held by each member, and of the amount paid, or agreed to be considered as paid, on the shares of each member, and, under Section 55 of the Act, such register is open to the inspection of any person on payment of a fee not exceeding one rupee, and any person may require a copy of such register on payment of two annas per 100 words copied.

11. I think it would be very important to obtain a copy of the register of members of the Nilgiri Railway Company in order to ascertain whether, as a fact, the capital has been subscribed for. In the meantime, I would suggest your requesting the Secretary of the Company to furnish you, for inspection, with the original Deben-
ture Trust Deed referred to his letter of 24th December, and, if he says in reply, that he cannot send you the original, you might then ask him to furnish you with a copy of the deed.

12. *I* Awaiting your instructions as to searching the register of members.

13. With reference to the Secretary's letter of 31st ultimo - I would remind you that, under clause 22 of the Schedule contract, all moneys have to be paid into the Bank of Madras to the account of Government or into such other Bank as may be approved by the Secretary of State - I would suggest that the Bank of Madras be insisted on, at any rate for the present, if you propose to reply to

this letter; but, you will probably agree with me that it would be better not to do so until the course I have suggested has been followed

I have the honor to be

Sir,

Your Obedient Servant

Ernest Barclay

Government Solicitor.

PWC No 309

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