

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Muttusami Ayyar, and Mr. Justice Shephard.

REFERENCE BY THE BOARD OF REVENUE UNDER S. 46 OF THE
INDIAN STAMP ACT, 1879.*

1891.
October 13.

Stamp Act—Act I of 1879, s. 3, sched. I, art. 13—Bond—Attestation.

A company agreed to pay £220,000 in five instalments for the cost of constructing a railway, on the terms, among others, that debentures on the railway should be handed over to the company on each payment being made, and that in the event of the other party failing to perform his liabilities as to the construction of the railway, the company should be entitled to sell the debentures, and also to recover damages and also to discontinue payments of the above instalments. It was also provided that the company should be at liberty to retain £40,000 as compensation for risk, expenses, &c. The agreement was sealed with the seal of the company in the presence of two Directors and the Secretary :

Held, that the instrument was liable to stamp duty as a bond for £220,000 under Act I of 1879.

CASE referred by the Board of Revenue under section 46 of the Indian Stamp Act, 1879.

The case was stated by the Board of Revenue as follows :—

“ The Debenture Company bind themselves to pay £220,000
“ *minus* £40,000. It is doubtful whether the stamp should be
“ calculated on the £220,000 as previously decided by the Board
“ or on the net amount only or on what and under what article
“ of schedule I, if not under article 13 as a bond ; and the Board
“ would be glad of the decision of the High Court on this point.”

The document in question was an agreement, dated the 20th December 1889 and made between Richard Woolley of the one part and the Union Debenture Company thereafter called the Debenture Company of the other part. It recited an indenture, dated 26th February 1886, and made between the Secretary of State for India of the one part and the Nilgiri Railway Company of the other part, whereby it was agreed among other things that the Railway Company should construct a railway on land to be provided by the Secretary of State and pay to the credit of the Government of Madras Rs. 25,00,000 as therein provided. It

* Referred Case No. 15 of 1891.

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further recited an agreement made between the Nilgiri Railway Company of the one part and Richard Woolley of the other part, whereby it was among other things agreed that Richard Woolley should upon receiving possession from the Railway Company of the land required for the Railway, construct the same and that the Railway Company should create and issue debentures to the amount of £220,000 to bear interest and be secured as therein provided, and that the said debentures should be issued to Richard Woolley, and that the Railway Company should pay the sum of Rs. 25,00,000 to Richard Woolley, or as he should direct in the manner provided for in the agreement of 26th February 1886, and that Richard Woolley should subscribe or procure substantial subscriptions for the whole share capital of Rs. 25,00,000 of the company. The document proceeded as follows :—

“ And whereas the said Richard Woolley has applied to the Debenture Company to supply him with funds for the purpose of making all requisite payments in respect of the subscription to the shares of the Railway Company and in respect of the other obligations incident to the said recited agreement which the company have agreed to do to the extent in the instalments subject to the deductions and otherwise in the manner hereinafter appearing upon the terms of the said Richard Woolley selling and making over to the Debenture Company in manner hereinafter appearing the whole of the said debentures for two hundred and twenty thousand pounds so to be issued to him as aforesaid and such fully paid-up shares of the Railway Company as hereinafter mentioned and upon the other terms and conditions hereinafter appearing. Now it is hereby agreed as follows that is to say :—

1. The Debenture Company shall pay and provide for the purposes of this agreement the sum of two hundred and twenty thousand pounds in the instalments and at the dates following that is to say :—

£25,000 on or before the 21st day of December 1889.

£40,000 on or before the 31st day of March 1890.

£50,000 on or before the 31st day of October 1890.

£50,000 on or before the 31st day of March 1891.

£55,000 on or before the 31st day of October 1891.

Provided always that the first second third and fifth of the said instalments shall be subject to the deductions hereinafter particularly mentioned.

2. Upon and simultaneously with the making by the Debenture Company of the aforesaid payments the said Richard Woolley shall cause to be handed to the company for their own absolute use and benefit the whole of the debentures so issued to him as aforesaid in equivalent amounts and by the like instalments that is to say :—

£25,000 such debentures on or before the 21st day of December 1889.

£40,000 such debentures on or before the 31st day of March 1890.

£50,000 such debentures on or before the 31st day of October 1890.

£50,000 such debentures on or before the 31st day of March 1891.

£55,000 such debentures on or before the 31st day of October 1891.

3. For the purposes of these presents the whole of the said debentures shall forthwith or so soon as the same are issued be delivered by the Railway Company with the concurrence of the said Richard Woolley to the branch at Madras of the Agra Bank Limited for transmission by such Bank to its Head Office in the City of London to be held by the said Bank as stakeholder for the purposes hereinafter mentioned.

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[Clause 4 prescribed the mode in which the payments were to be made by the Debenture Company, and provided that on each payment being made an equivalent amount of debentures was to be delivered to the Company. Clause 5 contained provisions as to the form of the debentures and the mortgage securing the same. In clause 6 the instrument dealt with the accrual and payment of interest on the debentures.]

7. The sums paid by the Debenture Company to the said Richard Woolley shall be duly applied by him first in payment of all moneys payable by him or by the subscribers procured by him in respect of the said shares in the Railway Company and subject thereto in fulfilling the other obligations under these presents and his said agreement with the Railway Company.

8. In addition to the said debentures and as further consideration for the payments so to be made by the Debenture Company as aforesaid the said Richard Woolley shall so soon as the shares in the Railway Company shall have been fully paid up make over and transfer to the Debenture Company or as they shall direct Three thousand such fully paid-up shares of Rupees one hundred each such shares shall unless the Debenture Company and the said Richard Woolley shall otherwise agree be those numbered 8 to 3007 inclusive.

[Clause 9 provided for the contingency of a public issue of the debentures under the agreement with the Railway Company.]

9(a). The said Richard Woolley shall finish and equip the said railway in accordance with his said agreement with the Railway Company within the time limited by the said indenture of the twenty-sixth February one thousand eight hundred and eighty-six, or such further time (if any) as may be allowed by the Secretary of State and shall otherwise perform and fulfil the obligations and liabilities undertaken by him in his said agreement with the Railway Company and shall use his best endeavours to procure the said railway to be duly started and worked and the said debentures of the company and the shares thereof to be thereby rendered valid and marketable securities and property.

10. In case the said Richard Woolley shall fail to perform and fulfil the obligations and liabilities mentioned in the last preceding clause the Debenture Company shall forthwith thereafter give notice to the said Richard Woolley specifying the breach or breaches of which it complains and if the same shall be capable of remedy requiring the said Richard Woolley to remedy the same and if the said Richard Woolley fails within the space of three months after the receipt by the said Richard Woolley of such notice to remedy the same or if such breach shall be irremediable then immediately upon giving such notice the Debenture Company shall be entitled to damages against him which shall be estimated on the footing that but for such failure the debentures which have then been handed over by the said Bank to the Debenture Company would have been worth ninety-five per cent. of the full nominal value thereof and on the further footing that the actual value of the said debentures after such failure is the price which the Debenture Company is able to obtain for them by selling and disposing of them by public auction after due publicity shall have been given by advertisement and otherwise of such intended sale within three

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calendar months or if the Debenture Company is unable within such period to sell or dispose of the said debentures at all or at any reasonable price then that the value of the debentures so unsold is either the highest price offered for them and declined or if no price whatever has been offered then nothing but if in case such breach shall be capable of remedy the said Richard Woolley shall within the space of three months after the receipt of the beforementioned notice remedy the breach or breaches complained of in such notice then the damages to which the Debenture Company shall be entitled against him shall be ascertained by referring the question to arbitration in pursuance of clause sixteen hereinafter contained. Provided always that the Debenture Company shall before it shall sell or dispose of the Debentures in the events mentioned in the first part of this clause offer the same debentures for sale to the said Richard Woolley at ninety-five per cent. of the nominal value thereof and the said Richard Woolley shall be at liberty within two months after the same shall have been so offered to purchase the same debentures in which event the purchase money therefor shall be payable by two equal half-yearly instalments with interest at the rate of five per cent. per annum on the instalment or instalments for the time being remaining unpaid calculated from the date on which the said debentures shall have been so offered to the said Richard Woolley up to the date of payment of such instalment or instalments respectively the first of such instalments to become due and payable three months after the date on which the said Richard Woolley shall elect to purchase the said debentures or at such earlier date or dates as the said Richard Woolley shall elect. Provided always that in case of default as aforesaid and any damages being thereby occasioned to the Debenture Company the said Richard Woolley shall upon payment of such damages together with the reasonable costs of the Debenture Company be entitled to receive from the Debenture Company the whole of the said debentures.

11. In case the said Richard Woolley 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 with due diligence to the satisfaction of the Secretary of State or shall otherwise fail in some material respect to fulfil the obligations and liabilities undertaken by him in his said agreement with the Railway Company or in those presents in such manner as to prejudice the security intended to be hereby given to the Debenture Company then and in such case the Debenture Company shall forthwith thereafter give notice to the said Richard Woolley 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 said Richard Woolley to perform the same and if the said Richard Woolley fails within the space of three months after the receipt of such notice to do so or if any such obligation or liability shall no longer be capable of performance the Debenture Company may by notice to the said Richard Woolley elect to discontinue the payment of the remaining instalments to be paid and provided by the Debenture Company and shall thereupon be freed from all obligation and liability to pay or provide the same such discontinuance shall not affect the right of the Debenture Company to any debentures already handed to them nor their right to have the said Three thousand shares fully paid up and transferred to them or as they shall direct nor their right to damages for breach of this agreement. Provided nevertheless that in the event of any such default as aforesaid on the part of the said Richard Woolley the Debenture Company shall not be bound to make any further payment of the moneys payable by it hereunder notwithstanding that the due date for the

payment of the same may have arrived unless and until the said Richard Woolley shall within the time hereinbefore limited have made good such default to their reasonable satisfaction. Provided always that in case the Debenture Company shall on any such alleged default elect to discontinue payment as aforesaid the remainder of the said two hundred and twenty thousand pounds debentures not then already handed over to the Debenture Company by the said Agra Bank shall thenceforth be held by the said Bank as a security for the payment of the amounts due or to become due from the said Richard Woolley or other the holders of the said shares to be subscribed for as hereinbefore provided to the Railway Company upon and in respect of the said shares and for the purpose of raising such amounts the said Richard Woolley or the said Bank at his request may sell or mortgage the said debentures or any of them and the Bank so acting at the request of the said Richard Woolley shall not be bound to enquire whether any such alleged default has actually occurred or whether the Debenture Company shall have elected to discontinue payments as aforesaid and subject thereto the same shall be held by the said Bank as a security to the Debenture Company for any damages or other claims against the said Richard Woolley under these presents or otherwise and the Debenture Company shall for enforcing such damages or other claims against the remainder of the said debentures have subject as aforesaid all the powers and remedies of mortgagees by deed and may at any time give good receipts for such debentures to the said Bank.

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12. Notwithstanding anything hereinbefore contained the Debenture Company shall be entitled to deduct and retain out of the first three and the fifth instalments of money so to be paid and provided by them as aforesaid the following sums as compensation for expenses risk commission stamp duties payable in India (if any) and in England upon the said Debentures and in England only upon the said Debenture mortgage also all legal expenses of the said Debenture Company in England and in India and otherwise in respect of the transaction aforesaid that is to say—

(1) From the first instalment of twenty-five thousand pounds payable on or before the twenty-first day of December next of the sum of four thousand pounds leaving twenty-one thousand pounds only to be actually paid and provided together with one half of the cost of stamping in India the Debenture mortgage not exceeding five hundred pounds.

(2) From the second instalment of forty thousand pounds payable on or before the thirty-first day of March one thousand eight hundred and ninety the sum of eight thousand pounds leaving thirty-two thousand pounds only to be actually paid and provided.

(3) From the third instalment of fifty thousand pounds payable on or before the thirty-first day of October one thousand eight hundred and ninety the sum of Eight thousand pounds leaving forty-two thousand pounds only to be actually paid and provided.

(4) From the fifth instalment of fifty-five thousand pounds payable on the thirty-first October one thousand eight hundred and ninety-one the sum of twenty thousand pounds leaving only thirty-five thousand pounds to be actually paid and provided. Provided always and it is hereby agreed and declared that for the purpose of ascertaining the amount of Debentures to be handed over to the Debenture Company and the moneys to be paid on account of the said shares in the Railway Company and for all other the purposes of these presents the said four respective instalments shall notwithstanding the respective deductions aforesaid be deemed to have been paid and provided by the Debenture Company in full.

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13. In case of any default by the Debenture Company to pay the moneys aforesaid by the instalments and on the dates aforesaid the contractor or his agent or attorney in England may give the Debenture Company notice by prepaid letter addressed to it at its registered office for the time being requiring the Debenture Company to pay the moneys then due and payable hereunder within one month from the date of the receipt of such notice and unless the said moneys shall be paid to the said Agra Bank within the time prescribed by such notice. The Agra Bank shall thereupon hand over to the said Richard Woolley or as he shall direct the whole of the said Debentures then remaining in the custody of the said Bank and his receipt shall absolutely exonerate the said Bank from any liability to account therefor and the Debenture Company shall thereupon cease to have any interest in or claim against the said Debentures or the said three thousand fully paid-up shares but nothing in this clause contained shall be deemed to affect or prejudice the rights of the said Richard Woolley against the Debenture Company for damages in respect of any such default.

[The remaining clauses of the instrument provided for the reference of disputes to arbitration, &c., &c.]

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

The common seal of the Union Debenture Company Limited was affixed hereto in the presence of

(Signed) _____ }
 (Signed) _____ } *Directors.*
 (Signed) _____ } *Secretary.*

Signed by the abovenamed Richard Woolley in the presence of } (Signed) RICHARD WOOLLEY."

The Government Pleader (Mr. Powell) for the Board of Revenue.

JUDGMENT.—We are of opinion that the instrument must be stamped as a bond for the payment of £220,000.