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KALI KISHORE DUTT GUPTA MOZUMDAR v. BHUSAN CHUNDER alias BEPIN CHUNDER DUTT GUPTA.

advise Her Majesty to affirm the judgment of the High Court and the interlocutory orders before referred to. The appellant must pay the costs of the appeal.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Tatham, Son, & Lousada.*

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

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*P. C.** *1890* *July* 8 & 23.

BISHAMBAR NATH AND OTHERS (PETITIONERS) *v.* IMDAD ALI KHAN (OBJECTOR).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Attachment—Civil Procedure Code, 1882, *s.* 266, *sub-section* (*g*)—*Political pension—Payments due under the Oudh loans of* 1838 *and* 1842—*Exemption from liability to attachment for debt.*

Although it is probable that the enactments of section 266, Civil Procedure Code, 1882, were not meant to cover pensions payable by a foreign State when remitted for payment to their pensioner in India, they certainly include all pensions of a political nature payable directly by the Government of India. A pension guaranteed payable by the latter by a treaty obligation contracted with another sovereign power is in the strictest sense a political pension.

An allowance, payable by the Government of India under an arrangement made between the King of Oudh and the Governor-General in 1842, for the benefit of members of the King's family and household, and their respective heirs in perpetuity, and payable to one of such heirs, who has inherited it, as his share in the interest in the Oudh loan of 1842, is a political pension within the meaning of section 266, sub-section (*g*), Civil Procedure Code, 1882. The arrangement of 1842 cannot be treated as merely *a provision out of the King's private estate for the maintenance of members* of his family, there having been in a State like that of Oudh no distinction between State property and private property vested in the sovereign.

SIX appeals, consolidated by order (3rd April 1889), from orders (2nd September 1887), of the Judicial Commissioner, reversing orders (14th March 1887) of the District Judge of Lucknow.

The appellants, who were all judgment-creditors, respectively, of the respondent, raised the question whether a sum of money

* *Present:* LORD WATSON, SIR B. PEACOCK, and SIR R. COUCH.

receivable by him from the Government of India, in the form of an inherited share in the interest of the Oudh loan of 1838, augmented in 1842, was liable to be attached by a decree-holder in execution for his debt, or was a political pension within the meaning of section 266, sub-section (*g*). The latter enacts that stipends and gratuities allowed to military and civil pensioners of Government, and political pensions, shall not be liable to attachment or sale.

The share was inherited by the judgment-debtor from his grandmother, Nawab Malka Jehan, principal consort of Mohammad Ali Shah, formerly a King of Oudh. With the latter, Colonel Low, on behalf of the East India Company, entered into the engagements of 1838 and 1842 referred to in their Lordships' judgment.

The first engagement (1) stipulated that the loan should bear interest at the rate of four per cent. per annum, and that, out of the total interest of Rs. 68,000, there "should be paid as pension in perpetuity, in four equal instalments, to the persons named in the 3rd Article, and to their heirs in perpetuity, on their receipts under their seals, the amounts set opposite their names." The first named of these persons was Malka Jehan, Queen of Mohammad Ali Shah, to whom, and her heirs in perpetuity, Rs. 400 per month, or Rs. 4,800 per annum, were thus made payable.

Of the proposal to the King in 1842 to advance to the East India Company a further sum of 12 lakhs, the result is thus stated by the Judicial Commissioner:—"The King readily acceded to this proposal, and sent in 12 lakhs of rupees to the British Minister, who issued promissory notes to the extent of 2 lakhs of rupees in favour of persons designated by the King. A few days afterwards the King proposed that instead of an ordinary subscription to the public loan, his twelve lakhs should be treated as a special loan, and that a paper of acknowledgment therefor should be drawn up, and that the Government note should not be negotiable, and that the interest accruing upon the loan should be paid as pension to his favourite Queen, Nawab Malka Jehan, and to her heirs for ever, and that the same should be treated as an augmentation of the small pension of Rs. 400 per mensem secured to her by the loan and treaty

(1) Aitchison's Treaties, Engagements and Sanads, Vol. II, p. 141, of edition of 1876.

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(XLVIII) of 1838, and that the said pension should be payable monthly, at the Resident's Treasury, at Lucknow."

The promissory note was in the form of an ordinary Government Promissory note, payable on demand, after three months' notice, to Mohammad Ali Shah, his executors, or administrators, or order. The margin of the note contained a statement that "the interest on this note is to be paid to Nawab Malka Jehan, and her issue, under order of Government, Financial Department, dated 9th February 1842."

A suit was brought in 1884 by the heirs of Malka Jehan to obtain a decision as to the shares in which they were entitled to receive the pension inherited from her on her decease. This having been brought before the Judicial Committee in appeal [*Mariam Begum* v. *Mirza* (1)], their Lordships were of opinion that it was the intention of the King that, in the event of the death of any of the pensioners having issue, his, or her, heirs according to the Mahomedan (Shia) law of inheritance should receive payment of the pension in the proportions regulated by such law.

The interest payable on the note was paid to Nawab Malka Jehan until her death on 4th July 1881. She left four grandchildren, her heirs under the Imamiya law, of whom the present respondent was one. The shares of these descendants were finally settled by the decision above referred to. Pending the litigation, these appellants, as decree-holders, applied to have the respondent's share attached. An order was made accordingly attaching Rs. 14,354, then in the Government Treasury at Lucknow, and said to be this respondent's share. On the 15th January 1887, the latter filed his objections which were dealt with under section 244, Civil Procedure Code. Notice was issued, and, on the appearance of the decree-holders, issues were recorded. Of these the first, which applied to all the decree-holders, was whether the pension fell within the provisions of section 4, Act XXIII of 1871, the Pensions Act (2). The District Judge made his order (14th March 1887)

(1) I. L. R., 17 Calc., 234; L. R., 16 I. A., 175.

(2) This Act provides in section 4, "except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension, or grant of money, or land revenue, conferred or made by the British or any former Government, whatever may have been the consideration for any such

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in favour of these appellants. He considered that payments issuing as the result of the loan of 1842, were not pensions within the meaning of the Act of 1871, and he pointed out that they were not referred to in the Oudh Wasikas' Act, 1886 (1).

The present respondent appealed to the Judicial Commissioner, resting his case for exemption upon section 11 of the Pensions' Act, 1871. The order of the District Judge was reversed by the Appellate Court, and the attachments were removed. The Court held that the claim did not fall within the prohibition of the Pensions' Act, 1871, any more than it did within the Wasikas' Act, 1886.

The Judicial Commissioner, however, considered that, as far as the settlor Mohammad Ali Shah was concerned, the payment to the respondent and to his grandmother before him was a pension pure and simple made on political grounds. He therefore was of opinion that the sum lying in the Treasury and now in dispute was a "political pension" within the meaning of section 266, Civil Procedure Code.

On this appeal,

Mr. *J. D. Mayne*, for the appellants, argued that the order of the District Judge ought to be restored. The payment in question

pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted." And in section 11, "No pension granted or continued by Government on political considerations, or on account of past services or present infirmities, or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment, or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court."

(1) This Act (XXI of 1886) recites the creation of certain pensions arising out of loans made by members of the Oudh Royal Family to the East India Company in 1813, 1814, 1825, and 1838, which were known respectively as the Amanat, Zamanat, and Loan, wasikas, and that doubts had arisen whether such wasikas were pensions within the meaning of the Pensions' Act, 1871. It then proceeded (section 2) to declare that they were pensions within the meaning of the Pensions' Act, 1871, and that that Act should apply to them as if they were pensions of classes referred to in sections 4 and 11 of that Act. No reference was made in the Act to the loan of 1842.

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was neither a pension within section 11 of the Pensions' Act, 1871, as contended by the present respondent when appealing below, nor was it a political pension within section 266 of the Civil Procedure Code, as the Judicial Commissioner had held it to be. Act XXI of 1886 by implication excluded money payable under the loan of 1842 from those pensions which were by that Act exempted from the ordinary civil process. The payment was in virtue of a settlement of the King's private estate, he having made the Government of India the instrument for carrying out an arrangement whereby he provided for his relations. This was not a political pension.

Mr. *R. V. Doyne*, for the respondent, argued that the construction already put by their Lordships on the agreement of 1842 was that the loan of that year was by way of augmenting the loan of 1838, and was brought, in effect, within the terms of the previous engagement. This at all events gave the sums paid under the latter as well as under the former loan the character of a political pension, within the meaning of section 266, sub-section (*g*), of the Civil Procedure Code.

Mr. *J. D. Mayne* was heard in reply.

On a subsequent day, 23rd July, their Lordships' judgment was delivered by—

LORD WATSON.—These are consolidated appeals at the instance of judgment-creditors of the respondent, Nawab Ali Khan, one of the heirs, according to Mahomedan law, of the late Malka Jehan, who was the principal consort of Mohammad Ali Shah, the last King of Oudh. In all of them the same question is raised for decision,—Whether a monthly allowance payable to the respondent by the Indian Government, under an arrangement made between the King of Oudh and the Governor-General of India in the year 1842, is liable to be taken in execution for his debts?

Mohammad Ali Shah had, in 1838, advanced Rs. 17,00,000 to the Government of India, in pursuance of a formal treaty, by which the latter undertook to apply the interest of that sum in payment of allowances to certain members of the Royal family and household, including his spouse Malka Jehan, and their respective heirs in perpetuity. In the treaty, these allowances are described as

"pensions," and the persons entitled to them for the time being as "pensioners;" and on the failure of an original pensioner, and his or her heirs, the Government undertook to devote the lapsed pension towards the maintenance of a mosque selected by the King.

Mohammad Ali Shah subsequently advanced on loan to the Indian Government Rs. 12,00,000, which he intended to settle as an additional provision for Malka Jehan and her heirs. Being apprehensive that the lady or her heirs might, if the note or acknowledgment of the loan were issued in her name, be "persuaded at some future period, by evil advisers, to sell the note and squander away the money," His Majesty, by letter dated the 4th January 1842, requested the Governor-General, instead of issuing a promissory note in name of Malka Jehan, to "pay to her, and her issue in perpetuity, the interest at the rate of 5 per cent. per annum, that is, Rs. 5,000 a month, so long as 5 per cent. interest may be allowed, and afterwards such reduced interest as may be paid from time to time by the British Government." The letter made special reference to the guarantee or treaty of 1838, and the pensions thereby settled on the ladies of the Royal family, and represented that compliance with the request which it preferred "will prevent any new guarantee being entered into, but will merely be the payment of a large sum of interest instead of a small one."

In reply to that communication the Governor-General, by a letter dated the 15th February 1842, intimated his pleasure "in concurring with the hearty desire and wishes" of His Majesty, and gave the assurance that an order would be duly passed for their execution.

A promissory note for repayment of the loan was issued in the name of Mohammad Ali Shah, which appears to have been renewed, in similar terms, as of date the 30th June 1854. The letters which constitute the arrangement between His Majesty and the Government of India, with respect to payment of the interest to Malka Jehan and her heirs in perpetuity, contain no provision for disposal of the capital of the loan, in the possible event of their failure. Whether the capital would, in that event, be payable to the representatives of the King, or belong to the Indian Government, appears to their Lordships to be a question the decision of

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which, one way or another, cannot affect the character of the right conferred on Malka Jehan and her heirs by the arrangement of 1842, under which the fund is at present held and administered by the Government.

The Civil Procedure Code of 1882, section 266 (*g*), enacts that "Stipends and gratuities allowed to military and civil pensioners of Government, and political pensions," shall not be liable to attachment and sale in execution of a decree. If the share, inherited by the respondent, of the interest on the loan of 1842, originally payable to Malka Jehan, be a "political pension" within the meaning of that enactment, the case of the appellants necessarily fails.

The appellants argued, in the first place, that the allowance payable to the respondent by the Indian Government is not a pension; and, in the second place, that, assuming it to be a pension, it is not a political pension in the sense of the Civil Procedure Code, inasmuch as it is not a pension bestowed by the Indian Government in respect of political services, or for political considerations.

In support of the first of these propositions, it was maintained that the arrangement of 1842 was in its nature akin to a deed of settlement, by which the King made a provision, out of his private estate, in favour of members of his family who had a natural claim upon him for maintenance. The argument ignores the fact that, under a despotic government, like that of Oudh in 1842, there was really no distinction observed between State property and private property vested in the Sovereign, and that all the estate of which he was possessed passed, on his decease, to his successor in the throne.

Their Lordships had occasion in a recent case [*Mariam Begum* v. *Mirza* (1)] to consider the character and effect of the arrangement constituted by the letters passing between the King of Oudh and the Governor-General in 1842. Sir Barnes Peacock, who delivered the judgment of the Board, there said :—"Their Lordships concur with the Judicial Commissioner in the opinion that the King intended in 1842 to provide an additional pension for Malka Jehan

(1) I. L. R., 17 Calc., 234; L. R., 16 I. A., 175.

of the same nature as that which he had already provided for her in the year 1838." Notwithstanding the argument addressed to them for the appellants, their Lordships see no reason to alter or modify the views thus expressed by Sir Barnes Peacock on their behalf. The Governor-General, in assenting to the King's letter of the 4th January 1842, expressly agreed to apply the interest arising upon the new loan in augmenting the pensions already secured to the Queen and her heirs by the Treaty of 1838, such augmentation being subject to the same conditions and under the same guarantee as the original pensions. In that view, it is impossible to say that the increase is not a pension, or that the heirs of Malka Jehan, the present recipients, have not been recognized as pensioners by the Government of India.

Then it is said that these payments by way of increment, although they may be pensions, are not political pensions within the meaning of the Code. The following passage, in the judgment already referred to, appears to their Lordships to be conclusive against this branch of the appellants' argument:—"It should be remarked that although a settlement in the terms of the King's letter of 1842, creating pensions in perpetuity, could not under the Mahomedan law be validly made by a private individual, the arrangement of 1842 takes effect as a contract or treaty between two sovereign powers."

It is probable (although the point is not one which it is necessary to determine in this case) that the enactments of section 266 (*g*) of the Code were not meant to cover pensions payable by a foreign State, when remitted for payment to their pensioner in India; but these enactments certainly include all pensions of a political nature payable directly by the Government of India. A pension which the Government of India has given a guarantee that it will pay, by a treaty obligation contracted with another Sovereign Power, appears to their Lordships to be, in the strictest sense, a political pension. The obligation to pay, as well as the actual payment of the pension, must, in such circumstances, be ascribed to reasons of State policy.

Being of opinion that the respondent's pension is protected from execution by the provisions of the Code, their Lordships consider it unnecessary to express any opinion with regard to his

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pleas founded on "the Pensions' Act, 1871," and the "Oudh Wasikas' Act, XXI of 1886."

In one of these appeals a plea of *res judicata* was taken, upon the ground, apparently, that a ruling by the Judge in one application for execution ought to be held conclusive against the judgment-debtor in every other application for execution of the same decree. The plea requires no further notice, because the decree or order upon which it is rested has not been produced.

Their Lordships will, therefore, humbly advise Her Majesty to affirm the judgments appealed from. The costs of the respondent in these appeals must be paid by the appellants.

Appeals dismissed with costs.

Solicitor for the appellants: Mr. *W. Buttle.*

Solicitors for the respondents: Messrs. *Young, Jackson, & Beard.*

C. B.

P.C.* 1890 July 10 and 26.

JARAO KUMARI (PLAINTIFF) *v.* LALONMONI AND ANOTHER (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

Evidence—Admission in a mortgage as to amount of land excepted from its operation—Evidence Act (I of 1872), s. 83—Takbast survey map —Statements recorded on such map.

Debutter land within the limits of a revenue-paying mouzah, which had been mortgaged by the defendants to a predecessor in title of the plaintiff, was exempted from the mortgage, the deed specifying the number of bighas making the area of the debutter. Against a plaintiff, who made title to the mortgaged mouzah and claimed possession of all of it that had passed by the mortgage, the mortgagors set up that there was more debutter in the mouzah than the deed had specified, the intention of the parties to the deed having been to exempt whatever debutter there actually was:—*Held,* that the statement in the deed as to the quantity of the debutter was a deliberate admission, imposing upon the mortgagors who had made it, the burden of proving that it was untrue, or that they were not bound by it; also that the Subordinate Judge's finding that the defendants had not given proof sufficient to discharge themselves of this, was correct.

* *Present:*—LORD WATSON, SIR B. PEACOCK, and SIR R. COUCH.