Judgment of the Lords of the Judicial Committee of the Privy Council on the five Consolidated Appeals of Bishambhar Nath and others v. *Nawab Imdad Ali Khan (Nos.* 13, 14, 15, 16 *of* 1887 *and No.* 5 *of* 1888), *from the* [illegible] *Court of the Judicial Commissioner of Oudh; delivered* 23*rd July* 1890.

Present:

LORD WATSON.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*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 Mahommedan 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

62670. 125.—7/90. A

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.

Mahommad Ali Shah subsequently advanced in 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 name of Mahommad 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 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 (XVI. Ind. Ap., 175), 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 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 re-" marked that, although a settlement in the " terms of the King's letter of 1842, creating " pensions in perpetuity, could not under the " Mahammedan 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 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.