Judgment of the Lords of the Judicial Committee of the Privy Council on the two Appeals of Nawab Sultan Mariam Begam and another v. *Nawab Sahib Mirza and another, and Nawab Wazir Begam* v. *Nawab Sahib Mirza and another, from the Court of the Judicial Commissioner of Oude; delivered 22nd June* 1889.

Present:

LORD WATSON.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Sir Barnes Peacock.*]

The facts of this case, as well as the origin and nature of the suit, are fully set forth by the Judicial Commissioner. It is sufficient for the present purpose to state that in the latter part of the year 1841 Mahomed Ali Shah, the then King of Oudh, was, under circumstances to which it is not now necessary to advert, induced by the late Sir John (then Colonel) Low, the Political Resident at Lucknow, to subscribe the sum of 12 lacs of rupees to the 5 per cent. Government loan which was then open. The money was paid into the Resident's Treasury, and brought to the credit of the Government of India.

On the 21st January 1842 a letter from the King, dated 21st Zikad 1257 Hejira, corresponding with the 4th of January 1842, and

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addressed to the Governor General, was forwarded by the Resident to the Secretary to the Government of India. The letter was, after the usual compliments, in the following terms :—

" Being fully convinced that your Lordship has always entertained a sincere friendship for me, I without any ceremony mention to your Lordship that at the time when the guarantee of the 3rd Ramzan, 1254 Hijri (corresponding with the 22nd November 1838), regarding the pension of the ladies of my royal family, children, and other relations was concluded, the trifling sum of Rs. 400 per month was assigned to Malka Jahan Hamidai Sultan, Fakhruzzamani Nawab Tajunnissa Begum. Owing to the smallness and insufficiency of the amount invested, as I have always entertained a particular regard for her and in every way endeavoured to promote her honour and comfort, I now entertain the hope from your Lordship's kindness that, instead of issuing a promissory note in the name of Malka Jahan for the sum of 12,00,000 rupees, which was totally lodged by me in the Residency Treasury, your Lordship will receive that money into the Company's Treasury as a separate loan, for which he and the future Residents will pay 5 per cent. per annum interest, or 5,000 rupees monthly, as long as the present public 5 per cent. loan shall exist, and that, when this loan shall have been paid off, that Colonel Low and the Residents for the time being will, after taking receipt in the same manner as prescribed for the allowance mentioned in the said deed, pay to her and to her issue, generation after generation and womb after womb, the interest at the rate of 5 per cent. per annum, *i.e.*, 5,000 rupees 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. My sole object in making this request is to prevent the risk that might otherwise occur of Nawab Malka Jahan or her offspring being persuaded at some future period by evil advisers to sell the note and squander the money. The accomplishment of this object will be highly gratifying to me, and will demonstrate to the public your Lordship's friendship and regard for me; this will prevent any new guarantee being entered into, but will merely be the payment of a larger sum in interest instead of a small one."

The Governor General, by letter sent through the Resident and addressed to the King, assented to his request, stating that he was pleased and gratified beyond limit in concurring with the hearty desire and wishes of the King in regard to the fixing of the stipend of Malka Jahan. From that time until the time of her death on the 9th of July 1881 the stipend was paid to her in accordance with the terms of the arrangement between the Government of India and the King. Malka Jahan at the time of her death left two grandsons, the Respondents in both these appeals, two granddaughters, Sultan Mariam Begum and Nawab Amir Jahan Begum, the Appellants in one of the appeals, and a great granddaughter, Nawab Wazir Begum, the daughter of a deceased grandson, the Appellant in the other appeal, her surviving; such deceased grandson being a son of Mirza Humayun Bukt, a son of Malka Jahan, who died in his mother's lifetime.

The question in these appeals is what is the proper construction of the King's letter of 1842, read as it ought to be in conjunction with the deed of the 22nd November 1838, referred to therein and to be found in the second volume of

Aitchison's Treaties and Engagements, ed. 1876, p.144.

By the latter of these documents it was the intention of the King to provide pensions or stipends for the ladies of his royal family, children and other relations, including amongst others Malka Jahan and her son Mirza Humayun Bukt, the grandfather of the Appellant Nawab Wazir Begum, and father of the other Appellants and of the Respondents.

By the 3rd Article it was stipulated that the pensions should be paid to the several pensioners specified therein and to their heirs in perpetuity on their receipts under their seals, and by the 4th Article, that if any of the pensioners should die without issue, his or her pension should revert to the King of Oudh.

By Article 6, it was provided that the said pensioners and after them their issue who on their decease should succeed to their respective pensions should always experience the special favour and kindness of the British Government. It should be observed that in that article the favour and protection of the Government is bespoken not for all the issue but merely for the issue who should succeed to the pensions. In the deed of 1838, the words "heirs" and "issue" are used as convertible or equivalent terms, so that in that document the word "heirs" must mean heirs who are issue and "issue" must mean issue who are heirs.

Their Lordships are of opinion that it was the intention of the King that in the event of the death of any of the pensioners leaving issue his or her heirs, according to the Mahomedan law of inheritance, should receive payment of the pension in the proportions regulated by such law of inheritance.

Their Lordships concur with the Judicial Com-

missioner in the opinion that the King intended in 1842 to provide an additional pension for Malka Jahan of the same nature as that which he had provided for her in the year 1838, and that after her death, provided she should leave issue, it should be paid to such of her issue as should be her heirs according to the rules of the Mahomedan law of inheritance. There is nothing in the King's letter of 1842 to lead to the inference that he intended by the increase of the pension of Malka Jahan to benefit any other persons than those who were to be benefited upon her death by the pension of 1838. It seems unreasonable to suppose that he intended that the several pensions of Malka Jahan and of her son which were created by the deed of 1838 should, if they should die leaving issue, be paid to their respective heirs according to the Mahomedan law of inheritance, and that the pension of Malka Jahan created in 1842 should be paid to her issue so as to allow a granddaughter of her son to take an equal share with his sons and daughters, ignoring altogether the policy of the Mahomedan law of descent. Some effect ought to be given to the last words of the King's letter of 1842, wherein he says, "this"—(meaning the assent of the Governor General to his request, or to use the King's own words, "the accomplishment of this object")—"will prevent the necessity of any new guarantee being entered into, but will merely be "the payment of a larger sum in interest instead "of a small one."

The guarantee of the Government in the deed of 1838 was to pay the interest to the pensioners and their heirs if they should die leaving issue, and consequently a new guarantee would have been necessary if the intention was that the interest of the new loan should be paid to the issue of Malka Jahan, whether heirs or not.

This appears to be almost conclusive that the word "issue" in the letter of 1842 was used in the sense of heirs of the body, and that such of the issue of Malka Jahan as would be her heirs according to the Mahomedan rule of descent ought alone to receive payment of the pension in the proportions assigned to them by that law.

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.

For the above reasons, their Lordships will humbly advise Her Majesty that the decree of the Judicial Commissioner, except so far as it relates to costs, ought to be affirmed. Considering, however, that the Lower Courts differed in opinion, and that the ambiguity in the words used by the King in his letter of 1842 has led to the litigation, their Lordships will humbly advise Her Majesty to vary the decree of the Judicial Commissioner as to costs, and to order that the costs of all the parties in the Lower Courts be paid out of the pension which is the subject matter of the suit.

Their Lordships order that the costs of the Appellants and of the Respondents of the appeals to Her Majesty in Council be paid out of the same fund.