

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Nurjahan Begam, deceased, by her heirs and legal representatives, Haidar Husain Khan and others, v. Faghfur Mirza and others, from the Court of the Judicial Commissioner of Oudh; delivered the 12th May 1905.*

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Present at the Hearing :

LORD JAMES OF HEREFORD.

LORD ROBERTSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

This Appeal relates to the construction of a deed of trust, executed on the 23rd November 1839, by Mohammad Ali Shah, then King of Oudh, by which he settled a sum of money deposited with or lent to the East India Company, as security for certain pensions for the benefit of persons connected with his family, and for other purposes. One of the original pensioners was a daughter-in-law of the King, Nawab Khakan Balu, who died on the 21st March 1889. The original Appellant, Khakan's sister and her sole heir according to Moham-  
medan law, claimed to be entitled to succeed to the pension, and brought the present suit against certain trustees to establish her title and to recover arrears. The only question is whether the title to the pension descended to the heirs general of the original pensioner, or whether the right to succeed was limited to heirs who are also issue.

The deed is a very short one; and according to the translation embodied in the judgment of the Subordinate Judge, which all parties have accepted as correct, it is in substance as follows:—

“ Article 1st. The sum of twelve lakhs of Lucknow *Sicca* rupees . . . has been deposited by us in perpetuity in the Honourable Company’s Treasury . . . and the interest . . . has been bestowed as a gift upon the persons herein mentioned, and for the expenses of Huseinabad Mubarak, &c. We have nominated and appointed . . . and after them their descendants, generation after generation, to the situation of *Daroghas* or Superintendents of Mosque, and . . . and his descendants after him to the duties of vakeel of the pensioners only . . . .

“ It is incumbent on the officers of the Honourable Company’s Government to pay in perpetuity . . . . to” (the *Daroghas* of the Mosque) “ and to their descendants, generation after generation . . . the money for the expenses of the Huseinabad Mubarak . . . . The stipends of the pensioners are to be paid through” (the Vakeel) “. . . and should any of the pensioners enumerated in this deed, or their heirs, go and reside within the territories of the Honourable Company, the Resident for the time being shall cause their pensions to be remitted to their place of residence.” (The list of pensioners follows, of whom Nawab Khakan Bahu is one.)

“ Article 2nd. As the pensioners enumerated in this deed are the objects of our peculiar consideration and favours it is necessary that the Resident for the time being owing to the union and friendship subsisting between the two Governments treat them and their descendants with kindness, and considering them deserving of the support of the British Government, always afford them his aid and assistance.

“ Article 3rd. Should it happen that any of the said pensioners or after them any of their heirs die without heir, the pension of the deceased shall be paid by the Resident for the time being for the expenses of Huseinabad Mubarak &c. to the Superintendent . . . .

“ Article 4th. As the whole of the income and disbursements of Huseinabad Mubarak and . . . . have been placed entirely at the disposal of” (the *Daroghas*) “. . . . it is necessary that they and their descendants should receive with honesty the sums set apart . . . . and should no descendants of the Mutwallies or Superintendents of the Mosque or of the Vakeel remain, let the Resident for the time being, with the concurrence of three-fourths of the pensioners, appoint in the place of the person dying without heir one of the pensioners to the situation of the person dying without heir.”

The deed provides for two things, the religious endowment and the pensions, and appoints

trustees to administer the one and a vakeel to pay the other, with a gift over, in case of the lapse of any of the pensions, of the amount so set free to the religious endowment.

The clauses dealing directly with the beneficial enjoyment of the pensions and the succession to such enjoyment are Clauses 1 and 3. These clauses are not framed as clauses of similar purport would probably have been framed by lawyers in this country. Clause 1, which embodies the gift, contains in the actual terms of gift no words of limitation. These are to be sought partly in other words in Clause 1, but more clearly in Clause 3, which deals with the expiration of the pensions and the gift over. And this is a method of dealing with such matters not unfamiliar in Indian documents.

If these clauses stood alone there could be no doubt, first, that the pensions were to descend by inheritance (which is not disputed), nor secondly, that the descent was to be to heirs general.

But it is said that the literal meaning of these clauses must be rejected, and that "heirs" must be understood as including only heirs who are also issue; and for this three reasons are given:—

First, it is said (and this is true) that in the year 1838, a year before the execution of the present trust deed, the King executed another document of the nature of a treaty or arrangement with the East India Company, by which he settled pensions upon other members of his family; that that document was construed by this Board in the case of *Nawab Sultan Mariam Begum v. Nawab Sahib Mirza* (16 I. A. 175), in which it was held that in the document then under consideration, in which the words "heirs" and "issue" were both used, each must be understood as meaning heirs who were also

issue; and it was argued in this case that the document so construed should be used for the purpose of ascertaining the meaning of the one now before their Lordships. With respect to this contention their Lordships entirely agree with the learned Judges in the Appeal Court in India. The document now in question does not embody or refer to the earlier document; the two documents are not in any sense parts of one transaction, they are not even contemporaneous documents. Nor does the decision on the earlier document afford a precedent for the interpretation of that now in question, for the language of the two documents is entirely dissimilar.

Apart from the attempt to import the meaning of the earlier into the construction of the later document, and limiting the inquiry to the language of the latter alone, two arguments were used. One was founded upon Article 2 of the deed of trust, which commended to the kindness and support of the British Government the pensioners "and their descendants." The Appeal Court in India, differing on this point from the First Court, thought that this clause introduced a manifest inconsistency with Clauses 1 and 3 if construed literally. But this can only be so on the assumption that the class of persons commended to the good offices of the British Government were of necessity exactly co-extensive with the class who could enjoy the pensions. And their Lordships are not prepared to make this assumption.

The only point that remains for consideration is the argument based upon a comparison of certain words in Clauses 1 and 4 of the deed, relating to the devolution of the rights of the mutwalis of the religious endowment and of the vakeel of the pensions, in which it is said that the terms "heirs" and "descendants" are used as convertible terms, and it was contended that

for this reason the word "heirs" must, throughout the whole deed, mean heirs who are also descendants. This contention did not find favour in either of the Courts in India. And their Lordships think that those Courts were right. The descent of the trusteeships and the descent of the beneficial interest in the pensions are distinct things, and their Lordships have no right to assume that the King intended them to be governed by the same rules. The ambiguity of the language used on the one subject cannot control the clear and unambiguous words employed with regard to the other.

Their Lordships will humbly advise His Majesty that the decree of the Judicial Commissioner's Court should be set aside with costs, and that of the Subordinate Judge restored.

The Respondents will pay the costs of this Appeal.

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