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tions from section 326 to convictions for hurt under section 324; and instead of the sentences of five years' rigorous imprisonment passed on Vasta and Vaja, we sentence them to two years' rigorous imprisonment; and instead of that of two years' rigorous imprisonment passed on Chuntha, we sentence him to one year. These sentences to commence at the expiry of the other sentences.

We uphold the order about security to be given by Chuntha, but reduce the amount to Rs. 100, with two securities each for that sum.

Convictions and sentences altered.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1894. *February* 28.

DHARAMDA'S SAMBHUDA'S (ORIGINAL PLAINTIFF), APPELLANT, *v.* HAFASJI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hereditary Offices Act (Bombay Act III of 1874), Sec. 13—Hereditary service vatan—Kázi—Kázi's office—Roziná allowance—Its liability to attachment and sale in execution of a decree—Pensions Act (XXIII of 1871), Sec. 4.

The office of *kázi* is not a hereditary service vatan under Bombay Act III of 1874.

Plaintiff obtained a money decree against Hafasji and in execution sought to attach and sell a decree obtained by Hafasji against Mohiyodin which entitled Hafasji to receive annually a certain portion of the *roziná* allowance paid by Government to Mohiyodin as *kázi*. Hafasji contended that the *roziná* allowance was paid to Mohiyodin and his family for service as *kázi*, and that, therefore, it was not liable to the process of a civil Court under section 13 of Bombay Act III of 1874. This contention was upheld by both the lower Courts.

Held, that as the *kázi's* office was not a hereditary service vatan, plaintiff's right to attach the decree obtained by Hafasji against Mohiyodin was not barred by section 13 of Bombay Act III of 1874.

Held, also, that as Hafasji was not liable to serve as *kázi*, it was not open to him to urge that the allowance in question was appropriated as service remuneration, and was not, therefore, transferable.

Held, also, that as the decree sought to be attached was passed before the Pensions Act (XXIII of 1871) came into force, plaintiff's *darkhást* was not barred for want of a certificate under section 4 of the Act.

* Second Appeal, No. 626 of 1893.

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SECOND appeal from the decision of A. B. Steward, District Judge of Khándesh, in Appeal No. 247 of 1892.

In original Suit No. 1352 of 1872 the plaintiffs obtained a a decree for Rs. 2,402-1-3 against the defendant Hafasji valad Gulámi.

In execution of this decree the plaintiff sought to attach and sell a decree obtained by Hafasji in Suit No. 1490 of 1864, under which he was to receive annually a 1 anna and 11⅓ pies' share in the rupee out of a cash allowance known as *roziná* allowance payable by Government to one Mohiyodin as *kázi*.

The *sanad* under which that allowance was originally granted in 1825, stated that it was to be paid to the grantee and his descendants from generation to generation as service emolument appurtenant to the office of *kázi*. And the *sanad* issued in 1880 under the Summary Settlement Act showed that the allowance would be continued as long as the village community required the services of a *kázi*.

The defendant Hafasji pleaded *(inter alia)* that the *roziná* allowance was granted for performing the services attached to the office of a *kázi*, and being a service vatan was not liable to attachment and sale in execution of a decree.

The Court of first instance was of opinion that the allowance in question was not liable to the process of any civil Court, under section 13 of Bombay Act III of 1874. The application for execution was, therefore, dismissed.

This order of dismissal was confirmed, on appeal, by the District Judge. His reasons were as follows :—

"There is no doubt, in my mind, that the *roziná* allowance is a hereditary service vatan, and that Mohiyodin and Hafasji, the defendants in this case, are members of the family which is to supply the *kázi*. Defendant has by the decree (above mentioned) a share of 1 anna and 11⅓ pies in the rupee in the allowance, and to the extent of that share he can be called upon by Mohiyodin to assist in carrying out the duties of *kázi*. As the defendant could be called upon for this pupose by Mohiyodin, it stands to reason that his share cannot be transferable, as the *sanad* distinctly states that the *roziná* allowance is not transferable, and the allowance cannot be purchased by anybody, as it was granted for the performance of the duties of *kázi*. Section 13 of Bombay Act III of 1874 shows that the allowance in question is not liable to the process of any civil Court. Defendant's share, awarded to him by the decree, is not, therefore, liable."

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Against this decision the decree-holders appealed to the High Court.

Dáji Abáji Khare for appellant (decree-holder):—The office of *kázi* is not a hereditary one. By Regulation XXVI of 1827 *kázis* are no doubt recognized as vatandárs. But this regulation is repealed by Act XI of 1864. Under Act XII of 1880, which modifies Act XI of 1864, Government have the power of appointing a *kázi*, but the appointment is not hereditary. That being the case, the *roziná* allowance, which in the present case we seek to attach, is not a hereditary vatan under the Bombay Vatandárs' Act (III of 1874)—*Bábá Kákáji* v. *Nassaruddin*[1]. Section 13 of the Act has, therefore, no application to the present case. Even if it did apply, only so much of the *roziná* allowance as was assigned by the Collector for the remuneration of the officiator would be exempt from liability to the process of a civil Court—*Nilkanth* v. *Baslinga*[2]. There is no evidence that the defendant ever acted as *kázi*, or that his share of the allowance in question was ever assigned for the remuneration of the officiating *kázi*. We are, therefore, entitled to attach his interest under the decree in the allowance in question.

Ganesh Krishna Deshmukh for respondents:—The *kázi's* office and the emoluments attached to the office are a hereditary vatan within the meaning of the Vatandárs' Act. The *kázi* has to perform certain services to the Mahomedan community. His presence is necessary at the celebration of marriages and the performance of other rites and ceremonies. The office of *kázi* is hereditary in the defendant's family. And the allowance, which is granted for the support of the office, is also hereditary. It is, therefore, a hereditary vatan, and as such not liable to any process of the civil Court. Even if it be not a hereditary vatan, the allowance is expressly declared by the *sanad* to be inalienable. It is a right of personal service within the meaning of section 266 (*j*) of the Code of Civil Procedure, and as such it is protected from attachment—*Ganesh Rámchandra Dáte* v. *Shankar Rámchandra*[3]; *Diwáli* v. *Apáji Ganesh*[4]. Lastly I contend that the allowance in

(1) I. L. R., 18 Bom., 103.
(2) I. L. R., 9 Bom., 104.
(3) I. L. R., 10 Bom., 395.
(4) I. L. R., 10 Bom., 342.

question is a grant of money within the meaning of section 3 of Act XXIII of 1871. The present proceeding is, therefore, barred under section 4 of the Act for want of the Collector's certificate —*Janárdhan Bháskar* v. *The Secretary of State for India*[1].

Dáji Abáji Khare in reply:—The Pensions Act is not retrospective. The decree which entitles the defendant to receive his share of the cash allowance, and which we now seek to attach, was passed before the Pensions Act. Under that decree the defendant is to get his share of the allowance from Mohiyodin and not from Government. Moreover, section 4 of the Pensions Act applies to suits and not to execution proceedings—*Vajirám Bhagván* v. *Ranchordji Gopálji*[2].

JARDINE, J. :—In this case plaintiff obtained a decree against the defendant in 1879, and in execution of the same, plaintiff sought to attach by a prohibitory order, and thereafter to sell, a decree which defendant had obtained in Suit No. 1490 of 1864 against one Mohiyodin on account of defendant's share in a *roziná* allowance payable to Mohiyodin as *kázi*. It was contended on defendant's behalf that the arrears of the allowance, to which he had a claim under his decree against Mohiyodin, had been recovered by him before plaintiff's *darkhást* was given, and, further, that the *roziná* allowance was paid to Mohiyodin for service as *kázi*, and that it was not liable to attachment and sale under section 13 of Bombay Act III of 1874. This latter contention was upheld by both the lower Courts.

It was urged before us by the appellant's pleader, (1) that the *kázi's* office was not an hereditary vatan under the Vatandárs' Act; (2) that, even if it was held to be a vatan, the allowance in question was not appropriated for the vatan service, and (3) that the decree sought to be attached was passed before the Act, and could not be affected by its provisions. The respondent's pleader urged, on the other hand, that the *kázi's* office was hereditary vatan; that the original *sanad* rendered the allowance non-transferable; that the *kázi's* vatan is like the *joshi vritti*, which latter had been held to be not liable to attachment. He also

(1) I. L. R., 14 Bom., 573. (2) I. L. R., 16 Bom., 731.

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contended that plaintiff could not proceed with his *darkhást*, as he had obtained no certificate under the Pensions Act.

We are of opinion that both the lower Courts were in error in holding that section 13 of Bombay Act III of 1874 barred plaintiff's right to attach the decree obtained by defendant against Mohiyodin. Plaintiff sought to attach and sell only the defendant's interest under his decree which entitled him to receive annually a portion of the *roziná* allowance. The *kázi's* office has been held to be not an hereditary vatan—see *Bábá Kákáji Shet* v. *Nassaruddin*(1). The office itself, or rather the power of appointing *kázis*, was taken away by an express Act of the Legislature so far back as 1864, and though this Act has been since then modified by Act XII of 1880, that amendment has in no way invested the office with the character of a hereditary service vatan under Bombay Act III of 1874. Admittedly, defendant has no obligation of service imposed on him—see *Nilkanth* v. *Baslinga*(2). Mohiyodin acts as *kázi*, and it may be open to him, but not to the defendant, to urge that the allowance is appropriated as service remuneration, and is non-transferable. As regards the objection under the Pensions Act, it was not taken in the lower Courts, and we do not think that it is valid as against the plaintiff, inasmuch as he only seeks to attach the decree defendant had obtained against Mohiyodin. That decree was passed before the Pensions Act came into operation, and plaintiff's *darkhást* is not, therefore, barred by reason of his having obtained no certificate under section 4: see *Vajirám* v. *Ranchordji*(3).

We accordingly reverse the decrees of the lower Courts and direct that plaintiff's *darkhást* should be duly executed according to the provisions of law in that behalf. Costs on respondent throughout.

Decree reversed.

(1) I. L. R., 18 Bom., 103. (2) I. L. R., 9 Bom., 104.
(3) I. L. R., 16 Bom., 731.