APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Curgenven.

SATRAJI DONGERCHAND FIRM (FIRST PLAINTIFF), APPELLANT,

1926, December 14.

v.

MADHO SINGH AND ANOTHER (DEFENDANT AND SECOND PLAINTIFF), RESPONDENTS.*

Pensions Act (XXIII of 1871), ss. 3, 11 and 12—Political pensions, meaning of—Political prisoner under Regulation III of 1818—Allowance granted by Government of India to such prisoner—Arrangement between Government of India and Foreign State (Panna State) that the allowance should be paid by the latter into Government treasury for payment—Allowance, whether ceases to be political pension—Pensions Act, applicability of—Agreement by the pensioner with his creditor, empowering latter to draw amounts from time to time in discharge of his debt—Validity of—Transfer of Property Act (IV of 1882), sec. 6, clauses (d) and (g)—Specific performance of agreement, suit for, whether maintainable.

A pension payable to a political prisoner by the Government of India under a statutory obligation to maintain that person as, for instance, under Regulation III of 1818, does not cease to be a political pension because the Government of India under some arrangement gets a foreign State to remit the amount to the Government Treasury for payment, but falls under the Pensions Act (XXIII of 1871).

An agreement entered into by such a pensioner with his creditor irrevocably empowering the latter to draw the amounts from the Treasury from time to time in discharge of his debt and to pay a portion to the pensioner, is void under the provisions of the Pensions Act (XXIII of 1871), as well as under section 6, clauses (*d*) and (*g*), of the Transfer of Property Act, and cannot be specifically enforced.

* Appeal No. 141 of 1926.

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Muthusami Naidu v. *Prince Alagia Manavala Samala Raja*, (1903) I.L.R., 26 Mad., 423, followed; *Bishambar Nath* v. *Imdad Ali Khan*, (1891) I.L.R., 18 Calc., 216 (P.C.), explained; *Rajindra Narain Singh* v. *Sundara Bibi*, (1925) I.L.R., 47 All., 385 (P.C.), distinguished.

APPEAL against the decree of H. R. BARDSWELL, District Judge of Bellary, in Original Suit No. 17 of 1926.

The material facts appear from the judgment.

B. Somayya for appellant.—Though a right to future maintenance cannot be attached or transferred, the Court will grant equitable execution: See *Rajindra Narain Singh* v. *Sundara Bibi*(1). This is not a case of political pension, as the money-allowance was not paid out of the revenues of the Government of India but out of the amount paid by the foreign State (Panna Darbar). See *Bishambar Nath* v. *Imdad Ali Khan*(2), which gives a definition of political pension.

C. Sambasiva Rao (with him *T. M. Venugopala Mudaliar*) for first respondent.—The pension need not be paid by the British Indian Government out of its revenues, in order that the pension may be a political pension. It is enough if the Government of India is responsible for the payment: See *Bishambar Nath* v. *Imdad Ali Khan*(2); and *Muthusami Naidu* v. *Prince Alagia Manavala Samala Raja*(3). This is a political pension under section 6 (*g*) of the Transfer of Property Act as well as the Pensions Act, and is not assignable. Further, it is a purely personal allowance restricted in its enjoyment to the grantee personally and falls under section 6, clause (*d*) of the Transfer of Property Act, and cannot be transferred.

In any event specific performance of the agreement cannot be granted in this case. Section 22 of the Specific

(1) (1925) I.L.R., 47 All., 385 (P.C.).
(2) (1891) I.L.R., 18 Calc., 216 (P.C.), at 223.
(3) (1903) I.L.R., 26 Mad., 423.

Relief Act makes the relief discretionary; specific enforcement of an agreement to give a security cannot be directed; there was no expectation raised in the creditor, when he took up the promissory notes.

JUDGMENT.

KUMARA-SWAMI SASTRI, J.

KUMARASWAMI SASTRI, J.—The Maharaja of Panna who is the respondent was deposed by the Government of India who acting under the powers given to it by Regulation III of 1818 directed that the ex-Maharaja should be confined as a State prisoner in Bellary. Exhibit X refers to the proceedings of the Government. An allowance was fixed for his maintenance as required by Regulation III of 1818 and this allowance was ultimately increased to Rs. 2,000 a month. It appears from the exhibits filed in this case that the allowance was sent to the Collector of Bellary by the Panna Darbar and was being disbursed by him. The ex-Maharaja borrowed moneys under three promissory notes, from the appellant. Under Exhibit A, dated the 10th of January 1924, he promised to pay Rs. 20,000, under Exhibit B, dated the 20th October 1924, he promised to pay Rs. 28,000 and under Exhibit C, dated the 18th of April 1925, he promised to pay Rs. 2,000. There is a dispute as to the amount which was actually advanced, the ex-Maharaja pleading failure of consideration for a large portion of the amounts claimed under the three promissory notes. It is, however, unnecessary to consider in this appeal what the actual amount due would be. In order to enable the appellant to recover the moneys lent by him the ex-Maharaja executed a power-of-attorney Exhibit D, dated the 10th of January 1924, in favour of the appellant firm. In Exhibit D, he authorizes the appellant firm to be his true and lawful agent and to sign and receive on his

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behalf from the Bellary Treasury allowances that would become due to him each month and to disburse the amount on his behalf and he agrees to ratify and confirm all acts done on his behalf by the appellant firm. Some differences arose after Exhibit D, but they seem to have been composed and on the 22nd of March 1925 the ex-Maharaja wrote Exhibit E, to the Treasury Deputy Collector, Bellary, stating that he had settled his differences with the appellant firm and requesting the Deputy Collector to continue the payments to the appellant firm under the power-of-attorney already given. The ex-Maharaja requests the Deputy Collector to pay the appellant the allowance for 45 months consecutively from the 1st of April 1925 as per the power-of-attorney executed by him. He says that he would not ask the payment to be made to any other person during that period. On the date of Exhibit A, the ex-Maharaja also executed an agreement Exhibit F, as to how the debt was to be discharged. He promises to pay the sum of Rs. 20,000 by instalments of Rs. 800 to Rs. 1,000 every month commencing from February 1924 and in order to secure the regular payments of the instalments he authorizes the appellant firm to draw the monthly allowance from the treasury and pay themselves the amount. On the 15th of April 1925 he writes Exhibit G, to the appellant firm promising not to cancel the power-of-attorney till their debt is discharged on the instalment system and he authorizes them to draw his allowance from the Government treasury, pay themselves the instalments due and to pay over the balance to him. On the 30th of August 1925 he addressed Exhibit H to the Treasury Deputy Collector of Bellary withdrawing the power-of-attorney. Owing to his withdrawal of the authority given, the Collector declined to pay the allowance

to the appellant and referred him to a suit to enforce any remedies which he may have. The present suit was filed by the plaintiffs for specific performance of the agreement by the ex-Maharaja to allow the appellant firm to draw the allowance payable to him from the treasury, pay themselves the amount due to them and hand over the balance to the ex-Maharaja. Various defences were raised but it is only necessary to consider the pleas that the suit is barred as the amount payable is a political pension under Act XXIII of 1871, that it is not liable to be attached or transferred both under the Civil Procedure and the Transfer of Property Act and that specific performance ought not to be decreed of the arrangement set out in the plaint. The District Judge was of opinion that the Pensions Act (XXIII of 1871) did not apply as the allowance was not paid by the British Government but by the Panna Darbar. He was also of opinion that section 60, Civil Procedure Code, and section 6 of the Transfer of Property Act would not apply. He however held that the agreement was not specifically enforceable as damages would be an adequate relief.

The first question is as to the nature of the allowance which is payable to the ex-Maharaja of Panna. The ex-Maharaja was a political prisoner detained under the provisions of Regulation III of 1818. The Regulation casts on the Government of India the duty of making an allowance for the maintenance of a person interned under its provisions. I find it difficult to see why such an allowance should not be a political pension simply because the Government of India on whom the duty is cast by the law arranges with the Panna Darbar instead of paying it out of its own funds. It seems to me to be clear from the exhibits filed in this case that the allowance payable to the ex-Maharaja by

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the Government was by some arrangement between the Government and the Panna Darbar paid by the Panna Darbar into the Government treasury for the purpose of being disbursed to the ex-Maharaja. The Pensions Act (XXIII of 1871) refers to pensions and grants by Government of money or land revenue. Section 3 only defines "grant of money or land revenue" and says that it includes anything payable on the part of the Government in respect of any right, privilege, perquisite or office. It does not define the word "pension," nor is there anything in the Act which says that the pension must be paid from the British revenues. Section 11 expressly states that no pension granted or continued by Government on political considerations, 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. Section 12 makes assignments in anticipation of pension void. It seems to me that there is nothing in the Pensions Act to exclude allowances granted by the British Government to political prisoners from its operation in cases where the British Government by some arrangement with a foreign State collects the allowance which it fixes from the foreign State. I think the present case falls under the Pensions Act. In *Muthusami Naidu* v. *Prince Alagia Manawala Samala Raja*(1), it was held that the pensions granted to the descendants of the Kings of Ceylon who were residing in Tanjore were political pensions exempt from attachment under section 266 (*g*) of the old Civil Procedure Code which corresponds to section 60 (*g*) of the present

(1) (1903) I.L.R., 26 Mad., 423.

Code. BENSON, J., was of opinion that pensions granted or paid by a State for reasons of State do not lose their character as political pensions by reason of any arrangements for the purpose of the payment made by the Government with somebody else, and that section 266 does not restrict the exemption to political pensions granted by the Government of India.

Reference was made by the vakil for the appellant to *Bishambar Nath* v. *Imdad Ali Khan*(1), in support of his contention that in order to constitute a payment of political pension it should be paid directly by the Government out of its own funds and the following observations of their Lordships of the Privy Council were relied on :

"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."

The pensions which are referred to by their Lordships payable by a foreign State are evidently pensions which the British Government was under no obligation to pay but which were remitted by the foreign State for payment to their pensioner resident in India. There is nothing in the observations of their Lordships to show that a pension payable to a political prisoner under a statutory obligation to maintain that person ceases to

(1) (1891) I.L.R., 18 Calc., 216 (P.C.).

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be a political pension because the Government of India under some arrangement gets a foreign State to remit the sum to the Government treasury for payment. In this case the Panna Darbar makes the payment by reason of some agreement or understanding with the Government of India and any arrangement between the Government of India and the Panna Darbar would in my opinion not affect the question as to the allowance being a political pension. Moreover as pointed out in the 26 Madras case the word "*political pension*" is a general term and the source from which the money is derived is not an element which should be taken into consideration so long as the payment is made by the Government through its treasury. The cases to which reference was made by appellant's vakil do not touch the present case. In *Ranee Annapurni Nachiar* v. *Swaminatha Chettiar*(1), the question arose as to whether future maintenance payable to a Hindu widow can be attached and it was held that a right to future maintenance was not property within the enabling words of section 6 of the Transfer of Property Act, or an interest in property restricted in its enjoyment to the owner personally within the meaning of paragraph (*d*), and the mere fact that a transfer is not recognized by the Transfer of Property Act is not conclusive on the question of the validity. In *Subraya* v. *Krishna*(2), the question was whether the right of a widow to future maintenance under a registered deed and charged on immovable property is capable of being transferred before the maintenance became due, and it was held that the right under a contract to a definite amount for future maintenance is property within the enabling words

(1) (1911) I.L.R., 34 Mad., 7. (2) (1923) I.L.R., 46 Mad., 659 (F.B.).

of section 6 of the Transfer of Property Act but that the question still remained whether it was an interest in property restricted in its enjoyment to the owner personally and that this question is not one capable of a general answer but must depend upon the facts of each case to be ascertained from the wording of the document and the surrounding circumstances at the time of its execution. *Asad Ali Molla* v. *Haidar Ali*(1) was a case where a decree for maintenance was assigned. These cases in my opinion do not cover the question now raised. It is clear that the amount payable to the ex-Maharaja is not an amount that has been fixed by any decree or order of Court nor is the amount given to him from time to time one which he could claim as a matter of right but it is in the discretion of the Government to allow such a sum as it thinks proper. It is open to the Government to reduce the sum to any figure which it thinks proper and the ex-Maharaja would have no legal redress. There is, therefore, very little analogy between the cases of political pension granted under Regulation III of 1818 and cases of maintenance which under Hindu Law is payable to a widow or to a junior member of an impartible estate. I am also of opinion that section 6 of the Transfer of Property Act would prevent the assignment of a political pension. Clause (*d*) prohibits the transfer of an interest in property restricted in its enjoyment to the owner personally and clause (*g*) states that stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred. I have already given my reasons for holding that the allowance granted to the ex-Maharaja is a political pension. I think it is also restricted in its enjoyment to the owner personally

(1) (1910) 12 C.L.J., 230.

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as Regulation III of 1818 expressly states that the allowance is to be for the maintenance of the political pensioner and for that purpose only. Reference has been made to the recent decision of their Lordships of the Privy Council in *Rajindra Narain Singh* v. *Sundara Bibi*(1), where their Lordships observed that the proper remedy in a fit case where a person wants to proceed against a maintenance grant is to get a Receiver appointed for the realization of the rents and profits of the property, with directions to pay out of the same a sum sufficient and adequate for the maintenance of the judgment-debtor and his family and apply the balance towards the liquidation of the decree. In this case the property proceeded against in execution of the decree was an amount due to the judgment-debtor out of the rents and profits of immovable property granted to him in lieu of maintenance without power of transfer, and their Lordships, while holding that such a right is not attachable and liable to be proceeded against, point out the remedy which in their opinion was the proper one in a fit case. Their Lordships in this case indicate a remedy which might be available to a decree-holder in a fit case, where he has obtained a decree against the judgment-debtor and seeks to proceed by way of execution against the properties which are assigned to him for maintenance. But this is no authority for holding that the Court can grant specific performance of an agreement enabling a person to draw a political pension and appropriate the whole or any portion of it towards the payment of a debt. What we are concerned with is the right to enforce specific performance of a contract like the present. I am of opinion that specific performance was rightly refused by the District Judge.

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(1) (1925) I.L.R., 47 All., 385 (P.C.).

The appeal fails and is dismissed with costs of the first respondent.

CURGENVEN, J.—This appeal arises out of a suit instituted by two Marwadi firms doing business at Bellary against the ex-chief of Panna, who since 1902 has resided at that place as a State prisoner. On 10th January 1924 the defendant executed to the plaintiffs a promissory note for Rs. 20,000 and, on the same day, two other documents, (1) a power-of-attorney, Exhibit D, appointing the first plaintiff his agent for the purpose of drawing his monthly allowance of Rs. 2,000 and (2) an agreement to pay the loan of Rs. 20,000 in monthly instalments of Rs. 800 to Rs. 1,000 and not to revoke the power-of-attorney until the whole was paid. The defendant subsequently borrowed further sums of Rs. 28,400 and Rs. 2,000 from the plaintiffs, and eventually resiled from his agreement, securing payment to himself of the whole allowance by the local treasury. The suit was accordingly brought for specific performance of the agreement, and for an injunction restraining the defendant from drawing the allowance in violation of the terms of it. A number of issues were raised, but the broad question we are now concerned with is whether the contract between the parties is of such a nature that specific performance of it should be decreed.

The three documents executed on 10th January 1924 are to be read as components of a single transaction, and it has not been seriously disputed that they created an agency coupled with interest, or that the right to exercise such an agency may, in suitable circumstances, be specifically enforced. The interest which the defendant purported to transfer at the same time as he created the agency was a right to a portion of each succeeding month's allowance, as it fell due. The

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question which immediately arises is whether the allowance, while still in prospect, was alienable.

Under paragraph (*d*) of section 6 of the Transfer of Property Act "an interest in property restricted in its enjoyment to the owner personally cannot be transferred by him," and under paragraph (*g*) of the same section political pensions cannot be transferred. Dealing first with the former clause, the application of this provision to a right of future maintenance was considered in *Ranee Annapurni Nachiar* v. *Swaminatha Chettiar*(1). and it was held that such a right was neither property within the enabling words of section 6 nor an interest in property restricted in its enjoyment to the owner personally within the meaning of paragraph (*d*) so that the question had to be considered apart from the provisions of the Act. That was a case of a Hindu widow's maintenance allowance, and upon a similar case arising in *Subraya* v. *Krishna*(2), a reference was made to a Full Bench on the ground that the decision in *Ranee Annapurni Nachiar* v. *Swaminatha Chettiar*(1) appeared to be at variance with section 6 of the Transfer of Property Act. While deciding that in the particular instance in question the widow's right to future maintenance was inalienable, the Full Bench abstained from pronouncing upon the general question, holding that each such case must be examined for an answer to the question whether the right is restricted in its enjoyment to the owner personally. I propose, therefore, to apply this test here. The defendant is a State prisoner, placed under restraint "in conformity to the orders of the Governor-General in Council and the provisions of Regulation III of 1818" as the warrant filed as Exhibit XI in the suit shows.

(1) (1911) I.L.R., 34 Mad., 7. (2) (1923) I.L.R., 46 Mad., 659 (F.B.).

As such he is in receipt of the allowance in question, and if we turn to the regulation we find in the preamble an expression of the need, that, in the case of every State prisoner, "suitable provision be made for his support according to his rank in life" and in section 7 that the officer in whose custody the State prisoner is placed shall take care that the allowance fixed for his support is duly appropriated to that object. It is true that an attempt has been made to argue that, because the allowance is met from the revenues of the Panna State, and not of the Government of India, it is not such an allowance as the regulation provides for, but we have not to look to the source but to the authority, and though the Panna Darbar may formally sanction or approve the rate of maintenance, there can be no doubt that it is the Government of India which had made itself responsible for ensuring that it is furnished. I think therefore that this allowance is subject to the provisions of Regulation III of 1818, and the words I have quoted show clearly that it is to be appropriated to the support of the State prisoner, and to no other purpose. The Government, having regard to the defendant's rank, have fixed this allowance at Rs. 2,000 per mensem, and it is not open to him to defeat the purpose of that arrangement by alienating a portion of it and contriving to live on the remainder, nor is it open to the Court, whether directly or indirectly, to enforce such an alienation. That the future instalments of maintenance are inalienable is clear. I think, from another consideration, that neither the allowance-holder nor his alienee can enforce by process of law the payment of the allowance. If the Government of India chose to revoke the allowance to-morrow, or to reduce it by one-half, they would be free to do so. The recipient has no such enforceable right as, for instance, the widows had in the

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cases above cited, and the consequence is that he had nothing beyond an expectation to transfer. On this ground it cannot be said that there was a transfer of property within the meaning of section 6 of the Transfer of Property Act. And, whether or not that be a conclusive argument against its transferability, the fact that the grant is revokable at the will of the grantor shows plainly, I think, that it was intended to be purely personal to the grantee.

These considerations appear to be sufficient to dispose of the plaintiffs' claim, which may also, in my view, be successfully resisted on the ground that the allowance is in the nature of a political pension, and so is inalienable under paragraph (*g*) of section 6. Reference may be made to *Muthusami Naidu* v. *Prince Alagia Manavala Samala Raja*(1) for a refutation of the argument that because the source from which the payment is made is not the Government of India's revenues—in that case the funds were provided by the Ceylon Government—the allowance is not a "political pension" within the meaning of the proviso to section 60 (1) of the Code of Civil Procedure, or, as here, section 6 of the Transfer of Property Act. The same case is authority for holding that for a pension to be "political" it must be granted or paid by a State for reasons of State, which appears to apply to the allowance now in question.

There remains the point whether, assuming the allowance to be alienable, the claim to specific performance is such as the Court should allow. Under paragraph (*n*) of the proviso to section 60 (1), Code of Civil Procedure, a right to future maintenance is not liable to attachment or sale under a decree of Court, and I do not think that a Court, which has discretion

(1) (1903) I.L.R., 26 Mad., 423.

whether or not to enforce specific performance, should permit a creditor to achieve by one means what he is debarred from doing by another. The force of this argument is not, I think, weakened by the circumstance that as was held by the Judicial Committee in *Rajindra Narain Singh* v. *Sundara Bibi*(1), a decree-holder may in a fit case, obtain what is known as equitable execution by the appointment of a receiver to realize and distribute the debtor's income according to the Court's directions. In deciding whether to permit such a course the Court, I conceive, would be guided by much the same considerations as would weigh with it in granting or refusing specific relief; and what would be a "fitting case" from the one point of view would be equally so from the other. It is accordingly no answer to say that the Court has jurisdiction to apply this method of execution.

I agree that this appeal should be dismissed with costs of first respondent.

K.R.

(1) (1925) I.L.R., 47 All., 385 (P.C.).