

1867.
 LA'LDA'S
 RA'MDA'S
 v.
 KA'SHI'RA'M.

persons who are said to have sold the trees in dispute had any right to dispose of them ; and this being the case, his error in requiring strict proof of the execution of the documents in this case is immaterial, as if the persons who are said to have executed those deedshad no power to sell they could confer no title upon plaintiff.

We are, therefore, of opinion that with the Judge's finding on the issue regarding possession, and on the issue regarding the title of the persons who are said to have made conveyances to the plaintiff's ancestor, his decree was correct, and we affirm that decree with costs on special appellant.

Decree affirmed.

March 27.

Special Appeal No. 62 of 1867.

MA'DHAVRA'V T. PA'NSE and others *Appellants.*

B'APURA'V K. PA'NSE..... *Respondent.*

Pension—Assignment—Compromise—Act VI. of 1849.

A pension having been granted by Government to B. P., in lieu of a *Saranjám* held by his grandfather, a claim to share the same by M. P. and his brothers was compromised, by B. P. agreeing to pay them a certain proportion thereof yearly. The Agent for Sardárs, affirming the decree of the Assistant Agent, found the agreement to be null and void, as an assignment of a future interest in a pension.

Held, that as the pension was not granted "in consideration of past services and present infirmities or old age," the case did not come within the terms of Act VI. of 1849 ; and that the agreement was a valid one.

THIS was a special appeal from the decision of F. Lloyd, Agent for Sardárs in the Dakhan, in Appeal Suit No. 5 of 1865, confirming the decree of F. D. Melvill, Assistant Agent, in Original Suit No. 22 of 1865.

The special appellants brought the suit to recover Rs. 64 as by agreement, of which the following is a translation :—

"To Chiranjiv Rájáshri Mádhavrát and Rámvrát and Balvantrát Trimbak Pánse. From Bápurrát Krishṇa Pánse. To wit : On a petition being made by my respected father, Krishnarát Sáheb, to Government, regarding the *saranjám* vil-

lages in the parganā of Ahirvādi, in the Solápur District which had been attached by Mr. Chaplin after the death of the late Mádhavrāv Krishṇa, a resolution was passed by Government to the effect that the saranjám should be continued in his name. It was not carried out, however, in consequence of his death. On a petition having lately been submitted by me, a moiety of the pension, amounting to Rs. 531-1-0 per annum, according to the Government Resolution of the 29th of December 1859, was ordered to be entered against my name, agreeably to the rules for (the management of) saranjáms. You made applications to Government, praying to the allowed (a share) therein; and an order as to final disposal was thereupon conveyed in the Saranjám Outward Letter No. 444, dated the 14th of April in the current year, to be effect that, if you pleased, you might have your remedy in the Civil Courts. A notice was accordingly served upon you. Thereupon you personally came to me at Savnári station, and said that you would agree to (receive) what I would pay to you for expenses; and that, excepting for this, you would have no connection at all with the said pension, and [or] with any saranjám pension whatever; and that with regard to this you would never take any step whatever, either by a civil action or otherwise, in any Government office, on any ground whatever. So I am to go on paying to you every year, commencing from the month of May in the year 1861, out of whatever pure balance that may be paid to me, after such deductions as the Government may order to be made from the amount of the pension aforesaid, at the rate of Rs. 12-8-0 for every hundred (rupees), so long as the pension may be continued to me. Excepting for this, you shall have no connection whatever with this affair. This is an arrangement with regard to what has been written above. You have furnished me with a copy of this paper under your signature, on a stamp of eight annas. The 9th of May 1862. The handwriting of Hari Bajáji Páñse, Joshi Kulkarni of Mouje Savnári, at present staying at Puná.”

“Signature of Bapurāv Krishṇa Páñse,

[Attestations.]

his own handwriting.”

1867.
PAÑSE
v.
PAÑSE.

1867.

PA'NSE

D.
PA'NSE.

The Assistant Agent, in deciding against the plaintiff, recorded the following judgment :—

“It has been ruled on several occasions by the Sadr Diváni Adálat, that Act VI. of 1849 is applicable to political pensions of the kind now enjoyed by the defendant. By Sec. 3 of that Act: ‘All assignments, agreements, orders, sales, and securities of every kind, made by any such pensioner, in respect of any money not payable at or before the making thereof, on account of any such pension, or for giving or assigning any future interest therein, are null and void.’ The money now claimed was due in 1865; whereas the agreement sued on was passed in 1862. It seems to me clear, then, that this agreement is invalid.

“It is, however, urged by the plaintiffs, that they have a right to a share in the pension; that they would have established that right before, by an action in the Civil Courts, if the defendant had not passed this agreement; and that Sec. 3 of the Act merely refers to transactions between the pensioner and his creditors. I cannot now decide what right the plaintiffs may have as shareholders, or whether the Civil Court can under any circumstances enforce a division of a pension. The suit has been brought on the agreement, and by that agreement the plaintiffs’ case must stand or fall. So far as the agreement is concerned, the plaintiffs stand in the position of creditors of the defendant to the amount of Rs. 60 odd per annum; and by the above Act the pension is exempted from seizure under process of law, and any assignment of any portion of it is declared null and void. I do not see how the third section can be read in any other way; and I must, therefore, decide against the plaintiffs.”

On appeal, the Agent concurred with the Assistant Agent in holding the document (exhibit No. 3) to be null and void, under the provisions of Act VI. of 1849, Sec. 3.

The case was heard by COUCH, C.J., and WARDEN, J.

Dhirajlál Mathurádás, for the appellant, cited *Ex parte Vithalráv bin Eshwantráv*, decided on the 14th of November

1863 (a), and *Ex parte Harbhat bin Rámchandrabhat*, decided on the 24th of November 1864 (b); and contended that Act VI. of 1849 did not apply.

1867.
PA'NBE
v.
PA'NBE.

Vishvanáth Náráyan Mandlik, for the respondent, contended that the grant of this pension was personal, and, therefore, collaterals were not entitled to share in it.

COUCH, C.J.:—The agreement, No. 3, shows that the pension was assigned in 1856, in lieu of a saranjám held by the defendant's grandfather; and that a compromise was made of the claim which the plaintiffs had to a share of the pension.

This is not a pension granted in "consideration of past services and present infirmities or old age;" and does not come within the terms of Sec. 2 of Act VI. of 1849. The cases cited for the appellant are in point.

We, therefore, reverse the decrees of both the lower courts; and award the plaintiff the amount sued for, with costs.

Appeal allowed.

—◆◆◆—
Civil Petition.

Ex parte VITHALRA'V ESHWANTRA'V.

Pension—Attachment—Act VI. of 1849.

On petition praying that an attachment placed on a pension, of which petitioner was the recipient, might be removed, under Act VI. of 1849, the High Court declined to interfere; as it had not been shown that the pension was one enjoyed in consideration of past services and present infirmities or old age.

THE petitioner represented that Dáji Mahádev Athavale, having obtained an arbitration award against him for the sum of Rs. 1,651, sued out execution of the same, by praying for the attachment of, and payment to himself of, a portion of a pension paid periodically to the petitioner from the treasury of the Collector at Puná; that the District Judge complied with this prayer, and directed that a specific portion of the said pension be attached and paid over to the said creditor; that this order for attachment was contrary to law,

(a) *Next case.*

(b) *Post, p. 67.*