

FAUSTMANN v. G. A. FICHARDT & CO.  
AND A. E. FICHARDT.

1910. *March* 7, 8 and 11. MAASDORP, C.J., and WARD, J.

*Pension.—Registration.*

Pension means an annual payment for life given in remuneration for past services. A pension of less than £500 per annum does not require registration as a donation to enable the donee to recover from the donor on an executory contract.

This was an action for a declaration that the plaintiff was entitled to a pension for life at the rate of £240 a year from the defendant company, or in the alternative from the second defendant, the managing director of the company, and judgment for £120, being two overdue quarterly instalments of the pension. The plaintiff had been in the employ of the defendant company for over thirty years as a bookkeeper. The defendants, while admitting that payments at the rate mentioned had been made to the plaintiff since he had retired, denied liability, on the ground that the payments referred to had been made as an act of grace. The defendants further pleaded that there had been no valuable consideration or *causa* for the alleged contract, and that if there had been, the promise would constitute a donation of over £500, which would therefore be invalid for want of registration.

*Blaine, K.C.*, for the plaintiff: A promise was made by the defendant company to pay the plaintiff a pension of £240 per annum, payable quarterly, and it was duly accepted. The *causa* for the promise was gratitude for past services. Valuable consideration is not necessary in the case of donations. See *Van Renen's Trustees v. Versfeld and Others* (9 S.C. at p. 166). The word "pension," according to the ordinary acceptation of the term, means payment for past services. It is generally applied to payments made to servants of the Crown. See the Pensions

Ordinance (23 of 1904). In that Ordinance the word "pension" is used to denote a life pension. Unless the term is qualified it implies an annual payment throughout the pensionary's life. The probabilities of this case point to the conclusion that the pension was granted for life, as the plaintiff was seventy-six years of age when it was granted. An executory donation can be enforced. See Maasdorp's *Institutes of Cape Law*, vol. 3, p. 99. There is no necessity for the registration of a donation of over £500 between the donor and the donee. See *Wiese, N.O., v. Executors of Wiese* ([1905] O.R.C. 130).

[MAASDORP, C.J.: That was the case of an executed donation, where it was desired to set aside transfer of the property.]

See *Barrett v. O'Neil's Executors* (Kotzé, 104). That was a case of an executory donation. A life pension does not require registration, provided that the annual amount is less than £500. See Voet, 39, 5, 16; *Code*, 8, 53, *De donationibus*; and Maasdorp's *Institutes of Cape Law*, vol. 3, pp. 97 and 98.

*Fichardt*, for the defendants: A deliberate and solemn act is required to effect a donation. Donation is preferably effected by deed. See Maasdorp's *Institutes of Cape Law*, vol. 3, p. 92; *Marchant v. Lee Conservancy Board* (L.R. 9 Exch. Ca. 62).

[MAASDORP, C.J.: That case was decided on the ground that the document had not been sealed as the law required.]

Pension means deferred payment of salary—something that has been earned.

MAASDORP, C.J.: The plaintiff sues the defendants for an order declaring him entitled to payment by the defendants of a pension at the rate of £240 per annum during his lifetime and for the payment of certain amounts already due in this connection. It appears that the plaintiff was over thirty years in the first defendants' employ, when in 1906 Mr. A. E. Fichardt, who appears then to have been managing the firm's business, on various occasions, as if to prepare the plaintiff, told him that he was getting too old for the business and that he ought to be pensioned. Then on the 31st May, 1906, a letter was written to the plaintiff terminating his employment, and in this letter it was also stated that, in proof of the esteem in which the plaintiff

was held, the question of a pension was being taken up by the Fichardt and Beck estates, the writer of the letter expressing the hope that he would be able to advise the plaintiff that the matter had been arranged, and that the pension would be granted him by the above estates. Now the use of the concluding words would seem to convey the impression that the first defendants were not liable; but at the same time it must be borne in mind that the only partners who had money in the business were the two estates mentioned, and therefore it is clear that it was intended first to consult those partners in the business on whom the burden of the liability would fall. If this one letter stood by itself there might be something in the arguments advanced by the defendants that no pension had been granted, or that it had been granted not by the firm, but by the two estates. After this we come to the 16th August, 1906, when it appears that it was intended to float the firm into a limited liability company, and Messrs. Fichardt & Daniels, as secretaries to the firm "in flotation," write to the plaintiff that they are instructed to convey to him a resolution "of the *directors* at our last meeting." Now the only directors then in existence were the directors of the defendant firm. Mr. Fichardt stated that he had called a meeting for a specific purpose, and probably it was at that meeting that the resolution was taken, that the secretary should inform the plaintiff that the Fichardt estate had already resolved to grant the pension, but that it was necessary to consult the Beck estate, and that it was proposed to date the pension a month back, *i.e.* from the 1st July, 1906. On the 8th December Messrs. Fichardt & Daniels, the secretaries to the defendant firm, wrote that it had been resolved that "our managing director shall send" the sum of £120 by way of payment of pension to the plaintiff. On the 10th December they wrote again in regard to the payment, and all the letters are signed by Fichardt & Daniels, as secretaries on behalf of the defendant firm, and all speak of "our directors." This being so, we cannot come to any other conclusion but that if a pension was granted it was granted by the defendant firm. It may be that the consent of the two estates was thought necessary, and that their consent was obtained, but the resolution was taken by

the directors of the defendant firm, and was communicated to the plaintiff by the defendant firm direct or by Messrs. Fichardt & Daniels as acting secretaries to the firm. We must therefore hold that the firm of Fichardt & Co. are liable, if there is any liability for the payment of any pension at all. The question as to whether there is any such liability depends on what a pension is. It surely can mean nothing but a pension for life, provided it has been solemnly agreed that it is to be given. There have been cases decided as to liability for pension on the part of public bodies, but there have been no disputed cases as to the meaning of the word "pension." We can only take it as we know it ourselves and as it is defined in dictionaries, namely, as an annual payment for life given in remuneration for past services. It is therefore unnecessary to criticise the evidence given in detail. So far as we have to test it, we were more favourably impressed with plaintiff's evidence than with that of Mr. Fichardt, and we are prepared to accept the evidence of the former in preference to that of the latter whenever they differ as to what passed between them. Mr. Fichardt's account differed very little from that of the plaintiff, but he wished us to put his own legal construction on the facts. Judgment must be for the plaintiff on the first claim of the declaration, *i.e.* against the defendant firm with costs.

WARD, J., concurred.

Plaintiff's Attorneys: *Fraser & Scott*; Defendants' Attorneys: *Gordon Fraser & McHardy*.

[This judgment was reversed on appeal on the ground that the defendants were not liable for payment of the pension whoever else might be. But the meaning of the word "pension" was adopted. See 4 Buch. A.C. Rep. 73.—REPORTER.]

---