authorise the Sessions Judge to transfer such cases to the Additional Sessions Judge for disposal. I, therefore, think that the first Additional Sessions Judge has jurisdiction to hear the reference. The Rule is accordingly discharged. Let the record be returned to the lower Court at once.

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CHOTZNER J. I agree.

E. H. M. *Rule discharged.*

APPELLATE CIVIL.

Before Mookerjee and Rankin JJ.

KALI KRISHNA RAY

v.

MAKHAN LAL MOOKERJEE.*

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Aug. 10.

Religious Endowment—Letters of administration—Residuary Legatee, priest or shebait—Probate and Administration Act (V of 1881), s. 21—Hindu Wills Act (XXI of 1870), s. 2—Appointment of priest—Shebaitship, vesting of.

A Hindu lady disposed of her properties by a will, gave one of her legacies of a specified amount to the family priest, and directed that the residue would be devoted to the maintenance of the worship of the idol that was established by the ancestors of her husband and died. The priest obtained letters of administration as the residuary legatee under s. 21 of the Probate and Administration Act:

Held, that the priest was not entitled to the letters of administration as residuary legatee or otherwise. The proper person to get it as residuary legatee under s. 21 of the Probate and Administration Act was the *shebait* of the idol.

Where the appointment of a *purohit* has been at the will of the founder, the mere fact that the appointees have performed the worship for several generations will not confer an independent right upon the members of the

* Appeal from Original Decree, No. 161 of 1922, against the decree of A. J. Chotzner, District Judge of 24-Perganahs, dated March 1, 1922.

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family so appointed, and will not entitle them as of right to be continued in office as priest.

Nanabhai v. *Trimbak* (1) and *Narayana* v. *Ranga* (2) referred to.

It is well-settled that when the worship of an idol has been founded, the shebaitship is vested in the founder and his heirs, unless he has disposed of it otherwise or there has been some usage or course of dealing which points to a different mode of devolution.

Gossamee v. *Rumanlolljee* (3), *Jagadindra* v. *Hemanta* (4) and *Mohan* v. *Gordhan* (5) referred to.

APPEAL by Kali Krishna Roy and Satish Chandra Roy, the petitioners.

This appeal arose out of an application for grant of letters of administration in favour of Makhan Lal Mookerjee, the respondent. One Bidhumani Debi disposed of her properties by a will and left several legacies including one to her family priest, namely, the respondent for the payment of Rs. 50. She directed that the residue would be devoted to the worship of the family idol of her husband and then died. The executor named in the will did not take out probate. One Rajendra Nath Roy, a first cousin of the lady, took out letters of administration and managed the estate. On the death of Rajendra, the respondent applied for letters of administration. The appellants, who were grandsons of the brother of the lady, also applied for letters of administration. The District Judge made a grant in favour of the respondent under section 21 of the Probate and Administration Act on the ground that he was the residuary legatee.

Babu Rupendra Kumar Mitra (with him *Babu Pasupati Ghose*), for the appellants. Under s. 21 of the Probate and Administration Act if the executor and the residuary legatee or the representative of residuary

(1) (1878) Bom. P. J. 195.
(2) (1891) I. L. R. 15 Mad. 183.
(3) (1889) L. R. 16 I. A. 137.
(4) (1904) L. R. 31 I. A. 203.
(5) (1913) L. R. 40 I. A. 97.

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legatee fail, the beneficial heirs of the testatrix are entitled to the letters of administration. The respondent cannot get it as he is the priest and not the *shebait*: *Maharanee Indurjeet Kooer* v. *Chundermun* (1).

Babu Probodh Kumar Das (with him *Babu Panchanan Ghose*), for the respondent. The appellants cannot get letters of administration as they are not the heirs of the testatrix. The respondent cannot be blamed for not making parties those persons who are not legal heirs of the testatrix. The grounds on which the order of the learned District Judge stand cannot be supported. Under section 37 of the Probate and Administration Act the respondent is entitled to the letters of administration: *Gaurishankar* v. *Ramji* (2)

MOOKERJEE AND RANKIN JJ. This appeal is directed against an order for the grant of letters of administration, with copy of the will annexed, to the estate left by one Bidhumani Debi. The lady made a testamentary disposition of her properties on the 29th November, 1898 and died on the 16th December, 1898; she directed the expenditure of Rs. 600 on the occasion of her obsequious ceremonies and Rs. 1,400 in the payment of specified amounts as legacies to various persons. The residue, she directed, would be devoted to the maintenance of the worship of the idol Sri Sri Iswar Lakshmi Janardan established by the ancestors of her husband. The executor named in the will did not take out probate, and it was not till the 5th November, 1904 that one Rajendra Nath Ray, a first cousin of the lady, came forward to take out letters of administration with copy of the will annexed. We are not now concerned with the history of the

(1) (1871) 16 W. R. 99. (2) (1911) I. L. R. 36 Bom. 94.

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management of the estate by this administrator. It is sufficient to state that on his death, one Makhan Lall Mookerjee, the priest of the testatrix, applied for letters of administration. In the first instance, an *ex parte* order was made in his favour; this was subsequently recalled and the case was reheard in the presence of Kalikrishna Ray and Satis Chandra Ray who are the grandsons of the brother of the testatrix and have come forward to obtain letters of administration. The District Judge has made a grant in favour of the priest under s. 21 of the Probate and Administration Act. We are now called upon to consider whether this order can be sustained.

Section 21 is in these terms.

"When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly."

The District Judge has made an order in favour of the priest on the ground that he was the residuary legatee. In our opinion, this position cannot be supported; and, indeed, in the course of argument, the view that the priest was the residuary legatee has been abandoned. The will directs the payment of a legacy of Rs. 50 to the priest; this clearly does not make him the residuary legatee. But it has been admitted before us that this sum has already been paid to the priest out of the estate. He cannot consequently be regarded as a legatee having a beneficial interest in the estate. The residuary legatee is unquestionably the idol established by the ancestors of the testatrix.

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It is to the idol that the residue of the estate is bequeathed, and under s. 89 of the Indian Succession Act, which is applicable to Hindus under s. 2 of the Hindu Wills Act, a residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated should take the surplus or residue of his property. Consequently, the person entitled to letters of administrations, as residuary legatee under s. 21 of the Probate and Administration Act, is the *shebait* of the idol. It cannot be suggested that the priest is the *shebait.* The *shebait* appoints the *purohit* to conduct the worship, but that does not transfer the management of the *debuttar* estate from the *shebait* to the *purohit*: *Maharanee Indurjeet Kooer* v. *Chundemun* (1), *Nafar* v. *Kailash* (2). Where the appointment of a *purohit* has been at the will of the founder, the mere fact that the appointees have performed the worship for several generations will not confer an independent right upon the members of the family so appointed, and will not entitle them as of right to be continued in office as priest: *Nanabhai* v. *Trimbak* (3), *Narayana* v. *Ranga* (4). We are consequently of opinion that the respondent is not entitled to the letters of administration as residuary legatee or otherwise, and the order made in his favour cannot be supported.

The result is that the appeal is allowed and the application for letters of administration made by Makhan Lal Mookerjee dismissed with costs both here and in the Court below. The hearing fee in this Court will be assessed at two gold mohurs.

The case will be remitted to the lower Court so that the question of grant of letters of administration

(1) (1871) 16 W. R. 99.
(2) (1920) 25 C. W. N. 201.
(3) (1878) Bom. P. J. 195.
(4) (1891) I. L. R. 15 Mad. 183.

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to the appellants or other persons may be further considered. The residuary legatee is the person entitled to the office of *shebait*. We are not in a position to decide, from the materials on the record, who is entitled to the shebaitship. But we may add that it is well-settled that when the worship of an idol has been founded, the shebaitship is vested in the founder and his heirs, unless he has disposed of it otherwise, or there has been some usage or course of dealing which points to a different mode of devolution: *Gossamee* v. *Rumanlalljee* (1), *Jagadindra* v. *Hemanta* (2), *Mohan* v. *Gordhan* (3). In this connection, it must be borne in mind that, as stated in the will of the lady, the worship of the idol was established by the ancestors of her husband. She is consequently not the original founder; nor can she be regarded as a founder because of her subsequent benefaction, which is nothing beyond an accretion or addition to the existing foundation: *Annasami* v. *Ramakrishna* (4), *Appasami* v. *Nagappa* (5). The question of shebaitship is thus a matter for careful investigation, and we direct that the application for letters of administration made by the present appellants be reheard, after notice to the heirs of the husband of the lady and to the Government pleader as representing the Crown.

B. M. S. *Appeal allowed.*

(1) (1889) L. R. 16 I. A. 137.

(2) (1904) L. R. 31 I. A. 203.

(3) (1913) L. R. 40 I. A. 97.

(4) (1900) I. L. R. 24 Mad. 219, 229.

(5) (1884) I. L. R. 7 Mad. 499.