

minds about accepting this deposit were, firstly, because they did not care to lose any more interest; and, secondly, because a portion of the deposit had been attached and taken out of Court by some of their creditors. How the learned Subordinate Judge conceived that he had any jurisdiction to allow such a deposit, not accepted by the mortgagees, to be attached and drawn out of Court by creditors of the mortgagees we are at a loss to understand.

For the foregoing reasons we hold that the appellants' claim has been wholly satisfied by the withdrawal from Court by them of the money deposited by the plaintiff to meet that claim, and we accordingly dismiss the appeal with costs.

*Appeal dismissed.*

1902

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## REVISIONAL CIVIL.

1902  
December 5.

*Before Mr. Justice Know and Mr. Justice Blair.*

GAPPU LAL (PLAINTIFF) v. MATHURA DAS (DEFENDANT).\*

*Act No. XII of 1887 (Bengal, N.W. P. and Assam Civil Courts Act), sections 11 and 17—Civil Procedure Code, section 25—Transfer—Jurisdiction—Construction of Statutes.*

*Held*, that the words "in the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held," occurring in section 11, clause (1) of Act No. XII of 1887, include the abolition by order of Government of a special Court temporarily constituted by Government to exercise jurisdiction in a particular district, and that therefore where such Court, being the Court of a Subordinate Judge, had ceased to exist, and the District Judge had taken upon his own file a suit which had been pending before the said Court, it was competent to the District Judge under section 11, clause (3), of the Act above-mentioned to retransfer such suit to the Court of the permanent Subordinate Judge in his district, from which Court the suit had already been transferred by him to the Court of the temporary Subordinate Judge. *Amir Begam v. Prahlad Das (1) and Sakhrum v. Gangaram (2) distinguished.*

A suit was instituted in the Court of the Subordinate Judge of Gorakhpur. After issues had been framed by the Subordinate Judge the suit was transferred to the Court of the Additional Subordinate Judge. While pending before the Additional

\* Civil Revision No. 29 of 1902.

(1) (1902) I. L. R., 24 All., 304. (2) (1889) I. L. R., 13 Bom., 654.

1902

GAPPU LAL  
v.  
MATHURA  
DAS.

Subordinate Judge the suit was referred to arbitration, but before the award was ready the Court of the Additional Subordinate Judge was abolished by order of Government. Thereupon the suit was registered as a suit in the Court of the District Judge, though without any formal order of transfer being made, and the District Judge took certain proceedings in the suit. Finding, however, that the arbitration award was likely to be disputed, and that the suit, which was a very heavy one, was likely to proceed to a full hearing, the District Judge retransferred the suit to the Court of the Subordinate Judge, from which Court he had himself removed it some three years previously. Against this order the plaintiff applied in revision to the High Court.

Mr. *W. K. Porter*, who appeared with Babu *Haribans Sahai* for the applicant contended that the action of the District Judge in taking the suit on to his own file must, though no order specifically under that section was made, be considered as a transfer made under section 25 of the Code of Civil Procedure, and the District Judge was therefore not competent to retransfer the suit. Reliance was placed upon the rulings in *Amir Begam v. Prahlad Das* (1), *Nandan Prasad v. Kenney* (2) and *Sakharam v. Gangaram* (3).

Pandit *Sundar Lal*, who appeared with Mr. *A. E. Ryves* and *Munshi Govind Prasad* for the opposite party, relied upon section 17 of the Bengal, N.-W. P. and Assam Civil Courts Act, 1887, which, he argued, covered the present case. But if section 17 did not apply, then section 11 of the same Act gave express power to the District Judge to retransfer the suit.\*

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\* Sections 11 and 17 of Act No. XII of 1887 are, so far as material to the present case, as follows:—

11 (1) In the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court or to any Court under his administrative control, competent to dispose of them.

(1) (1902) I. L. R., 24 All., 304. (2) (1902) I. L. R., 24 All., 356.  
(3) (1889) I. L. R., 13 Bom., 654.

Mr. Porter, in reply, submitted that there was no order transferring "the business" of the Additional Subordinate Judge's Court, which had ceased to exist, to that of the District Judge, while as to section 11 it had no application to the circumstances of the present case. That section, it was submitted, only applied where the Court remained, though the presiding officer might for the time being be incapacitated or absent. It did not apply to the case where the Court itself, as distinguished from the presiding officer, ceased to exist.

KNOX and BLAIR, JJ.—The suit out of which this application has arisen was, in the first instance, instituted in the Court of the Subordinate Judge of Gorakhpur. After issues had been fixed by the Subordinate Judge, the case was transferred to the Court of the Additional Subordinate Judge. There is nothing to show how this was done. It might have been done under section 25 of the Code of Civil Procedure, and presumably it was so done. Before the suit determined, the Court of the Additional Subordinate Judge ceased to exist, and the Judge and the Court together were removed. The next stage in which we find the case is that it is by an order registered as a suit pending in the Court of the District Judge. Further proceedings took place, and eventually the District Judge transfers the suit or retransfers it to the Court of the Subordinate Judge from which three years before he had removed it. It is now objected that that order was an order *ultra vires* and must be discharged. The argument is based and proceeds upon the ruling in *Amir Begam v. Prahlad Das* (1). *Sakharam v. Gangaram* (2) was also cited to us. These cases, as we find from consulting them, were cases in

1902

GAPRU LAL  
v.  
MATHURA  
DAS.

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(3) Provided that the District Judge may retransfer to the Court of the Subordinate Judge or his successor any proceedings transferred under sub-section (1) to his own or any other Court.

17 (1) Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.

(1) (1902) I. L. R., 24 All., 304. (2) (1889) I. L. R., 13 Bom., 664.

1902

GAPPU LAL

v.  
MATHURA  
DAS.

which the District Judges had, by an order under section 25 of the Code of Civil Procedure, transferred a suit or proceedings to his file and thereafter had under an order purporting to be made under the same section retransferred it to the Subordinate Court from which he had withdrawn it. In the case before us we have no order to consider which in express terms was made or purported to have been made under section 25. If then, we can find another section and another Act under which, in our opinion, this transfer could have been legally made by the District Judge of Gorakhpur, we must presume that he did act under that section. Section 11 of Act No. XII of 1887 does appear to provide for a case like the present. The learned counsel for the applicant contended that section 11 has reference only to cases of temporary absence, and that death, resignation or removal, other events contemplated by that section were all circumstances in which the Court subsists, and the absence of the presiding Judge is an absence of a temporary nature. We see no reason for so limiting the word "removal" in that section. To hold otherwise would lead in the result to very serious inconvenience. Many cases have arisen in our own experience in which the District Judge has had to transfer all proceedings pending in the Court of the Subordinate Judge to his own Court and deal with them more or less. To hold that, in consequence, he was debarred from retransferring them when opportunity arose under clause (3) of section 11 would lead to a very serious block of business. When the District Judge registered this suit, he should undoubtedly have recorded a separate order of transfer from the Court of the Additional Subordinate Judge to his own Court under section 11 of Act No. XII of 1887. We hold, however, that his order to register the suit as a suit pending in his Court was an act of transfer, and that clause (3) of section 11 did empower him afterwards to retransfer to the Court of the Subordinate Judge the proceedings which he had so transferred under sub-section (1) of section 11 of Act No. XII of 1887. We dismiss this application with costs. The order of stay, which we understand has been made, will be discharged.

*Application dismissed.*