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has been created, to nominate new managers who were to take his place after his death, because subsequently to the creation of the trust his position is merely that of a manager and he is not competent to revoke the trust or to alter it or to appoint new managers. No doubt in that case, inasmuch as the newly appointed trustees had taken possession of the trust property as such, they were treated as trustees *de son tort* who could along with the real trustee sue under section 92 of the Code of Civil Procedure. In that way it may be said that the observation was an *obiter dictum*, but it is entitled to weight.

It seems to us that when the property has been dedicated by a donor and he had thereby divested himself of all interest in the property, then unless he reserves to himself a right of changing the line of succession laid down by him in the deed of trust, that rule must be binding even on him. The rule of succession to the office of *Shebait* is of considerable importance in the case of trust, and if laid down by the donor at the time of the dedication must be deemed to be a part of the rules governing the management of the trust, and in the absence of any reservation the rule is not capable of being altered by the donor at his will. We therefore think that the view taken by the learned Judge of this Court is sound. The appeal is dismissed with costs.

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### MISCELLANEOUS CIVIL

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Before Mr. Justice Thom and Mr. Justice Rachhpal Singh

1937  
January, 15

LAKHI NARAIN RAM (JUDGMENT-DEBTOR) v. ADJAI COAL COMPANY (DECREE-HOLDER)\*

*U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 5—"Court whose business has been transferred to it"—Decree transferred for execution to another court—Whether such execution court can act under section 5 and convert the decree into an instalment decree—Jurisdiction—Court executing decree can not modify it.*

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\*Miscellaneous Case No. 155 of 1936.

The words, "court whose business has been transferred", in section 5 of the U. P. Agriculturists' Relief Act obviously refer to instances where one court has ceased to exist and the entire business of that court has been taken by another court. They do not refer to a case where a decree has been transferred from one court to another for execution. An executing court, therefore, can not grant relief under section 5 of the U. P. Agriculturists' Relief Act in a decree transferred to it for execution by another court situated in or outside the United Provinces, and convert the decree into an instalment decree. It is well established law that an execution court has no jurisdiction to amend the decree.

Mr. K. L. Misra, for the applicant.

Mr. Chaturbhuj Sahai Srivastava, for the opposite party.

THOM and RACHHPAL SINGH, JJ.:—The question referred by the learned Additional Civil Judge is in the following terms: "Can an executing court grant relief under the Agriculturists' Relief Act in a decree transferred to it by another court situated in or outside the United Provinces?"

This question of law has arisen in connection with the execution of a decree obtained by the Adjai-Coal Co., Ltd., against Lakhi Narain Ram in the court of Asansol in Bengal.

When the decree was transferred to the court of the Additional Civil Judge of Ballia for execution the judgment-debtor applied for an instalment decree under section 5 of the Agriculturists' Relief Act of 1934.

Section 5 of the Act relates to the granting of an instalment decree. The section is in the following terms:

"(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the court shall, unless for reasons to be recorded it directs otherwise, at any time, on the application of the judgment-debtor and after notice to the decree-holder, direct that any decree for money or preliminary decree for sale or foreclosure passed by it or by any court whose business has been transferred to it, against an agriculturist, whether before or after this Act comes into force, shall be converted into a

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decree for payment by instalments drawn up in such terms as it thinks fit in accordance with the provisions of section 3:

“Provided that any final decree for sale which has not been fully satisfied, passed before this Act comes into force, shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, be revisable in the same manner and to the same extent as the preliminary decree for sale or foreclosure passed against an agriculturist.”

Now it is not disputed that the court of the Additional Civil Judge of Ballia, so far as the decree of the plaintiff is concerned, is merely an execution court. In our opinion the *business* of the court of Asansol has not been transferred to the court of the Additional Civil Judge of Ballia within the meaning of section 5 of the U. P. Agriculturists' Relief Act.

The part of the section which relates to the transfer of business from one court to the other refers clearly to instances where one court has ceased to exist and the entire business of that court has been taken by another court. It does not refer, in our judgment, to the case where a decree has been transferred from one court to another for execution. Had the intention of the legislature been to give jurisdiction to the execution court to amend a decree under section 5 of the Act, the expression “whose business has been transferred” would not have been used. The section would have run: “or by any court whose decree has been transferred to it for execution”.

In support of this view we refer to section 30 of the U. P. Agriculturists' Relief Act which relates to the reduction of interest. In that section it is made clear that it is the court which has passed the decree which has the jurisdiction to reduce the rate of interest. We refer further in this connection to the provisions governing instalment decrees of the Code of Civil Procedure, order XX, rule 11. Under the provisions of that rule it is the court which passes the decree which alone has power to modify the decree and substitute a decree for payment by instalments.

It is well established law that the execution court has no power to amend a decree. The duty of the execution court is to carry out the decree as it has been passed by the court from which the decree has been transferred for execution. If the intention of the legislature had been to give power to the execution court to amend the decree so as to give the judgment-debtor benefits of the provisions of the Agriculturists' Relief Act, such provision, so inconsistent with accepted principle and present procedure, would have been embodied in clear and unambiguous terms.

No doubt the inability of the executing court to give effect to section 5 of the U. P. Agriculturists' Relief Act may lead to much inconvenience, and in certain instances, as in the present, it appears that the main intention of the Act may be defeated. Our duty, however, is to give effect to the clear provisions of the Act as they stand. It will be a matter for the Government to consider whether section 5 of the Act should not be amended so as to give execution courts the necessary jurisdiction to amend decrees under the provisions of the Act.

In the result we answer the question referred by the learned Additional Civil Judge of Ballia in the negative.

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## MISCELLANEOUS CIVIL

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*Before Mr. Justice Thom and Mr. Justice Rachhpal Singh*

INAM-ULLAH (DECREE-HOLDER) *v.* BABU RAM AND OTHERS  
(JUDGMENT-DEBTORS)\*

1937  
January, 15

*U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 7, 9—Stay of proceedings—Proceedings in execution against a surety—Application by some judgment-debtors under section 4 of the Act—Whether the execution against the surety must be stayed.*

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