

Transfer of Property Act (4 of 1882) , S.3, S.8— Transfer of debt pending suit**Civil Procedure Code, 1908 (V of 1908) , O.21 R.10— Equitable transfer of decree.**

Per Das J. : Where during the pendency of a suit for recovery of a certain amount from the defendant the plaintiffs in the suit transfer to third persons all book and other debts due to them the transfer of the debt passes all the interest which the transferors were then capable of passing in the debt and in the legal incidents thereof. There was then no decree in existence and, therefore, the transferors could not then pass any interest in the non-existing decree. Section 8 does not assist the third party. Upon the assignment of the debt the third persons undoubtedly became entitled to get themselves substituted under O. 22, R. 10 as plaintiffs in the pending suit but if they did not choose to do so and allowed the transferors to continue the suit and a decree to be passed in their favour S. 8 does not help them. Section 8, T. P. Act, does not operate to pass any future property, for that section passes all interest which the transferor can then, i.e., at the date of the transfer, pass. A book debt which was made the subject matter of the pending suit did not, for that reason, cease to be a book debt and, therefore, it was also transferred but no decree to be passed in respect of that book debt was in terms transferred. In such a situation there is no room or scope for the application of the principle of equitable assignment at all.(Para 8)

Per Bhagwati J. : In cases of transfer of book debts or property coming within the definition of actionable claim there is necessarily involved also a transfer of the transferor's right in a decree which may be passed in his favour in a pending litigation and the moment a decree is passed in his favour by the Court of law, that decree is also automatically transferred in favour of the transferee by virtue of the assignment in writing already executed by the transferor. The debt which is the subject matter of the claim is merged in the decree and the transferee of the actionable claim becomes entitled by virtue of the assignment in writing in his favour not only to the book debt but also to the decree in which it has merged. The book debt does not lose its character of a debt by its being merged in the decree and the transferee is without anything more entitled to the benefit of the decree passed by the Court of law in favour of the transferor. The transferee of the actionable claim thus could step into the shoes of the transferor and claim to be the transferee of the decree by virtue of the assignment in writing executed by the transferor in his favour and could, therefore, claim to execute the decree as transferee under O. 21, R. 16, C. P. C.(Para 56)

Read Here; [1955 PLRonline 0001 , Jugal Kishore Saraf v. Raw Cotton Co. Ltd.](#)