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we are entitled to consider the question on its merits without feeling bound by authority, particularly as we have had so recently the benefit of the very full arguments advanced in the Full Bench case to which we have referred.

The Privy Council decision in the case of *Mujib-un-nissa v. Abdur Rahim* (1) has in our opinion no application to the circumstances of the present case. In that case the person who presented the document had been the attorney of a deceased person who wished to execute and register a deed of waqf. Before the document was presented for registration the donor of the power of attorney had died. Consequently the person presenting the document for registration had no authority from any one to present the document, nor was there any other person present who could have legally "presented" the document for registration. We think that the remarks of their Lordships in this case must be read and understood in connection with the facts of the case which were before them. After full consideration we see no reason to depart from the view which we expressed in the case of *Nath Mal v. Abdul Wahid Khan* (2). We, accordingly, allow the appeal, set aside the decree of both the courts below and remand the case to the court of first instance, through the lower appellate court, with directions to readmit the case upon its original number in the file, and proceed to hear and determine the same according to law. Costs here and heretofore will be costs in the cause.

Appeal allowed.

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November, 19.

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.

ALLAH DAD KHAN AND OTHERS (DEFENDANTS) v. SANT RAM (PLAINTIFF) AND WAHID-UN-NISSA AND OTHERS (DEFENDANTS)*.

Act No. VII of 1889 (Succession Certificate Act), sections 4 and 16—Succession certificate—Holder of certificate not entitled to assign his rights thereunder.

Held that the rights conferred by the grant of a succession certificate under Succession Certificate Act, 1889, are personal to the grantee and cannot be assigned.

The facts of this case are as follows :—

One Bahadur Khan was a mortgagee. He died, leaving Farzand Ali and others as his heirs. Farzand Ali on the 25th of

*First Appeal No. 43 of 1912 from a decree of Pitambar Joshi, Second Additional Judge of Moradabad, dated the 18th of March, 1911.

(1) (1901) I. L. R., 23 All., 233.

(2) (1912) I. L. R., 34 All., 365.

August, 1900, obtained a certificate under the Succession Certificate Act for the collection of the mortgage debt due to Bahadur Khan. On the 15th of March, 1904, Farzand Ali assigned the mortgage debt to Sahu Sant Ram together with his right to sue for the same, and made over to the assignee the succession certificate which he had obtained. The assignee brought a suit, on the strength of that assignment, for enforcement of the mortgage. He did not produce any succession certificate empowering him to collect the debt due to Bahadur Khan, but produced the one which was granted to Farzand Ali. The defence, *inter alia*, was that the certificate granted to Farzand Ali could not be acted upon by his assignee. This objection was overruled and the suit decreed. The defendants appealed.

The Hon'ble Pandit *Moti Lal Nehru* (with him The Hon'ble *Nawab Muhammad Abdul Majid*), for the appellants :—

The plaintiff cannot get a decree except on the production of a succession certificate granted to himself. Section 4 of the Succession Certificate Act is imperative. It has been definitely ruled that the section applies to mortgage debts as well as to simple money debts. The law does not recognize an assignment of a succession certificate; the right granted by such a certificate is a purely personal one, confined to the grantee thereof. To recognize such assignments would be to defeat the object of the Succession Certificate Act, which is to protect the debtor against the worry and uncertainty arising from disputes relating to the claimant's title. Section 16 of the Act indemnifies payments only when they are made to the person to whom the certificate has been granted. The plaintiff, by obtaining an assignment from the certificate-holder of his right to sue, cannot be deemed to have fulfilled the requirements of section 4.

Mr. *B. E. O'Connor* (for *Maulvi Muhammad Ishaq*), for the respondents :—

The requirements of section 4 have been complied with, inasmuch as a succession certificate covering the debt sued for has been produced. The section does not expressly require that the certificate should have been granted to the plaintiff personally, though in the case of a probate or letters of administration there is a distinct provision that the latter should have been granted to the plaintiff. The omission from clause (iii) of the words "to him"

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which occur in clause (i) is significant. There is nothing to prohibit the assignment of the rights under a succession certificate together with an assignment of the debt itself. The recognition of such an assignment would not go against the objects of the Succession Certificate Act. The fiscal object would in no way suffer, as a certificate, in the first instance, would still be necessary. And where the debt together with the right of collection thereof granted by a succession certificate are assigned, there arises no question of involving the debtor in vexatious disputes relating to the title of rival claimants. In this case the assignee is substituted for the original grantee of the certificate and the protection against the demands of rival claimants remains unaffected. None of the objects of the Act is, therefore, frustrated. Should a fresh certificate be deemed necessary the plaintiff may now be given an opportunity of obtaining and producing it.

The Hon'ble Pandit *Moti Lal Nehru* replied.

GRIFFIN and CHAMIER, J.J.:—This was a suit upon a mortgage made in favour of one Bahadur Khan by two persons who are now represented by the appellants and others. Bahadur Khan died leaving a son, Farzand Ali, and other heirs. Farzand Ali applied for a succession certificate in respect of several debts due to his father. Some of the other heirs stated that they had relinquished their rights in his favour, and a certificate was issued to Farzand Ali, who some years later assigned the mortgage debt together with his right to sue for the same to the respondent, Sant Ram. It is, on the strength of that assignment, that the present suit was brought. The claim was resisted upon several grounds, one of which was that Farzand Ali was not competent to transfer to another the right conferred upon him by the succession certificate to sue for the recovery of the debt. The court below decided this and other questions against the appellants. Hence this appeal.

Apart from the provisions of the Succession Certificate Act, Farzand Ali, as one of the heirs of Bahadur Khan, could have sued upon the mortgage, making as defendants the heirs of Bahadur Khan, who declined to join as plaintiffs. He could also have assigned his interest in the mortgage to the respondent, Sant Ram. Indeed, the assignment in favour of Sant Ram may be regarded

as having transferred to Sant Ram all Farzand Ali's rights under the mortgage, although the assignment purports to have been made by Farzand Ali as holder of the succession certificate. But section 4 of the Succession Certificate Act provides that no court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of a deceased person or to any part thereof, except upon the production by the person so claiming of a certificate granted under that Act or of one or other of certain other documents, which admittedly have not been produced in this case. It has been held by this Court in many cases, which we are bound to follow, that a debt secured by a simple mortgage is a debt within the meaning of the provision just quoted. A certificate under the Succession Certificate Act has been produced, but it is in favour of Farzand Ali. The question is whether such a certificate is sufficient. The Act does not in so many words say that the certificate must be one in favour of the plaintiff, but we think that that is the meaning of the provision. The declared object of the Act is to facilitate the collection of debts on successions and to afford protection to parties paying debts to the representatives of deceased persons. Section 16 of the Act protects a debtor of a deceased person who pays the debt in good faith to the *person to whom the certificate was granted*. An assignee of the person to whom the certificate was granted does not appear to come within the section. From this it would appear that the person to sue for the debt is the person to whom the certificate was granted. Notwithstanding the preamble to the Act, one of the objects of the Act seems to have been to prevent people from evading payment of the duty payable on certificates issued under Act XXVII of 1860. If that had been the sole object of the Legislature, there would have been much to say for the view taken by the court below. But the main object must be taken to be that stated in the preamble. The Act is designed to enable debtors to know with certainty the person to whom they can safely pay a debt due to a deceased person. If we were to hold that any person may sue for the recovery of a debt due to a deceased person provided that he produces a certificate having the debt specified in it, the debtor would have to trace the title of the plaintiff and

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we should re-introduce the confusion which the Act was designed to remove. If the plaintiff relies upon a grant of probate or letters of administration, he must show that the grant was made to him, and we see no reason why it should be otherwise in the case of a succession certificate. The result is that the plaintiff, in our opinion, was not entitled to maintain this suit.

It was suggested that we might adjourn the case in order that the plaintiff might apply for a certificate. We cannot allow this, as the plaintiff cannot be permitted to convert a suit by him as assignee of Farzand Ali into a suit by him as holder of a certificate authorizing him to collect debts due to Bahadur Khan. The appeal is allowed and the suit is dismissed with costs.

Appeal allowed.

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November, 23

REVISIONAL CRIMINAL.

Before Mr. Justice Tudball.

ANGAN AND OTHERS v. RAM PIRBHAN.*

Criminal Procedure Code, sections 203, 437—Complaint summarily rejected—Further inquiry.—Notice to person complained against not necessary.

A notice to a person against whom a complaint is made is quite unnecessary where it is sought to set aside the summary order rejecting the complaint in a proceeding to which he was actually no party.

A complaint made against Angan and others was summarily rejected by a magistrate of the first class without calling upon persons complained against. Subsequently a fresh inquiry into the subject matter of the complaint was ordered by the District Magistrate, again without notice to Angan and others. Angan and others applied to the High Court for revision of this order upon the ground that it could not have been legally passed without notice to them.

Mr. R. K. Sorabji, for the applicants :—

It is a well-established principle of criminal law that no order should be passed to the prejudice of any party by a court exercising appellate or revisional powers without giving that party an opportunity of showing cause against the passing of such order. Although section 437 of the Criminal Procedure Code does not expressly provide for the giving of such an opportunity, yet precedents have

*Criminal Revision No. 822 of 1912 from an order of E. M. Nanavatty, District Magistrate of Budaun, dated the 21st of September, 1912.