

APPELLATE CIVIL.

Before Mr. Justice Harrison and Mr. Justice Campbell.

1924

Nov. 22

BULAKI MAL AND ANOTHER—Appellants,
versus
 SHAMBU NATH AND OTHERS—Respondents.
 Civil Appeal No. 756 of 1923.

*Probate and Administration Act, V of 1881, section 50—
 Application to annul grant of Letters of Administration by a
 person having no interest in the estate—objection to his com-
 petency raised for the first time in appeal.*

Held, that although a Court is not bound to accept an application under section 50 of the Probate and Administration Act for annulment of a grant of Letters of Administration if made by persons who have not alleged any interest in the estate of the deceased, an objection of this nature must be taken at the earliest stage of the proceedings. If no such objection is made and the Court has once functioned, even if the application was made by persons not fully qualified, the order must stand unless it can be shown to be wrong on the merits.

Sri Gobind Parsad v. Laljhari Kuer (1), Gopal Chandra Bose v. Asutosh Bose (2), Kalajit Singh v. Parmeshwar Singh (3), In the goods of Kamineymoney Bewah (4), and Sarat Sundari Barmani v. Uma Prosad Roy (5), referred to.

Mayho v. Williams (6), followed.

*Miscellaneous first appeal from the order of
 O. F. Lumsden, Esquire, District Judge, Lahore,
 dated the 19th February 1923, accepting the applica-
 tion.*

BADRI DAS and TIRATH RAM, for Appellants.

DURGA DAS and NAWAL KISHORE, for Respon-
 dents.

(1) (1909) 2 I. C. 402.

(2) 1913) 20 I. C. 342.

(3) (1917) 39 I. C. 573.

(4) (1894) I. L. R. 21 Cal 697.

(5) (1904) I. L. R. 31 Cal 623.

(6) (1870) N. W. P. High Court Report 268.

The judgment of the Court was delivered by—

1924

HARRISON J.—One Bulaki Mal representing himself to be a creditor and mortgagee of Nibahu Ram, deceased, applied for letters of administration to his estate. He did not implead *Mussammât* Ananti, *Mussammât* Gian Devi, or Shambu Nath. After the letters had been granted these three persons presented an application under section 50 of Act V of 1881 for the revocation of the letters of administration. No objection was taken before the District Judge to the competency of these persons to make the application for revocation, and on the merits, the learned District Judge held that there had been concealment of a material character, which made it necessary that he should accept the application and revoke the grant.

BULAKI MAL
v.
SHAMBU NATH.

Bulaki Mal now appeals and a cross-appeal has been put in arising out of the proceedings which gave birth to the application for letters of administration. Mr. Tirath Ram has urged very vigorously and has supported his contention with ample authority that the petitioners, inasmuch as they did not allege any interest in the property of the deceased Nibahu Ram, were not entitled to present the application in the sense that the Court was not bound to entertain their application and this position is made clear in *Sri Gobind Parsad v. Laljhari Kuer* (1), *Gopal Chandra Bose v. Asutosh Bose* (2), *Kalajit Singh v. Parmeshar Singh* (3), *In the goods of Kamineymoney Bewah* (4). Mr. Tirath Ram has also contended that on the merits the order of the District Judge is not correct.

Now, the first objection was not taken at the earliest stage of the proceedings and as laid down

(1) (1909) 2 I. C. 402.
(2) (1913) 20 I. C. 342.

(3) (1917) 39 I. C. 578.
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1924

BULAKI MAL
v.
SHAMBU NATH.

in *Mayho v. Williams* (1), an objection of this nature to be sustained must be taken at once.

Whatever may be the position of the Court regarding the application in the sense that it is fully justified in rejecting an application made by a person who has claimed no interest, the question here arises of whether when the Court has failed to realise the situation and has acted on an application, which might have been dismissed *in limine*, and has found good reasons, and more especially suppression of material facts, which justify it in revoking the grant, that order is to be set aside on the technical ground that, had an objection been taken at the outset, the Court would possibly have rejected the application. We are of opinion that once the Court has functioned, even if the application was made by a person not fully qualified, the order must stand unless it can be shown to be wrong on the merits. It is true that in *Sarat Sundasi Barmani v. Uma Prosad Roy* (2) it was laid down that the Court must be moved before it can take action under this section and that under no circumstances can the Court take action on its own motion. Be this as it may, what we have to see here is whether the finding come to on an enquiry started on a petition irregularly made and not objected to at the time must be quashed. We think not. We are of opinion that once a Court has functioned on an application of this kind which was strictly speaking, not competent, or rather which could have been rejected as being made by an unqualified person, that order must stand unless and until it is shown that on the merits it is wrong.

On examining the facts we are of opinion that the applicant clearly misrepresented facts in the

1) (1870) N. W. P. High Court Report 268. (2) (1904) I. L. R. 31 Cal. 628.

sense that he suppressed necessary information and led the Court to come to conclusions which, he must have known, it would not reach had it been put in possession of all available material.

We, therefore, dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Justice Sir Henry Scott-Smith and Mr. Justice Fforde.

BAHAWALA—Appellant,

versus

THE CROWN—Respondent.

Criminal Appeal No. 316 of 1924.

1925

Jan. 23.

Criminal Procedure Code, Act V of 1898, sections 164 and 342—Confession—Statement of accused cannot be recorded under section 342 before any evidence for the prosecution is recorded—Statement recorded under section 164 must bear the certificate mentioned in the section.

In this case on the 3rd of September 1923 the police put up an incomplete *chalan* before the Committing Magistrate, and requested him to take the statement of the witness *Mst. K.* The Magistrate, however, recorded the statement of the accused first of all which was in the nature of a confession, and afterwards in his presence recorded the evidence of *Mst. K.* Subsequently on the 28th of January 1924, the accused retracted his statement before the Committing Magistrate.

Held, that as the accused was examined by the Court before any evidence for the prosecution had been recorded there was no circumstance which the accused could be called upon to explain. He could not therefore be examined under section 342 of the Code of Criminal Procedure and his statement must be taken to have been recorded under section 164.

Held further, that as the certificate attached to the confession was defective, the chief omission being that there was nothing to show that the accused had been told that he need