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independent man, which falsifies the evidence for the other side, who depose that Nabin was not attended by any medical man. His evidence also shows that he attended the widow of Nabin Chandra in his medical capacity in her father's house. We are therefore clearly of opinion that, when the application was made, the appellants Durga Das and Prem Chand wilfully and fraudulently suppressed the fact of the existence of Nabin Chandra's widow. If they had intended to base their claim to a certificate in preference to the widow on the ground of unchastity, it was their duty to state that in their application. The way in which the application is worded appears to us clearly to show a fraudulent intention on their part. It was argued by their pleader that the Judge was not competent to withdraw his certificate or to recall it in any way. There are two cases, *Hameeda Bibee v. Noor Bibee* (1) and *Mussamat Bhikun v. Mussamat Elahi Khanum* (2), in which it has been held

(1) 9 W. R., 394.

(2) *Before Mr. Justice E. Jackson and Mr. Justice Glover.*

The 22nd February 1871.

MUSSAMAT BHIKUN *u.* MUSSAMAT ELAHI KHANUM.

Mr. R. E. Twidale for the appellant.

Mr. C. Gregory and Baboos Ashutosh Chatterjee and Debendra Narayan Bose for the respondent.

THE facts of the case are fully stated in the judgment of the Court, which was delivered by

JACKSON, J.—The Judge of Patna, on the 1st April 1865, ordered a certificate under Act XXVII of 1860, to be granted to Elahi Khanum, to collect the debts due to her father, Haidar Buksh, who, it is stated died in the year 1844. The debts were at that time declared not to be above Rs. 2,000 in value, and a certificate on a stamp sufficient to cover that sum under Act X of 1862 was taken out by Elahi Khanum. It subsequently turned out that a sum of Rs. 25,000 was due to Haidar Buksh's estate; and payment of that sum having been refused on the certificate already taken out, Elahi Khanum applied under the Act to the Judge to cancel the first certificate and to grant her a fresh certificate on a higher stamp. Previous to this application, one Mussamat Bhikun had applied for payment to her of the

money due to Haidar Buksh's estate. On being refused, she represented to the Judge, first, that she was the widow and sole her of Haidar Buksh and in possession of his property, and that Elahi Khanum was not a daughter of Haidar Buksh, but some person in no way connected with him who had fraudulently obtained a certificate to collect his debts on false representations. She, accordingly, asked that enquiry might be made into the facts, the certificate granted to Elahi Khanum might be re-called, and a certificate might be granted to her as the real heir of Haidar Buksh. This application was rejected by the Judge, and Mussamat Bhikun was referred to a civil suit. An appeal was preferred to this Court, but that appeal was dismissed. No grounds are stated in the order of dismissal. Before the decision of the appeal in that case by the High Court, Elahi Khanum had put in her second application to the Zilla Judge for a further certificate on a higher stamp so as to allow her to collect the sum of Rs. 25,000 due to Haidar Buksh's estate. Mussamat Bhikun intervened on that application, and asked by petition that orders on Elahi Khanum's application might be stayed until the decision of Mussamat Bhikun's appeal to the High Court. The Judge, it is stated, and apparently admitted by both parties, refused to entertain the petition of Mussamat Bhikun, and returned it to her Vakeel. An

*Miscellaneous Regular Appeal, No. 505 of 1868, from an order of the Judge of Patna, dated the 31st August 1868.

that a Judge is competent to entertain a petition to recall a certificate granted

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order was afterwards obtained from this Court suspending the grant of the further certificate, and this appeal is now preferred from the order of the Judge refusing to entertain Mussamat Bhikun's objections to a grant of a further certificate to Elahi Khanum.

We are of opinion that Mussamat Bhikun is entitled to be heard on the facts which she has alleged against the grant of a further certificate to Elahi Khanum, and on the application which she has made for a grant of a certificate to herself. We think that the Judge should enquire into the allegations made by her. These constitute a charge of the grossest fraud, and state that the Court has been imposed upon; that Elahi Khanum, though in no way connected with the person whose daughter she represents herself to be, has brought witnesses to depose that she is his daughter, and has managed by fraud to prevent the due publication of the processes of the Court, and thus has succeeded in secretly obtaining a certificate from the Court to collect the debts of a person to whom she is not in any way related. These are very serious and grave charges, and under any circumstances we think that the Judge should have made some enquiry into them. Whether he had power to recall the certificate or not, he certainly had power to ascertain whether perjury and subornation of perjury had been committed in his Court and the processes of his Court had been abused. At present there is no longer any question for recall of the certificate. The certificate has been delivered up, is in possession of the Court, and has been cancelled. The question remains whether a fresh certificate shall be granted. It may be that under ordinary circumstances a Judge would grant a further certificate to the person who had in the first instance taken out a certificate, and would not entertain any further applications from other parties to obtain such certificate. But there are special and remarkable circumstances in this case which in our opinion call for the most careful enquiry and scrutiny. It is altogether an exceptional case. There is no doubt that the Court may refuse to grant an extension of the certificate, and if the

Court on enquiry ascertained that the allegations of Mussamat Bhikun were correct, it, in our opinion, should refuse to grant the extension, and not only should refuse but should take measures to have the parties who committed the alleged fraud punished in the Criminal Court.

Mr. Gregory, for Elahi Khanum, objects that the Court can make no such enquiry. We concur with the Judges who decided the case of *Hameeda Bibee v. Noor Bibee* (1) that every Court has inherent authority to make enquiries into such fraudulent abuse of its own processes as is charged in this case. In the case alluded to the Judges had doubts whether they could direct an enquiry, inasmuch as there was no power in the Act, under which the certificate was granted, for a recall of that certificate. But in this case no such objection exists. The certificate previously given has been returned to the Court, and is on the record cancelled. The appellant in this case had not appeared in the lower Court before the certificate was given. The appellant in this case did appear in the lower Court and strongly opposed the grant of the further certificate. The prayer of her application may have been only for a postponement of final orders until her first appeal was disposed of, but taking it in connection with the previous application alluded to in it, we consider that it is virtually an application objecting to the grant of a further certificate to Elahi Khanum, and asking that the certificate be given to herself.

But it is further urged by Mr. Gregory that, even viewing it in this light, her application has been already heard and dismissed by this Court on her former appeal. If it was certain that that appeal was dismissed on the ground that her objections could not be entertained, there might be some force in this argument. But we find that no reasons are given for the dismissal of her appeal; and as her objection on that occasion was for a recall of the certificate originally granted, which had however in the mean-while been given up, it is quite possible that the appeal may have been dismissed on that ground alone.

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by him under Act XXVII of 1860 if such a certificate has been obtained by fraud as in the present case. We therefore dismiss the appeal with costs,

Before Mr. Justice E. Jackson and Mr. Justice Ainslie.

HARIDAS BAISAKH (DEFENDANT) v. MIR MOAZAM HOSSEIN (PLAINTIFF).*

Commission for Examination of Witnesses, Obligation on Court to Issue.

Baboo Hem Chandra Banerjee and Nalit Chandra Sein for the appellant

Baboo Kali Mohan Das and Durga Mohan Das for the respondents.

JACKSON, J.—We think that this case must be remanded to the Judge in order that the witnesses whom the defendant cited to prove that Abdul Majid was a partner in the shop, should be examined either on commission, or it would be better perhaps if he should summon them to Dacca and examine them himself.

The Judge says, "I do not see what useful end would be obtained by examining the witnesses of whose non-examination the appellant makes complaint." It is very difficult to say what might be the result of their evidence. We understand that they were called to prove the partnership between the defendant and Abdul Majid. The evidence which has been given to prove that partnership has been held by the Judge insufficient, and it is just possible that these witnesses might give evidence to prove that which the Judge has held not sufficiently proved yet.

As to the right of the defendant to have these witnesses summoned, we find on the record that he applied that a commission might issue for their examination on the 16th September; the day fixed for the hearing of the case, was the 24th September; and the witnesses were not wholly examined until the 27th September,

We think that the appellant should be heard, and the charges she has put forward be enquired into before a fresh certificate is given to Elahi Khanum allowing her to take possession of Haidar Buksh's property amounting to so large a sum as 25,000 rupees. If the Court is satisfied that the certificate was originally obtained without fraud, it may order the certificate to be renewed. But if it is proved that Elahi Khanum is not a daughter of Haidar Buksh, and has never been in possession of his property, and that she did obtain the original certificate by fraud and perjury, the Court should not renew the certificate to her,

but should deal with her according to the criminal law, and the Court will under such circumstances, consider whether the certificate should now be given to Mussamat Bhikun. We observe that Elahi Khanum makes the same allegations of fraud and falsehood against Mussamat Bhikun as Mussamat Bhikun makes against her.

We reverse the orders of the Judge, directing that a further certificate be given to Elahi Khanum and remand this case with directions that full enquiry be made into the charges of fraud brought against her before such further certificate is granted.

* Special Appeal, No. 2340 of 1871, from a decree of the Judge of Dacca, dated the 23rd July 1870, affirming a decree of the Additional Subordinate Judge of that district, dated the 27th September 1869.