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be better expressed than in the passage which I adopt from my brother PRIGGOTT'S judgment:—"Obviously no form of words can be prescribed in which this claim is to be made, and I conceive that cases may arise in which the courts will be compelled to hold that the claim has been made by implication or that the witness was placed under practical compulsion to answer certain questions by the mere fact of his appearance in the witness-box." I hold that this witness was compelled to answer the question which the Munsif put to him and that any proceedings for defamation in respect to the answer are prohibited by section 132. The whole proceeding against him for defamation is misconceived and must be quashed. I admit the revision and quash all the orders made against him. The fine, if paid, must be refunded.

Conviction quashed.

MISCELLANEOUS CIVIL.

Before Sir Grimwood Meares, Knight, Chief Justice, and Mr. Justice Tudball.

1920
 January, 2.

MULRAJ (OBJECTOR) v. NIADAR MAL (INSOLVENT) AND JHUMAN LAL
 (APPLICANT)*

Act No. IX of 1908 (Indian Limitation Act), section 12—Limitation—Exclusion of time necessary for obtaining essential copies—Application for copies made after period of limitation had expired.

In order to obtain the benefit of section 12 of the Indian Limitation Act, an appellant must apply once and for all for copies of all essential documents before the period of limitation for appeal has run out. He cannot seek in aid the extended period if he finds later that an essential document has been omitted.

THIS was an application under section 46 of the Provincial Insolvency Act, 1907. The facts of the case, so far as they are necessary for the purposes of this report, appear from the following report of the office:—

"This is an appeal from an order of the District Judge of Saharanpur, dated the 26th of April, 1919, passed in an insolvency case. The term of ninety days allowed for appeal expired on the 25th of July, 1919, and adding to this the period of twenty-eight days from the 24th of July, 1919, to the 20th of August,

* Application in First Appeal from Order No. 2 of 1920.

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1919, occupied in obtaining a copy of the judgment, the term of appeal expired on the 22nd of August, 1919, when this Court was closed for the long vacation. A copy of the order appealed from was applied for on the 19th of September, 1919, and a copy thereof was ready for issue and was actually issued on the 6th of November, 1919. If this period of forty-nine days is also added, the limitation expired on the 29th of October, 1919, when this Court re-opened after this long vacation.

"The learned counsel contends that the copy having been issued on the 6th of November, 1919, the appeal could not be presented on the 27th of October, 1919. As there is a new question of limitation involved in this appeal, notice may be issued to the other side why the appeal should not be admitted."

Mr. *Nihal Chand*, for the appellant.

Mr. *M. L. Agarwala*, for the respondents.

MEARS, C. J., and TUDBALL, J. :—This is an application by a creditor who wishes to raise various questions in an appeal from the order of discharge granted by the learned Judge of Saharanpur. The only matter before us is whether the appeal should be allowed, it being contended that the appeal is out of time. Having regard to the terms of section 12 of the Limitation Act, we are of opinion that section 12 merely extends the time for any given appeal by the period which it is necessary to obtain essential documents for the court to which the appeal is being made and that it does not contemplate and does not allow an appellant to apply for a series of documents one after the other and to claim that his time of appeal is extended merely because he has applied within the successive periods of what he contends is the extended limitation of time. In other words an appellant must apply under section 12 once and for all for every essential document before the period of limitation of his appeal has run out. He cannot seek in aid the extended period if he finds later that an essential document is omitted. Well, that being so, it is quite clear that the ninety days had expired without the appellant having applied for a copy of the decree and therefore as far as this application seeks to be brought within the provisions of section 12 and is an application as of right, the application must fail. But Mr. *Nihal Chand* has asked that

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this appeal may be admitted on the grounds which are allowed to us in our discretion. We have considered the matter and we are willing to admit the appeal and we are influenced to some extent by the fact that the order of the District Judge of Saharanpur seems to us an order difficult to work out in practice and one which on consideration by the High Court may require some modification. In these circumstances we allow the application, not under section 12 but under section 5, and we give to the respondent on the application the costs of this application and fix them at Rs. 32.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

ABDUL WAJID (PLAINTIFF) v. HALIMA KHATUN AND ANOTHER
(DEFENDANTS)*

1920
January, 5.

Pre-emption—Wajib-ul-arz—Sale of right to receive malikana not a subject of pre-emption.

Held that a right to receive a *malikana* allowance cannot be the subject of a suit for pre-emption.

THE facts as found by the lower appellate court were these :—

In a certain village there were two classes of proprietary rights, namely, (1) zamindari rights and (2) muafidari rights. The body of persons designated zamindars were entitled to get a certain percentage of the cash collections, or of the produce, from the muafidars. The muafidars owned and were in possession of the entire land of the village (with the exception of a solitary grove), and paid a certain amount as *nazrana* to the Government. In fact the muafidars formed the proprietary body of the village, and the zamindars' rights amounted to the right to receive certain allowances or a percentage from the muafidars. It appeared that there were separate *khewats* for the zamindars and the muafidars, and that the custom of pre-emption found a place in chapter 2 of the

*Second Appeal No. 873 of 1918, from a decree of Ram Chandra Saksena, Additional Subordinate Judge of Moradabad, dated the 28th of February, 1918, confirming a decree of Rup Kishan Agba, Additional Munsif of Amroha, dated the 29th of November, 1916.