

1931

MOHAMMAD
SADIQ ALI
KHANFAKHR
JAHAN
BEGAM.

P. C.

Courts in India . They are also indebted to the learned Counsel who have appeared before them for their assistance in extracting the necessary material from a heavy record.

On the whole case, in their Lordships' opinion, the conclusion come to by the Chief Court were right and should be upheld, except in the matter of the Khairabad House, which was one of the subjects of Oudh appeal, No. 20 of 1928, in the Chief Court. Their Lordships think that this question should have been decided in favour of the plaintiffs, and that the decree of the Chief Court on this appeal should be varied by declaring that the so-called Khairabad House, as apart from the Mahal serai, is not appurtenant to the *taluga* of Kunwa Khera, but forms part of the divisible estate of Baqar Ali. They think that in all other respects the decrees of the Chief Court in both the suits should be affirmed, and they will humbly advise His Majesty accordingly. There will be no order as to the costs of these appeals.

Solicitors for appellant in first appeal: Barrow Rogers and Nevill.

Solicitors for respondents in first appeal: H. S. L. Polak, Chapman-Walker and Shephard.

APPELLATE CIVIL.

Before Mr. Justice A. G. P. Pullan.

1930
November,
26.

HAJI RAHIM BUX (PLAINTIFF-APPELLANT) v. MAIKU AND ANOTHER (DEFENDANTS-RESPONDENTS).*

Limitation Act (IX of 1908), sections 5 and 12—Application for copy of judgment and decree—Usual fee for such copies deposited—Folios deposited found to be insufficient—Applicant receiving information of deficiency of folios after expiry of period of appeal—Delay, if to be condoned.

Where a person applied for a copy of the judgement and decree for filing an appeal and paid the usual fee which,

*Second Civil Appeal No. 290 of 1930, against the decree of L. S. White, District Judge of Lucknow, dated the 31st of July, 1930, upholding the decree of M. Tufail Ahmad, Second Munsif of Lucknow district, dated the 16th of May, 1930.

however, was found to be insufficient but he received no information of the deficiency of folios and as a consequence the application for copies was dismissed and the period for appeal expired and when he was told for the first time that, he had not deposited a sufficient sum of money he made all haste to get the copy prepared by applying for an urgent copy of the judgment and decree and even after all this delay was able to file his appeal within 7 days of the reopening of the Court after vacation, his period of appeal having expired during the vacation, and it appeared that he had every intention of prosecuting his appeal, *held*, that if there was any negligence on the part of the appellant it should be condoned and the appeal admitted.

Mr. *Ghulam Husain*, for the appellant.

The respondent No. 2 in person.

PULLAN, J :—This is an appeal from an order of the District Judge of Lucknow dismissing an appeal filed in his court on the 18th of July, 1930, against a decree of the Second Munsif of Lucknow, dated the 16th of May, 1930, on the ground that it was barred by time. The facts of the case are as follows :

The Munsif's judgment was delivered on the 16th of May and on the 19th of May the present appellant made an application for a copy of the judgment and decree. He paid as usual a fee of Re. 1 for the copy of the judgment and 8 annas for a copy of the decree. It appears from a report made by the Head Copyist to the District Judge that the file was not received in the Copying Department until the 26th of May. It was then found that the judgment was a long one and folios for an additional sum of 6 annas were required. This was reported on the same date to the Subordinate Judge who on the 27th of May passed an order : "Supply within three days." The Head Copyist was in charge of the department until the 31st of May. He was not in charge on the two remaining working days before the court closed for the vacation, namely, the 2nd and 3rd of June. In his report he states that the practice of the Copying

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Department in such cases is that "at about 3.30 p.m. all such applicants are called out daily to give necessary information of their applications, and after waiting for 5 or 6 days the applications are rejected." It may be assumed therefore that a Chaprasi called out the name of the applicant at any rate for four days, possibly for six, but until the court closed for the vacation he did not appear. On the day that the courts re-opened, namely, the 11th of July, the application for copies was dismissed for non-compliance of the order to supply additional folios. On the 12th of July the applicant presented himself and his folios were returned. This was in accordance with rule 428 of the Oudh Civil Rules. The applicant thereupon applied for an urgent copy of the judgment and decree and presented his appeal with those copies on the 18th of July. The time allowed by law for filing this appeal was 30 days, but as the judgment was dated the 16th of May, this period would expire during the vacation and under section 12 of the Limitation Act the appeal was within time on the day that the court re-opened, namely, the 11th of July; but the applicant was also allowed such time as was required for obtaining a copy and it was clearly within the discretion of the court to allow the period from the 11th to 18th of July for the purpose of obtaining a copy. The learned Judge did not do so because he considered that it was the business of the applicant to ascertain the order that had been passed and he regarded the failure to supply the additional folios as negligence which should not be condoned. No doubt if it were satisfactorily proved that the applicant had received any information prior to the 12th of July that he had supplied insufficient folios for the copy of his decree, the order of the District Judge would be a proper one. But in my opinion the procedure of the Copying Department is not such that the appellant can be held to have received information of the deficiency of his folios in the face

of his own affidavit that he received no such information. Admittedly all that is done is to call out the applicant by means of a peon at about 3-30 p.m. daily. Clearly the applicant himself cannot be expected to attend court daily on a chance that his name may be called out, and his pleader is not the master of his own time so that he can be present at the Copying Department at any hour at which the Head Copyist decides to call out the names. When the copies are ready a notice to that effect is posted on a board which can be seen at any time. In my opinion a similar notice board should be used for posting information as to deficiency in folios or stamps. If this were done applicants and their pleaders could always find time to come and see the notice, and it would be their fault if they did not come forward and make good such deficiency. No one can suppose that the present appellant wished his appeal to be rejected because of a failure to pay 6 annas. He had every intention of prosecuting his appeal and he still has that intention. He was no doubt under the impression that he would get his copy when he applied for it on the 12th of July and that his appeal would then be within time. Clearly he would have been allowed some time for the preparation of copies and it would not then have been held to be beyond time. When he was told, I believe for the first time, that he had not deposited a sufficient sum of money, he made all haste to get the copy prepared and even after all this delay was able to file his appeal within seven days of the reopening of the court.

There is another point in which the procedure of the Copying Department might in my opinion be improved. An appellant is allowed to present his memorandum of appeal accompanied by the decree only, if the judgment is not ready. He had paid annas for the copy of the decree as far back as the 19th of May. The decree could clearly have been prepared on or before the 27th of May and it might well have been

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handed back to him on that date so that he could file his appeal, even though the copy of the judgment was detained for the payment of the additional 6 annas. It would in my opinion save litigants from harassment if in such cases the Copying Department proceeded with the preparation of the decree without waiting for the judgment. After all the fee has been paid and there can be no objection to the granting to the applicant a copy of his decree, irrespective of the fact that he wishes to file an appeal. I see no justification for withholding the copy of the decree until the copy of the judgment also is prepared. In this case I consider that if there has been any negligence on the part of the appellant it should be condoned. I, therefore, allow this appeal and direct the learned District Judge to admit the appeal against the decision of the Munsif. As this appeal is not opposed there will be no order as to costs.

Appeal allowed.

APPELLATE CRIMINAL.

*Before Mr. Justice Muhammad Raza and Mr. Justice
A. G. P. Pullan.*

1930
December, 8.

KING-EMPEROR (COMPLAINANT-APPELLANT) v. NARAIN
(ACCUSED-RESPONDENT).*

Confession—Subsequent retraction—Confession not of any value in evidence—Conviction, if justified—Sessions Judge and assessors holding confession to be untrue—Appellate court's power to interfere—Some evidence against accused but every item open to reasonable suspicion—Acquittal, whether to be set aside—Lists of stolen property prepared before actual commencement of investigation—Exclusion of such lists from evidence.

Held, that lists of stolen property prepared while the investigation is merely in a preliminary stage are mere additions to the first report which were necessary for the proper presentation of the case by the complainant to enable the

*Criminal Appeal No. 475 of 1930, against the order of S. Asghar Hasan, Sessions Judge of Hardoi, dated the 12th of September, 1930.