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v.
NAURANG
SINGH.

that this had been done with their permission. In my opinion whether this new well be looked upon as an accession to the property, and so falling within the provisions of s. 63 of the Transfer of Property Act, or whether the outlay on it be regarded as money necessarily spent in the management or preservation of the mortgaged property, the prior mortgagee is in either case entitled to add to the principal amount of his mortgage such reasonable sum as he may be shown to have expended. This disposes of the first ground of appeal. In the second ground it is urged that, the evidence in regard to the amount of the expenditure being unsatisfactory, nothing at all should have been allowed. This plea I cannot sustain. It is true that accurate accounts have not been filed by the defendant showing the exact amount of his outlay, but the sum which has been decreed to him by the lower appellate Court cannot be deemed to be in any way exorbitant or in excess of his actual outlay. For the above reasons I dismiss this appeal with costs. I extend the time allowed by the lower Court's decree for the payment of the amount found due up to the 1st of June 1895.

Appeal dismissed.

Before Mr. Justice Know and Mr. Justice Aikman.

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February 20.

MADAN MOHAN LAL AND ANOTHER (DEFENDANTS) v. KANHAI LAL
(PLAINTIFF).*

*Act No. XV of 1877 (Indian Limitation Act) Sch. II, Arts. 57, 120—Limitation—
Loan on security of movable property—Suit to recover money by sale of
property pledged and also from the defendant personally.*

Where a plaintiff who had lent money on the security of movable property sued to recover the money both by sale of the property pledged and also asked for a decree personally against the defendant, should the amount realised by the sale prove insufficient, it was *held* that, so far as the plaint prayed for a decree against the defendant personally, art. 57 of the second schedule of Act No. XV of 1877 was applicable; but, so far as the plaintiff sought to enforce his charge against the property pledged, the suit fell within art. 120. *Nim Chand Baboo v. Jagabundhu Ghose* (1) followed.

* First Appeal No. 2 of 1894, from an order of Maulvi Jafar Husain, Subordinate Judge of Bareilly, dated the 5th December 1893.

(1) I. L. R., 22 Calc., 21.

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THIS was a suit to recover money advanced on a pledge of certain jewelry. The plaintiff prayed for a decree for sale of the jewelry and also for a decree personally against the defendant. The pledge of the jewelry was evidenced by a memorandum signed by the defendant and another person. The suit was brought more than three, but less than six, years from the time when the loan was made.

The defendant pleaded that the suit was barred by limitation, also that the memorandum relied upon by the plaintiff as evidence of the transaction was not properly stamped and was inadmissible.

The Court of first instance (Munsif of Bareilly), holding that the memorandum in question was a bond or promissory note and applying art. 80 of sch. ii of the Indian Limitation Act, 1877, dismissed the suit as barred by time.

The plaintiff appealed. The lower appellate Court (Subordinate Judge), taking the view that the document in question was a mortgage, held that art. 120 applied and that the suit was within time. It accordingly remanded the suit to the Munsif under s. 562 of the Code of Civil Procedure.

From this order of remand the defendant appealed to the High Court.

Mr. *Roshan Lal* for the appellants.

Babu *Jogindro Nath Chaudhri* and *Lala Sheo Charan Lal* for the respondent.

KNOX and AIKMAN, JJ.—This is an appeal from an order passed by the Subordinate Judge of Bareilly in appeal remanding a case under s. 562 of the Civil Procedure Code for trial on the merits. The claim as laid by the plaintiff was to enforce payment of money which had been borrowed from him upon certain jewels which had been pledged with him. The prayer in the plaint, however, is not merely for recovery of money due by sale of the property pledged. There was a further prayer for the recovery of the balance due after sale of the jewelry by proceedings against the persons of

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the defendants, now appellants. The claim was instituted more than three years from the date when the money had been borrowed and the jewelry pledged. The Court of first instance held that the suit was one governed by art. 80 of the second schedule of the Limitation Act of 1877 and dismissed the suit. The Subordinate Judge was of opinion that there was no express article in the Limitation Act applicable to the suit, and therefore applied art. 120. The question before us was considered by the High Court at Calcutta in *Nim Chand Baboo v. Jagabundhu Ghose* (1). The learned Judges who decided that case were of opinion that, so far as the plaintiff might pray for a decree for the money lent against the defendant personally, it was barred under art. 57; but so far as the plaintiff sought to enforce his charge against the property pledged, the suit fell, not within art. 57, but within art. 120 of the schedule and was therefore not barred. We agree in the opinion there expressed. While, therefore, we dismiss this appeal, we so far modify the order of the lower appellate Court as to direct the Court of first instance to dispose of the suit on the merits with regard to the remarks made above. The respondents will get their costs.

Appeal dismissed.

Before Mr. Justice Knox and Mr. Justice Aikman.

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February 25.

BHAGWAN DAS (DEFENDANT) v. THE MAHARAJA OF BHARTPUR AND
OTHERS (PLAINTIFFS).*

*Appeal—Order rejecting application for suit to abate—Civil Procedure Code,
s. 366.*

Held that an order rejecting an application that a suit might be declared to have abated by reason of the death of the plaintiff and the invalidity of an application to the Court to bring his legal representative on to the record was not one of the orders contemplated by s. 366 of the Code of Civil Procedure and that no appeal would lie therefrom.

THE facts of this case are as follows :—

The late Mahārāja of Bhartpur was plaintiff in a suit pending in the Court of the Subordinate Judge of Agra. He died on the

* First Appeal from Order No. 141 of 1894, from an order of Maulvi Aziz-ul-Rahman, Subordinate Judge of Agra, dated the 18th July 1894.