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house as ostensible owner, and that in consequence of his conduct the respondents have been induced to purchase. I observe that plaintiff allowed upwards of four years to elapse from the date of the auction-sale before she took any step to assert her right, and in doing so, although she has made her husband's cousin a defendant to the suit, she has not asked for any relief against him. I think, under the circumstances stated above, the learned Judge was right in dismissing the suit. I dismiss the appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Aikman.*

DURGA SINGH (PLAINTIFF) v. NAURANG SINGH (DEFENDANT).

*Mortgage—Prior and subsequent mortgagees—Right of prior mortgagees to add to the amount secured by his mortgage outlay incurred in the preservation of the mortgaged property—Act No. IV of 1882 (Transfer of Property Act), s. 53.*

Where a mortgagee of agricultural land had with the consent of his mortgagors spent money in repairing a well on the property which had been rendered useless from natural causes, it was *held* that such mortgagee was entitled, in a suit by a subsequent mortgagee against him for redemption, to add the amount so expended to the mortgage-debt to be paid by the plaintiff before he could obtain the decree for redemption claimed by him.

THE plaintiff in this case, being a puisne mortgagee, sued for redemption of a prior mortgage on the property mortgaged to him by payment of Rs. 197. The prior mortgagee admitted that the amount due on the original mortgage was Rs. 197, but pleaded that certain other money was due to him under a subsequent bond and that the plaintiff was also bound, before he could redeem, to pay Rs. 600, the cost of a well which he had, with the permission of his mortgagors, built upon the land for its benefit.

The mortgagors also filed a written statement to the effect that they had given permission to the defendant-mortgagee to build the well, and that the amount claimed by that defendant was correct.

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Second Appeal No. 614 of 1894, from a decree of Rai Anant Ram, Subordinate Judge of Jaunpur, dated the 13th April 1894, modifying a decree of Babu Pramotha Nath Banerji, Munsif of Jaunpur, dated the 29th January 1894.

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The Court of first instance (Munsif of Jaunpur) found that the money claimed as due on the second bond of the defendant mortgagee was not recoverable, the bond being unregistered, and that, though the defendant might have spent something in repairing the well, he had not given satisfactory evidence of the amount. It accordingly decreed the plaintiff's claim for redemption at Rs. 197.

The defendant mortgagee appealed. The lower appellate Court (Subordinate Judge of Jaunpur) allowed the appellant a sum of Rs. 100, in respect of his claim for the well, to be added to the amount decreed by the first Court.

The plaintiff thereupon appealed to the High Court.

Mr. *H. C. Niblett*, for the appellant.

Munshi *Madho Prasad*, for the respondent.

AIKMAN, J.—This was a suit by a puisne mortgagee to redeem the mortgage of a prior mortgagee who was under his mortgage in possession of the mortgaged property, namely, certain agricultural land. The plaintiff paid into Court the amount secured by the prior mortgage. In addition to the sum deposited in Court the prior mortgagee claimed to be entitled to certain other payments, amongst others, to Rs. 600 for the construction of a well. The lower Court (the Subordinate Judge of Jaunpur) has held that the plaintiff, before he can redeem, must pay to the respondent the sum of Rs. 100 on account of the outlay on this well. In second appeal the plaintiff contends that, inasmuch as there was no covenant in the original mortgage-deed to pay more than the mortgaged amount, the defendant was not entitled to any compensation for the repairs of the well. In my opinion this plea is without force. It is impossible to provide in a mortgage-deed for all the accidents that may happen to the property mortgaged.

In the present case it has been held proved that a well which was required for the irrigation of the mortgaged land had been ruined through an inundation of the river Gumti, and that the respondent constructed a new one in its place. The mortgagors, who were parties to the suit, filed a written statement admitting

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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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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.