most proper one, and that the Sessions Judge rightly declined to disturb it in appeal.

With regard to the seventh ground urged in the petition, it appears to me that it has force. I do not think the Magistrate was empowered by s. 418 of the Criminal Procedure Code to direct the destruction of the books surrendered by the applicant. I am far from saying that it would not have been a most proper order for him to make, if express sanction had been given him by law to do so, but in my judgment it would be placing a very strained construction upon the words of s. 418 to hold them as giving him any such authority. I am glad to observe that in cl. 532 of the proposed new Code of Criminal Procedure a specific provision on the subject finds a place, though I may perhaps add, having regard to the fact in the present case that the applicant voluntarily handed over all the copies of his two books to the Magistrate, that it would be more convenient if no such limitation were made as might be inferred from the words—"which remain in the possession or power of the person convicted." I have only further to remark, with respect to the seventh ground urged for revision, that the books having been destroyed, it is obvious I can pass no order about them, which could have any practical effect. (The learned Judge then proceeded to dispose of the eight ground.)

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Duthoit.

AHMAD ATA (PLAINTIFF) *v.* MATA BADAL LAL (DEFENDANT).*

Death of plaintiff-appellant—Order directing suit to abate—Appeal—Act X of 1877 (Civil Procedure Code), ss. 2, 366, 588 (18).

An appellate Court rejected the application of the legal representative of a deceased sole plaintiff-appellant to enter his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held* that the order of the appellate Court, passed under the first paragraph of s. 366 of Act

*Second Appeal, No. 11 of 1881, from a decree of M. S. Howell, Esq., Judge of Jaunpur, dated the 29th September, 1880, affirming a decree of Pandit Soti Behari Lal, Munsif of Jaunpur, dated the 15th December, 1879.

X of 1877, not being appealable under cl. (18), s. 588 of that Act, nor being a decree within the terms of s. 2 from which a second appeal would lie, was not appealable. 1881

AHMAD ATA v. MATA BAI LAL.

THIS suit was instituted by one Jokhan Bibi. The Court of first instance dismissed the suit, and on the 20th January, 1880, Jokhan Bibi preferred an appeal from its decree. On the 4th June, 1880, while this appeal was pending, Jokhan Bibi died. On the 28th September, 1880, while the appeal was still pending, Ahmad Ata, the husband and legal representative of Jokhan Bibi, applied to the lower appellate Court to have his name entered on the record in her place. The lower appellate Court rejected this application, on the ground that it had not been make within the time allowed by law, and that, assuming that it might be admitted after time when the applicant showed that he had sufficient cause for not presenting it within time, the applicant had not shown sufficient cause for not presenting it within time; and made an order under s. 366 of Act X of 1877 "that the suit should abate."

Ahmad Ata appealed to the High Court, contending that the lower appellate Court was not competent to "strike off the appeal;" and that he had sufficient cause for not making his application within time.

Munshis *Hanuman Prasad* and *Sukh Ram*, for the appellant.

Munshi *Kashi Prasad*, for the respondent.

The High Court (STRAIGHT, J., and DUTHOIT, J.,) delivered the following judgment :—

STRAIGHT, J.—A preliminary objection is taken by the pleader for the respondent to this appeal being entertained. He argues that the order of the lower appellate Court, passed under the first paragraph of s. 366 of the Civil Procedure Code, is not appealable under cl. (18), s. 588 of the same Act, nor is it a decree within the terms of s. 2 from which a second appeal would lie. We are of opinion that this contention has force, and that it is fatal to the appeal, which must be dismissed with costs.

Appeal dismissed.