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acquired possession as mortgagees in 1834, and that there was no sale till 1838. There is nothing to show that the possession of Pándurang or of his father was exclusive or adverse to the plaintiff prior to the mortgage in 1834, or that there was any possession on the part of Bápu Kámble which can be treated as adverse to the plaintiff till 1838. The maintenance of the suit is, consequently, not barred by adverse possession for more than thirty years on the part of the special appellants, or of those under whom they derive, as has been alleged in special appeal.

I hold, therefore, that the grounds of special appeal have failed; and the decree of the Senior Assistant Judge must be affirmed: costs on special appellants.

WARDEN, J., concurred.

Decree affirmed.

Referred Case.

Jan. 14.

CHUNILA'L MA'NIKLA'LBHA'I.....*Plaintiff.*
MAHIPATRA'V valad KHANDU .....*Defendant.*

Jurisdiction—Cause of Action—Place of Delivery.

The defendant at Parolá agreed to sell and deliver to the plaintiff certain goods, for which the plaintiff then paid in advance. By the terms of the agreement, the goods were to be measured at Mazrod and delivered at Pádshá. In default of delivery it was stipulated that the value of the goods should be paid for at the market rate at Parolá.

The goods were not delivered in pursuance of the agreement.

Held, in an action brought to recover their value at the market rate at Parolá, that the cause of action arose at Pádshá, where the goods ought to have been delivered.

CASE referred for the decision of the High Court, under Sec. 28 of Act XXIII. of 1861, by the Honorable G. A. Hobart, District Judge of Khándesh.

The plaintiff sued to recover the sum of Rs. 440, as value of certain goods, which was alleged to be due on an agreement between him and the defendant, the agreement being that the goods should be delivered at a certain time at

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Mazrod (*a*), or 'the value of the goods at the market value of the same obtaining at Parolá.'

"The Munsif threw out the claim, on the ground that the defendant was living beyond his local jurisdiction, and the cause of action arose beyond it.

"The plaintiff appealed, urging that the cause of action arose within the Munsif's jurisdiction, as the agreement for the performance of the contract was made at Parolá, and the payment of the price of the goods was, by the same agreement, to be at the market rate of the same obtaining at Parolá; and that the cause of action—non-payment of price—arose, therefore, at Parolá, which was within the Munsif's local jurisdiction, and, therefore, the suit was cognisable. I was of opinion that 'Mazrod' appeared, from the words of the agreement, to be the place where the goods were to be delivered, and where in default of their delivery the price was to be paid, and that clearly the place agreed upon for the performance of a contract is the place where the cause of action on breach of such contract must be held to arise, so as to bring the case within the Munsif's local jurisdiction. The defendant was, on the face of the plaint, non-resident within the Munsif's local jurisdiction; therefore, I affirmed the Munsif's decision.

"The plaintiff's (appellant's) vakíl has requested me to make my decree contingent on the opinion of the High Court on a case submitted on the ground urged in appeal for holding the Munsif's jurisdiction complete.

"I do not see any reason for thinking that the facts of the agreement being made at Parolá, and of the market value of the goods at Parolá being the price agreed on to be paid, make it appear that the cause of action arose at Parolá; but I think, on the terms used in the agreement as above noted, some doubt, from the ambiguity of expression, arises, whether payment was not expected to be made at Parolá, Parolá being the village where the plaintiff resided, and it being rea-

(*a*) The District Judge was here in error. The exact words of the agreement were that the goods were to be measured at Mazrod and delivered at Pádshá, or, on failure, their value was to be paid at the market rate at Parolá. He stated the agreement as one for delivery at Mazrod.

sonable to expect that a debtor should find out his creditor, unless any particular place were agreed on for payment to be made there."

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PER CURIAM (COUCH, C.J., and NEWTON, J.) :—The Judge is to be informed that the cause of action arose at Pádshá, and the Judge's attention is to be called to the erroneous statement regarding the contract in his statement of the case. He recites the agreement as for a delivery at Mazrod, whereas from the agreement itself, which has been sent up to the Court, the Court finds that the contract is for measurement at Mazrod and delivery at Padshá.

Note.—As to the meaning of the words "Cause of action," and where it may be said to arise, see *DeSouza* v. *Coles*, 3 Mad. H. C. Rep. 384 (decided 21st Jan. 1868).—ED.

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Jan. 28.

RA'MKRISHNA MAHA'DEV.....*Plaintiff.*
BAYA'JI' bin SANTA'JI' *et al.* .....*Defendants.*

Limitation—Instalments—Bond—Waiver—Act XIV. of 1859, *Sec.* 1.

Suit upon a bond executed by the defendants to the plaintiff for the payment of a sum of money by instalments. The bond contained a proviso that on default being made in the payment of any one instalment the whole amount should become due.

Default was made in the payment of several instalments, but subsequently payments were made by the defendants and accepted by the plaintiff on account of the unpaid instalments.

The defendants pleaded the law of limitation. The suit was brought more than three years after the first default in payment of an instalment had been made, but within three years from the time when, taking into account the payments that had been made, the first instalment claimed became due.

Held that these payments as regards both parties must be considered as if made at the time fixed; that the defendants could not rely upon the stipulation as making the whole debt due, and fixing the period from which the time of limitation ran; and that, the first of the instalments claimed having become due within three years, the suit was not barred.

CASE referred for the decision of the High Court, under Sec. 22 of Act XI. of 1865, by Janárdan Vásudevji, Judge of the Small Cause Court at Puṇá.

"The plaintiff sues the defendants for the payment of Rs. 99-6-6 on a bond for Rs. 95, dated the 3rd of August