

1868.
June 11.

Referred Case.

Ex parte KÁSHINÁTH BALÁL OK.

Gaol—Subsistence Money—Civil Gaol Fund—Act IV. (Bombay) of 1865.

Where the defendants were arrested through the Munsif's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the Civil Gaol;

It was *held* that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him, that remained in the Munsif's hand at the time of his debtors' release, Sec. 10 of Act IV. of 1865 (Bombay) not being applicable to such a case.

CASE referred by A. Lyon, Assistant Judge at Tháná, for the orders of the High Court. The facts were these:—Káshináth Bálál Ok caused four defendants to be arrested in execution of a decree through the Munsif's Court at Kalyán. He had prepaid Rs. 21 on account of the subsistence money of the defendants. On the defendants being arrested, they were detained two days in the Munsif's Court at Kalyán, instead of being sent to the Civil Gaol at Tháná. During these two days the Munsif allowed the defendants each two annas per diem out of the Rs. 21 advanced by the judgment creditor, Ok. At the end of two days Ok prayed the Munsif's Court to release the defendants, and this was done. A balance of Rs. 19 remained out of the subsistence money advanced by Ok. This sum the Munsif refused to repay to Ok, on the ground that his judgment had been enforced, at his request, by the imprisonment of his judgment debtors; that the balance of subsistence money remaining in hand at the time of the prisoners' release was, under Sec. 10 of Bombay Act IV. of 1865, to be credited to the Civil Gaol Fund; and that the money, therefore, had ceased to belong to Ok, and had become a portion of that fund.

The Assistant Judge, in appeal, was of opinion that the prisoners referred to in Sec. 10 were the prisoners for whose safe custody, under Sec. 4, the Názár of the District Court, as *ex-officio* keeper of the Civil Gaol, was responsible; and that as the Názár of the District Court was not responsible for the safe custody of any Civil prisoners apprehended by

order of a subordinate court of which he was not the Názár, until such prisoners were made over to his custody, Sec. 10 did not apply.

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PER CURIAM (NEWTON, Acting C.J., and TUCKER, J.):—The Court is of opinion that as the debtors in question had never been prisoners in the Civil Gaol, the Munsif was in error in refusing to return to the execution creditor the balance of subsistence money that remained in his hands at the time of the debtor's release. The Court, therefore, reverses the order of the Munsif dated 10th September 1857, and directs that the balance of subsistence money be repaid to the applicant, Káshináth Balál Ok.

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Special Appeal No. 90 of 1868.

June 15.

HARI VA'SUDEV.....*Appellant.*

MAHA'DA'JI APA'JI.....*Respondent.*

Tenancy—Rent—Limitation—Act XIV. of 1859, Sec. 1., cl. 8.

Where the existence of a tenancy is proved, the fact of the tenant not having paid rent to his *khot* landlord for twelve years prior to the institution of the suit, is no bar to the right of the landlord to recover rent falling due within the period of limitation, *i.e.*, for three years previous to suit brought.

THIS was a Special Appeal from the decision of C. B. Izon, Joint Judge at Ratnágurí, in Appeal Suit No. 731 of 1866, reversing the decree of the Šadr Amín of Ratnágurí, and remanding the case for re-trial.

Hari Vásudev, a *khot*, on the 23rd of June 1862, filed this suit to recover from Mahádáji Apáji the *thal* rent of certain land for the year 1859-60.

The defendant stated that he had never paid the *thal*, and that the land was his ancestral *watani* land.

The Šadr Amín, Dáji Govind, on a remand of the case, awarded Rs. 36-3-9, finding that was the value of the rent proved.

The Joint Judge, after stating that a previous decision between the parties left no doubt of the fact of a tenancy