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

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Ex parte KA'SHINA'TH BALA'L OK.

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.

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 Ratnágirí, in Appeal Suit No. 731 of 1866, reversing the decree of the Sadr Amín of Ratnágirí, 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 Sadr 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

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existing between them, remanded the case with the following observations :—

"The Sadr Amín ought to have raised and determined the point whether the defendant can show that for twelve years prior to June 23rd, 1862, the date of the suit, neither he, nor any person through whom he claims, has ever paid any rent to the plaintiff, or to any other sharer in the khotship, or to any manager or person holding under such sharer. If he can, then I find the present claim will not lie. It is not that a prescriptive right is acquired in twelve years, but as a suit to establish a right to rent must be brought within twelve years, so a suit to recover rent must also be brought within twelve years from the discontinuance of payment, unless of course there be any special agreement; but such is not even suggested in the present case.

"The plaintiff will now (if, as is probable, he wishes to have the point finally decided) be able to appeal from my decision that there is such a period of twelve years applicable to suits by a *khot* for *thal* rent.

"This point has never, that I am aware of, been decided, but the principle followed in the case of *Bharatsangji Mansangji* v. *Navanidharaya Mansukharam* (*a*) appears to involve a similar decision to that I have come to."

The case came on for hearing this day, before COUCH, C.J., and NEWTON, J.

Pándurang Balibhadra (with him *Shántárám Náráyan*), for the appellant :—The lower court, having found the tenancy, was wrong in holding that a claim to the land and to further rent could be extinguished by non-payment of rent for twelve years.

Vishvanáth Govind Cholkar contra.

PER CURIAM :—Though the lower court found tenancy, it threw out the claim, which is merely to recover rent, because no rent had been paid for twelve years previous to the filing of the suit. The Court was wrong in so doing,

(*a*) 1 Bom. H. C. Rep. 186.

and the decision quoted by the Joint Judge does not touch this case. We, therefore, reverse the decree of the lower court, and remand the case for the Court to pass a decree awarding rent becoming due within three years before the institution of the suit. Costs to follow the final decision.

Decree reversed, and suit remanded.

Referred Case.

June 22.

VALLA' bin HATA'JI .....*Plaintiff.*
SIDOJI bin KONDA'JI .....*Defendant.*

Extrinsic Evidence—Patent Ambiguity—Written Contract.

Extrinsic evidence may be received to identify the thing referred to in a written agreement.

Where there is a written agreement to deliver a quantity of grain (*gallá*) at a particular time, parol evidence is admissible under certain limitations to show what kind of grain the contracting parties had in their contemplation at the time the contract was made.

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

"In this suit the plaintiff sues the defendant as the representative of his deceased brother, Rámji bin Kondáji, for the recovery of 4½ *man* of *gallá* (grain), or its value, Rs. 9, on a promissory note alleged to have been executed by the deceased Rámji.

"The defendant enters appearance, and states that he has no objection if the plaintiff recover against the estate of his deceased brother.

"The note, on which this action is founded, is for 3 *man* and 2 *páyalia* of *gallá* (grain), being the balance of the former debt, but what kind of grain is not stated in the note. It is, therefore, a patent ambiguity; and extrinsic evidence cannot be admitted to explain such ambiguity in executory contracts; but in the present case the contract is for an executed consideration, and as I doubt whether in this case parol evidence might not be let in, to show what description