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.

June 22.

Referred Case.

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 Puṇá, 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 *maṇ* 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 *maṇ* 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

1868. VALLA'HATA'JI v. SIDOJI KONDA'JI.

of grain actually passed from the creditor to the debtor, I beg to be favoured with the decision of their Lordships on the point."

The High Court having requested the Judge to state his opinion more distinctly on the question of law submitted by him, he stated as follows:—

"The rule of law is that no extrinsic evidence shall be admitted to explain a patent ambiguity in a written contract. Of the applicability of this rule to executory contracts, where the intention of the contracting parties is to be ascertained, there is no doubt; but in the present case the contract is for an executed consideration, and that consideration is expressed by a generic, and not by a specific term. The ambiguity, therefore, lies, not in what the intention of the parties was, but in what particular kind of grain actually passed from the creditor to the debtor. A distinction may be made between a case in which the intention of the parties is to be obtained, and one in which what consideration actually passed from the one to the other is to be ascertained; but I have not met with any reported cases in which such a distinction has been recognised. If parol evidence be admitted to explain a patent ambiguity in a contract for executed consideration, as in the present case, it will, I apprehend, open a wide door to fraud. The object of the crafty Márváḍi in using the generic term "*gallá*" to express the consideration, is evidently to extort from the gullible Kulambi a superior kind of grain for an inferior description actually lent; and he will find no difficulty in procuring witnesses to support his case. I am, therefore, of opinion that it would not be expedient to allow extrinsic evidence to be put in in the case submitted by me."

PER CURIAM (NEWTON and TUCKER, JJ.):—The question referred to us is, whether extrinsic evidence is admissible to show what kind of grain was in the contemplation of the parties to a written contract, the writing containing only an acknowledgment that a certain quantity of grain (*gallá*) was due, and a promise that this should be paid in a particular

month, with a certain proportional addition by way of interest.

We answer the question in the affirmative.

Although, under the Law of Evidence, as administered by English Courts, parol testimony cannot be received, to contradict, vary, add to, or subtract from, the contents of a written instrument, nor is it permissible to explain a patent ambiguity in a writing by evidence of the declarations of the maker of the instrument with respect to his intention, yet it is a settled rule "that *extrinsic evidence of every material fact* which will enable the Court to *ascertain the nature and qualities* of the subject-matter of the instrument, or in other words, *to identify the persons and things* to which the instrument refers," is admissible. This rule is laid down with great distinctness by Mr. Pitt Taylor in his Treatise on the Law of Evidence, Ch. XIX., Sec. 1082, p. 1007 (4th ed.), and is founded on the authority of the numerous decisions cited by this learned author.

In addition, proof of a particular usage may be given to interpret or make clear the signification of any word or sentence employed, the meaning of which, without knowledge of the usage, would be doubtful.

In the case that has been submitted to us, the fact that, in the transaction out of which the debt originated, a particular kind of grain had been advanced by the plaintiff to the defendant, would be material, as it would indicate clearly what was the intention of the parties when the acknowledgment of indebtedness was made; and we consider that the plaintiff is entitled to adduce any evidence, documentary or oral, which may be forthcoming to establish this fact. Further, if there be any custom of the district, or of the class of persons to which the plaintiff and the defendant belong, with reference to the term "*gallá*"—for instance, if it be ordinarily applied to any particular description of grain which forms the staple crop of the district, or if, as between a cultivating ryot and his *sávakár*, it is uniformly used to designate the particular crop which the *rayat* may grow on his holding in the year in which payment is promised to be

1868.

VALLA' HATA'JI *v.* SIDOJI KONDA'JI.

made, it is competent to either party to give evidence of the existence of such custom or usage, and of the collateral facts necessary to identify the thing which formed the subject of the agreement between the parties. Within these limitations, we hold that evidence outside the instrument may be received to identify the thing referred to in the agreement.

July 1.

Referred Case.

MUHAMMAD SILEMA'N valad MUHAMMAD ISHAKBHA'I..................................*Plaintiff.*
SATU valad HARJI ....*Defendant.*

Growing Crops—Moveable Property—Act XI. of 1865, *Secs.* 19 *and* 20.

Held that crops, which have not been severed from the ground, are not moveable property within the meaning of the term as used in Sec. 19 of Act XI. of 1865.

CASE referred for the decision of the High Court, by Bháskar Dámodhar, Judge of the Small Cause Court at Ahmednagar, under Act X. of 1867 :—

"The plaintiff, in the above suit, obtained, on the 22nd instant, a decree against the defendant, Satu valad Harji, for Rs. 53-7-6, inclusive of costs.

"The plaintiff has now presented an application for execution of the aforesaid decree, and he seeks to attach, through this court, as moveable property, a crop of sugarcane growing on a field belonging to the defendant.

"I consider that the sugarcane crop cannot be attached as moveable property, so long as it is not cut and separated from the land on which it is growing; but before rejecting the plaintiff's application, I refer, for the decision of Her Majesty's High Court of Judicature, the question whether or not, in the execution of decrees for money, *growing crops* should be treated as *immoveable* property.

"The words 'moveable property' and 'immoveable property' are not defined in the Small Cause Court Act, No. XI. of 1865, or in the Civil Procedure Code, but in the Penal