

1868.
 VALLA'
 HATAJI
 v.
 SIDOJI
 KONDAJI.

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

ISHAKBHAI.....*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

Code it is stated (Sec. 22) that 'the words 'moveable property' are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth,' and the Criminal Procedure Code gives the same definition in Sec. 6, only substituting the words 'shall include' for the words 'are intended to include.'

1868.
 MUHAMMAD
 SILEMA'N
 v.
 SATU HARJI.

"In the Registration Act, No. XX. of 1866, the words 'immoveable property' and 'moveable property' are defined as follows:—'Immoveable property includes land, buildings, rights to ways, lights, fisheries, or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass. Moveable property includes standing timber, growing crops, grass, fruit upon trees, and property of every other description except immoveable property.'

"In Act No. I. of 1868, entitled 'the General Clauses Act, 1868,' the following definitions occur:—'(5) Immoveable property shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.' '(6) Moveable property shall mean property of every description except immoveable property.'

"I am of opinion that, under the definitions given in the Penal and Procedure Codes, and in the General Clauses Act, 1868, growing crops come under the head of *immoveable* property; and that in defining them as moveable property in the Registration Act, the Legislature has made a special provision, with a view to prevent the hardship which would result from rendering compulsory the registration of deeds relating to property which, though immoveable while attached to the earth, is in its nature moveable."

PER CURIAM (NEWTON and TUCKER, JJ.):—The Court agrees with the Judge of the Court of Small Causes that crops, which have not been severed from the ground, are not moveable property within the meaning of the term as used in Act XI. of 1865.