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jurisdiction to entertain the appeal. The opposite view may perhaps derive some support from the observations made towards the conclusion of the judgment in *Chhitar Singh v. Rup Singh* (1), but, with all deference to the learned Judge who decided the case, we are unable to agree with him in holding that, when there is a question whether one party or the other is the cultivator of specified land, a question of proprietary title arises. This is our answer to the reference.

1908  
January 18.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.*

GANGA DEI (PLAINTIFF) v. BAI AM AND OTHERS (DEFENDANTS).<sup>\*</sup>  
*Land holder and tenant—Trees—Land holder's and tenant's rights as to trees on tenant's holding.*

*Held* that as a general rule the property in timber growing on a tenant's holding vests in the zamindar, and the tenant has no right to cut and remove such timber. But as a general rule also the zamindar has no right to interfere with the enjoyment by his tenant of the trees upon his holding so long as the relation of landlord and tenant subsists. *Sheik Abdool Rokoman v. Dataram Bashes* (2) referred to.

The plaintiff in this case sued as zamindar of a village called Kanchanpur praying for a declaration of her title to the trees growing on the cultivated and uncultivated lands of Kanchanpur in the possession of the defendants, who were her tenants, and also for a perpetual injunction prohibiting the defendants from offering any obstruction to the cutting down and removal by her of the trees on their holding. The defendants set up a right by custom to cut the trees in question, but this plea was rejected, and a declaration of title was given to the plaintiff as prayed for in her plaint. The Court of first instance (first Additional Munsif of Meerut) also granted the plaintiff the injunction prayed for, and this decree was upheld in appeal by the lower appellate Court (Additional District Judge of Meerut). The defendants appealed to the High Court, where, the case coming before a Single Judge of the Court, the only question argued was as to the right of the plaintiff to the injunction which she

<sup>\*</sup> Appeal No. 49 of 1907 under section 10 of the Letters Patent from a judgment of Richards, J., dated the 18th of April 1907.

(1) Weekly Notes, 1906, p. 247. (2) Weekly Reporter, January to July 1864, page 367.

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had obtained—*Cf.* Weekly Notes, 1907, p. 150. The result of this appeal was that the decrees of the Courts below were set aside so far as they granted an injunction to the plaintiff restraining the defendants from offering obstruction to the plaintiff in cutting down, removing and selling the trees (other than the trees actually cut). The plaintiff then preferred the present appeal under section 10 of the Letters Patent.

Babu *Durga Charan Banerji*, for the appellant.

Mr. *R. Malcomson* for the respondents.

STANLEY, C.J., and BURKITT, J.—The plaintiff appellant is a zamindar, and as such instituted the suit out of which this appeal has arisen for a declaration of her title to the trees growing on the cultivated and uncultivated land in mauza Kanchanpur in the possession of the defendants, who are her tenants. She also prayed for a perpetual injunction prohibiting the defendants from offering any obstruction to the cutting down and removal by her of the trees on their holdings. The defendants set up a right by custom to cut the trees in question, but this plea was rejected, and a declaration of title was given to the plaintiff appellant as prayed for in her plaint. The two lower Courts also granted to the plaintiff appellant the relief which was claimed by way of injunction; but upon appeal our brother Richards reversed their decrees and allowed an appeal in respect of the injunction. From this decision the present appeal has been preferred under the Letters Patent. We are of opinion that the learned Judge of this Court was perfectly right in the decision at which he arrived. The presumption of law, and the general rule in the absence of custom, is that the property in timber on a tenant's holding vests in the zamindar, and that the tenant has no right to cut and remove such timber. But it appears to us to be clear that in the absence of a custom or of a contract to the contrary a zamindar has no right to interfere with the enjoyment by his tenant of the trees upon his holding as long as the relation of landlord and tenant subsists. A tenant has a right to enjoy all the benefits of the growing timber on his land during his occupancy. If the zamindar desire to have the privilege during a tenancy of entering upon his tenant's holding and cutting down and removing timber he must procure a special stipulation from his tenant in

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that behalf. In the case of *Sheikh Abdool Rohoman v. Data-ram Bashee* (1) the learned Judges laid down that while a zamindar has a right in the trees which the Court should maintain, the tenant has a right to enjoy all the benefits that the growing timber may afford him during his occupancy, but has no power to cut down the timber and convert it to his own use. We hold therefore that our learned brother was correct in his decision and we accordingly dismiss the appeal with costs.

*Appeal dismissed.*

1908  
January 18.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burdett.*

SHEORAM TIWARI (DEFENDANT) v. THAKUR PRASAD AND OTHERS  
(PLAINTIFFS).\*

*Civil Procedure Code, section 578—Procedure—Irregularity—Disposal of a suit on a Sunday.*

*Held* that the fact that a suit was decided on a Sunday did not vitiate the decree. *Semble* that the Lord's Day Act (21 Geo. III, Cap. XLIX) does not apply to India. *Param Shook Doss v. Rashood Ood Dowlah* (2) referred to.

THIS was a suit for a declaration of the plaintiffs' ownership of a certain wall and for an injunction against the defendant's interfering with it. The suit was filed in the Court of a Munsif. During the proceedings the Munsif made an inspection of the spot on Sunday, the 18th of June 1905. While he was there the parties came to terms. Thereupon a rubkar was drawn up then and there compromising the case. This was signed by the pleaders on either side, and the Munsif on the same day wrote and signed his judgment. The defendant appealed upon the sole ground that the decree was void, the suit having been decided on a Sunday. The District Judge dismissed the appeal. The defendant then appealed to the High Court, and his appeal coming before a single Judge of the Court was dismissed (*Cf. Weekly Notes, 1907, p. 168*). The present appeal was thereupon preferred by the defendant under section 10 of the Letters Patent.

Babu Satya Chandra Mukerji, for the appellant.

Mr. Abdul Majid, for the respondents.

\* Appeal No. 51 of 1907 under section 10 of the Letters Patent from a judgment of Griffin, J., dated the 1st of May 1907.

(1) Weekly Reporter, January to July 1864,  
page 367.

(2) (1874) 7 Mad., C.,  
Rep., 235.