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to say :" In such cases the land on being clearly recognized shall remain the property of its original owner." In the present case the original owners are undoubtedly the plaintiffs appellants. That is a finding of fact which cannot now be assailed. There is nothing in the Regulation which lays down what is to happen in a case where land is taken away by the river gradually and restored suddenly. In our opinion the clause which we have quoted above will still apply in such a case and the land will go back to the original owner. We consider this is the legal as well as the equitable view to be taken in a case such as this. We, therefore, allow these appeals with costs, but in the case of appeal No. 1062 the compromise will have effect.

Appeal allowed.

Before Sir Cecil Walsh, Acting Chief Justice, and Mr. Justice Banerji.

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SARJU SINGH AND OTHERS (DEFENDANTS) *v.* BIJAI BAHADUR SINGH AND OTHERS (PLAINTIFFS).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 193 *(k) —" Standing timber "—Fruit trees not included in the term—Act No. X of* 1897 *(General Clauses Act)—Applicability of.*

Fruit trees are not included in the term " timber " or " standing timber, " and, therefore, cannot be sold by an officer who is authorized to sell movable property only.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Munshi *Shiva Prasad Sinha*, for the appellants.

The respondents were not represented.

WALSH, A. C. J., and BANERJI, J. :—In our opinion, the Judge's order is technically right

* First Appeal No. 40 of 1926, from an order of Gauri Prasad, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge of Allahabad, dated the 23rd of January, 1926.

according to the strict view of the law. Although in practice the Collector and his sale officers may some times take another view, fruit trees are not included in the term "standing timber." Fruit trees are undoubtedly "other produce of the earth" in the colloquial sense of the word, but when one studies the provisions of section 193, sub-section (*k*), the other produce of the earth is clearly meant to be *ejusdem generis* with growing crops and are clearly mentioned together with growing crops, whereas standing timber is not. It is obvious that it was intended to give special rights over standing timber which may be cut down for buildings from time to time, and which may, therefore, be said to be an ambiguous term. It was, therefore, thought by the draftsman necessary to give it a special place in the section. That would seem to indicate that fruit trees were not contemplated. The Small Cause Court Judge refers to the General Clauses Act, which includes trees generally in the term "immovable property." He then says that fruit trees are not included in the term "timber" or "standing timber." He is quite right. That view was taken by Mr. Justice RAFIQUE in the year 1912, and is still treated as good law. Therefore, these trees should not have been sold by an officer who had only power to sell movable property. On the other hand, the defendant has been tricked into buying them by an act of the court or an act of Government officials carrying out Government business. In the result, the defendant's money has been utilized to discharge the plaintiff's public debt of paying Government revenue, and we think as a matter of equity that the plaintiff ought not to sue for these trees and set up the mistake made by the officer against the equity of the defendant, without himself doing equity and replacing the

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money by which he has been benefited from the defendant's pocket. The whole thing is small and not worth all the trouble that has been taken over it by remanding it for further hearing. The plaintiff has not chosen to appear here, and we think the equitable thing is to make an end of the whole case by declaring that the plaintiff will be owner in possession of the trees when he has repaid to the defendant the sum of Rs. 30, the price of the trees, together with the sum of Rs. 9-10-0 representing interest at 6 per cent. per annum from the date of the purchase down to the present moment, the total being Rs. 39-10-0. In other words, we declare that the defendant has a charge to that extent over the trees. If the plaintiff does not pay the Rs. 39-10-0 within six months from today, the trees will become the property of the defendant.

Before Sir Cecil Walsh, Acting Chief Justice, and Mr. Justice Banerji.

1926 *December*, 16.

ABDUL AZIZ KHAN (APPLICANT) *v.* NANHE KHAN (OPPOSITE PARTY).*

Act No. VIII of 1890 (*Guardians and Wards Act*)—*Guardian and minor—Right of father to custody of minor son.*

A father is not only the natural guardian, but has an inalienable right to the custody of his minor son, unless there are overwhelming circumstances to the contrary. *In re Thain; Thain* v. *Taylor* (1), followed.

THIS was an application by Abdul Aziz for guardianship of the person of his minor son, aged about nine years. The maternal grandfather, Nanhe Khan, contested the application on the ground that he and his wife had been looking after the minor ever since his birth. The boy appeared to be fairly well looked after by the maternal grandfather. The mother of the

* First Appeal No. 51 of 1926, from an order of E. Bennet, District Judge of Agra, dated the 5th of December, 1925.

(1) (1926) 95 L.J., 292.