

## REVISIONAL CRIMINAL.

Before Mr. Justice Boys and Mr. Justice Kendall.

EMPEROR *v.* UMED SINGH.\*

1926  
November,  
10.

Act No. VII of 1878 (*Forest Act*), section 31(g)—*Forest rules*  
—*Construction of rules*—“*Breaking*” and “*clearing*.”

Where “*breaking*” of ground only was forbidden by rules framed under section 31(g) of the *Forest Act*, 1878, it was held that clearing only, without breaking, was not an offence.

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

Mr. *L. M. Roy* and Mr. *H. M. Roy*, for the applicant.

The Assistant Government Advocate (*Dr. M. Walliullah*), for the Crown.

BOYS and KENDALL, JJ. :—In this case the question that arises is whether the applicant broke certain ground in a protected forest in contravention of the “*Forest Act*” and a notification issued thereon. The notification as issued only renders punishable the breaking of ground. It is admitted that the applicant cleared some ground. It is quite possible that in the course of clearing or after clearing the ground, he also broke it. If indeed he dug up the root of a single tree he might be held to have broken the ground, but there is no satisfactory evidence on which it could possibly legally be held that he broke any ground at all. There is some reference to a note-book of the Magistrate who inspected the ground, but any remarks in such a note-book would not be any evidence in the case.

\* Criminal Revision No. 534 of 1926, from an order of F. D. Simpson, Sessions Judge of Kumaun, dated the 25th of May, 1926.

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We are, therefore, unable to hold it to be proved or to find that the fact has been legally held to be proved that there was any breaking, nor is it possible to hold by any permissible interpretation that the word "breaking" includes mere "clearing." The distinction between the two words is obviously recognized in the Act. It is possible and even probable that the Government intended by the notification to forbid mere "clearing" also, but in view of the distinction made between "breaking" and "clearing" in the Act, it is not possible for us to hold that where "breaking" only is forbidden by the notification, an offence has been committed where there has been only "clearing."

We understand that it is not desired on behalf of the Crown that the case should be sent back for further evidence and a fresh decision thereon. The application must, therefore, be allowed. It is allowed accordingly and the conviction and the sentence of fine are set aside. If the fine has been paid, it will be refunded.

*Application allowed.*

## APPELLATE CIVIL.

*Before Mr. Justice Boys and Mr. Justice Kendall.*

1926  
November,  
12.

SHIAM LAL (PLAINTIFF) v. GIRRAJ KISHORE AND  
OTHERS (DEFENDANTS).\*

*Civil Procedure Code, order XXI, rule 73—Execution of decree—Sale—Persons barred from purchasing—Clerk to decree-holder's pleader.*

A clerk of a pleader of a decree-holder is not debarred by the terms of order XXI, rule 73 of the Code of Civil Procedure

\* Second Appeal No. 858 of 1924, from a decree of Kashi Prasad, Additional Subordinate Judge of Aligarh, dated the 18th of February, 1924, confirming a decree of Muhammad Ahmad Ansari, Munsif of Haveli, dated the 29th of November, 1922.