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therefore guilty of culpable homicide not amounting to murder. The facts of this case do not, in my opinion, warrant any stronger conclusion.

*Conviction altered.*

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## LETTERS PATENT.

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*Before Dawson Miller, C.J. and Ross, J.*

LALJI SINGH

v.

NAWAB CHOWDHARY.\*

*Registration Act, 1908 (Act XVI of 1908), section 2—mango tree, whether is immovable property.*

A mango tree is immovable property within the meaning of section 2, Indian Registration Act, 1908.

Appeal by the defendants.

*L. K. Jha and Bhagwan Prasad*, for the appellants.

*S. N. Ray*, for the respondents.

DAWSON MILLER, C.J.—This is an appeal under the Letters Patent on behalf of the first party defendants from a decision of Das, J., affirming the decree of the Subordinate Judge.

It appears that the plaintiffs in the year 1916 purchased from the second party defendants in the suit a plot of land measuring 1 bigha, 12 kathas situate within the jurisdiction of the Sub-Registry office of Sheohar and in the same conveyance 5 dhurs of land together with 10 mango trees standing thereon situate within the area of the jurisdiction of the Sub-Registrar of Sitamarhi were included. This was no doubt

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\*Letters Patent Appeal no. 5 of 1927, from a decision of Das, J., dated the 26th January, 1927.

done for the purpose of registration, for the document of transfer was registered at Sitamarhi. In the year 1920, the appellants, who are the first party defendants in the suit, purchased the same 1 bigha, 12 kathas of land in execution of a money decree against the defendants second party, the vendors of the plaintiffs. Thereupon the plaintiffs who were in possession were dispossessed and they brought the present suit to recover possession.

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The question for determination is whether at the time when the appellants purchased in 1920 in the execution sale the defendants second party had still any interest in that land. If the conveyance of 1916 to the plaintiffs was valid then they had no interest and the appellants purchased nothing and it would follow that the plaintiffs would be entitled to recover possession. Whether anything passed or not to the plaintiffs by the sale of 1916 depends upon whether their vendors had in fact any interest in that portion of the property which was situate in Sitamarhi where the document was registered, for if not then the registration was not a valid registration and the transfer was not effective.

The courts below have found that in so far as the 5 dhurs of land are concerned the defendants second party, the vendors, had no interest in it but that they did have an interest in the 10 mango trees. It is conceded on behalf of the appellants that the intention was to pass not merely the 5 dhurs of land but also the mango trees, and it has been found that the mango trees did in fact pass by the conveyance. The question then arises whether these mango trees are immoveable property or are moveable property and if they are immoveable property within the meaning of section 2 of the Indian Registration Act it is admitted that the plaintiffs must succeed. If they are not immoveable property then it is also admitted that the defendants first party must succeed, and the only question we have to determine is that which arises under the construction of the clause

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defining 'immoveable property' in section 2 of the Registration Act. Das, J., agreeing with the lower court, has come to the conclusion that mango trees are immoveable property within the meaning of the section and not moveable property as defined in the same section. The section in question provides as follows:—

"Immoveable property includes land, buildings, rights to ways, lights, ferries, 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."

It seems to me that there is an antithesis there between those things which are attached to the earth and likely to remain permanently attached to the earth and those things which in all probability will very soon be severed. For example the definition excludes standing timber, that which is intended to be severed from the earth and used for building or other purposes; it also includes growing crops which in the ordinary course will be severed from the earth at the end of the season; it also includes grass. The question, therefore, is whether fruit trees such as mango trees are to be regarded as standing timber or not. In my opinion they clearly are not standing timber, they are not intended for use as timber at all, they are in the ordinary course used merely as fruit trees, that is to say they are there for the purpose of yielding fruit and not for the purpose of being cut down in order to be converted into furniture or parts of houses or for any other purpose for which timber is ordinarily used. It may be that occasionally mango wood is used for the same purpose as ordinary timber, but if so it must be very exceptional. The wood of a mango tree is not, in my experience, of such a nature that it can be said to be used generally as timber, but I think also that one sees some indication of the meaning of the definition of 'immoveable property' by reference to the definition of 'moveable property' in the following

clause of the section. 'Moveable property' is said to include standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description except immoveable property. Had it been intended to include in the definition of 'moveable property' not merely the fruit of the trees or the juice of the trees but also the fruit trees themselves, I think we should clearly have had them included in that definition, but so far from being timber they are impliedly excluded because it is merely their fruit or juice which is regarded as moveable property. It may be that under other Acts immoveable property may include standing trees of this nature and there are decisions which under other Acts have included them but for present purposes we are only concerned with the interpretation of the definition given in the Indian Registration Act.

For the reasons given I agree with the decision of the learned Judge under appeal and would dismiss this appeal with costs.

Ross, J.—I agree.

*Appeal dismissed.*

### PRIVY COUNCIL.

KAMAKHYA NARAYAN SINGH

v.

RAM RAKSHA SINGH.

J. C.\*  
1928.

March, 2

*Limitation Act (IX of 1908), Schedule I, article 144—Adverse possession—mukarrari istimrari patta—lease for lives—Heirs or assignee retaining possession—alleged permanency—payment of rent—marfatdari receipts—absence of relationship of landlord and tenant—Transfer of Property Act, 1882 (Act IV of 1882), section 116.*

Where, on the death of the grantee of a mukarrari istimrari patta, which upon its true construction is for life only, his heirs or assignees remain in possession claiming contrary

\*PRESENT: Viscount Sumner, Lord Atkinson, Lord Sinha, Sir John Wallis and Sir Lancelot Sanderson.