

Umed Singh Vs. Emperor

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Court : Allahabad

Decided On : Nov-10-1926

Reported in : AIR1927All121

Appellant : Umed Singh

Respondent : Emperor

Judgement :

1. 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.

2. 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'.

3. 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.

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