

to form part of the building for the purposes of the letting, whereas in the present case the fans and lights which were attached to the building, formed part of the building for the purposes of the demise according to the true intention of the parties as indicated in the agreement. I would make the rule absolute with costs 5 gold mohurs. The matter will now go back to the President of the Tribunal in order that he may consider what is the standard rent of the premises including the fans and lights.

1925
 BARBER
 v.
 DEBENHAM.
 —
 GRAVES J.

B. B. GHOSE J. I agree.

Rule absolute; case remanded.

G. S.

APPELLATE CRIMINAL.

Before Suhrawardy and Panton JJ.

SAMSERALI HAZI

v.

EMPEROR.*

1925
 July 9.

Depositions—Reading over depositions to the witnesses, examined one after another, not on the completion of the evidence of each, but during the midday adjournment or after the close of the day—Illegality vitiating the trial—Criminal Procedure Code (Act V of 1898), s. 360.

Under section 360 of the Criminal Procedure Code the evidence of each witness must be read over to him as soon as it is completed, and before the examination of the next witness is taken up.

Reading over the depositions to the witnesses, examined one after another, not on the completion of the evidence of each witness, but during the midday adjournment or after the close of the day, is not a compliance with the section, and the trial is vitiated by such procedure.

Criminal Appeal 105 of 1925 (1) followed.

*Criminal Appeal No. 187 of 1925 against the order of N. Edgley, Sessions Judge of Faridpur, dated March 7, 1925.

(1) Unrep : decided, on 7th July 1925, by Suhrawardy and Panton JJ.

1925
 SAMSERALI
 v.
 EMPEROR.

THE appellants were tried before the Sessions Judge of Faridpur and a Jury. Shamsheer Ali was charged under sections 147, 304 and 304 of the Penal Code, and Nazir Molla under sections 148 and 304. The Jury found the first person guilty under sections 147, 304 and 304, and the second under sections 147 and 335. The Sessions Judge accepted the verdict and sentenced each of the appellants to four years' rigorous imprisonment.

It appeared from the *Explanation* of the Sessions Judge, and the affidavit of the Sessions clerk, that certain witnesses were examined, one after another, until the midday adjournment when their depositions were read over to them during the interval. Similarly the depositions of the witnesses examined in the afternoon were read over to them after the Court had risen for the day. The accused were present when the depositions were so read over.

Babu Mrityunjoy Chatterjee (with him *Babu Nirmal Chunder Chuckerbutty*), for the appellants. Section 360 was not complied with. The depositions were read over to the witnesses during the midday adjournment, and after the Court had risen. The Judge was not present at the time, and could not make any corrections suggested by the witness. It was difficult for the accused to remember what each witness had said. Refers to *Cr. App. No. 105 of 1925(1)*.

Deputy Legal Remembrancer (Mr. Khundkar), for the Crown. The evidence was read over in the presence of the accused, and there was a substantial compliance with the law.

SUBHAWARDY AND PANTON JJ. The only point raised for the purpose of this appeal is that the

(1) Unrep.—Decided by Subhawardy and Panton JJ., 7th July 1925.

provisions of section 330 of the Criminal Procedure Code have not been complied with. It appears on the allegations made by the appellants, as well as from the Explanation submitted by the trying Judge together with the affidavit sworn by the Sessions clerk, that the witnesses were examined one after another until the midday adjournment, when their depositions were read over to them during the interval: and the depositions of the witnesses examined one after another in the afternoon were similarly read over to them in the afternoon after the close of the day. In *Appeal No. 105 of 1925*(1) we have held that the evidence of a witness must be read over to him after it is completed, and before the examination of another witness is started; and we have further held in that case that the reading over of the depositions of witnesses at the close of the day is not a sufficient compliance with the provisions of section 360 of the Criminal Procedure Code. The result, therefore, is that this trial must be held to be vitiated by this irregularity. In this view it is not necessary to consider the other points raised in the case. The conviction of the appellants and the sentences upon them are set aside, and it is directed that they be re-tried. The appellants will remain in jail pending further order of the trying Court.

E. H. M.

Appeal allowed.

(1) Unrep.—Decided by Suhrawardy and Panton JJ., 7th July 1925.

1925

SANSERAI
v.
EMPEROR.