

must be answered in the affirmative and it makes no difference that it so happens that that person at one time was an accused. If these questions, each and every one, have to be answered in the manner in which I have stated, then there can only be one answer to the contention which is placed before this Court by Mr. Sinha on behalf of the accused that they are entitled to copies of these statements, that answer also being answered in the affirmative. There will be an order accordingly.

1929.

MANMOHAN  
RAI  
v.  
KING-  
EMPEROR.  
WORT, J.

*Rule made absolute.*

## APPELLATE CIVIL.

1929.

*Before Kulwant Sahay and Macpherson, JJ.*

*July, 1.*

RAI JAGDISH PRASAD

v.

JAMUNA PRASAD.\*

*Bengal Tenancy Act, 1885 (Act VIII of 1885), section 30 (b)—tenant, food crops not grown by—holding converted into orchard—landlord, whether can claim enhancement.*

The mere fact that the tenant did not grow food crops upon the holding but used it as an orchard, cannot prevent the landlord from claiming enhancement under section 30(b), Bengal Tenancy Act, 1885.

*Raja Reshee Kesh Law v. Chintamani Dalai*(1), followed.

*Jeonath Jha v. Mahanth Bishambhar Das*(2), not followed.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

*Janak Kishore*, for the appellant.

\*Appeals from Appellate Decrees nos. 787, 858 and 859 of 1927, from a decision of Babu Kamala Prasad, Subordinate Judge of Patna, dated the 22nd of April, 1927, reversing a decision of Maulavi Abdul Aziz, Munsif, 1st Court of Patna, dated the 24th of May, 1926.

(1) (1922-23) 27 Cal. W. N. 962.

(2) (1927) 8 Pat. L. T. 495.

1929.

*L. N. Singh* (with him *Ramnarain Lal*), for the respondent.

RAI  
JAGDISH  
PRASAD,  
P.  
JAMUNA  
PRASAD.

KULWANT SAHAY, J.—Three suits for arrears of rent were instituted by the plaintiffs and there was also a prayer in the plaint for enhancement of rent under section 30(b) of the Bengal Tenancy Act. The learned Munsif gave a decree to the plaintiffs for arrears of rent and allowed the enhancement at the rate of 3 annas 3 pies in the rupee. The defendants appealed to the Subordinate Judge and the only point raised before him was whether the landlord was entitled to enhancement on the ground of rise in price of staple food crops when the holding was not producing food crops but had been converted into an orchard. The learned Subordinate Judge, relying upon a decision of a single Judge of this Court in *Jeonath v. Mahanth Bishambhar Das*(<sup>1</sup>), held that the landlord was not entitled to enhancement. In the judgment relied upon by the learned Subordinate Judge the learned Judge of this Court observed as follows: “On the main question in the case there seems to be no authority but it is in my opinion clear as a matter of principle that on the ground that there is a rise in the price of staple food crops, no enhancement can be claimed in respect of the land which is used in such a way with the acquiescence of the landlord that food crops cannot be raised thereon.” The point was considered in a number of cases in the Calcutta High Court and it was held that the fact that the tenants did not grow food crops upon the holding but used the holding as an orchard or kept it waste or used it as homestead land, did not prevent the landlord from suing for enhancement under section 30(b) of the Bengal Tenancy Act. The rent of the holding was a consolidated rent for all the lands and there was nothing either in the contract of tenancy or in the provision of law which took away the right of the landlord to claim enhancement

(1) (1927) 8 Pat. L. T. 405.

on the ground of rise in price of the staple food crops simply because the tenants did not grow food crops upon the holding in dispute. In *Rajah Reshee Kesh Law v. Chintamani Dalai*<sup>(1)</sup> the question was expressly raised and decided by the Calcutta High Court and it was held that under similar circumstances the landlord was entitled to enhancement, and we find nothing in principle which could entitle the defendants to object to enhancement under section 30(b) of the Bengal Tenancy Act simply because they had converted the land into an orchard and because the landlord did not object to such conversion. In my opinion the decision of the learned Subordinate Judge on this point cannot be sustained. There does not appear to have been any dispute in the Court below as regards the rate of enhancement and, therefore, the decree of the Munsif allowing the enhancement will stand. The appellants are entitled to their costs throughout.

MACPHERSON, J.—I agree.

*Appeals decreed.*

## REVISIONAL CRIMINAL.

*Before Terrell, C. J. and Rowland, J.*

BABU LAL MAHTON

*v.*

KING-EMPEROR.\*

*Autrefois convict—interruption of court's work and assault in court—summary punishment for interruption—subsequent trial for the assault—Penal Code, 1860 (Act XLV of 1860), sections 228 and 355—Code of Criminal Procedure, 1898 (Act V of 1898), sections 235, 236, 237, 403 and 480.*

(1) (1922-23) 27 Cal. W. N. 962.

\*Criminal Revision no. 311 of 1929, against a decision of R. B. Beavor, Esq., Additional Sessions Judge of Patna, dated the 16th March, 1929, upholding a conviction by Rai Bahadur Rameshwar Singh, Magistrate, 1st class of Patna, dated the 4th February, 1929.

1929.

RAI  
JAGADISH  
PRASAD,

*v.*  
JAMUNA  
PRASAD.

KULWANT  
SAHAY, J.

1929.

June, 24.  
July, 2.