full rate is fixed. But that clause does not bar any claim for abatement, while, on the contrary, an earlier clause in the lease contemplates measurement of the lands at any future time. The first contention of the defendant appellant must therefore fail.

The second contention in the defendant's appeal should, in my opinion, succeed; and the learned Vakil for the plaintiff very properly concedes that that must be so.

The result is that appeal No. 409 must be dismissed with costs, and appeal No. 758 allowed to this extent that the decree of the Lower Appellate Court will be modified by fixing the reduced rent at Rs. 187-8 a year. As this last-mentioned appeal succeeds only partially and to a very limited extent, the respondents will have their costs.

Appeal No. 409 dismissed.

S. C. G. *Appeal No. 758 partly allowed.*

APPELLATE CRIMINAL.

Before Mr. Justice Stevens and Mr. Justice Harington.

1902 *Jan. 16.*

MANGAN DAS

v.

EMPEROR.*

Misdirection—Charge to Jury—Duty of Judge to explain law—Law explained in addresses by pleaders on both sides to Jury—Criminal Procedure Code (Act V of 1898) ss. 297 and 298—Penal Code (Act XLV of 1860) ss. 147, 149, 323, 325, and 304.

Where a Sessions Judge in charging a Jury under s. 297 of the Code of Criminal Procedure said: "The accused are charged with offences under ss. 147, 323 with 149, 325 with 149, and 304 with 149. The law bearing on the case has been placed before you more than once in the addresses delivered by the learned pleaders on either side. I need not go into detail as to the law therefor."

* Criminal Appeal No. 730 of 1901, made against the order passed by J.J. Palit, Esq., Sessions Judge of Rajshahye, dated the 13th of July 1901.

1902

MANGAN DAS v. EMPEROR.

Held, that it was immaterial how much or how often the Jury may have been addressed by the pleaders on both sides upon the law. The responsibility of laying down the law for the guidance of the Jury rested entirely with the Judge, and a verdict arrived at by the Jury in the absence of any such direction on the law by which they should be guided could not be accepted as a valid verdict in the case.

Held, further, that although the common object of the unlawful assembly is stated in the charge, the Sessions Judge ought, in commenting upon the provisions of s. 149 of the Penal Code, to draw the attention of the Jury expressly to the common object.

THE accused Mangan Das and others appealed to the High Court.

The appellants were committed, charged with offences under s. 147 and ss. 323, 325, and 304, read with s. 149 of the Penal Code, to the Sessions Court at Rajshahye. In the course of the trial the Jury were addressed both on the law and the facts relating to the case by the Public Prosecutor and the pleaders engaged on behalf of the different accused. In his charge to the Jury the Sessions Judge stated as follows:—

"The accused are charged with offences under ss. 147, 323 with 149, 325 with 149, and 304 with 149. The law bearing on the case has been placed before you more than once in the addresses delivered by the learned pleaders on either side. I need not go into detail as to the law therefor. S. 147 of the Penal Code relates to the offence of rioting; s. 323 to the offence of causing simple hurt; s. 325 to the offence of grievous hurt; s. 304 to the offence of committing culpable homicide not amounting to murder. These last three sections are read with s. 149, which means that, if any member of an unlawful assembly commits an offence, the other members of that assembly are guilty of it, even though they do not commit it. But this following reservation is to be applied to s. 149. If a person is a member of an unlawful assembly at the beginning of a riot and then leaves it, and then, after he leaves it, an offence is committed by one or some of the members of the unlawful assembly, such a person would not be guilty of the offence committed after he left the assembly, s. 149 notwithstanding. To put things more clearly to you, if you find that some of the present accused were present at the beginning of the riot and gave orders to beat and then went away, and then after they went away the riot continued, and Ganga Pershad Tewari, the warder, was struck on the head with a *lathi* by one of the accused party and died in consequence of the blow, you will bring in a verdict of not guilty under s. 304 with s. 149 of the Penal Code against those accused who gave the *hukum* to beat and then went away. But if you believe the evidence you will bring in a verdict of guilty under s. 149 of the Penal Code against them, as they were members of an unlawful assembly, whose members committed rioting. Similarly, if you find that others of the accused were all along

in the riot, and were present when one or some of them struck the fatal blow, but you are not sure as to who struck the fatal blow, you will find these other accused guilty of an offence under s. 304 with s. 149 of the Penal Code. If you think that the hurt caused to the deceased was simple hurt or grievous hurt, and that the offence of committing culpable homicide not amounting to murder was not committed, but are not sure as to who caused the simple or grievous hurt, you will bring in a verdict under s. 325 with s. 149, if you believe that these accused were present when the hurt was caused."

The accused were convicted by the Jury of rioting and hurt under ss. 147 and 323 of the Penal Code, and were sentenced by the Sessions Judge to two years' rigorous imprisonment each.

Babu Hara Prasad Chatterjee for the appellants.

The Deputy Legal Remembrancer (*Mr. Leith*) for the Crown.

STEVENS and HARINGTON JJ. In this case it is clear that there was a misdirection on the part of the learned Judge to the Jury, in that he did not comply with the provisions of s. 297 of the Criminal Procedure Code, which requires that the Judge shall lay down the law by which the Jury are to be guided. What the learned Judge says is "the accused are charged with offences under ss. 147, 323 with 149, 325 with 149, and 304 with 149. The law bearing on the case has been placed before you more than once in the addresses delivered by the learned pleaders on either side. I need not go into detail as to the law therefor."

It is immateral how much or how often the Jury may have been addressed by the pleaders on both sides upon the law. The responsibility of laying down the law for the guidance of the Jury rested entirely with the Judge, and the verdict arrived at by the Jury in the absence of any such direction on the law by which they should be guided cannot be accepted as a valid verdict in the case.

We also think that, although the common object of the unlawful assembly is stated in the charge, the learned Judge ought, in commenting upon the provisions of s. 149 of the Indian Penal Code, to have drawn the attention of the Jury expressly to the common object.

We must accordingly set aside the conviction and sentence in this case and direct a retrial.

D. S.