

1878  
 EMPRESS  
 ON THE  
 PROSECUTION  
 OF JOHARDI  
 SHEIK  
 v.  
 HEMATULLA.

land and crop in dispute. The complainant produced four witnesses, of whom the Deputy Magistrate examined two only, because (as it appeared) the remaining two witnesses were only cognizant of the same facts as the two previously examined. After hearing both sides the Deputy Magistrate discharged the accused under s. 215 of the Code of Criminal Procedure, because the evidence for the prosecution did not clearly establish the sowing of the crop by the complainant.

The Magistrate was of opinion that the other two witnesses ought to have been examined, and referred the case to the High Court under s. 296 of the Criminal Procedure Code.

No one appeared on the hearing of the reference, and the judgment of the Court was delivered by

JACKSON, J.—The Deputy Magistrate was bound, under s. 215 of the Criminal Procedure Code, to hear all the witnesses for the prosecution. We direct that he do this, and then pass such order on the case as the evidence appears to him to call for.

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## ORIGINAL CIVIL.

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*Before Mr. Justice Pontifex.*

DEBENDRONATH MULLICK AND OTHERS v. ODIT CHURN  
 MULLICK.

1878  
 March 7.

*Cause of Action—Right to turn of Worship.*

A refusal to deliver up an idol, whereby the person demanding it was prevented from performing his turn of worship on a specified date, gives the party aggrieved a right to sue for damages.

THE plaintiffs in this case alleged that they were entitled to perform the worship of a deity, Ranee Thakooranee, on a certain day in the year 1284, B. S. (1877-78); and that they had been prevented performing such worship on the day in question through the refusal of the defendant to deliver up to them the said deity for such purpose. The plaintiffs further alleged that, in consequence of such refusal, they had been disgraced in the eyes of the other members of the family,

and that they had lost the benefits from a religious point of view and otherwise, which they would have enjoyed if they had performed the worship in their turn. The damages claimed were Rs. 5,000.

The case coming up for settlement of issues Mr. *Phillips* for the defendant raised the point whether the plaint disclosed any cause of action.

Mr. *Hill* for the plaintiffs.—A right vested in the plaintiffs to a turn of worship; if there is a right, there must be a remedy; see *Ashby v. White* (1). A turn of worship is described as “property” by Couch, C.J. in *Mitta Kunth Audhicarry v. Neerunjun Audhicarry* (2). See also *Anund Moyee Chowdrain v. Boykantnath Roy* (3) and *Gour Mohan Chowdhry v. Madan Mohan Chowdhry* (4).

Mr. *Phillips* for the defendant.—The loss (if any) suffered by the plaintiffs is a purely spiritual one. It is impossible to estimate damages on such loss. The rule in *Ashby v. White* (1) refers to purely temporal damages. [PONTIFEX, J.—The plaintiffs state that they have been disgraced in the eyes of the family.]

PONTIFEX, J., was of opinion that the plaint did disclose a cause of action, and allowed other issues in the case to be settled.

Attorneys for the plaintiff: Messrs. *Beeby* and *Rutter*.

Attorney for the defendant: Mr. *Paliologus*.

(1) 1 Smith's L. C., 251, 276.

(3) 8 W. R., 193.

(2) 14 B. L. R., 166.

(4) 6 B. L. R., 352.