

evidence which the defendant might and could have brought forward, if he had so pleased, in the former suit, and which he offered no excuse for not producing on that occasion.

We think, therefore, that the principle upon which we decided the case of *Nobo Doorga Dossee v. Foyz Buksh Chowdhry* (1), and which has been acted upon by this Court in other cases, applies with equal force here.

We consider, for the reasons given by the learned Judge in the Court below, that no notice of enhancement was necessary before bringing this suit, and we think that the Munsif was right in the first instance in adjudging to the plaintiff the same rate of rent as was decreed to him in the former suit.

The decree will therefore be altered in that respect; but, as this long series of litigation has arisen from the misconception of the Full Bench judgment by the Officiating Judge, we think that each of the parties should pay their own costs of the proceedings subsequent to that judgment.

APPELLATE CRIMINAL.

Before Mr. Justice L. S. Jackson and Mr. Justice Cunningham.

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

1878
Feby. 12.

Criminal Procedure Code (Act X of 1872), s. 215—Evidence for the Prosecution—Examination of Witnesses.

A Magistrate is bound, before he discharges an accused person under s. 215 of the Criminal Procedure, to examine all the witnesses, and should not refuse to examine witnesses simply because their evidence will be to the same effect as that already taken for the prosecution.

THE complainant Johardi in this case charged another man with forcibly cutting paddy. The Deputy Magistrate to whom the case was referred took evidence as to the possession of the

* Criminal Reference, No. 1114 of 1878, from F. W. J. Rees, Esq., Offg. Magistrate of Maldah, dated the 5th of February, 1878.

(1) I. L. R., 1 Calc., 202; S. C., 24 W. R., 403.

1878
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 ON THE
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 v.
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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.

ORIGINAL CIVIL.

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,