Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Kishore Bun Mohunt v. *Dwarka Nath Adhikari and others, and Kishore Bun Mohunt* v. *Prosunno Coomar Adhikari, from the High Court of Judicature at Fort William in Bengal; delivered 28th February* 1894.

Present:

LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

BOTH these appeals have been argued before their Lordships *ex parte.*

In the appeal of *Kishore Bun Mohunt* v. *Dwarka Nath Adhikari and others* a Judgment of the High Court at Calcutta is impeached, which reversed a judgment of the District Judge of Chittagong, who had upheld, with a variation, a judgment of the Moonsif of Sitakund.

The facts of the case are shortly as follows:— In the year 1880 the Respondents, who are officiating priests in the temple of a deity called Sumbhu Nath Deb, instituted a suit in the Moonsif's Court against the Appellant for the purpose of establishing their right to perform certain offices at the shrine and to receive certain offerings from the votaries. On the 31st March 1881 a decree was made by the Moonsif, by which the claim of the Respondents was allowed, and the Appellant was ordered to deliver to the Respondents certain articles necessary for the performance of the offices in question, and the right of the Respondents to the offerings claimed was decreed. This decree was not complied

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receiving certain articles necessary for its performance, and so afford the Appellant an opportunity of complying with the decree.

The Appellant did not supply the articles in question, and objected to the petition on the ground that it was barred as being *res judicata*. The Moonsif held that the matter was *res judicata*, and dismissed the petition. The Respondents appealed to the District Judge of Chittagong, who affirmed the decision of the Moonsif on the question of *res judicata*, while reversing it in another respect. Both sides appealed to the High Court, who reversed the decision of the District Judge and declared that the Respondents were entitled to enforce their decree under section 260 of the Civil Procedure Code, and ordered execution to issue accordingly.

The High Court pointed out in their judgment that their decree in the first suit was only intended to determine that the particular application for execution then the subject of appeal could not be allowed. The Respondents had not at that time placed themselves in the position of having the right to have their decree executed, inasmuch as they had not given notice to the Appellant, and so afforded him an opportunity of complying with it. They had not gone to the temple so as to be ready to receive the articles necessary for the performance of the ceremony if they were offered to them. That matter of fact distinguished the second suit entirely from the first.

It is therefore quite plain, in their Lordships' opinion, that the question was not *res judicata*. Their Lordships think that the Respondents were properly non-suited in the first action, because they had not then shown that there was a demand made by them on the Appellant, and an opportunity thus given him of complying with the decree. In the second action they remedied this