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But secondly, this property cannot be attached, forming part, as it does, of an immoveable property, and having no separate existence.

Thirdly, these singular proceedings, in which the right to property, of which these doors and window-frames admittedly form a part, has been incidentally enquired into, (as to which the Courts below have expressed a decision), cannot be held as in any way establishing any right or absence of right in any person to the house.

The attachment ought never to have been granted, and the suit ought never to have been entertained. And although, in second appeal, we do not set aside the decree of the lower Court, that decree must be altered by striking out of it so much as orders that the door-frames and window-frames shall be liable to attachment or sale.

Each party must bear his own costs throughout.

Decree altered.

Before Mr. Justice Mitter and Mr. Justice Norris.

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RUNG LALL AND ANOTHER (JUDGMENT-DEBTORS) *v.* HEM NARAIN GIR (DECREE-HOLDER).*

Civil Procedure Code—Act XIV of 1882, *s.* 258—*Certifying part payment o decree—"To show cause,"- Meaning of.*

In determining under s. 258 of Act XIV of 1882 whether or no the cause shown by the decree-holder is sufficient, it is incumbent upon the Court to investigate and decide any questions of fact upon which the parties may not be agreed.

In such an investigation the evidence may be given either orally or by affidavit.

The term "to show cause" does not mean merely to allege causes, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court.

THE judgment-debtors in this case applied within the time allowed by law to the Additional Subordinate Judge of Gya

* Appeal from Appellate Order No. 218 of 1884, against the order of T. Smith, Esq., Officiating Judge of Gya, dated the 5th of July 1884, affirming the order of Baboo Dinesh Chunder Rai, Subordinate Judge of that district, dated the 14th of June 1884.

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under s. 258 of the Code of Civil Procedure for the issue of a notice upon the decree-holder, calling upon him to show cause why a payment of Rs. 1,000 made by them in favor of the decree-holders out of Court in part satisfaction of a decree obtained against him by the decree-holders should not be recorded as certified.

The decree-holder appeared in accordance with the notice, and denied having received any sums of money from his judgment-debtors in part satisfaction of this decree.

The Additional Subordinate Judge, after hearing the denial of the decree-holder, declined to receive evidence of the payment, or to enquire otherwise into the matter, as he was of opinion that the Code of Civil Procedure made no provision for any such enquiry; and he thereupon dismissed the application.

The judgment-debtors appealed to the District Judge. The District Judge, agreeing with the lower Court, dismissed the appeal.

The judgment-debtors appealed to the High Court.

Moulvi *Mahomed Yusuf* and Moulvi *Serajul Islam* for the appellants.

Mr. *C. Gregory* for the respondent.

Judgment of the Court (MITTER and NORRIS, JJ.) was as follows:—

In this case the judgment-debtors, appellants, informed the lower Court that they had paid out of Court to the decree-holder, respondent, Rs. 1,000 in part satisfaction of the decree, and applied under s. 258 of the Civil Procedure Code for the issue of a notice upon the respondent to show cause why the said payment should not be recorded as certified. The respondent appeared and denied the receipt of the money. The lower Courts being of opinion that under the section in question the appellants were not entitled to go into evidence to establish their allegation, rejected their petition without taking any evidence upon the disputed question of fact.

We are opinion that the lower Courts are in error in not allowing the parties opportunity to establish their respective

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allegations. The section says that, if the decree-holder fails to show cause why the payment should not be recorded as certified, the Court shall make the rule absolute. It appears to us that in determining whether the cause shown is sufficient or not, it is incumbent upon the Court to investigate and decide any question of fact, upon which the parties may not be agreed, upon such materials as they may legally place before it. In investigating this matter, the Court may take oral evidence, or may, under Chapter XVI of the Civil Procedure Code, allow the disputed fact to be proved by affidavit according as the one or the other course may appear to it convenient.

The language of s. 526 is similar to that of s. 258, and in *Dandekar* v. *Dandekar's* (1), it was held that the term "to show cause" in s. 526, "does not mean merely to allege causes, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court." Following this decision we think that the same construction should be put upon the term "to show cause" in s. 258.

We reverse the decisions of the lower Courts and remand the case to the Court of first instance to decide upon evidence whether the cause shown is sufficient and satisfactory. The costs will abide the result.

Case remanded.

(1) I. L. R. 6 Bom., 663.