

1888
 INA SHEIKH
 Q.
 QUEEN
 EMPRESS.

In *Reg v. Cooper* (1) Manle, J., said: "Where a man is found in possession of a horse six or seven months after it is lost; and there is no other evidence against him but that possession, he ought not to be called to account for it."

In *Reg v. Partridge* (2) Patteson, J., pointed out that the question of what is or is not such a recent possession of stolen property as to require the person in whose possession it is to give an account of how such possession was acquired, was to be considered with reference to the nature of the articles stolen, adding "if they are such as to pass from hand to hand readily, two months would be a long time."

The stolen article in this case was not of an unique or unusual character, but such as is possessed in every native household and would pass readily from hand to hand.

Upon the authority of these cases, we are of opinion that the mere fact of the prisoner's possession of the cup 11 months after it was stolen, was not such a recent possession as to put him to proof of how such possession was acquired.

But no doubt there was other evidence besides that of possession to be considered, and if we felt that we could credit the evidence of the concealment of the cup, we should hesitate to interfere with this conviction, but we are not prepared to accept this evidence, and consequently we set aside the conviction.

Conviction set aside.

APPELLATE CIVIL.

Before Mr. Justice Pigot and Mr. Justice O'Keefe.

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 January 28.

PERU BEPARI (ONE OF THE DEFENDANTS) v. RONUO MAIFARASH
 (PLAINTIFF) AND SHAIK TATAH (ANOTHER DEFENDANT.)*

Execution of Decree—Attachment—Attachable Property—Doors and Windows—Immoveable Property.

The doors and window-shutters of a *pucca* building cannot be separately attached in execution of decree, forming as they do part of an immoveable property, and having no separate existence.

* Appeal from Appellate Decree No. 1449 of 1883, against the decree of Baboo Girish Chunder Chowdhry, Second Subordinate Judge of Dacca, dated 12th of March 1883, affirming the decree of Baboo Sham Kishore Bose, Extra Munsiff of that district, dated 31st of May 1882.

(1) 3 C. & K., 318.

(2) 3 C. & P., 551.

THE plaintiff, Sheikh Ronuo, obtained a decree against the defendant Taiah, and in execution thereof attached, as the property of the judgment-debtor, sixteen pairs of doors and four pairs of window-shutters, which were the doors and window-shutters attached to a *pucca* building alleged to be the property of Taiah. The defendant Peru claimed in the execution proceedings the *pucca* building and the land on which it stood under a purchase from Taiah and others, the owners thereof in 1275 B.S. The property was released from attachment, and thereupon the present suit was brought to have it declared that the attached property was the property of the judgment-debtor, alleging that the purchase of 1275 was a *benami* transaction. The Court of first instance gave the plaintiff a decree, and this decision was affirmed on appeal. The defendant Peru appealed specially to the High Court, on grounds impugning the decision of the lower Appellate Court on the merits, and also on the ground that the suit was one cognizable by a Court of Small Causes only.

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Baboo *Lall Mohun Doss* for the appellant.

Baboo *Gopi Nauth Mookerjee* for the respondent.

The judgment of the Court was delivered by

FIGOR, J.—In this matter, as it comes before us in second appeal, we think we are bound by the rule followed by the Chief Justice in the case of *Tofail Ahmad v. Bamee Madhub Mookerjee* (1). That was a suit by an execution-creditor to establish the title of his judgment-debtor to a certain property which was erroneously held in the lower Court to be moveable property, and which this Court pointed out was in truth immoveable property. Notwithstanding which, the Court held (p. 395) “that the only question which could properly have been tried in this case is, whether the property seized did really belong to the execution-debtor as against the defendant in this suit.” In this case, that matter has been found as a fact by the two Courts, and we shall follow the case, that we have referred to in not reviewing the finding upon a question of fact. That is the first point.

(1) 24 W. R., 394

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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.

1885
 January 7.

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

Civil Procedure Code—Act XIV of 1882, s. 258—Certifying part payment of 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.