

Debi Prashad Vs. Shama Charan

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Court : Allahabad

Decided On : Jan-29-1910

Reported in : 5Ind.Cas.584

Judge : John Stanely, C.J. and ;Banerji, J.

Appellant : Debi Prashad

Respondent : Shama Charan

Judgement :

1. This is a reference by the learned Munsif of Allahabad, purporting to be made under Section 617 of the old Code of Civil Procedure. The question submitted is, whether the salary of a public officer on leave is attachable, and whether the nature of his leave and the fact of his drawing half pay can affect the attachment of his salary. It appears to us that it was not competent for the learned Munsif to refer this question to this Court and for this reason. The decree which was in the course of execution was not a final decree but was appealable. Section 617 provides that if before or on the hearing of a suit, or an appeal in which the decree is final, or if in the execution of any such decree (i.e., any decree which is final), any question of law or usage having the force of law * * * arises, on which the Court may * * * refer the matter to the High Court for decision. Inasmuch as the decree under execution in this case was appealable, and was, therefore, not a final decree, the section clearly has no application, The learned Munsif must himself determine the question which has arisen, and only after its determination can this Court entertain

the question. We decline therefore, to pass any orders on the question Let the record be returned.

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