

(1879) 04 AHC CK 0007

Allahabad High Court

Case No: None

Sheo Prasad

APPELLANT

Vs

Anrudh Singh

RESPONDENT

Date of Decision: April 17, 1879

Citation: (1880) ILR (All) 275

Hon'ble Judges: Spankie, J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Pearson, J.

In our opinion the lower Courts are wrong in holding that the period of three years allowed by law for the execution of the ex parte decree, dated 2nd December 1874, should be reckoned from the date of the order of the Appellate Court which upheld the first Court's order refusing the application made by the defendant for the re-hearing of the suit. The first two clauses of Article 167, Schedule ii, Act IX of 1871, allow three years for the execution of a decree from the date of the decree, or (where there has been an appeal) from the date of the final decree of the Appellate Court. We think it beyond doubt that the words, "where there has been an appeal," contemplate and mean an appeal from the decree; and no other appeal. In the present case there was no appeal from the decree now sought to be executed; nor indeed under the provisions of the old Code of Procedure was that decree appealable. The application for execution of the decree of 2nd December 1874, presented on 12th April 1878, was clearly beyond time, and should have been disallowed. We reverse the orders of the lower Courts and decree the appeal, with costs in all Courts.