" The 5th Bench has, however, since decided in *Horil Pattuck* v. *Bhowaneeram* (1) that, with reference to s. 13 of the new

(1) *Before Mr. Justice Markby and Mr. Justice Birch.*

The 9th March 1874.

HORIL PATTUCK (PLAINTIFF) *v.* BHOWANEERAM AND OTHERS (DEFENDANTS).*

Limitation—Appeal—Act IX of 1871, *s.* 13.

In computing the period of ninety days under s. 13 of Act IX of 1871 for filing an appeal, the appellant is, as a matter of right, entitled to deduct the number of days required for taking a copy of the decree only. The word 'decree' in that section does not include the 'judgment.'

Under the circumstances, however, the Court admitted the appeal although presented after time.

Baboo *Anund Chunder Ghosal* for the appellant.

The facts of this case are sufficiently set out in the judgment of the Court, which was delivered by

MARKBY, J.—In this case the judgment was delivered in the Court below on the 16th of September 1873. On the 1st of November the appellant asked for a copy of the judgment and decree. The judgment was delivered to him on the 24th, and the decree on the 19th. On the 7th of January he filed his appeal in this Court, and it was returned to him as being too late. An application is now made to us to admit the appeal.

The appellant contends that he is within time. From the 16th September to the 7th of January is one hundred and thirteen days. The law (Act of 1871 IX, s. 13 and Sched i, art. 163) says—that the time allowed for filing an appeal is ninety days from the date of the decree appealed against; but that in computing the period of limitation the day on which judgment was pronounced and the time required for obtaining a copy of the decree, sentence, or order appealed against shall be excluded. Excluding the time occupied in obtaining copy of this decree,—namely, eighteen days,—the appellant would still be too late. The appellant, however, contends that the time required for obtaining a copy of the judgment is also to be excluded; and he argues that in the above provision of the law the word 'decree' idcludes the 'judgment' also. Considering that the word 'judgment' is used in the very same section as distinguished from 'decree,' I can hardly think this to be the case. The words 'judgment' and 'decree' are not generally used in the Code in the same signification, and when both are intended, both are expressed, as, for example, in s. 198. Nor do I think the sense of the section requires this construction. I think the main object of the section was to provide for any delay there might be in drawing up the decree after the judgment was pronounced, the exact form of a decree being often a matter of consideration and discussion after the judgment has been pronounced.

Of course if there were such delay that the appellant could not comply with the requirements of art. 163 he would have good ground for claiming the indulgence of the Court, but I do not think that, as a matter of right, he can claim to deduct more than the time required for obtaining a copy of the decree.

*Application for admission of special appeal.

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JAGARNATH SINGH v. SHEWRATAN SINGH.

Limitation Law, the term 'decree,' used in s. 333 of Act VIII of 1859, does not include the 'judgment;' and that the appellant cannot, as a matter of right, claim to deduct more than the time required for obtaining a copy of the decree."

The case was heard before Glover and Mitter, JJ., who, in consequence of the conflicting decisions, referred it to a Full Bench.

Baboo *Taruck Nath Sen* for the appellant.—The Act of 1871 has not altered the law upon the subject. There is no material difference between s. 13 of Act IX of 1871 and s. 333 of Act VIII of 1859. The filing of a copy of the judgment is as necessary now as before, and the judgment must be filed just as much as the decree, therefore the time required for the one should be deducted as much as that for the other. Great injustice may result from a delay in the office of the Court that passed the judgment in giving the appellant a copy of the judgment. By Act IX of 1871, Sched. i, art. 163, ninety days are allowed from the date of the decree appealed against. This must be taken with s. 372 of Act VIII of 1859, which allows an appeal from a "decision." There

There is, however, a case—*Harrak Sing* v. *Tulsi Ram Sahu* (*a*)—in which it is said that the Division Bench held the contrary upon s. 333 of the Code of Civil Procedure, which, though it is as to this matter now repealed, is merely in the same words as the substituted provision of the Limitation Act of 1871. I have some doubt whether that case quite correctly states the opinions of the learned Judges who decided it, nor is the practice of this Court on the Original Side, as far as I can ascertain, such as is there stated. The practice on the Original Side is, I am informed, not to enlarge the time to enable the party to obtain a copy of the judgment, as it is supposed that counsel will attend and ascertain the contents of the judgment when it is delivered. By s. 183 of the Code all Judges are required to pronounce their judgments in open Court after having given due notice to the parties or their pleaders, and therefore the same opportunity exists (unless Judges entirely neglect their duty) in the mofussil as here of obtaining information upon what points the judgment turns.

As, however, it appears that there has been a practice in the office of excluding the time required for obtaining both judgment and decree it is possible that the appellant has been in this case misled, and therefore, under cl. *b* of s. 5, I think this appeal may be admitted.

(*a*) 5 B. L. R. 47

is no separate period of limitation for this: therefore "decree" and "decision" are used as meaning the same thing. Hence the "decree" in s. 333 has been held to include the "decision," and this has been the practice of the Court.—*Hossanee Begum* v. *Dumree Mathoon* (1). It is very doubtful that the Court would have the power to prevent any injustice arising from the neglect of others, if any other construction were to be put upon the Act.

The opinion of the Full Bench was delivered by

MACPHERSON, J.—We are of opinion that the decision of Markby and Birch, JJ., in *Horil Pattuck* v, *Bhowaneeram* (2) is right, and that the Limitation Act must be construed strictly as meaning that which it says,—namely, that the time from which the period of limitation begins to run is the date of the decree appealed against, and that the days which under s. 13 of that Act may be excluded are only the days requisite for obtaining a copy of the decree.

As a general rule, there can be no doubt that the time which suffices for obtaining the decree will also be sufficient for obtaining the judgment. But if in any case it is impossible for the appellant to obtain the decree or to obtain the judgment in time, the Court, if satisfied that the appellant is not to blame, may consider that there is "sufficient cause" within the meaning of s. 5, cl. b of the Limitation Act, and may admit the appeal after the period of limitation prescribed by the Act. In such cases, however, a special application will have to be made, and the Court will require to be satisfied not only that there has in fact been delay in receiving the decree or judgment, but that the delay has arisen otherwise than from the fault or neligence of the appellant.

The case will go back to the Bench which referred it with this expression of our opinion.

(1) 2 W. R., Mis., 51 (2) *Ante*, p. 273.