
(1870) 02 CAL CK 0026

Calcutta High Court

Case No: Regular Appeal No. 108 of 1869

Maharaja Rajendra
Pratap Sahoy Bahadur

APPELLANT

Vs

Bhawabal Sing

RESPONDENT

Date of Decision: Feb. 10, 1870

Judgement

Markby, J.

After detailing the facts of the case, and observing that, upon the proceedings before the Court, there was not the slightest trace of the suits (viz., the suits decreed in favor of Bhawabal Sing on the 13th and 19th January 1864) having been compromised, and that the decision of the Subordinate Judge against Chatarbhuj, who had not appealed, was final, continued:--The Subordinate Judge was clearly wrong in not raising the issue whether the plaintiff's suit was barred by the decrees of the 13th and 19th January 1864 respectively, and I am at a loss to understand why he did not do so. We, therefore, have raised it in the terms proposed; and having heard the argument upon it, I think it ought to be decided in favor of the defendant, Bhawabal Sing.

2. I wish to observe that the case now stands as a simple one between the plaintiff on the one hand, who seeks to have his title to this property declared, and the defendant, Bhawabal Sing, on the other, who denies that title. There is no relief prayed as against the defendant, Bhawabal Sing; the plaintiff himself asserts that he has been up to this moment in full enjoyment of his rights, and the only relief prayed in this suit, as consequent upon the declaration, is that certain proceedings should be set aside, to which Bhawabal Sing was not a party.

3. The allegation that these proceedings were taken by the two defendants in collusion has been entirely abandoned.

4. Under these circumstances, there may be some doubt whether, under the rule which this Court has several times laid down that no declaratory suit can be maintained, unless some act has been done which would entitle the plaintiff to relief if asked for, this suit

could be maintained at all. But this point has not been argued, and I do not place my decision on this ground. I point out the condition in which the question now stands before us, for the purpose of showing that in this, as in all other cases, where the plaintiff, who has not been disturbed in his possession, seeks for a declaration of his title, he must state clearly and precisely what that title is.

5. The argument on the part of the defendant is that we are bound, by the decree of January 1864, to hold that Bhawabal Sing was, at that date, as against the Raja, entitled to hold this property as his own; and that any title claimed by the Raja prior to the decree is, in fact, destroyed by the decree. He does not contend that, if the Raja claimed any title which accrued since the decrees, that the decrees would then be a bar; but he contends that they bar any claim to a title which accrued prior to the decrees. It is argued that, as between parties to a decree, there can be no inquiry as to who was the real plaintiff or the real defendant; that is, as between them, the decree is conclusive.

6. The plaintiff on the other hand denies that, except under sections 259 and 260 of the Code of Civil Procedure, there is any restriction whatever on the right of parties in this country to show the real nature of a benami transaction, and he contends that the rule, as to the conclusiveness of decrees, must be subject to the right of any of the parties to show for whose benefit the suit was carried on.

7. It is on this point that our judgment chiefly turns. I think that there is no such general exception, as is contended for by the plaintiff, to the rule that a decree of Court is final and conclusive between the parties. It seems to me that it would lead to endless confusion if the defendant on the record could show that, so far from being really a defendant, he was the plaintiff; that so far from judgment having been recovered against him, he had really recovered judgment. Not a single instance has been adduced before us of the benami system having been carried so far, and though it may be too late for this Court to abolish that pernicious system to the extent to which it is established, it is highly desirable not to introduce it where it is as yet unknown.

8. It is hardly necessary to observe that the case before us stands quite apart from those cases where a third person, who is not on the record at all, comes in to show that a suit was carried on really for his benefit. It also stands apart from those cases where a person on the record seeks to show that a suit was carried on really against a person who was not a party to the suit. This, though a highly inconvenient practice, has been very frequently allowed; and to such cases, the present decision does not apply.

9. Nor need we consider in this case the reasons why a person against whom an adverse decree has been obtained is allowed, in some cases, to show cause why the decree should not be executed. No such question arises here.

10. What I hold is that a decree, until it is set aside, is, as between the parties to it, conclusive both as to the rights of those parties and the character in which they sue.

11. It follows from this that the decrees of January 1864 are a complete bar to the claim of the plaintiff to have declared a title by purchase in 1863, which is flatly inconsistent with those decrees.

12. It is clear, however, that the decrees would be no bar to a title which the plaintiff claimed as having accrued since those decrees were passed; and it is easy enough to see, if the plaintiff's case be a true one, how such a title might have been created. Not being, therefore, quite sure what the plaintiff's case really was, and not being desirous, even in appeal, to hold the plaintiff too strictly to the terms of his plaint, we enquired of Mr. Allan in the course of the argument if he relied on any new title acquired since the decree. He replied distinctly that he did not, but that he relied on the purchase in 1863, and the confirmation of that title by Bhawabal Sing's acts since the decree. It is clear, therefore, that the plaintiff, no doubt, for very good reasons, is desirous to carry back his title to the year 1863, and that is exactly what I think he is unable to do.

13. It is useless, therefore, to enquire further into the facts. I am of opinion that the decrees of January 1864 are a complete answer to the plaintiff's claim, and that the decision of the lower Court should be reversed on this ground, and the plaintiff's suit dismissed with costs.

14. We were very much pressed to go into the questions of fact raised and decided by the lower Court, and to decide them contingently on our decision being reversed by the Privy Council. I am aware that that course has been recommended by the Privy Council in some cases, but I feel sure that their Lordships did not intend to take away our discretion in such cases, and I consider that there are in this case the strongest reasons for confining the discussion within the narrowest limits.

Bayley, J.

15. I think we cannot go behind the decrees of January 1864, and that here the plaintiff's suit is barred. We are simply asked to reverse the position of the parties to the extent of giving a decree against the defendant, who has it in his favor, and to transpose it in favor of the plaintiff, who has no decree.

16. I concur in the order proposed.

17. On the 6th July 1870, the plaintiff applied for a review of the above judgments upon the following grounds, which were filed with the petition for review:--

1. According to several precedents of this Honorable Court, it has been distinctly ruled that the benami system being well known and recognized in this country, it is open to all persons claiming a beneficial interest in property to institute suits, for the purpose of showing that property purchased in the name of the person was so purchased with the money of another, who was the beneficial owner thereof. In the present suit, such evidence was clearly and fully adduced, but your Lordships, without any enquiry as to the

merits in respect of the fact of benami, have determined that, in consequence of the decisions of 13th January 1864 and 19th January 1864, in which Bhawabal Sing, being a benamidar for the petitioner, had obtained a decree, such decree was final, and no enquiry as to the circumstances connected with that decree could be entered upon.

2. Your Lordships, by declining to look into the evidence as to the payment of consideration-money, undisturbed possession by petitioner for several years, and the express acknowledgment of Bhawabal Sing himself, made after the date of the decree obtained in his name, have shut out from consideration the admission of your petitioner's title so made by the said Bhawabal Sing after the said decree, which acknowledgment, your petitioner contends, has the effect of re-opening in toto the legal operation of the said decree whatever that may be, and establishing your petitioner's title as undisputed proprietor of the property in question.

3. The cause of action in the present suit, and the subject-matter thereof, and the issues to be tried, are wholly separate and distinct from the cause of action, subject-matter, and issues in the former suit. Section 2, Act VIII of 1859, does not apply.

4. In the former case, the suit was by Tiag Ali and Tilak Pattak against your petitioner, Debi Taranarayan and others, the heirs of Jitan Lal, for a moiety of the property called mokurrari, of which the Maharaja was a purchaser of 4 annas. There is nothing, your petitioner submits, in law to prohibit your petitioner purchasing the former plaintiff's cause of action in respect of 8 annas, and securing the decree for the same in the name of his benamidar, at the same time giving up his right under his prior purchase at auction to the extent of 4 annas.

5. As your Lordships' judgment differs from other decisions of this Honorable Court, your petitioners pray that this case may be referred to a Full Bench for an authoritative ruling on the matter involved in this appeal.

6. Your petitioner was ready and willing, and offered to lay before your Lordships the oral and documentary evidence adduced by your petitioner, but your Lordships declined to look into the same, whereby your petitioner has not, he submits, had a full and proper investigation of his case accordingly to the ruling of their Lordships in the Privy Council.

18. Mr. Paul for the petitioner in review. [Bayley, J.--Before you commence your argument, I must observe that you were not in the appeal, and we cannot hear you in anything beyond or contrary to what was then advanced by Mr. Allan.] [Markby, J.--Mr. Allan argued that the decrees obtained in January 1864 were not res judicata between the parties. You are not entitled to re-argue that.] I am entitled to argue any point upon which the decision of the Court has been adverse to my client, and to show that the decision was wrong and contrary to justice. I must do this in my application for a review, for the purpose of showing why I ask for it. I shall not be entitled to a rehearing, until I have shown that there is a good and sufficient reason for granting me a review, and that it

is requisite for the ends of justice. This, if I may be allowed, I am prepared to do upon the arguments of fact and law indicated in the written grounds of review which have been filed, and which I am entitled to urge now, whether they have been raised before, fully or partially, at the original hearing of the appeal, or whether they have not been raised at all. It may be, should my application be admitted, and a notice be directed to issue to the other side for them to appear at the re-hearing of the case, that, at such re-hearing, I shall repeat the same arguments as I desire now to lay before the Court.

19. When a motion is made for a rule nisi, the counsel who seeks the rule has to advance certain statements of fact and arguments on points of law showing the necessity for the rule. These arguments have to be repeated for the purpose of making the rule absolute, when the opposite party shows cause against it. To avoid such repetition of argument in cases of review, a practice has been commonly followed of issuing a notice to the opposite party, when the petition for review and written grounds are filed, and thus the arguments on the application for review, and the arguments for and against the review itself, are heard simultaneously. The application for review, and re-hearing on review, become one proceeding.

20. It is no ground (first) to prevent my showing why I ask for a review at all, or (secondly) for stopping my argument on the re-hearing in review, to say,--"these arguments were raised and considered at the hearing of the appeal;" or to say,--" these arguments were not then raised; in either case we will not hear "them now." What third course can be adopted? If an argument has been raised on the hearing of the appeal, but has been misunderstood, or misapplied, or overruled by the Court, so that the justice of the case has been prejudiced (it lies on me to show this), I may put it in a clearer light, proving, if I can, that the Court is wrong on that point.

21. If a point has been passed over by the pleader, or by the Court, through inadvertence, or because it was, at the time, thought unimportant, I may show that it is really of the greatest importance; and that, as affecting the justice of the case, it should be fully and carefully discussed. It was said in *Janab Ali v. Chandi Charan Dey*⁽⁴⁾: "On the one hand a review is to be sought, not upon the same arguments upon the same matter and facts already placed before the Court, and upon which judgment has been given; and, on the other hand, a review should not be allowed upon altogether a new point which had not been taken at all at the time of the first hearing of the case, though full opportunity existed for doing so."

22. I do not dispute the truth of the proposition put forward in *Prosunnonauth Dutt v. Judoo Nath Paul* 9 W.R., 589 that "reviews are not granted merely to supply defects on the part of pleaders in their conduct of appeals." Judges, however, may be presumed to be generally acquainted with the law upon every material point in the case before them, and this entirely apart from what may be suggested to them by counsel. A Judge is competent to decide a case on any material point, even though such point has been but slightly pressed, or even passed over altogether in argument. The Advocate and the

Judge may often take opposite views of the bearing and importance of some particular point. If any such material point has been passed over in the judgment of the Court, or the law relating to it has been misapplied, and if it is probable that a full or further consideration of the point will lead the Court to a different conclusion, the party who considers himself aggrieved by the judgment is entitled to argue it in review, whether it has been raised or not by the advocate or pleader in the original hearing of the appeal.

23. If the mere fact that some particular point has been previously discussed, or the fact that it has not been discussed, are equally good grounds for rejecting a review, then section 376 and the other sections of Act VIII of 1859 relating to reviews may as well be expunged.

24. The meaning of the word "review," as understood in Indian Courts, is clearly different from the technical meaning of the same word as understood in the Court of Chancery in England. A review is admitted in the Court of Chancery in England, for the correction of an error of law apparent in the decree, and not for the correction of an erroneous judgment or the questioning of the ratio decidendi: *Musleah v. Musleah*⁽⁵⁾. In these Courts the word review has no such technical signification. Act VIII of 1859, section 376, enacts that Any person considering himself aggrieved by a decree of a Court, &c., and who from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time when the decree was passed, or "from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against him, may apply for a review of judgment by the Court which passed the decree." In section 378, it is laid down that, "If the Court shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application; but if it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Court shall grant the review."

25. In *Maharajah Moheshur Sing v. The Bengal Government* 7 Moore's I.A., 283; see 304, the Privy Council, with reference to Regulation XXVI of 1814 section 4, clause 2,⁽⁶⁾, relating to reviews of judgment, where precisely similar words are used, observed:--"It must be borne in mind that a review is perfectly distinct from an appeal; it is quite clear from the regulations that the primary intention of granting a review was the re-consideration of the same subject by the same Judge, as contradistinguished to an appeal, which is a hearing before another tribunal." The decision goes on to show that if, upon a consideration of the reasons stated in the petition of review, the circumstances of the case shall appear in justice to require it, the review is to be granted, and the same decision (page 309) impliedly holds that reasons impeaching the grounds of a judgment, or, in other words, matters whereby the ratio decidendi is questioned are admissible as grounds of review, provided that, if it should appear that the parties were cognizant of them at the time, any delay in pressing them shall first be accounted for.

26. It has been sometimes said by Judges of this Court that reviews can only be granted when there shall appear some "evident error" on the face of the judgment. The

Legislature does not so limit the right to review, it expressly uses the words "or any other good and sufficient reason," "or otherwise requisite for the ends of justice" See Act VIII of 1859, s. 370, and Act XXIII of 1861, s. 11.

27. It is not often that a judgment by any Judge of this Court discloses an "evident error" on the face of it; but the judgment may be nevertheless wrong See *Nadiar Chand Roy v. Baikant Nath Misser*, 4 B.L.R., A.C., 33, foot note.

28. In 6 M.L.A. 510 (Privy Council) ., new points were allowed to be argued in appeal before the Privy Council; and in *Maha Raja Dheeraj Raja Mahatab Chund Bahadoor* , an objection that the right of Government to sue was barred by limitation, was taken up for the first time in appeal before the Privy Council and allowed. If a point so material to the case can be taken up for the first time at the very latest stage in appealable cases, a fortiori can they be taken up in review, the object of which is to save the parties the expense of an appeal, and, if possible, stop further litigation. [Bayley, J.--In review it must be shown that we are wrong upon the facts and statements put before us at the original hearing of the appeal.] That is what I propose to do; but any new point may be raised in review, so as it does not work an injustice. Any good and sufficient reason, "requisite for the ends of justice," may be put forward. Here, however, to speak strictly, I do not seek to raise any "new" point. I seek to argue a point which has always existed in the case, and which necessarily goes to the very root of it, although its importance may not have been fully pressed upon the Court, or considered in the judgment. It is no "new" point which has arisen since your Lordships' judgment was delivered. I wish to press Mr. Allan's argument upon the Court, and other arguments to the same end, which will tend to show your Lordships' decision to be erroneous, and to quote several authorities which have not been put before the Court or considered.

29. Every Court of Justice is entitled to re-consider its judgment apart from regulations and law. But here the Legislature expressly provides for such re-consideration. The Judges are, therefore, bound to obey the Legislature, and to review their judgments whenever there is reasonable ground for saying that the justice of the case requires it. The effect of the decisions is practically to repeal the review sections of Act VIII of 1859.

30. If reviews are not to be granted, either upon points which have been taken during the argument of the appeal, nor upon points which have not been so taken, it follows that a review can only be granted for the purpose of correcting an error evident on the face of the judgment or decree. This object could, it is submitted, be more properly and easily attained by calling the Court's attention to the error by motion, than by the more tedious and expensive process of a review. Such has been the practice in some cases.

31. If reviews of every description, with the exception of those in which self-evident error or omission is suggested, are to be disregarded and summarily dismissed, the inevitable result will be that appeals to the Privy Council must increase. I have to submit that the right of such re-consideration as I desire to support is a privilege enjoyed by the Court for

the purpose of rectifying an erroneous judgment, which might have been passed; and I have further to submit that the restriction which the High Court have in some instances put upon their power to review judgments, is a surrendering of their privilege.

Markby, J.

32. The question raised for our decision on this application is one on which I believe nearly all the Judges of the Court have expressed their opinions. It is whether an unsuccessful party can come up in review, and claim as of right to be heard to argue that the conclusions arrived at by the Court at the hearing are erroneous. I consider it to be a settled rule of practice in this Court that no such right can be claimed. We heard the case to which this application relates argued at very considerable length, and we took time to consider our judgment. The result was that the plaintiff's suit was dismissed.

33. The plaintiff now claims, as a matter of right, to be heard to argue that the grounds of our decision were wrong.

34. It was contended, on behalf of the plaintiff, that this was contemplated by Act VIII of 1859. The contrary appears to me to be the case. The sections which relate to proceedings in review provide, first, by section 376, for the application for a review; secondly, by section 378, for a notice to the opposite party, and a hearing in order to discuss whether the application for a review ought to be granted; thirdly, u/s 380, for a re-hearing if the review is granted.

35. Now it is clear that the proceedings u/s 376 and section 378, and u/s 380, are perfectly distinct, the first is in order to consider whether the case should or should not be re-heard; the second is the re-hearing.

36. But the right which the plaintiff now claims would wholly expunge the first of these proceedings; what the plaintiff's counsel really now claims is at once to have the case re-heard; he wishes at once to produce his arguments to show that our decision was wrong; he has not stated in his application, or suggested a single reason of any sort or description why the hearing was not full, and complete, and final; but simply states the several grounds on which he wishes to contest our decision. In my opinion to permit this would be to give an unsuccessful party the privilege of a re-hearing, without the preliminary requirement being satisfied, namely, that he should show some good and sufficient reason why he should be re-heard.

37. This view of the law which seems to me to follow from the plain language of the Act, has possibly been lost sight of from the three stages of the proceedings above-mentioned very often taking place at one sitting of the Court. We have found it more convenient when an application for review is filed that notice should at once be given to the vakeel of the opposite party u/s 378, so as to bring both parties before the Court, when the review is first applied for. And when both parties are before the Court, if the Court thinks that the application for review should be granted, it is very often found convenient at once to

re-hear the case. But it was never intended thereby to make the re-hearing of a case a matter of right.

38. I think the plaintiff, before he can be heard to argue that our decision was wrong, must satisfy us that there is some good and sufficient cause why we should grant him the privilege. Until he has done so, I think we are bound to treat our former judgment as final.

Bayley, J.

39. I think the plea of the plaintiff untenable, and that the application for review should not be granted.

40. The provisions of the law as to the application for review are one distinct matter. To re-hear after the success of that application is another matter. But the plaintiff's counsel argues that he is entitled to a re-hearing of his case on any good and sufficient ground, even if such grounds were never urged in any Court below, or even here; that is, the Court is asked to say it is in error in its adjudication when it never had before it in the first instance the new points on which it is asked subsequently to adjudicate. I adhere then to the almost concurrent decisions of this Court which construe the sections 376 to 378 not to allow of a re-hearing upon the possibility of an alteration of opinion upon new points being put, and new arguments urged, after the decision, by another advocate not present at the first hearing.⁽⁷⁾

⁽¹⁾ i.e., apparently, the order of the Principal Sudder Ameen, directing the property to be attached.

⁽²⁾ Before Mr. Justice Kemp and Mr. Justice Glover.

March 4th, 1869.

Mahabir Prasad v. Lala Ram Bahadur.

Special Appeal, No. 2247 of 1868, from a decision passed by the Additional Judge of Tirhoot, dated the 15th June 1868, reversing a decision of the Munsiff of Tajpore, dated the 31st August 1867.

Kemp, J.--The plaintiff, special respondent, purchased the estate in dispute from Baboo Lal Jha, defendant No. 1; and defendant No. 1, Baboo Lal Jha, purchased the property from defendant No. 2, Gopal Lal. Baboo Lal Jha sued Gopal Lal for confirmation of possession, registration of name, and establishment of right, and that suit was dismissed. The plaintiff in the present suit purchased from Baboo Lal Jha, during the pendency of that suit. The Court of first instance has substantially held, that, because the suit of Baboo Lal Jha against his vendor was dismissed, the plaintiff (whose rights, we may observe, arose after that suit) is precluded from bringing the present suit u/s 114, Act VIII of 1859.

The present suit is for possession, on the allegation of dispossession, on 19th January 1867, which is long after the decision passed in the case of the plaintiff's vendor, Baboo Lal Jha. The cause of action not being the same, section 114 is clearly not applicable.

(3) Before Mr. Justice Bayley and Mr. Justice Macpherson.

Umes Chandra Roy v. Nabin Chandra Mazumdar. ■

December 15th, 1868.

Macpherson, J.--The question in this case is whether the present suit is barred by the decree made in a former suit, which was dismissed. The plaintiffs in the former suit were Haronath Roy, Radha Charan Roy, Chandra Kumar Roy, and Kali Prasanna Roy. The plaintiffs in the present suit are Umes Chandra Roy, Radha Charan Roy, and Chandra Kumar Roy. It appears to me that the former suit cannot be said to be between the same parties, or to have been brought by parties under whom the plaintiffs in the present case claim. Therefore, the present suit is not barred by section 2, Act VIII of 1859. Umes Chandra may or may not have stated in the course of the former suit that all the interest he had belonged to his father, Haronath Roy. But if he did make the statement, it will not alter the case so long as the parties to the two suits are not the same, and they are not the same, whether some of them are merely trust tees for the others or not. I would therefore reverse the order of the lower Appellate Court, and remand the case to that Court to be tried on the merits.

Bayley, J.--I concur.

■ Special Appeal, No. 928 of 1868, under Act X of 1859, from a decision passed by the Judge of Rajshahye, dated the 14th January 1868, reversing a decision of the Deputy Collector of that District, dated the 17th September 1867.

(4) Before Mr. Justice Bayley and Mr. Justice Markby.

Janab Ali (Decree-holder) v. Chandi Charan Dey and Another (Judgment-debtors).

Case No. 3 of 1869. Application for review of judgment passed by Mr. Justice Bayley and Mr. Justice Markby, on the 29th November 1868, in Miscellaneous Appeal. No. 394 of 1864.

The 5th March 1869.

Bayley, J.--I am of opinion that this application for review must be rejected with costs.

A new point as to the jurisdiction of this Court has been raised on review, and it is urged that such a point can be taken at any time and in review.

I think the proper rule as to reviews is that, on the one hand, a review is to be sought, not upon the same arguments upon the same matter and fact already placed before the Court, and upon which judgment has been given; and, on the other hand, a review should not be allowed upon altogether a new point which had not been taken at all at the time of the first hearing of the case, though full opportunity existed for doing so. (Of course, I do not mean that a review might not be asked for on new evidence not before available, but such is not the plea here.)

As to the point of the jurisdiction now urged before us for the first time, it was (as admitted by the pleader) not laid before us at the first hearing, and we cannot be said to have erred in our former judgment in respect of a point on which we never were asked to give judgment.

The other point taken is that re-consideration of the case might lead us to form a different view of the construction of the decree. I do not think, under the rule I have referred to as the proper one, that we ought to allow a re-hearing, because a repetition of the very same arguments which had failed in the first instance might succeed in the second. The principle would be utterly at variance with the finality of litigation required by law.

I would, therefore, reject this application with costs.

Markby, J.--I am of the same opinion. I think it is quite too late to take any objection as to jurisdiction in review after the Court has finally decided a case and come to a conclusion upon it. This disposes of the first objection.

As to the other objection, I quite agree with Mr. Justice Bayley that it ought not to be allowed to be taken. I think it is altogether an abuse of the right to ask for a review, and an unwarrantable waste of the time of Court which is the time of the public, to attempt to re-argue a point which has been once considered and decided by the Court.

⁽⁵⁾ 1 Boulnois, 58, and cases therein considered. See also *Perry v. Phelps*, 17 Ves., 178, where Lord Eldon distinguishes between a "review" and a "re-hearing," which latter is more analogous to what the learned counsel contends is a "review," as understood by the Indian Legislature.

⁽⁶⁾ Reg. XXVI of 1814, sec. 4, cl. 2.--"Any persons considering themselves aggrieved by a decree passed in a regular civil suit, or appeal by a Zilla, City, or Provincial Court, from which decree no further appeal may have been admitted by a superior Court, and who, from the discovery of new matter or evidence which was not within their knowledge, or could not be adduced by them at the time when the decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against them, are at liberty to present a petition for this purpose to the Court in which the decree in question may have been passed."

(7) A similar application was made by Mr. Paul, on 25th July 1870, in Gangaprasad v. The Agra and Master-man"s Bank. Reg. App., 283 of 1869.

Couch, C.J.--I have ruled for years that a point previously argued cannot be argued in review. It is quite clear that we considered the matter of costs and the circumstances before, and we cannot allow the same point to be argued again in review.