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disposed of the application after having heard the defendant or the opposite party.

For these reasons I formulate my answer to this reference in the following terms:—

The Court has powers under s. 622, Civil Procedure Code, to revise an order passed under s. 407, Civil Procedure Code, rejecting an application for permission to sue *in formâ pauperis*, in cases where such rejection has been made by exercising jurisdiction "illegally or with material irregularity" within the meaning of s. 622, but in the present case the jurisdiction vested in the lower Court, having been exercised without being open to either of such objections, the present is not a fit case for revision under s. 622, Civil Procedure Code.

CRIMINAL REVISIONAL.

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April 23.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Brodhurst.

QUEEN-EMPRESS *v.* DURGA CHARAN.

Review of judgment—Criminal case—Criminal Procedure Code, s. 369.

The High Court has no power under s. 369 of the Criminal Procedure Code, to review an order dismissing an application for revision made by an accused person, and the only remedy is by an appeal to the prerogative of the Crown as exercised by the Local Government.

Per BRODHURST, J.—The Legislature has not conferred in express words upon a High Court the power of reviewing its judgments in all criminal cases as it has done under the Civil Procedure Code in civil cases; and the provisions of s. 369 of the Criminal Procedure Code, so far as they affect the High Court, apply merely to questions of law arising in its original criminal jurisdiction, and which are reserved and are subsequently disposed of under the provisions of s. 434 of the Criminal Procedure Code and ss. 18 and 19 of the Letters Patent for the High Court of the North-Western Provinces. *Queen* v. *Godai Raout* (1) referred to.

ON the 18th March, 1884, a pleader was convicted by a Magistrate of cheating, and was fined Rs. 200. This conviction and sentence were affirmed by the Court of Session, on appeal, on the 7th May, 1884. The pleader then applied to the High Court for revision. This application was rejected on the 12th August, 1884, by Duthoit, J. Subsequently, with reference to this conviction, the District Judge, under Act XVIII of 1879 (Legal Practitioners Act), reported the case to the High Court for orders, expressing

(1) 5 W. R., Cr. 61.

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his opinion that the pleader was unfit to be allowed to practice. The case came for disposal before the Full Bench. With the permission of the Bench, the pleader's counsel was allowed to argue that his client had committed no offence at law. After hearing argument on this point, the Full Bench was of opinion that the pleader should not be either suspended or dismissed under s. 12 of Act XVIII of 1879 (1).

The pleader then applied to the High Court for a review of its former judgment of the 12th August, 1884.

Mr. *T. Conlan*, for the appellant.

PETHERAM, C. J.—In my opinion this Court has no power to review the order of Mr. Justice Duthoit, by which he dismissed the application for revision made by the accused, and therefore the only remedy is by an appeal to the prerogative of the Crown as exercised by the Local Government.

BRODHURST, J.—This is an application that this Court will, under the provisions of s. 369 of the Criminal Procedure Code, review an order passed, on revision, on the 12th August, 1884, by Duthoit, J., who is no longer a Judge of this Court.

The question now arises whether a High Court in India can in any criminal case—*i.e.*, as a Court of original jurisdiction, or as a Court of appeal, or as a Court of revision—review its judgment or order.

A Full Bench of the High Court of Calcutta, in the case of *Queen* v. *Godai Raout* (2), held that a review of judgment will not lie from a sentence or judgment pronounced by the High Court in a criminal case upon appeal, and the learned Judges were of opinion that "it was the intention of the Legislature that the Court should not exercise the power of reviewing its own judgment in criminal cases."

That Full Bench judgment was delivered on the 15th February, 1866, when Act XXV of 1861 was the Code of Criminal Procedure in force; but the following extract from the judgment is still in point, even though the Code of Criminal Procedure has since then been more than once amended.

(1) *Ante*, p. 290. (2) 51 W. R., Cr. 61.

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"The Code of Criminal Procedure does not contain any section expressly authorizing a review of judgment in a criminal case after the judgment has been recorded. The Code of Criminal Procedure was passed after the Code of Civil Procedure. The latter contains a section expressly authorizing a review of judgment, but the former contains no corresponding section. From this it may reasonably be inferred that the Legislature did not intend to confer in criminal cases a power similar to that which they had given in civil cases."

The Legislature has not, even under the Criminal Procedure Code now in force, conferred, in express words, upon a High Court, the power of reviewing its judgments in all criminal cases as it has done under the Civil Procedure Code in civil cases; and, in my opinion, the provisions of s. 369 of the Criminal Procedure Code, so far as they affect a High Court, apply merely to questions of law arising in its original criminal jurisdiction, and which are reserved and are subsequently disposed of under the provisions of s. 434 of the Criminal Procedure Code and the corresponding sections of Letters Patent, which, for the North-Western Provinces, are ss. 18 and 19.

Under these circumstances, I concur with the learned Chief Justice in rejecting the application.

Application refused.

APPELLATE CIVIL.

1885
April 23.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

AJUDHIA (DEFENDANT) *v.* BALDEO SINGH (PLAINTIFF).*

Pre-emption—Profits of property accruing between purchase and transfer to pre-emptor.

B purchased a share in a mahal on the 3rd January 1880 (Pus, 1287 fasli). *A* sued *B* and the vendor to enforce his right of pre-emption, and, on the 24th March 1882 (Chait, 1289 fasli), obtained a final decree enforcing the right. Subsequently *B*, as a co-sharer in the mahal, during 1288 fasli, claimed from *A*, as lambardar of the mahal, the profits of the share for 1288 fasli.

Held that the pre-emptive right which was declared in the suit instituted by *A*, when it was once established, existed, and must be presumed to have taken

* Second appeal No. 935 of 1884, from a decree of W. Barry, Esq., District Judge of Banda, dated the 29th April, 1884, affirming a decree of Muhammad Fazal Azim, Assistant Collector, 1st class, of Hamirpur, dated the 21st February, 1884.