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tory upon executors or legatees to take out probate or letters of administration, are not applicable.

The learned Judge of the District Court has found that but for the "defect of jurisdiction," which he supposed to exist, the applicants would have been entitled to the letters they ask for. That being so, I agree with my learned brother in holding that the Judge should be directed to grant letters of administration.

J. V. W.

Appeal allowed.

FULL BENCH.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice Wilson, Mr. Justice Macpherson and Mr. Justice Grant.

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IN THE MATTER OF THE PETITION OF F. W. GIBBONS.

Review of judgment of High Court—Criminal Procedure Code (Act X of 1882), s. 369.

The verdict and judgment of a Divisional Bench of a High Court, coupled with the sentence in a criminal case, are absolutely final, and as soon as they have been pronounced and signed by the Judges, the High Court is *functus officio*, and neither the Court itself, nor any Bench of it, has any power to revise that decision or interfere with it in any way.

THIS was an application in which the petitioner prayed that the High Court would review or revise the judgment and sentence of a Division Bench of the said Court.

The petitioner's case had been tried before the Sessions Judge of the Assam Valley Districts, and on the trial the jury unanimously acquitted him of the offence with which he was charged. The Judge differed from the verdict, and consequently referred the case to the High Court, under s. 307 of the Criminal Procedure Code. The case came before a Division Bench of the Court (MITTER and GRANT, JJ.) who reversed the verdict of acquittal and convicted and sentenced the petitioner to one year's rigorous imprisonment, and a fine of Rs. 1,000, or in default to suffer six months' further imprisonment.

Subsequently on the 31st August Mr. *Pugh* (with him Mr. *Evans*) applied to the Chief Justice to appoint a Bench to hear an application to review such order, and considering the importance of the case Mr. *Pugh* asked that a special Bench, consisting of

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more than two Judges, might be appointed. This application was based upon a petition in which the accused prayed that the judgment and sentence of the Division Bench of the High Court might be reviewed and revised, and that he might in the *interim* be released on bail. Upon that application the Chief Justice appointed the present Bench to hear the questions raised in the petition argued, but in doing so stated that Mr. *Pugh* was to understand that upon the application being heard, all objections, if any, would have to be considered as to whether the Bench so appointed had any jurisdiction to hear the application at all.

The application now came on for hearing.

Mr. *Pugh* and Mr. *Evans*, for the petitioner.

Mr. *Pugh*.—I apply upon petition for a review or revision of the judgment, or order passed by a Bench of this Court consisting of Mr. Justice Mitter and Mr. Justice Grant, and shall not read the petition further than is necessary to show your Lordships the points which I propose to raise.

PETHERAM, C. J.—The first question is, whether there is any power to review or revise that judgment, whether there is any jurisdiction or not.

Mr. *Pugh*.—I shall only go into such facts as will illustrate the points which will arise.

WILSON, J.—To my mind there is an earlier question, and that is whether this Bench, as at present constituted, can entertain the question.

Mr. *Pugh*.—There is the case of *In the matter of Abdool Sobhan* (1) in which the late Chief Justice considered an order made by Mr. Justice Cunningham and Mr. Justice Prinsep, and in the course of that hearing the Chief Justice observed that the Original Bench had expressed their willingness to hear the case again, and it was taken up.

MITTER, J.—If I remember right that judgment was against your contention. The Chief Justice distinctly ruled that he had no power to constitute a Bench.

Mr. *Pugh* (after reading the judgment in that case).—In applying for this review and hearing I applied for it on the grounds of the extreme gravity of the questions involved. In that case the

(1) I. L. R., 8 Calc., 63.

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circumstances were that the Judges declined to hear the matter themselves, which is not the case here. No doubt in that case the late Chief Justice thought it was within his competence to order that such a Bench should sit, but I do not know how he arrived at that conclusion. There is no rule on the subject in the Code of Criminal Procedure. Supposing there had been a miscarriage of justice or any error committed, there was no rule that that should only be rectified by the Judges who passed the order and not by a Full Bench of the Court. I contend that such a matter could be heard before any Bench, and that it is within the province of the Chief Justice to appoint a Bench of a larger number than two Judges to hear such a matter.

WILSON, J.—As I understand, the case is this: A Bench of this Court, consisting of two Judges, has duly heard and disposed of the matter, and you now ask that another Bench should be appointed to overrule their decision.

Mr. *Pugh*.—I contend that the Court has power to grant a review in a criminal matter of this nature. Since the Code of Criminal Procedure of 1861, under which this Court had no power to grant a review, considerable legislation and numerous changes in the law have taken place. In England there always existed the "writ of error" to the Court of Queen's Bench from the decisions of inferior Courts. When, however, the Court of Queen's Bench was itself in error, when the error appeared on the face of the judgment, the subject had still his remedy, and under recent legislation he is enabled to go to the Court of Appeal, the section of the Judicature Act conferring such right being in the widest terms. Here the only thing corresponding to that right is the right to ask for a review, and the tendency of legislation here between the two Acts of 1861 and 1882 shows that the intention of the Legislature has been to provide the subject with a more easy and quicker remedy.

PETHERAM, C.J.—You must go the length of saying that if there is power to review a judgment of conviction there is also power to review a judgment of acquittal.

Mr. *Pugh*.—Of course I must go that length. Section 369 of the Criminal Procedure Code, in limiting the power of Courts

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other than a High Court to alter or review its judgment after it has been signed, by implication shows that a High Court has the power to review its judgments. I contend that that section is an enabling one and should, in matters such as these, receive a liberal interpretation. Upon the point I rely also on section 439.

Mr. *Pugh* then proceeded to refer to an unreported case No. 69 of 1885, *Ramdass petitioner*, in which he stated that a Bench consisting of Prinsep and Pigot, JJ., reheard a case after judgment had been signed, when he was stopped by the Chief Justice who intimated that he must decline to look into or be guided by unreported cases.

Mr. *Evans* followed on the same side.

The following opinions were delivered by the Full Bench:—

PETHERAM, C.J.—I quite agree with the remark of Mr. Evans that this is a matter of very grave importance, and it was because I thought that it was a matter of very grave importance, and not because I had any doubt about the law, that I constituted this Bench for the purpose of hearing it argued, and I was all the more led to do so by the fact that I was told that a Division Bench of this Court had expressed a doubt as to whether there was not a power inherent in the Court itself to review a judgment of a Division Bench in a criminal case: and when I say, to review a judgment of a Division Bench, I mean, to review a judgment of a Division Bench by itself, because, in my opinion every Division Bench constitutes a Court in itself for the purpose of its judgment, and every judgment of a Division Bench is a judgment of the Court; and speaking for myself, (and as to this I wish to guard myself from expressing any opinion but my own) I do not think any difference exists between one Bench, and another so that it must be constituted of the same Judges to review a judgment of the Court, supposing it to be a judgment which is subject to review.

Speaking for myself, and, indeed, in this matter I think for the whole of the Judges constituting this Bench, I have no doubt whatever that, in cases of this kind, no power of review resides in the Court or in any Bench of the Court. This is an opinion which I have expressed before in the High Court at Allahabad

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[*Queen Empress* v. *Durga Charan* (1),] and it is an opinion which has been expressed in the High Court at Bombay [*Queen Empress* v. *Fo.e* (2),] and in opposition to which, so far as I know, there is no reported case to be found.

The question arises under various sections of the Code of Criminal Procedure, and the first section that applies to the matter is section 306.

Section 306 provides that, where an accused person has been acquitted or convicted by a jury, the Judge shall either record judgment of acquittal or pass sentence on him according to law.

So far as that section is concerned, unless there was another section that qualified it, that acquittal or conviction stands, in my opinion, exactly on the same footing as an acquittal or conviction by the verdict of a jury in England, and is final as to the guilt or innocence of the accused, so far as Courts of Justice are concerned.

Then, following upon that, comes section 307, and that section provides that, where the Sessions Judge disagrees with the verdict of the jury, he may, if he thinks fit, submit the case to the High Court with his reasons for so disagreeing, and the High Court is then invested with this power in dealing with the case; the High Court "may convict or acquit the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Sessions."

So that, as it seems to me, the effect of s. 307, read with s. 306, is to say, that if the Judge, who tries the case, is dissatisfied with the verdict and the High Court, upon a consideration of the whole case, accepts his view, they may substitute their verdict for the verdict of the jury, and, upon that being done, may pass sentence upon him; but there is nothing whatever in these two sections to place the judgment and verdict of the High Court, under these circumstances, in any different position from that in which the verdict of the jury and the judgment of the Court would have been if it had been accepted by the Judge and he had passed sentence accordingly; and the verdict,

(1) I. L. R., 7 All., 672. (2) I. L. R., 10 Bom., 176.

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judgment and sentence, under s. 306, would, under such circumstances, have been final.

That being so, the question then arises, whether this state of things is varied by any of the following sections, and whether those sections give, either a power of appealing from the Division Bench which heard the matter to some other Bench of this Court, or give the Court itself, or the Bench constituted in the same way, a power of revision.

The first section which is relied upon is section 369. Section 369 states that "no Court, other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in s. 395 or to correct a clerical error."

In my opinion the effect of the words "other than a High Court" is precisely the same as if in place of them the legislature had at the end of the section added these words, "this section does not apply to the High Court." There is no substantive enactment in that section with reference to the High Court, and all it does is to reserve the powers which existed in the High Court before, so that they are in no degree taken away. What the powers of the High Court were before, it is unnecessary to consider, but whatever they were, they were reserved and they were in the same position after this section was passed as they had been in before; and inasmuch as it is not shown to us that, before the passing of this section, any power of revision existed in the High Court, that section did not, in my opinion, create any such power, and therefore it appears that this section does not help the applicant.

I should concur with the dgment of Sir Barnes Peacock in

H. T. H.

the law which was in existence as the law then stood, no such refore that shows clearly that e, and that, taken along with put upon the section, that it ws clearly that no power of that section is concerned.

(1) I. L. R., 8

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of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may," *et cetera.* In my opinion, the first four lines of that section show, beyond all possibility of doubt, that the record which is referred to in that section is the record of some Court other than that of the High Court, because it is obvious that what is meant is, the record of the case which has been called up and brought before the High Court, and not the record of the case which is in the High Court itself, and which it therefore has in its possession and has no need to call for.

Under these circumstances, I think that neither section 369 nor section 439 helps the case on which the present application has been made, and that it must therefore fall back on the condition of things created by sections 306 and 307, and, as I have said before, the verdict and judgment of a Division Bench of this Court, coupled with the sentence, are, in my opinion, absolutely final. As soon as they have been pronounced and signed by the Judges, this Court is *functus officio*, and neither the Court itself nor any Bench of it, has any power to revise that decision or interfere with it in any way.

MITTER, J.—I am of the same opinion. I desire only to add that the last part of section 439 was enacted in order to meet a case of this kind. Section 266 says: "In this chapter, except in section 307, the expression High Court means a High Court of Judicature established or to be established under the 24th and 25th Victoria, Chapter 104, and includes the Chief Court of the Punjab, and such other Courts as the Governor-General in Council may, by notification in the [illegible]
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other respects, would not have the power of reversing or interfering with any order passed by that Court under s. 273.

As regards the question whether this Court as constituted has any jurisdiction to entertain this application, I express no opinion.

WILSON, J.—I am entirely of the same opinion on the main question. There is only one point on which I desire to add anything. The point is not really one of any practical importance, because the Court, as now constituted, does contain both the learned Judges whose judgment we have been asked to review, and therefore the decision of this Court, as at present constituted, will, by reason of their presence, be a valid and efficacious decision; but I have myself very grave doubt whether it does not derive the whole of its efficacy from the fact of those two Judges being present.

I entertain considerable doubt whether, assuming that such an application as this is one that could be entertained in law, any Division Bench of this Court could entertain it with respect to a judgment of another Division Bench, and I think the view taken by Sir Richard Garth in the *case of Abdul Sobhan* (1) tends strongly to confirm this doubt. I only say this by way of safeguard, because, as I said before, the Bench being constituted as at present, the point is not really of any practical importance.

MACPHERSON, J.—I concur with the Chief Justice.

GRANT, J.—I concur with the learned Chief Justice.

H. T. H. *Application refused.*

(1) I. L. R., 8 Calc., 63.