of opinion upon new points being put, and new arguments urged, after the decision, by another advocate not present at the first hearing. (1)

(1) A similar application was made by Mr. Paul, on 25th July 1870, in *Gungapersad* v. *The Agra and Masterman'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.

The 7th April 1870.

Before Sir Barnes Peacock, Kt., Chief Justice and Mr. Justice L. S. Jackson.

SHAHAZADI HAJRA BEGUM,

versus

KHAJA HOSSEIN ALI KHAN.

Application for Review in Appeal 8 *of* 1869, *under Section* 15 *of the Letters Patent.*

Mr. Woodroffe applied for a review of the judgment given in this case on appeal under the 15th Section of the Letters Patent (1). He showed that Mr. Justice Kemp had not correctly stated the point in contention, the point really involved, and which was really argued before the Division Bench, being whether the sale of the appropriated property and its conversion into money, for want of assets to pay off the mortgage, rendered the *wuqf* void, and also contended that money, which in this case was the surplus proceeds of the sale of the talook in the hands of the Collector, could not be the subject of "*wuqf*," (Baillie's Digest of Mahomedan Law, p. 562.)

Peacock, C. J., raised no objection to the hearing of these arguments, although the first had been argued before in appeal, and the second had not, but simply delivered a judgment supporting the previous decision. He said :—

. . . . . .

"Even if the talook had been sold under the mortgage, it appears to me that the heirs at law would not be entitled to the surplus proceeds. . . . . .

"The talook was sold under Regulation VIII of 1819 for the purpose of realizing rent due for it. . . . . The sale did not take place under the Mahomedan law, and it appears to me that, when the mortgage was satisfied out of the surplus proceeds of the sale, the remainder of the surplus proceeds belonged to the matwalli under the endowment. The plaintiff's mortgage was paid off out of the surplus proceeds, which were realized for the arrears of rent, and it appears to me that the surplus did not belong to the heirs-at law of the endower, but to the person who, but for the sale for arrears of rent, would be entitled to it. For these reasons I think this application should be rejected with costs."

(1) 4 B. L. R., A. C., 86.

Jackson, J., concurred in rejecting the application for review. In the course of his judgment, he observed :—"I also think, whether the real point in the case was correctly stated by the Division Bench or not, that it is quite clear that the other points on which the appropriation of the "wuqf" was impugned were not argued or brought before the learned Judges, and that those points must consequently be excluded from our consideration in this review. I desire only to add that, in hearing the argument of the learned counsel to-day, on a point which was fully argued before us, on which we pronounced our deliberate opinion, I in no way resile from the opinion which I recently expressed in a case of review which was decided by me and Mr. Justice Marky ; for in the first place, there are one or two points of difficulty which in my opinion made it desirable that argument should be heard ; and in the next place, I have not thought it convenient to raise before the Court, constituted, as it now is, a point of some difficulty and importance unquestionably, and on which the learned Chief Justice has not hitherto expressed a decided opinion."

The 14th July 1870.

Before Mr. Justice Bayley and Justice Sir C. P. Hobhouse, Bart.

GARIB HOSSEIN CHOWDHRY and others *(Defendants)*,

versus

WISE *(Plaintiff)*.

Review No. 79 *of* 1870 *from the judgment of Mr. Justice Bayley and Justice Sir C. P. Hobhouse, Bart., passed in a Regular Appeal No.* 178 *of* 1869, *dated the* 8*th March* 1870.

THE plaintiff, having bought up decrees against the first defendant's deceased father, sued to have the property of the deceased father sold in satisfaction of the plaintiff's decrees. The property consisted of five parcels. The answer was that these properties had, since the father's death, been sold in execution, and bought by the other defendants. The plaintiff replied that the other defendants were merely the benamis of the father's son and heir, the first defendant, and that he it was who had bought in the properties at each execution sale.

The Lower Court found that the other defendants were not the first defendant's benamis, but *bona fide* purchasers at the several execution sales.

On appeal the High Court, BAYLEY and HOBHOUSE, JJ., held on the facts that the first defendant was the real purchaser, and ordered the properties to be sold, in satisfaction of the plaintiff's decrees.

Mr. Money, on behalf of two of the defendants who were purchasers of two of the lots, applied for review of the judgment as to those lots, on the ground that the debts for which the lots had before been sold in execution was also a decree against the deceased father, and that therefore these assets, having been already once exhausted in sale for the deceased's debts, were not liable to be sold again, in satisfaction of further debts of deceased, and that whether bought really by the son or by the other defendants, unless it were proved that the purchase by the son was made out of other assets of the deceased father.

Mr. Money contended that, as to these two parcels, the order for a re-sale was an erroneous legal conclusion from the High Court's own premises, however rightly that conclusion might flow from those premises as to the other parcels which had been previously sold, not for the dead father's debt, but for the son's debt, after the father's death.

Bayley and Hobhouse, JJ., were for refusing to allow the argument to proceed, on the ground of the decision in *Bhawabal Sing* v. *Maharaja Rajendra Pratab Sahoy Bahadur* (1), and because this point had not been taken in the argument on appeal.

Mr. Money contended that this case did not come within even the exhaustive grounds ruled in the case referred to for refusing the review, as it was neither a point raised before, or not raised before, neither an argument already urged and decided, nor an argument failed to be raised at the appeal; that the appeal was on facts, and the question was whether the purchases were made by the son or by the other defendants; that, according to the finding of fact, certain legal consequences should flow therefrom different as to the different parcels; that at the argument on the appeal, it was to be assumed that, however they found the facts, the Court would draw the proper legal conclusion from those facts; and that therefore he now proposed to argue only the inaccuracy of the conclusion drawn, as to these two parcels, from the Court's own finding of fact, and which error first came into existence after the argument on the appeal, *viz.*, when the judgment on appeal was given. The Court however refused to allow Mr. Money to proceed, and gave judgment as follows:—

Hobhouse, J.—We think, after the best consideration that we can give to the arguments of the learned counsel for the petitioner for review, that there are only three points which call for any notice on our part: the *first* is whether there is any error or not in our not coming to a decision on the question of the collusiveness of certain decrees; the *second* is as regards the multifariousness of the suit; and the *third* is with reference to the decision of the 17th January 1868. I understand the learned counsel for the applicant for review to say that, if we had found that the decree of one Dilwar Hossein was a true decree, then we should have been obliged to find that, so far as his client is concerned, the plaintiff had no cause of action. I really do not know whether this would have been the case or not; and in order to determine, first of all, whether the decree was a true or fictitious decree, and if it was a true decree, whether the plaintiff had any cause of action or not, it would, it seems to me, be necessary to go into the whole case again, re consider the evidence in the case, and re-hear the counsel for the opposite party.

Now, on turning to the judgment which we gave, I find that the pleaders who were then instructed by the defendants made one common issue on which they elected that we should determine, either for the plaintiff or for the defendants, and that issue is thus recorded.

I state in my judgment, after referring to certain admissions made, that "it is further not denied that, if the said Garib Hossein is found to be the person at present beneficially interested in those properties, and in the possession and enjoyment of them, then he, as the possessor, is bound to the extent of the properties to satisfy the decrees against Joki Chowdhry." So that it seems to me that the parties elected that we should determine the case on a question of fact, and that that question should be one altogether independent of that now raised before us. The parties were then at liberty to raise the question which the learned counsel now contends for; and if they did not do so, they have only themselves and their advisers to thank for it; and in my judgment, an application for review is not the proper place where we can come to a trial and determination of a question which was not raised in the appeal provided for by the law, and which requires us to go into the whole evidence once again. For these reasons I do not think that we ought now to allow the parties to raise the question which the learned counsel would now raise.

In the matter of multifariousness, that is a question which was fully argued at the first hearing, and all that the learned counsel now asks us to do is that we should hear it once again. Possibly we should hear from him arguments, not those which were urged at that time, but certain others which he is prepared to advance on that particular question; but here again I agree with a number of the Judges of this Court who have held that an application for review is not the place where we should have a re-argument of what has been already argued. If that were so, the Legislature, instead of providing for review on the narrow grounds expressed in the law, would have provided that every case which has once been heard in the way provided by the law should be entitled to a second hearing.

In the matter of the decree of the 17th January 1868, I think we went too far when we said that it was no evidence at all against the plaintiff; but at the same time, I do not think that it is conclusive on the point which was in issue before us, and I am quite clear therefore that that decree, standing alone, should not induce us to alter our judgment on the facts found.

The other grounds which the learned counsel would take are, in my judgment (although the learned counsel does not think it to be so), determined by the decision which we have originally passed in the case.

I would reject this application with costs.

(1) *Ante*, p. 42

Bayley, J.—I quite concur with Mr. Justice Hobhouse who has delivered the judgment of the Court in this case.

As to the admission of new arguments, after a decision has been given in the case upon points, the very same as were previously put before the Court, I have already expressed my opinion in review No. 42, decided on the 6th July last by Mr. Justice Markby and myself. (1)

In regard to the manner in which this case has been placed before us, I would state that the pleaders argued the case, as on the merits upon the one point only, *viz.*, whether Garib Hossein Chowdhry was really the beneficial owner of the property in suit; and after carefully hearing the evidence, as it was read by counsel, and argued upon by the pleaders on both sides, we came to the conclusion of fact that Garib Hossein was such beneficial owner.

The point of multifariousness had been previously raised and disposed of, and cannot, I think, be re-argued on a new footing by a new counsel.

I agree in rejecting this application with costs.

(1) *Ante, p.* 42.

The 20th December 1869.

Before Mr. Justice L. S. Jackson, and Mr. Justice Markby.

BENI MADHAB GHOSE *(Petitioner)*,

versus

GANGA GABIND MANDAL *(Opposite Party)*.

Application for Review No. 225 *of* 1869, *against the judgment of Mr. Justice L. S. Jackson, and Mr. Justice Markby in Special Appeal No.* 2687 *of* 1368.

Mr. Paul, for Petitioner.

Mr. R. T. Allan for Opposite Party.

Jackson, J.—THE question that we have to consider in the present application is one which we have often considered before, and upon which I for my part have, and as I understand most of the other Judges also have, expressed a decided opinion. It is, whether in a case, an appeal having been carefully considered by this Court on a point of law argued at length, and the Court having come to a deliberate conclusion on that point, the party dissatisfied with the judgment of this Court, has an absolute right to be heard by fresh counsel in an application for review, merely for the purpose of convincing the Court that its first opinion upon that point of law was erroneous.

Mr. Paul contends that a party has such right, and declares that such right is perfectly clear. I can only say that it appears to me to be quite clear the other way. Rights of parties and the duty of the Court, in dealing with petitions of reviews must be gathered, if anywhere, from Sections 376 and 378 of the Procedure Code *(reads)*.

It seems to me clear that the only case in which the Court is bound to grant a review is where "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."

Mr. Paul contends that his object in this case is to correct an evident error in law, in the judgment of the Court. It is necessary therefore to consider what can be called an evident error. Can it be said that an error which is capable of being established by a lengthened argument upon a point which admits of two opinions is an evident error? I think not.

It appears to me that the word evident is used in the same sense as it is in a passage to which the Chief Justice (whom I have just had the advantage of being able to consult) has referred me in the second volume of Maddock's Chancery Practice, page 484, title "Re-hearing," I think the word evident means merely that which is manifest, patents or obvious, and it is only where the Court ha. fallen into an error of that description that it i, bound to grant a review.

Mr. Paul refers us to a ruling of PEACOCK, C. Js and MITTER, J., in *Koh Poh* v. *Moung Tay* (1) on a reference from the Recorder of Rangoon. In that case the Recorder, after stating the nature of the case in which the point arose, says:—"It seems to me that the ground set forth by Mr. Agabeg is a ground for an appeal, instead of a ground for review, and I find that the Chief Justice, in the case of *Nusseeroodeen Khan* v. *Inder Narain Chowdhry* (2), held that the fact of the Court below having decided against the weight of evidence is a ground for appeal, and not for review, and His Lordship goes on to say (see page 149) that the attempt has frequently been made for the purpose of having the case re-argued by fresh counsel, when "parties have been dissatisfied with the first decision. . . . . .
I would therefore request the opinion of the High Court, whether an error in a point of law is a ground for review of judgment."

On that the Chief Justice was of opinion "that an error on a point of law is a ground for a review of judgment."

In consequence of this case being cited in argument, I have thought it right to consult the Chief Justice, in order to learn whether he intended to go so far, as these words might be held to imply. The result of that communication is that I believe myself authorized to state that what the Chief Justice really intended to say on that occasion was not that an applicant for review was entitled to a fresh argument on a point of law; but that if the Judge should be satisfied that he had committed an error in law, so that his own conscience should prompt, and as it were compel, him to rectify such error, it would be quite in accordance with the Procedure Code that he should do so, and in this I fully agree.

(1) 10 W. R., 143.
(2) 1 Ind. Jur., N. S., 147.