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.