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ing that the Lower Court did come to such a finding. I do not say that the reasons shown were just and reasonable, or that the finding was a good one, or the contrary; but I hold that the Court did come to a finding on that point and that it was a finding within the jurisdiction of the Court,—a finding that may, therefore, possibly be a subject for appeal hereafter within the terms of Full Bench Ruling, *Shama Charan Chuckerbutty v. Brindaban Chandra Roy* (1), but that it was not a finding in respect to which we can exercise our extraordinary powers under section 15 of the Charter Act upon which the pleader in support of the rule relies.

In this view, I agree in thinking that the rule should be discharged with costs.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

IN THE MATTER OF MANI CHANDRA DAS AND OTHERS.*

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 Jan. 26.

Contempt of Court—Regulation IV. of 1793, s. 25—Criminal Procedure Code
 (Act XXV. of 1861), ss. 163 and 168.

See also
 2 B. L. R.
 (F. B.) 21.

A Judge of a Small Cause Court in the Mofussil found a Judgment-debtor guilty of resisting an officer of the Court in attaching property in satisfaction of the decree, and fined him. *Held*, that the Judge acted without jurisdiction. He ought to have sent the judgment debtor before the Magistrate.

NITAI SING, an officer of the Small Cause Court at Backergunge, reported to the Judge of that Court, that he was resisted by Mani Chandra Das and others, debtors to Kalikrishna Kundu, under a decree of that Court, in attaching, in satisfaction of the decree, certain property of the judgment-debtors, and in bringing away what he had attached. The Judge summoned the alleged offenders and finding them guilty of the offence, fined each of them in a sum of Rs. 200.

Mani Chandra Das and others petitioned the High Court to set aside the order of the Judge of the Small Cause Court, and to remit the fine on the ground (*inter alia*):

(1) Case No. 1395 of 1866, 30th January 1868.

* Rule *Nisi*, No. 75 of 1869.

“That the Small Cause Court had no jurisdiction to fine the petitioners under section 25, Regulation IV. of 1793, nor did the offence charged fall under the purview of that section.”

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IN THE MATTER OF MAN CHANDRA DA

The High Court (Bayley and Hobhouse, JJ.) granted a rule calling upon the Judge of the Small Cause Court of Backergunge to shew cause why the record of the case should not be sent for, and his order imposing the fine should not be set aside, and the fine remitted.

The Judge of the Small Cause Court of Backergunge sent up the record of the case and wrote to the Registrar of the High Court, contending that the Small Cause Court was a Civil Court, within the meaning of the Regulation, and that he had jurisdiction to pass the order sought to be set aside.

Baboo *Girija Sankar Mozoomdar* moved to make the rule absolute.

BAYLEY, J.—I am of opinion that this rule must be made absolute.

The question is, whether a Small Cause Court in the Mofussil, has authority by any law, or by any power inherent in itself, to punish for the resistance of a process of attachment issued by it. In the Mofussil Small Cause Court Act (XI. of 1865,) no such power is expressly given, whereas in the Presidency Small Cause Court Act, an express provision is made for the exercise of that power by the Court.

The Judge of the Small Cause Court of Backergunge, in his present letter to this Court, argues that such power is given to his Court by section 25, Regulation IV. of 1793, because that Court is a Civil Court, modified only as to forms of procedure and rules of appeal. But in my opinion this is not legally a sound argument. Section 25, Regulation IV. of 1793, expressly refers to Zilla Courts constituted under that law, and not to Mofussil Courts of Small Causes. Certain cases have been cited by the Judge of the Small Cause Court, especially that of *Chunder Kant Churckerbutty* (1) decided on the 22nd April 1868 (Loch and Glover, JJ.), in which it was held that the resistance of a process of a Civil Court can be punished by that Court without

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referring the offender to the Magistrate, and reference is made in that judgment to the fact, that section 25, Regulation IV. of 1793, is not repealed by the Repealing Act VIII. of 1868. Not only has that decision been expressly overruled by the Full Bench Ruling in *The Queen v. Bhagai Dafadar* (1); but further, as before observed, the Small Cause Court is not a Civil Court within the meaning of section 25, Regulation IV. of 1793.

Then as to the power inherent in any Civil Court, including a Small Cause Court in the Mofussil, to punish for contempt of Court by resistance of its process. There is a case cited before us of *Abdulla and Matab Chaprasees* (2), in which it was held that the High Court had power to punish parties for contempt of Court without sending them for trial to the ordinary Courts of Criminal Jurisdiction; but that was in consequence of the High Court being by the Letters Patent made a Court of Record, and having all the powers of the late Supreme Court.

Upon the whole, I consider that the Judge of the Small Cause Court acted without jurisdiction in imposing the fine, but at the same time referring to section 171 of Act XXV. of 1861, I find that that section gives power to any Court, Civil or Criminal, when the offence is one coming under Chapter X., or one (as this is) under section 186 of the Indian Penal Code, to send the accused person before the Magistrate, and the Magistrate shall thereupon proceed to deal with the accused according to the law.

The order of the Judge of the Small Cause Court is accordingly set aside as passed without jurisdiction.

HOBHOUSE, J.—The point before us is one of considerable importance; and I, therefore, think it advisable to add a few words to the judgment of Mr. Justice Bayley.

The fact is, that the Judge of the Small Cause Court of Backergunge fined certain persons for resistance of a process of his own Court, and the question is whether that fine could be legally imposed by the Judge, that is to say whether the Judge of the Small Cause Court had jurisdiction to impose the fine, or whether we should not rather set aside the order imposing it, as passed without jurisdiction, and direct the fine to be refunded.

(1) 2 B. L. R. (F. B.,) 21.

(2) 8 W. R., Cr., 32.

The Judge of the Small Cause Court supposes that he had jurisdiction under the provisions of section 25, Regulation IV. of 1793, and he relies on a judgment of a Division Bench of this Court in *Chunder Kant Chuckerbutty* (1). This decision was to the effect that the Magistrate had not jurisdiction to fine for resistance of a process of a Civil Court, but that the Civil Court alone had such jurisdiction. This decision has been overruled by *The Queen v. Bhagai Dafadar* (2), and it is there held that a Magistrate has jurisdiction to punish for resistance of a process of a Civil Court. It is clear, therefore, that the decision of the Division Bench was overruled by the Full Bench; but the Full Bench did not decide whether a Civil Court had or had not jurisdiction to punish for the resistance of its own process, and that question, therefore, is still open for our decision.

I quite agree with Mr. Justice Bayley that the provisions of section 25, Regulation IV. of 1793, do not in terms apply to Courts of Small Causes, but apply simply to Zilla Courts, not Courts of Small Causes. The only decision which is then at all in point is the case of *Abdool and Matab Chaprases* (3), referred to by Mr. Justice Bayley, and it is quite clear that, in that case, this Court held, that it had jurisdiction to punish for contempt of Court, on the ground that it was a Court of Record expressly so declared to be by the Letters Patent. Now the Courts of Small Causes in the Mofussil are not Courts established by Letters Patent, but are only Civil Courts established under the legislative enactments of the council of this country. They are therefore, it seems to me, Civil Courts within the meaning of the Codes of Civil and Criminal Procedure and of the Penal Code.

Then in regard to such Courts, we have express provisions in the Code of Criminal Procedure. The first provision is to be found in section 163 of that Code, and that section lays down this, that when an offence, such as is described in sections 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or in the presence of any Civil Court, it shall be competent to such Court to cause the offender to be detained in custody, and to adjudge the offender to punishment by fine or imprisonment in a civil jail. If then, any offence

(1) 9 W. R., Cr. 63. (2) 2 B. L. R. (F. B.), 21. (3) 8 W. R. Cr., 32.

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such as is described in those sections of the Penal Code, is committed before any Civil Court, such Court has clearly jurisdiction to punish for that offence. But the offence committed in this instance is not an offence under any of those sections; it is an offence under section 186 of the Indian Penal Code and in regard to such offence there is a special procedure, in order to punishment, provided by sections 168 and 171 of the Code of Criminal Procedure. Section 171 lays down that when any Civil Court is of opinion that there is sufficient ground for investigating any charge mentioned in the last three preceding sections, that is to say the sections under Chapter X. of the Indian Penal Code, (not being sections 175, &c., above mentioned), the Court, after making such preliminary enquiry as may be necessary, may send the case for investigation before any Magistrate, in order that such Magistrate may try or commit for trial according to law.

It seems to me quite clear, therefore, that when the law lays down certain provisions giving the Civil Courts jurisdiction to try and punish certain offences, being contempts of those Courts, and directing the same Civil Courts not to try and punish certain other cognate offences but send them to the Magistrate for such trial, then it is only in case of the first kind of offence that the Civil Courts have any jurisdiction to try and punish, and this particular offence being, as I said before, an offence not provided for by section 163, but in sections 168 and 171 of the Code of Criminal Procedure, the Judge of the Court of Small Causes had no jurisdiction over such offence.

The order of the Judge of the Small Cause Court is, therefore, set aside, and the fines, if collected, must be refunded.

1869
 Jan. 30.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

KALI CHARAN v. SRIRAM AND OTHERS.*

Principal Deceased—Surety—Execution.

A decree was obtained against a surety only, the principal debtor being dead, and his property having been attached as of an intestate and proclamation made. *Held*, that the property could not be taken in execution of the decree against the surety.

* Reference from the Small Cause Court of Darjeeling.