under ss. 174 and 175 of the Penal Code; the allegations in these proceedings being that the petitioners had been ordered to attend before the Collectors with their collection papers and with their rent receipts, and that they had disobeyed these orders. It is not alleged how the petitioners in either of these two cases, are legally bound either to attend with their collection papers in the one case, or to attend with their rent receipts in the other, nor can it be successfully contended that a Receiver is a public servant legally competent to issue such an order. On those grounds, the proceedings in the two cases which I have last mentioned must be set aside.

The result, therefore, will be that in all these four cases which arise out of the same transaction and have been heard together, the rules for setting aside the proceedings will be made absolute.

D.S. *Rules made absolute.*

APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Pratt.

JADU MANI BOISTABEE

v.

RAM KUMAR CHAKRAVARTI.*

Presidency Small Cause Court's Act (XV of 1882 as amended by Act I of 1895) s. 38— New trial—Civil Procedure Code (Act XIV of 1882) s. 373— Withdrawal of a suit—Jurisdiction of the Small Cause Court to pass an order under section 373 of the Civil Procedure Code after granting a new trial.

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A suit having been dismissed by a Judge of the Small Cause Court at Calcutta, the plaintiff made an application for a new trial, which was granted, the suit being allowed to be withdrawn under s. 373 of the Civil Procedure Code. On a rule obtained by the defendant, in the High Court.

Held, that, although the Judges of the Small Cause Court, when granting the application for a new trial, were exercising their revisional powers, yet, as soon as

* Civil Rule No. 2584 of 1901.

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they had passed the order granting the new trial, their revisional jurisdiction ceased, and then they had jurisdiction to deal with the case as an Original Court, and as such had perfect authority to pass the order under s. 373 of the Civil Procedure Code.

THE petitioners were the defendants Jadu Mani Boistabee and another.

The plaintiffs Ram Kumar Chakravarti and another brought a suit for Rs. 442-3 in the Court of Small Causes at Calcutta, on a *hatchita* alleged to have been executed by the defendants. The case coming on for trial before the 4th Judge of the said Court, the learned Judge dismissed the suit on the 21st June 1901. Thereupon the plaintiff, on the 25th June 1901, filed an application for a new trial which was granted, and the plaintiff was allowed to withdraw the suit with liberty to bring a fresh suit. Against this order the defendants made an application to the High Court and obtained a rule.

Babu Boidya Nath Dutt for the petitioners. Question is whether a suit having been dismissed by a Presidency Small Cause Court Judge on a new trial being granted, the Court has power to allow the plaintiff to withdraw the case under s. 373 of the Civil Procedure Code. I submit the Court, after granting a new trial, has no jurisdiction to pass an order under s. 373 of the Code. It says, at any time after the institution of the suit, if there are sufficient grounds for permitting the plaintiff to withdraw from the suit, the Court will grant the permission with liberty to bring a fresh suit. No sufficient grounds are given in the judgment of the Judges of the Small Cause Court. Having reference to s. 38 of the Presidency Small Cause Court's Act, in a new trial Judges do exercise revisional jurisdiction. See the case of *E. D. Sassoon* v. *Hurry Das Bhukut* (1).

Babu Nil Madhub Bose (with him *Babu Shib Chunder Palit*) for the opposite parties. No sooner a new trial is granted, the Court has seisin of the case as original jurisdiction; that being so, it had perfect authority to pass the order under s. 373 of the Civil Procedure Code.

(1) (1896) I. L. R. 24 Calc. 455.

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RAMPINI and PRATT JJ. This is a rule, calling upon the opposite party to show cause why the order of the Court below, complained of by the petitioner, should not be set aside.

It appears that the plaintiffs, who are the opposite parties in this rule, brought a suit against the applicant in the Calcutta Small Cause Court, and the suit was dismissed. The plaintiffs, opposite parties, then made an application for a new trial, which was granted, the suit being allowed to be withdrawn under s. 373, C. P. C. with liberty to bring a fresh suit upon the same cause of action. The present rule was granted to show cause why this order should not be set aside. The grounds upon which the application was made are (*i*) that the order of the Small Cause Court Judges does not disclose any ground, such as is referred to in s. 373, C. P. C. upon which permission to withdraw the suit with liberty to bring a fresh suit upon the same cause of action has been granted; and (*ii*) that as in granting the new trial the Court of Small Causes was exercising its revisional and not its original jurisdiction, it had no authority to allow the suit to be withdrawn under s. 373.

In our opinion there is no force in either of these contentions.

The orders of the Court of Small Causes are, of course, recorded with great brevity; and because in the order complained of, there is no ground such as is specified in s. 373, C. P. C. it does not follow that there was no ground made out to the satisfaction of the Judges, who granted the application.

As regards the second ground, although it may be that the learned Judges, when granting the application for a new trial were exercising their revisional powers, yet, as soon as they had passed the order granting the new trial, their revisional jurisdiction ceased, and then they had jurisdiction to deal with the case as an Original Court, and as such had perfect authority to pass the order under s. 373. There is no reason for supposing that there is any defect or illegality in the proceedings of the Judges of the Small Cause Court in this case. The rule is discharged with costs.

S. C. G. *Rule discharged.*