

*Referred Case.*1868.  
Dec. 8.

KHANDU MORESHYAR ..... *Plaintiff*.  
SHIVJI bin GORKOJI ..... *Defendant*.

*Want of Jurisdiction—Plaint—Return of Plaintiff.*

Where there is a want of jurisdiction in the court to which a plaint is presented to try the cause of action mentioned in it, the plaint should be returned to the plaintiff.

CASE stated for the opinion of the High Court, by Janárdhan Vásudevji, Judge of the Court of Small Causes at Puná:—

“The plaintiff sues the defendant for the payment of Rs. 74 on a note of hand dated the 5th of August 1865.

“The defendant, who is a Kulambi, appears in person and pleads payment. He puts in no other plea.

“On reading the note at the trial, it appears to have been passed, not for any loan, but for arrears of rent of land which was leased by the plaintiff to the defendant. The claim, therefore, is one of a class which, under an interpretation by Government on Sec. xxxi., cl. 3, of Reg. XVII. of 1827, dated the 26th of February 1829, was, until the passing of the Bombay Act II. of 1866, cognisable by the Revenue Court.

“By the Act just referred to, the Civil jurisdiction of the Revenue Courts has been transferred to the ordinary Civil Courts; but as the provision in Sec. 6 of Act XI. of 1865, which excludes suits for rent of land, and other revenue suits, from the jurisdiction of the Small Cause Courts, has not been rescinded by that Act, and as the jurisdiction of these courts does not extend to all claims of a civil nature, but is limited to certain classes of claims, this court cannot take cognisance of the suit in question. It must, therefore, be struck off the file.

“The plaintiff, however, asks the plaint back, in order that it may be presented in the proper court. A question therefore, arises, whether a plaint, after it has been admitted on the register, can be returned to the party. The

plaintiff,<sup>7</sup> in support of his application, cites the case of *Cawasji Framji v. Wallace*, reported at page 113 of the 1st volume of the High Court's Reports.<sup>8</sup> In that case the cause was struck out for want of jurisdiction,<sup>9</sup> and the plaint was ordered to be returned to the plaintiff. The authority, on which the order was based, is, however, not given in the report of the case. Nor do I find any provision in the Civil Procedure Code authorising such a procedure. The provision in that behalf contained in Sec. 14 of Act VIII. of 1859 is not of general application, but is restricted to suits for land situate on the borders of the court's local jurisdiction. That being so, it follows that it is not the intention of the Legislature that in other cases the plaint should be returned to the party, when the cause is struck out for want of jurisdiction. I am, therefore, of opinion that in the suit in question the plaint cannot be returned to the plaintiff.<sup>10</sup>

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The case was considered by COUCH, C.J., and GIBBS, J.

PER CURIAM :—The Court is of opinion that it appears to have been the intention of the Legislature that whenever there is a want of jurisdiction the plaint should be returned, and in the present case the plaint ought to have been returned.