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so; and on the contrary Mr. Craige states that he distinctly objected to any such question being gone into by the Court, on the ground that the materials necessary for its decision were not before the Court The action of the Court was, therefore, distinctly irregular, and, moreover, irregular to a material degree.

We must, therefore, reverse the decision come to by the Full Court on the rule, and remit the case to the Small Cause Court for the Full Court to dispose of the rule according to law. Costs to be costs in the cause.

*Inverarity* said the Small Cause Court had frequently intimated that there was no machinery by which it could assess costs incurred in the High Court, and asked for some order as to the scale on which these costs were to be allowed.

SARGENT, C. J. :—The costs will be taxed by the Registrar of the High Court on the appellate Side according to the usual scale of allowance observed on that side of this Court.

Attorneys for plaintiffs :—Messrs. *Craigie, Lynch and Owen.*

Attorneys for defendant :—Messrs. *Ardesir, Hormasji and Dinsha.*

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**13 B. 650.**

## [650] APPELLATE CIVIL.

*Before Mr. Justice Birdwood and Mr. Justice Jardine.*

BIBI LADLI BEGAM (*Original Defendant*), *Applicant v.* BIBI RAJE RABIA (*Original Plaintiff*), *Opponent.** [18th December, 1888.]

*Jurisdiction—Plea of—Waiver - Consent cannot give jurisdiction where none is given by law.*

Where a Court has no inherent jurisdiction over the subject-matter of a suit the parties cannot by their mutual consent give it jurisdiction.

A suit of a nature cognizable by a Court of Small Causes alone was brought in the Court of a Joint Subordinate Judge. The defendant objected to the jurisdiction of the Court, but his objection was overruled. The suit was, however, dismissed on the merits. In appeal before the District Judge, the defendant did not renew the plea of want of jurisdiction. The District Judge reversed the decree of the Subordinate Judge and awarded the plaintiff's claim. The defendant thereupon applied to the High Court under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

*Held*, that both the lower Courts had no jurisdiction to deal with the suit. The mere circumstance that the defendant did not raise the plea of want of jurisdiction in the appellate Court did not clothe that Court with a jurisdiction not given to it by law.

[R., 14 A. 413 (416); 20 B. 86 (92); 35 C. 525=7 C.L.J. 445=12 C.W.N. 569; 28 A.W.N. 211 (214); 37 P.R. 1903; 122 P.L.R. 1902=36 P.R. 1902.]

THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

The plaintiff and defendant were co-sharers in the *talukdari* village of Dharoda. The *talukdari* estate, being heavily incumbered with debt, was entrusted to the management of the Talukdari Settlement Officer under the provisions of Bombay Act VI of 1862. During the period of his management the Talukdari Settlement Officer used to pay, out of the

* Application, No. 92 of 1888, under Extraordinary Jurisdiction.

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annual income of the village, the sum of Rs. 209 to the defendant for the support and maintenance of the *talukdar's* family. This amount was distributed by the defendant among the different co-sharers according to their respective shares.

The plaintiff filed the present suit to recover her one-third share of the sum of Rs. 200 received by the defendant from the Talukdari Settlement Officer on 2nd September, 1884.

The suit was filed in the Court of the Joint Subordinate Judge of Ahmedabad.

**[651]** The defendant pleaded (*inter alia*) that the suit was cognizable by a Court of Small Causes, and that, therefore, the Subordinate Judge had no jurisdiction to hear the suit.

The Subordinate Judge disallowed this objection, but dismissed the suit on the merits.

In appeal before the District Judge the defendant did not again raise the plea of jurisdiction. The District Judge reversed the decree of the Subordinate Judge, and awarded the plaintiff's claim.

Against this decision the defendant applied to the High Court under its extraordinary jurisdiction.

A rule *nisi* was issued to the plaintiff to show cause why the decree of the District Judge should not be set aside on the ground that the suit was filed in a Court which had no jurisdiction to take cognizance of it.

*Manekshah Jehangirshah* showed cause.

*Goverdhan M. Tripati, contra.*

JUDGMENT.

BIRDWOOD, J.—The plaintiff sued to recover the sum of Rs. 66-10-8, due to her by way of maintenance, and payable out of a sum of Rs. 200 in the defendant's hands, which the defendant had received from the Talukdari Settlement Officer for distribution to the persons entitled to maintenance from a *Talukdari* estate under the management of the Settlement Officer. The suit was heard in the Joint Subordinate Judge's Court at Ahmedabad, and the defendant pleaded that the Subordinate Judge had no jurisdiction to hear the suit, as it was cognizable by the Court of Small Causes alone. The Subordinate Judge overruled this plea, but rejected the claim on the merits. The plaintiff appealed to the District Court, which reversed the Subordinate Judge's decision and awarded the claim. In the District Court, the defendant did not renew the objection to the Court's jurisdiction which she had taken in the Subordinate Court; but she now takes that objection in her present application under s. 622 of the Code of Civil Procedure. For the plaintiff, it is here contended that, as the defendant was silent in the District Court, she is estopped from raising the objection, and that, moreover, the suit is practically one for maintenance, and, **[652]** therefore, within the cognizance of the ordinary Courts. We think that the District Judge has rightly described the suit as one for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. The suit is, therefore, one on an implied contract; and, as such, it was cognizable only by the Court of Small Causes at Ahmedabad, under Act XI of 1865—*Ratanhsanker Revashankar* v. *Gulabshankar Lalshankar*(1); *Gulam*

(1) 10 B. H. C. R. 21.

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*Nabi Kutbudin* v. *Shahabudin Martuja* (1) The decree in the Subordinate Judge's Court having been in the defendant's favour, she could not have appealed against the finding unfavourable to her on the issue as to jurisdiction—*Muttukumarappa* v. *Arumuga* (2). But though she could have taken an objection to that finding in the appellate Court, (see *Rajai* v. *Appaji* (3) still the circumstance that she did not do so would not clothe the District Court with a jurisdiction not given it by law. In a somewhat similar case, the Calcutta High Court refused to interfere in the exercise of its general powers of superintendence under s. 35 of Act XXIII of 1861 and s. 15 of 24 and 25 Vic., cap. 104—see *Drobo Moyee Dabee* v. *Bipin Mundul* (4). But we prefer to follow the decision of the Allahabad High Court in *Debi Singh* v. *Hanuman Upadhya* (5), in which Straight, J., observed that the objection to the jurisdiction was directly based upon the provisions of s. 622 of the Civil Procedure Code, and that the Court could not refuse to take notice of it. See also *Aukhil Chunder Sen Ray* v. *Baboo Moheenee Mohun Das* (6). In the recent case of *Meenakshi* v. *Subramaniya* (7), the Privy Council decided that "a right of appeal from the decision of a Judge must be given by statute, or an equivalent authority," and that, where there was an inherent incompetency in the High Court of Madras to deal with the question before it, the omission to raise before that Court the question of its jurisdiction did not operate as a waiver of the right to raise it before the Privy Council, and that consent could not confer on the High Court a jurisdiction which it never possessed. [653] Their Lordships followed the decision in the case of *Ledgard* v. *Bull* (8), in which it was said: "When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him." In the present case there was no such submission to the arbitration of the District Judge. As there was an inherent incompetency in both the Courts below to deal with the suit, we reverse the decrees made by them, and direct that the plaint be returned to the plaintiff, in order that she may, if so advised, present it in the Court of Small Causes. Plaintiff to pay costs throughout.

*Decrees reversed.*

(1) Printed Judgments for 1885, p. 14.
(2) 7 M. 145.
(3) Printed Judgments for 1888, p. 220.
(4) 10 W.R.C.R. 6.
(5) 3 A. 747.
(6) 4 C.L.R. 491.
(7) 14 I. A. 160.
(8) 13 I.A. 134 (145).