

Present : Bertram C.J. and Porter J.

1922.

AVVA UMMAH *v.* CASINADER.

78—D. C. Batticaloa, 5,253.

No averment in plaint disclosing jurisdiction of Court—Plaint accepted by oversight—Mistake pointed out by defendant—Return of plaint for amendment—Rejection of plaint.

Where the plaint did not allege anything on the face of it which gave it jurisdiction, and the Court by an oversight omitted to notice the defect and accepted the plaint, and where the attention of the Court is called to the point by the defendant—

Held, that the Court ought either to reject the plaint, or to return it to the plaintiff for amendment.

THE facts appear from the judgment.

Navaratnam, for appellant.—The plaint is defective *ex facie* in that it does not indicate *where* the cause of action arose. This being so, can the Court exercise jurisdiction? Want of material particulars in a plaint can be cured by the attention of the Court being drawn to the defect. There was no motion before the Court, as stated by the judge, either to reject the plaint or to dismiss the action. The fact that the Court had already entertained the plaint did not preclude an amendment at the Court's discretion. The Court had ample power under section 93 of the Code to amend the plaint. Counsel relied on *1 N. L. R. 292*.

1922. September 4, 1922. BERTRAM C.J.—

*Avva Ummah
v. Casinader*

This is an appeal against an interlocutory order of the District Court of Batticaloa. The action was an ordinary action for the repayment of money lent, but the plaint did not allege anything on the face of it which gave the Court jurisdiction. Accordingly Mr. Abdul Cader, in the first instance, drew the attention of the learned Judge to the fact that it was not stated in the plaint that the transaction took place within the jurisdiction of the Court. The proper procedure in such a case is that indicated by Bonser C.J. in the case of *Read v. Samsudin*.¹ There Chief Justice Bonser held that when a plaint is defective in some material point, and that appears on the face of the plaint, but by some oversight the Court has omitted to notice the defect, then the defendant, on discovering the defect, may properly call the attention of the Court to the point, and then it will be the duty of the Court to act as it ought to have done in the first instance, either to reject the plaint or to return it to the plaintiff for amendment. Mr. Abdul Cader seems consciously or unconsciously to have exactly followed this procedure. The learned Judge does not appear to have appreciated Mr. Abdul Cader's position. He speaks first of something said by Mr. Abdul Cader, next he refers to a motion to reject the plaint, and finally to a motion to dismiss the plaint. It seems, however, clear from the authority cited by Mr. Navaratnam that Mr. Abdul Cader's procedure was correct. The defect in the plaint has now been made good by the application of the proctor for the plaintiff, and no further action is therefore necessary. But the appellant is certainly entitled to relief in respect of the order casting him in costs in the Court below, and he is entitled to his costs in this Court.

The appeal, therefore, would be allowed, and the order is set aside, with costs here and in the Court below.

PORTER J.—I agree.

Appeal allowed.

¹ (1895) 1 N. L. R. 292.