the benefit of improvements made by him. This may be so, but the law as it stood prior to the passing of the Estates Land Act did not prevent additional rent being legally recoverable in cases where it was payable under a *contract*.

I am of opinion that the words "contract to the contrary" refer only to contracts made after the passing of the Act and that section 13, clause (3) has no retrospective operation in cases where rent claimed was payable under a contract which would have been legally enforceable under the Rent Recovery Act or any other law in force at the time of the passing of the Estates Land Act.

N.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Seshagiri Ayyar.

PERURI VISWANADHA REDDI (DEFENDANT), APPELLANT,

v.

D. T. KEYMER (PLAINTIFF), RESPONDENT.*

1914. October 23, 26 and November 6.

Foreign judgment—Defence struck out—No decision on the merits—No cause of action.

Where in a suit in a foreign Court, defence was struck out and judgment entered for plaintiff.

Held, that the judgment is not one decided on the merits and thus not being conclusive could not of itself constitute a cause of action to the suit.

APPEAL against the judgment and decree of BAKEWELL, J., in Civil Suit No. 291 of 1913.

The facts of this case appear from the judgment of the trial Judge which is as follows :—

"This is a suit upon a judgment of the High Court of Justice in England for the sum of £425-17-2. A certified copy of the judgment has been filed, and from the recitals therein contained it appears that on the 11th of February 1913, an order was made in an action in that Court between the parties to the present suit that the defendant should answer interrogatories, that he failed to comply with that order and that on the 5th of May 1913 a Judge of that Court ordered that the defendant's defence be struck out and that he be

* Original Side Appeal No. 77 of 1914.

VISWANADHA REDDI v. KEYMER.

placed in the same position as if he had not defended, and that the plaintiff be at liberty to sign judgment for £425-17-2, the amount claimed, and costs.

"It may also, I think, be inferred from the terms of the judgment that the claim was for a "liquidated demand," within the Rules of the Supreme Court Order III, rule 6, and that the defendant had entered an appearance and delivered a defence, and had therefore submitted to the jurisdiction of the Court.

"The case has been reported in the English Law Reports (1912) 1 K.B., 215, upon the question of the procedure to be adopted by a defendant who intends to take objection to the jurisdiction of the Court, and the effect of an appearance under protest, and it has been argued that it hence appears that the defendant never submitted to the jurisdiction.

"It is clear that statements of facts made by a private Law Reporter are not evidence of those facts, and the proceedings in the English Court should be proved by certified copies thereof (Evidence Act, sections 74 to 78).

"Moreover, the judgment of the English Court is made an exhibit to the plaint in this case, which may therefore be taken as containing an averment that the defendant appeared in the action and delivered a defence, and accordingly it was incumbent upon the defendant to plead that he did such acts under protest and did not submit to the jurisdiction.

"The defendant's plea to the jurisdiction is contained in paragraph 4 of his written statement, and is to the effect that no part of the cause of action arose in England, and no leave to sue was obtained.

"It is admitted that the cause of action was the failure of defendant to pay the difference between the sum advanced by the plaintiff and the sale-proceeds of the defendant's goods sold in England on his account by the plaintiff, and therefore part of the cause of action arose within the jurisdiction of the High Court in England.

"Leave to sue is not necessary to give jurisdiction to the English Court; it is only necessary to obtain leave to serve the writ out of the jurisdiction, and it must be assumed that all necessary steps were taken in the action, in the absence of any specific objection by the defendant.

"The English Court was therefore competent to try the case, and since the defendant acquiesced in its doing so, I hold that it had jurisdiction.

"The second issue is whether the judgment is binding on the defendant, and raises the question whether it was given on the merits of the case, within section 13 (*b*) of the Code of Civil Procedure, 1908.

"Under the procedure of the English Court, if the plaintiff's claim be for a liquidated demand and the defendant does not deliver a defence, the plaintiff may enter judgment for the amount claimed and costs (Rules of the Supreme Court, Order XXVII, rule 2). The entry of judgment is a formal proceeding by the officer of the Court made upon production of the prescribed records, and there is no hearing of the case (Rules of the Supreme Court, Order XLI, rule 41).

"In the present case, however, there was an order of a Judge giving leave to the plaintiff to sign judgment, and I think that it must be taken that the records in the action, including the plaintiff's statement of claim, were before him.

"A statement of claim must contain the material facts of which the plaintiff relies (Order XIX, rule 4), and the order therefore was made with reference to these facts.

"It is true that a statement of claim is not verified by the oath of the plaintiff, or in any other manner, but no hardship is caused to a defendant by accepting the statement as correct, if the defendant has had an opportunity of denying it and has failed to do so.

"By allowing his defence to be struck out and failing to take proceedings to set aside the judgment (Rules of the Supreme Court, Order XXVII, rule 15), the defendant must be taken to have admitted the facts contained in the plaintiff's statement of claim (see Piggott on Foreign Judgments, Part I, pages 76 and 77).

"It is obvious that great injustice might be caused to a creditor, if a defendant could appear in a suit, delay the trial by various dilatory proceedings, and at last to allow judgment go against him by default and then were allowed to plead that there was no decision on the merits and that the original claim was barred by limitation.

"I hold that the judgment of the English Court was given on the merits of the case, and is conclusive that the amount claimed is due by the defendant, and I answer the second issue in the affirmative.

"There will be a decree for the plaintiff for Rs. 8,649-15-0, costs and interest at 6 per cent from 17th October 1913."

V. Masilamani Pillai and *V. V. Srinivasa Ayyangar* for the appellant.

D. Chamier for the respondent.

The judgment of the Court was delivered by WALLIS, C.J.— This is an appeal from the decision of BAKEWELL, J., on the original side giving judgment for the plaintiff in a suit on a foreign judgment obtained by the plaintiff against the defendant in the High Court in England. The defendant pleaded among other things that the English Court had no jurisdiction, and that the case was not decided by the English Court on the merits. BAKEWELL, J., overruled both the defences, and gave the plaintiff a decree on the judgment sued on. It appears from the certified copy of the English judgment filed by the plaintiff that the defendant was ordered to answer interrogatories and failed to do so, and that therefore it was ordered that his defence should be struck out and that he should be placed in the same position as if he had not defended, and that the plaintiff should be at liberty to sign judgment against him for £425-17-2, the amount claimed and costs, and that judgment was signed accordingly. Now in this state of things the first question that arises is whether a judgment obtained in this manner was a judgment not given on

VISWANADHA REDDI v. KRYMER.

WALLIS, C.J., AND SESHAGIRI AYYAR, J.

the merits of the case within the meaning of section 13 (*b*) of the Code of Civil Procedure, in which case it is not to be conclusive upon the parties in a subsequent suit. BAKEWELL, J., has held that it must in the circumstances be taken to have been given on the merits, but with great respect, we are unable to agree with him. We cannot see how a case, in which the defence, or to use our phraseology, the written statement of the defendant was struck out and he was not permitted to go into the merits at the trial, can be said to have been decided on the merits. In *The Delta*(1), Sir ROBERT PHILLIMORE overruled a plea of *res judicata* by reason of a foreign judgment on two grounds: one, that the foreign judgment had not been pronounced when the English suit was instituted and that it was therefore merely a case of *lis alibi pendens*, and the second, that the foreign judgment "not having been given on the merits of the case but on matter of form only," could not be set up as a bar to a decision on the merits. A foreign judgment passed in default of appearance was there treated as not being a decree on the merits, as also by GORELL BARNES, J., in *The Challenge*(2). It does not seem to us to make any difference whether the default was to enter appearance or to answer interrogatories when the result of not answering them was to put the defendant in the same position as if he had never entered appearance. There is however even more direct authority. In *Haigh* v. *Haigh*(3) in refusing to set aside a judgment signed, as the judgment sued on was after the defence had been struck out for failure to answer interrogatories, PEARSON, J., said that he has the strongest disinclination that any case should be decided otherwise than upon its merits, but that in the circumstances he could not set aside the judgment. And in *Forden* v. *Richter*(4), the Master and the Judge at Chambers set aside a judgment obtained in this way on the default of the defendant to answer interrogatories, and the Court of Appeal restored the judgment on the ground that the affidavit of the defendant in support of the motion to set aside the judgment did not show that he had a defence on the merits. These cases which apparently were not cited before the learned Judge appear to us to show that a judgment obtained in such circumstances as the

(1) (1876) I.P.D., 393.
(2) 1914 P. 41.
(3) (1886) 31 Ch.D., 478.
(4) (1889) 23 Q.B.D , 124.

present judgment cannot be considered to have been decided upon the merits.

It has next to be considered how this finding affects the present case. This is a suit on the foreign judgment and not on the original cause of action, as appears both from the plaint and the issues; and it is now well settled that in such a suit the cause of action is the legal obligation to satisfy a foreign judgment which complies with the requisite conditions. This was so ruled by PHEAR and BAYLEY, JJ., in *Heera Monee Dossia* v. *Promothonath Ghose*(1), citing the judgment of PARKE, B., in *Williams* v. *Jones*(2), and is in accordance with all the later authorities in England. Such a foreign judgment under the terms of our law is not conclusive unless the case be decided on the merits, and a judgment that is not conclusive for this reason cannot of itself constitute a cause of action. Even before the introduction of the statutory provision in the Code of 1877 that foreign judgments not given on the merits should be no bar to a fresh suit here, it had been ruled in *Sreehuree Bukshee* v. *Gopal Chunder Samunt*(3), citing Storys' "Conflict of Laws" that foreign judgments must, in order to be received, finally determine the points in dispute and must be adjudications on the merits. Whether or not this latter statement be in accordance with principle or with recent decisions in England, it has been accepted by the legislature and embodied in the Code and we are bound to give effect to it. The provisions of the Code of 1877 expressly dealt only with foreign judgments as a bar to a suit and not as constituting a fresh cause of action. It would however be anomalous that different rules as to the recognition of a foreign judgment should apply according as it is set up as a bar to a fresh suit or as a fresh cause of action; and the provision, which was added to section 14 by Act VII of 1888, giving the Courts power to enquire into the merits of the case in suits brought on foreign judgments of certain specified Courts is a clear indication that the general provisions of section 14 were considered applicable to suits on foreign judgments as well as to foreign judgments set up in bar to a fresh suit. This question is very fully discussed in Mr. Hukum Chands' "*Res judicata*"

(1) (1867) 8 W.R., 32. (2) (1845) 13 M. & W., 628. (3) (1871) 15 W. R., 500.

VISWANADHA RIDDI v. KEYMER.

where the same conclusion is come to. We must therefore hold that the plaintiff is not entitled to sue on the foreign judgment in this case as it was not a decision on the merits.

WALLIS, C.J., AND SESHAGIRI AYYAR, J.

In this view of the case it is unnecessary to consider whether the judgment sued on was the judgment of a Court of competent jurisdiction for the purposes of section 13 of the Code by reason of its having been passed in the exercise of jurisdiction conferred on the High Court in England pursuant to an act of the Imperial Parliament as held in *Moazim Hossein Khan* v. *Raphael Robinson*(1). The utility of such a suit is no doubt much impaired by the decision we have come to; but this is not perhaps to be regretted, as but for the fact that the authority conferring jurisdiction on the High Court in England is the Imperial Parliament to which we are subject, no such suit would lie here for the reasons given by their Lordships of the Judicial Committee in the Faridkote case *Gurdyal Singh* v. *Raja of Faridkot*(2). The precise point decided in *Moazim Hossein Khan* v. *Raphael Robinson*(1) might come before the Courts in England if a defendant resident in England were sued there upon a judgment obtained in one of our High Courts under clause 12 of the Letters Patent which are issued under an Imperial Statute but no such case has as yet arisen. In the result the Appeal must be allowed and the suit dismissed with costs throughout.

Messrs. King and Partridge, attorneys for the respondent.

S.V.

(1) (1901) I.L.R., 28 Calc., 641. (2) (1895) I.L.R., 22 Calc., 222.