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per annum, allowed by the court below up to the date of the decree. It is said this is an excessive rate. We do not think so, and we should not be justified in interfering with the discretion of the court below to award interest at what it considered a reasonable rate. The patent dishonesty of the appellant in appropriating money which he knew did not belong to him is a very good ground for the award against him of interest at a substantial rate.

The appeal succeeds to the extent that we substitute for the decree of the court below a decree for profits received for the three years prior to suit at the rate of Rs. 412-8-0 per annum, carrying interest at 12 per cent per annum up to the date of this Court's decree and thereafter at 6 per cent per annum. The plaintiff will get proportionate costs upon this amount in the court below. The appellant, in view of his conduct as described above, will pay his own costs in this Court.

Decree modified.

Before Mr. Justice Iqbal Ahmad and Mr. Justice Kendall.

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May, 26.

ISHRI PRASAD (PLAINTIFF) v. SRI RAM (DEFENDANT)*.

Civil Procedure Code, sections 13 and 14—Suit on a foreign judgement—“Judgement given on the merits of the case”—Assertion by defendant that he was not residing within the jurisdiction when the suit was filed—Burden of proof.

In a suit brought in the Rampur State the judgement, after giving a summary of the plaint, ran as follows:—“The defendant, notwithstanding due service of summons, has not contested the suit. The document is registered. The failure of the defendant to contest the suit amounts to an admission of the plaintiff's claim. Accordingly the plaintiff's suit is decreed.”

*Second Appeal No. 376 of 1925, from a decree of Joti Sarup, Second Subordinate Judge of Saharanpur, dated the 15th of September 1924, confirming a decree of Niaz Ahmad, Additional Munsif of Saharanpur, dated the 16th of February, 1924.

Held, on suit brought by the plaintiff on this judgement in a British Indian Court, (1) that the judgement of the Rampur court was a judgement "on the merits of the case" within the meaning of section 13 (b) of the Code of Civil Procedure; (2) that, a certified copy of the judgement having been produced by the plaintiff, the British Indian Court was bound to presume that the judgement was pronounced by a court of competent jurisdiction; and, if the defendant wished to get rid of that presumption, on the allegation that he was not residing in Rampur on the date when the suit was filed, it was for him to prove that he was not, and not for the plaintiff to prove that he was.

Keymer v. Visvanatham Reddi (1), *Cole v. Harper* (2) and *Kassim Mamoojee v. Isuf Mahomed Sulliman* (3), referred to.

THE appellant sued the respondent in the court of the Munsif of Saharanpur for recovery of Rs. 979-9-6 as due to him from the respondent under a decree obtained by the appellant in the Rampur State.

The plaintiff's case was that the respondent was living in Rampur State at the time that the suit was filed and the decree was obtained by the plaintiff, but subsequent to the passing of the decree, the defendant had left Rampur State and settled within the local limits of the jurisdiction of the court of the Munsif of Saharanpur.

The suit was contested by the defendant *inter alia* on the ground that he was not residing in Rampur State at the time of the institution of the suit in the court of Rampur State and, as such, the foreign judgement obtained by the plaintiff could not be enforced against him, in view of the provisions of section 13 (a) of the Code of Civil Procedure.

The Munsif, while holding that the defendant and one Kesari were jointly and severally liable for the debt with respect to which the plaintiff had obtained a decree

(1) (1916) I.L.R., 40 Mad., 112. (2) (1919) I.L.R., 41 All., 521.

(3) (1902) I.L.R., 29 Calc., 509.

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in Rampur State, dismissed the plaintiff's suit on the ground that "the defendant's presence or even residence in Rampur when the case was in progress there has not at all been proved" and "therefore the court in Rampur had no jurisdiction over the defendant and the judgement thus passed carries no weight."

On appeal by the plaintiff the lower appellate court after observing that the only question argued before it was "the question of jurisdiction" and after referring to section 13 (a) of the Code of Civil Procedure, held that there was "not a scrap of evidence on the record to show that the defendant lived in Rampur when the decree was passed against him." After recording this finding the lower appellate court referred to the case of *Keymer v. Visvanatham Reddi* (1) and recorded a finding in the following terms:—"I hold that such a judgement was not a judgement given on the merits of the case as contemplated by section 13 of the Civil Procedure Code and thus no action could be maintained on it in the Indian courts." The plaintiff appealed.

Munshi *Shambhu Nath Seth*, for the appellant.

Mr. *Muhammad Husain*, for the respondent.

THE judgement of the Court (IQBAL AHMAD and KENDALL, JJ.), after setting out the facts as above, thus continued:—

It is argued by the learned counsel for the appellant that the judgement, on which the suit giving rise to the present appeal was based, was a judgement given "on the merits of the case" and the lower appellate court has erred in holding otherwise. It is further argued that the courts below were wrong in proceeding on the assumption that it lay on the plaintiff appellant to show that the defendant was residing within the jurisdiction

(1) (1916) I.L.R., 40 Mad., 112.

of Rampur court at the time when the suit was filed and the decree was obtained by the plaintiff and that, in view of the provisions of section 14 of the Code of Civil Procedure, it was incumbent on the courts below to presume that the judgement, on which the present suit was based, was pronounced by a court of competent jurisdiction, unless the contrary was proved.

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It is a fact that the decree obtained by the plaintiff in Rampur was an *ex parte* decree. The judgement of the Rampur court, after giving a summary of the plaint, runs as follows :—

“ The defendant notwithstanding due service of summons has not contested the suit. The document is registered. The failure of the defendant to contest the suit amounts to an admission of the plaintiff's claim. Accordingly the plaintiff's suit is decreed.”

We are unable to hold that this judgement was not a judgement given “ on the merits of the case.” It appears to us that the phrase “ the merits of the case ” has been used in the Code in contradistinction to a judgement by way of penalty. If without considering the questions, the determination of which is necessary for the decision of the case, the court, because of certain default made by a plaintiff or by a defendant, penalizes the party in default by deciding the case against him, the decision cannot be regarded as a “ judgement given on the merits of the case.” In the present case it appears that the Rampur court was impressed by the fact that the document sued on was a registered document, and having taken that fact into consideration along with the fact that the defendant did not contest the plaintiff's claim, came to the conclusion that the plaintiff's case was true. That being so, it cannot be said that that court pronounced its judgement without considering the question whether or not the amount claimed was due to

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the plaintiff from the defendant. The case reported as *Keymer v. Visvanatham Reddi* (1), on which reliance has been placed by the lower appellate court, is distinguishable. In that case, upon the defence being put in, the plaintiff applied for liberty to exhibit interrogatories. He was allowed to do so, and the interrogatories were exhibited, calling upon the defendant to answer with respect to some of the material matters in dispute. This the defendant failed to do, and then an application to have the defence struck out was made on behalf of the plaintiff under order XXXI, rule 21 of the English Judicature Act, which provides that where a defendant fails to comply with an order to answer interrogatories he shall be liable to have his defence struck out. The application was allowed, and the plaintiff was allowed to sign judgement against the defendant. The judgement so obtained by the plaintiff was not a judgement on the merits, inasmuch as, as observed by their Lordships of the Privy Council, not one of the questions that arose for consideration in the case was "ever considered" or was "ever the subject of the adjudication at all" and the merits of the case were never investigated. As was pointed out in the case of *Cole v. Harper* (2), "the judgement followed as a penalty upon the defendant not complying with the order of the court." In the present case a decree was granted to the plaintiff by the Rampur court, not because of the failure of the defendant to comply with any order of the court but because the court, rightly or wrongly, was of opinion that the fact that the document on which the suit was based was registered coupled with the omission of the defendant to contest the suit furnished a *prima facie* proof of the genuineness of the plaintiff's claim. We are, therefore, unable to hold that the judgement on which the present suit was based was a judgement that was

(1) (1916) I.L.R., 40 Mad., 712. (2) (1919) I.L.R., 41 All., 521.

pronounced by the Rampur court without considering the merits of the case.

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The argument of the learned counsel for the appellant, that both the courts below wrongly cast on the plaintiff the burden of proving the fact that the defendant was subject to the jurisdiction of the Rampur court when the suit was filed in Rampur, has considerable force. The courts below seem to have overlooked section 14 of the Code of Civil Procedure. The plaintiff did produce a certified copy of the judgement of the Rampur court. On such copy being produced, it was imperative on the courts below to presume that the judgement was pronounced by a court of competent jurisdiction, unless the contrary was proved. It is a well settled rule of international law, that courts cannot, by their judgements, bind absent foreigners who have not submitted to their jurisdiction, and can only exercise jurisdiction over persons who are within the territorial limits of their jurisdiction, and, therefore, a judgement of a foreign court obtained against a defendant cannot be enforced in British India where the defendant at the time of the commencement of the suit was not a subject of, nor resident in, the country in which the judgement was obtained; *vide* the case of *Kassim Mamoojee v. Isuf Mahomed Sullaiman* (1). That being so, in a suit based on a foreign judgement, one of the questions that arises for consideration is, was the defendant at the time of the commencement of the suit in the foreign court residing within the territorial limits of the jurisdiction of the State in which the suit was brought? But on the production of a certified copy of a foreign judgement the court is bound to presume that the judgement "was pronounced by a court of competent jurisdiction" and therefore it devolves on the defendant, by his pleading and evidence, to deny and disprove every fact and circumstance which negatives

(1) (1902) I.L.R., 29 Cal., 509.

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the jurisdiction of the foreign court. "Jurisdiction over him being presumed, he must allege and establish facts from which the inference must necessarily arise that in his case the presumption is contrary to the facts;" *vide* Freeman on Judgements, 4th edition, page 1017. In the present case, as already stated, both the courts below decided the point against the plaintiff because the plaintiff adduced no evidence to show that the defendant was residing in Rampur State at the time that the suit was filed against him by the plaintiff. Inasmuch as the findings of the courts below on this point proceed on a misapprehension of the law on the subject, we consider it desirable to decide this appeal after having a finding from the lower appellate court on the following points:—

(1) Is the defendant a subject of Rampur State?

(2) Was the defendant residing in Rampur State at the time that the suit was filed by the plaintiff in that State?

Parties will be allowed to adduce further evidence. On receipt of the finding ten days will be allowed for filing objections.

Issues remitted.

*Before Sir Grimwood Mears, Knight, Chief Justice and
Mr. Justice Sen.*

EQUITABLE TRUST COMPANY AND OTHERS (PLAINTIFFS)
v. HAFIZ MUHAMMAD HALIM AND COMPANY
AND OTHERS (DEFENDANTS)*

*Civil Procedure Code, section 115—Revision—Non-joinder of
necessary party—Order refusing substitution and conse-
quential amendments—"Case decided".*

*Held that no revision would lie against an order of a
Subordinate Judge refusing to substitute as plaintiffs in an
original suit certain persons alleged to be interested in the*