

Daniel Thomas Keymer - - - - *Appellant,*

v.

P. Viswanatham Reddi - - - - *Respondent,*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 14TH NOVEMBER, 1916.

Present at the Hearing :

THE LORD CHANCELLOR.

LORD SHAW.

LORD WRENBURY.

MR. AMEER ALI.

[*Delivered by* THE LORD CHANCELLOR.]

This case raises only a short question, but admittedly it is one of wide and general importance. It is for that reason that the Board departed from their usual course, and permitted Sir Robert Finlay to resume his argument after it had been concluded and his junior had addressed the Board. After having given full consideration to the arguments urged both by him and by his junior, the Board find themselves unable to accede to his contention.

The history of the case is this : The appellant was originally plaintiff in a suit brought by him in this country against the respondent. In that suit he claimed a sum of 425*l.* 17*s.* 2*d.*, which he said was due to him from the respondent in these circumstances : The plaintiff is an Indian merchant carrying on business in London. The defendant, he alleged, was a member of a certain firm of traders who traded in Madras. The plaintiff asserted that he had entered into an arrangement with the firm, of which the defendant was a member, under which the firm were to consign to him, the plaintiff, goods for sale in London ; they were to be sold on a certain commission, this commission and expenses were to be deducted, and the net proceeds were to be remitted back to India. As against those proceeds, it was also arranged that the defendant should be at liberty to draw bills to the extent of 75 per cent. The

plaintiff asserted that bills were so drawn; that he accepted them, and that ultimately it was found that these bills exceeded the amount of the proceeds for which he was properly accountable by the sum of 425*l.* 17*s.* 2*d.*, and for that sum he brought his suit. His statement of claim set out these facts, and to that claim a defence was delivered by the respondent, who denied that he ever was a partner in the firm with whom, and with whom alone, it was asserted that the transaction had been made. He also denied in less explicit terms that there was any money due, or that the arrangements had been made under which the plaintiff asserted that his claim arose. Upon this defence being put in, the plaintiff applied for liberty to exhibit interrogatories. That liberty was granted, and interrogatories were exhibited calling upon the defendant to speak as to some of the material matters in dispute. Those interrogatories the defendant omitted to answer, and thereupon an application was made to the Court, asking that the defence might be struck out and judgment entered for the plaintiff in the action. That judgment was accordingly given on the 5th May, 1913, and it is in these terms: "It is ordered upon the application of the plaintiff that the defendant's defence herein be struck out, and that the defendant be placed in the same position as if he had not defended, and that the plaintiff be at liberty to sign judgment for 425*l.* 17*s.* 2*d.*, the amount claimed herein, and his costs of this action to be taxed"; and then judgment goes for the 425*l.* 17*s.* 2*d.*

Upon that judgment the appellant sued the respondent in Madras. The respondent set up by way of defence the statement that the judgment between him and the plaintiff in the English Courts had not been a judgment given upon the merits of the action, and that consequently by virtue of Section 13, Sub-Section (b), of the Indian Code of Civil Procedure, 1908, the action could not be maintained on the judgment alone in the Indian Courts, and that the merits would have to be investigated.

The question as to whether that defence is well established depends upon considering what are the terms of Section 13 of the Code of Civil Procedure, and what is the meaning of the phrase there contained as to a judgment given "on the merits of the case." Section 13 begins by a general provision that foreign judgments shall be conclusive as between parties to the litigation. It is in these terms: "A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title." But to that general provision there are certain definite exceptions, and one of them is as follows: "Except where such judgment has not been given on the merits of the case."

The whole question in the present appeal is whether, in the circumstances narrated, judgment was given on the 5th May,

1913, between the parties on the merits of the case. Now if the merits of the case are examined, there would appear to be, first, a denial that there was a partnership between the defendant and the firm with whom the plaintiff had entered into the arrangement; secondly, a denial that the arrangement had been made; and, thirdly, and a more general denial, that even if the arrangement had been made the circumstances upon which the plaintiff alleged that his right to the money arose had never transpired. No single one of those matters was ever considered or was ever the subject of adjudication at all. In point of fact what happened was that, because the defendant refused to answer the interrogatories which had been submitted to him, the merits of the case were never investigated and his defence was struck out. He was treated as though he had not defended, and judgment was given upon that footing. It appears to their Lordships that no such decision as that can be regarded as a decision given on the merits of the case within the meaning of Section 13, Sub-Section (b). It is quite plain that that Sub-Section must refer to some general class of case, and Sir Robert Finlay was asked to explain to what class of case in his view it did refer. In answer he pointed out to their Lordships that it would refer to a case where judgment had been given upon the question of the Statutes of Limitation, and he may be well founded in that view. But there must be other matters to which the Sub-Section refers, and in their Lordships' view it refers to those cases where, for one reason or another, the controversy raised in the action has not, in fact, been the subject of direct adjudication by the Court.

In the circumstances that happened here, it is in their Lordships' view impossible to hold that the merits of this case were ever the subject of adjudication, and therefore they think that this appeal must fail. They will therefore humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

DANIEL THOMAS KEYMER

vs.

P. VISWANATHAM REDDI.

DELIVERED BY
THE LORD CHANCELLOR.