

abroad, the case could be distinguished from the English cases cited and referred to in *Emanuel v. Symon*. But I am satisfied that a foreign judgment, even regularly obtained according to the practice and procedure of the foreign country, in order to create that duty or obligation to pay which the English Courts will enforce, must come within one of the five cases above enumerated. The plaintiff's judgment was not obtained under circumstances coming within any of the enumerated classes, and I am of opinion, is not a foreign judgment that can be enforced in this province.

It was further urged before us that a foreign judgment in this province stood on a different footing from foreign judgments sought to be enforced in England by reason of the provisions of Order 35, Rule 38. But I think that rule was merely intended to give to a defendant another defence to an action on a foreign judgment, was not intended to and does not regulate or alter the law of the country, as to when a foreign judgment can be enforced in this country.

I am of opinion the appeal should be allowed with costs and the judgment below vacated.

As the plaintiff's counsel on the argument intimated that if the opinion of the Court should be against him on his right to hold his judgment, he desired to amend by adding or substituting a claim against defendants on the original note or cause of action.

I think the right to amend ought to be allowed on the usual terms, viz., on payment of the costs occasioned by such an amendment.

RUSSELL, J.:—I cannot dissent, although I have some doubts. It is a new question.