1873. November 24. R. C. No. 53 of 1873.

admissible as evidence of the obligation created by it? Looking at the language of Section 49 of Act VIII of 1871, we are of opinion that the bond, though an unregistered instrument, should be received in evidence for the purpose mentioned, in a suit to enforce the personal liability of the person executing the bond. It is only excluded where it is offered as evidence of a transaction affecting immovable property.

Appellate Jurisdiction.(a)

Referred Case No. 52 of 1873.

C. VENCATARAMANIER.....*Plaintiff.*
MANCHE REDDY.....*Defendant.*

Suit brought in August 1873 on a bond, payable on demand, dated July 1868. Payment had been demanded on three occasions—May 1871, September 1872 and May 1873. *Held*, that by the law in force at the time of execution of the document, the action was born in July 1868 and by the new as well as by the old law became barred in July 1871. The rule of the old as of the new law is that the time, having once begun to run, cannot be stopped. That the demand in 1871 could have no effect, for it was neither by the old nor the new law a mode of giving a new point of departure.

1874. January 24. R. C. No. 52 of 1873.

THIS was a case referred for the opinion of the High Court by A. Chendriah, the District Munsif of Palamanair, in Suit No. 215 of 1873.

The following was the case as stated—

The suit was brought to recover Rupees 32, amount of principal and interest due on a bond executed by defendant in favour of plaintiff on the 26th July 1868, for Rupees 20. The bond provides for repayment of the amount on demand with interest at one per cent. thereon. The plaint was filed on the 4th August 1873. Plaintiff's vakil adduced oral evidence to shew that plaintiff made repeated demands for payment during the last 3 years. That on every occasion defendant promised payment, and that the last demand and promise of payment was made four months ago.

Plaintiff's vakil argued that the cause of action in this suit must be considered to have commenced from the date of last demand, made four months ago, and he relies on Note 58 to Schedule II of the new Limitation Act IX of 1871. I

(a) Present : Morgan, C. J., and Holloway, J.

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am unable to agree in this view. On the date of the bond sued on, the Law of Limitation in force was Act XIV of 1859. The bond falls under Clause 10, Section 1 of Act XIV of 1859. In the absence of a subsequent written acknowledgment under Section 4 of Act XIV of 1859 the prescribed period of limitation of three years should be reckoned from the 26th July 1868, the date of the bond, and this period expired on the 26th July 1871. The question arising is whether the Note No. 58 in Schedule II of the new Limitation Act is applicable to this bond?

In reply to an inquiry by the High Court, the Munsif returned the finding—That the 1st demand for payment was made in May 1871; the 2nd demand one year before 29th September 1873, and the 3rd and last demand four months before the 18th September 1873.

The following is a translation of the bond:—

"Bond executed to Kodur Vencataramanappah Guru of Chadum village by Machi Reddi, son of Chelakapati Runga Reddi, living in Palepalle in Japti Chilakapadu, on 7th Sravana Sudha of Vibhiva. (26th July 1868.)

"The sum of Rupees 20 which I borrowed of you on account of my exigency, and which has been found to be due against me on a personal adjustment of accounts, in the matter of previous accounts and bonds, and interest thereon at 1 per cent. per mensem, I shall pay whenever you demand and shall obtain back my bond. Thus of my own accord I have caused this bond to be written by the karnam of Chadun and have delivered it."

[Signed and witnessed.]

No Counsel were instructed.

The judgment of the Court was delivered by

HOLLOWAY, J.—This suit was brought in 1873 upon a document executed in July 1868. Up to 1st April 1873 the rules of limitation were those of the old Act, for to say that, these parts shall not be applied until 1st April 1873 is in effect to say that the Act for the purpose of limitation becomes operative on that date. By the law in force the action was born on 26th July 1868, and by the new as well as by the old law became barred on 6th July 1871. The rule of the

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old as of the new law is that the time, having once begun to run, cannot be stopped (Section 9).

The demand in 1871 can have no effect, for this is neither by the old nor the new law a mode of giving a new point of departure.

The effect of the new law when it comes into force upon obligations to pay money on demand is to cause the action to be born not at the period of the lending of the money but at the period of demand. That this mischievous crotchet is founded upon a mistake of Mr. Austin as to the Roman law and a confusion of the ideas of "*actio nata*," and "*mora*," I have shewn elsewhere. It seems to me quite clear that on legal principle this rule cannot have the effect, as against the plaintiff, of strangling the action already born, and as against the defendant of strangling his right to the peremptory exception which was in expectancy on 26th July 1868, and a well acquired right in July 1871, before the period at which the new Act could apply at all.

Here all the facts required to consummate the destruction of the action took place under the old law, and no lawyer doubts that in such a case the right to the exception in limitation and the real right acquired by prescription vested at the period of the new law cannot be divested by it. So to decide would be to affect acquired rights by matter subsequent (Unger I, 146 n. 77). *Leges et constitutiones futuris*, &c. C. I., 14-7, set out in Broom, Lofft and others.

If however the new Act, although not applicable to suits, could in some mysterious way be considered to have come into operation on 1st July 1871 before the period had run out, my answer would be the same.

To destroy an action and exception already born would be to violate the principle of law referred to.

To give a new starting point on account of a demand would be to do what neither the new nor the old law authorises. To stop the period of limitation by any other modes than those prescribed would be to violate the principles of all Statutes of Limitation and the express provisions of this (Section 9). I have no doubt that the suit was barred.