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July 2.  
R. C. No. 24  
of 1873.

however admitted, even by Romanists who maintain the doctrine, that it has no support in the texts of the Roman law, and the highest authorities are opposed to admitting its reasonableness on principle [Sav. V, 295, Vang. I, 226 (See Dig. 45, 1, 48 de V. O.)].

Mr. Austin's reasons are founded upon two misapprehensions the old mistake that the action only exists when the demandee has committed an infraction of right—the other that there is a connection between *mora* and the birth of the action (See Sav. V, 295, p. 1.) He was no doubt struck with the fact that every man in England is allowed without necessity to drag his opponent into Court, although he would have paid without compulsion, and inflict a heavy penalty on him by way of costs. This monstrous iniquity, however, is no essential part of the doctrine. A man's right is protected by the action at the moment of its arising. It may well be, however, that he, who needlessly drags his opponent to Court, ought in justice not only not receive costs but ought to pay them. This is a question altogether apart from the one under discussion. I cannot, therefore, but lament that this legislative novelty, opposed to the opinion of nearly all great lawyers, has been introduced.

INNES, J.—I agree in the opinion of the Acting Chief Justice as to the construction of the document.

### Appellate Jurisdiction. (a)

Referred Case No. 53 of 1873.

STRI SESHATHRI AYYENGAR.....*Plaintiff.*

SANKARA AYEN.....*Defendant.*

Under the provisions of Section 49 of Act VIII of 1871 an unregistered bond, though immovable property be made by the terms of it collateral security, is admissible in evidence 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.

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**T**HIS was a case referred for the opinion of the High Court by J. Wallace, the Acting Judge of the Court of Small Causes at Madura, in Suit No. 1182 of 1873.

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

The following was the case as stated :—

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“ The plaintiff sues to recover Rupees 218-5-8 due upon a bond dated the 10th of October 1869. The defendant objected to the bond being received in evidence on the ground that it was not registered, whereas, inasmuch as immovable property was made by the terms of its collateral security, it ought to have been registered, and he cited High Court Reports, Volume IV, page 178. I was of opinion that the present Act (VIII of 1871) by the 3rd Clause of Section 49, operates to exclude such evidence, where a right to such immovable property is in dispute, but that where, as in the present case, it is sought to make the deed merely evidence of the obligation, the objection was not valid.

The following is a translation of the document :—“ Deed of hypothecation dated 10th October 1869, executed to M. R. R. Ponnosamy Thever Avergal, son of M. R. R. Sivaga Thever Avergal of Poodoovayal, residing at Ramnad within the jurisdiction of the Sub-Registrar of Ramnad in the Madura District, by Sunkara Ayer, son of Rangasawmy Sastry residing at Darasunum Pathánandel within the jurisdiction of the Sub-Registrar of Ramnad in the Madura District. I have borrowed Rupees 150, pledging my Kendy Punjab, being a spot of land consisting of 3 kurucums of Valacodappoo Punjab situated on the east of Sundasamien's Punjab, on the south of the road leading to Pappacoody, on the west of Kearay Punjab of Ramasamien and on the north of the road running from east to west attached to my Kearay lands in the said village. As I have received this sum of one hundred and fifty Rupees, before Ragaviengar from the Treasury of Poonandy, I bind myself to repay the sum with interest at 1 per cent. within 30th July 1870.”

*[Here follow the signatures.]*

The question for the decision of the High Court is

Is the bond in this case admissible as evidence of the obligation created by it ?

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—The question referred for the decision of the High Court is whether the bond in the above suit is

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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.

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of 1873.

**T**HIS 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.