

cause of the "action" with which the section is dealing—an action of covenant or debt on a bond or other specialty. "Cause of action" is a well-understood phrase, and comprises "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court:" per Lord Esher, M.R., in *Read v. Brown* (1888), 22 Q.B.D. 128, 131, and a "cause of action arises" (within the meaning of the Limitations Act) "at the time when the debt could first have been recovered by action:" per Lindley, L.J., in *Reeves v. Butcher*, [1891] 2 Q.B. 509, 511, following *Hemp v. Garland* (1843), 4 Q.B. 519.

If the meaning which it is contended should be given to the word "action" were given to it, the result would be that a plaintiff who had issued his writ of summons within the prescribed period could not after that period had expired take any step in the action—which is *reductio ad absurdum*.

For these reasons, I am of opinion that the appellant's right to renew his execution was not barred by sec. 49 at the expiration of 20 years from the recovery of his judgment.

This conclusion is not opposed to what has been decided in any reported case. . . .

[Reference to *Caspar v. Keachie* (1877), 41 U.C.R. 599; *Neil v. Almond* (1897), 29 O.R. 63; *In re Woodall* (1904), 8 O.L.R. 288; *McDonald v. Grundy* (1904), 8 O.L.R. 113.]

In these cases the question arose on what was sec. 23 of R.S.O. 1897, ch. 133, or its prototype, the language of which differs materially from that employed in sec. 49. . . .

I am also of opinion that the order cannot be supported on the ground that, there having been no payment or acknowledgment in the meantime, it is to be presumed, at the expiration of 20 years from its recovery, that the appellant's judgment is satisfied. . . .

[Reference to 3 & 4 Wm. IV. ch. 42 (Imp.); *Best on Evidence*, 11th ed., p. 390; *Oswald v. Legh* (1876), 1 T.R. 270, 271; *Statute of Westminster II.* (13 Edw. I., stat. 1, ch. 45); *Tidd's Practice*, 8th ed., pp. 1152, 1153; the *Upper Canada Common Law Procedure Act*, 1856 (19 Viet. ch. 43), secs. 189, 203; 20 Viet. ch. 57, sec. 10; 27 Viet. ch. 13, sec. 2; Rule 872 of the *Consolidated Rules of 1897*; the *Execution Act*, 9 Edw. VII. ch. 7, sec. 10; *Welden v. Greg* (1862), 1 Siderfin 59; *Simpson v. Heath* (1839), 3 Jur. 1127; *Tidd's Practice*, 9th ed., p. 1103; *Jenkins v. Kerby* (1866), 2 U.C.L.J. N.S. 164; *Du Belloix v. Lord Waterpark* (1822), 1 Dowl. & Ry. 16, 17; *Price v. Wade* (1891), 14 P.R. 351.]