consideration. Such an assumption may be of considerable assistance, under another point of view, in the construction of the law, as will be shown hereafter; but the assumption by the Provincial Legislature of the existence of an Imperial Statute of the time of James I. is not a declatory enactment, either *affirmative* or *negative* of the *Common Law* of Lower Canada. It is not necessary to insist upon this. It may therefore be held as undeniably true, that this Act is not declaratory of the Statute of Limitations, even had it been previously a part of the Law of Lower Canada; and *à fortiori*, if it were not in force.

The question of the pre-existence of the Statute of Limitations, as part of our law, being of considerable importance in the interpretation of our Provincial Act, whether it be regarded as declaratory or introductory, by express terms or by implication—or if viewed as having given force of law to the Statute of Limitations, by the assumption of the Legislature that it was law—it is thought advisable to offer a few incidental observations in reference to it. They may assist in elucidating some of the views taken by the writer of these sheets, and probably tend to establish his conclusions on surer foundations.

Notwithstanding the doubts and questions historically commemorated in the Preamble, and in spite of the apparent assumption on the part of the Legislature of the pre-existence of the Imperial Act, the writer has ventured to believe that there was nothing of the kind in force in Lower Canada at the time of passing the Act under discussion, and that it was never, or at least not within half a century, if ever, solemnly or effectively held to be law. Both these propositions, it is believed, are susceptible of conclusive demonstration.*

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* With reference to the opinions of our Courts upon this point, we are aware that a decision was given in the case of Morrogh *vs.* Munn, bearing on this question. It is there stated, "that the prescription of a year being a prescription to Evidence only, and in all commercial cases the Rule of Evidence which formerly obtained under the *Coutume de Paris* being abrogated by the Ordonnance 25 Geo. II, sec. 10, and the rule of the Law of England, which provides that all debts due to merchants may be proved by witnesses or otherwise, in the ordinary course of evidence, until the expiration of six years from the date of such debts, is the rule which we are bound to follow in the present case, and consequently the Plea of *prescription annale* must be overruled." It is believed, that it would have been better Law, if the Court had laid down broadly "that the Law of Prescription is not a Law of Evidence, but a part of the general and fundamental Law of the State; and that the common Law therefore relative to a particular prescription, would not be abolished by a Statute introducing foreign rules of evidence. The Judgment of the Court, in our humble opinion, would have been more distinctly and amply to the point and the Law, if it had run thus :—"The provision of the law of England, which enacts that actions of account and debts shallbe commenced within six years next after the cause of such actions, and *not after*, being a fundamental Law, it cannot be regarded as a Ruleof Evidence, and therefore will not apply in this case, under the 25 Geo. III, cap. 2, sec. 10. And not applying, our *prescription annale* at common law would, in deed, remain in full force, did not the English rules of Evidence prevail. But the oath of payment permitted and required to sustain a Plea of *prescription annale*, not being admissible under the new rules, this prescription becomes inoperative; and we must fall back upon the prescription of thirty years, where not otherwise provided for, by our Common or Statute law; therefore the prescription pleaded in this case, cannot be maintained." Besides, this Judgment leaves the question of the existence of the Statute of Limitations as part of our Law, substantially undecided.