ticular debt or note. This answer, taken with other answers of the defendant, was to his honor's mind perfectly sufficient to establish an acknowledgment of the debt. It was argued, and it would be decided by the majority of the Court, that the prescription was a perfect bar to the action. His honor referred to the case of Russell and Fisher, 4 L. C. Rep. p. 237, Pothier, Traité des Obligations, No. 846, &c., in support of his opinion that the prescription was interrupted by the defendant's promise to pay contained in letters written to the plaintiff.

MEREDITH, J., observed that the case was one of great importance. After giving the subject due consideration, he thought the decisions under the English statute tended rather to embarrass than to aid us in determining the course to pursue under our own law. In this there was nothing surprising, because the two laws are worded so differently as to lead to the belief that the framers of our law, aware of the conflicting decisions under the English statute had determined not to take it as their model, lest the Canadian law should share the fate of the English original. The terms of our statute were in effect that any promissory note, made after 1st August, 1849, shall be held to be absolutely paid and discharged, if no suit or action has been brought within five years. The fact of the maker of the note having paid a part on account during the five years did not tend to weaken the presumption that the whole was paid, when no action was brought within the five years. The respondent tried to interpret the statute as if it contained the words "provided that an acknowledgment or part payment of any note within the five years shall take the note out of the reach of the statute." The law contained no such proviso. His honor was quite aware that a strict interpretation of the terms of our statute might bear hard upon individuals, and it bore hard upon the respondent in the present case: but the remedy was with the Legislature. The conflicting decisions in England showed the danger of stretching the plain meaning of the statute. The court could not avoid holding that the note sued on was absolutely paid and discharged, but judgment would go in favour of the respondent on the open account. The judgment now rendered, his honor remarked, could not serve as a guide in future, as the code would introduce modifications of the law.

DRUMMOND, J., said it was with very great regret that he had come to the conclusion that the action was barred. He looked upon the law as dishonest and immoral, but he had always felt very great apprehension at any endeavor to break through a statute.

MONDELET, J., said he was clearly of opinion that our statute applicable to promissory notes was as stringent as the ordinance with reference to arrears of *rentes constituées*. There was a total extinction of indebtedness. The law was imperative. His honor had some doubt whether the acknowledgment of indebtedness and promise to pay applied directly to the note in question. No decision would be given on the question of *faits et articles*, which arose in the case, as it was not required. Judgment reversed. Judgment for plaintiff for $40, and costs as of an action for that sum, with costs of appeal in favor of appellant.

A. & W. Robertson for appellant; Snowdon & Gairdner for respondent.

MONTREAL ASSURANCE CO., (plaintiffs in the Court below) appellants; and MACPHERSON) defendant in the Court below,) respondent.

HELD—*That service of writ and declaration at a place different from that alleged in the writ to be defendant's domicile, is insufficient.*

This was an appeal from a judgment rendered by Mr. Justice Monk, maintaining an *exception à la forme* fyled by defendant, and dismissing plaintiffs' action. The facts were as follows: The defendant being resident in Upper Canada, the plaintiffs obtained leave under C. S. L. C. Cap. 83, Sec. 63, to have the writ and declaration served there. In the preliminary affidavit, produced on behalf of the plaintiffs, with a view to such service, it was alleged that "the said defendant now resides in the City of Toronto." Besides this the defendant was described in the writ and declaration as "now of Toronto, in the Home District of Canada West." The person making the affidavit of service declared "that I served the within writ of summons and declaration thereto attached on the defendant therein named *at the township of York in the County of York*, in the Province of Upper Canada, by delivering to Mrs. D. L. Macpherson, the wife of said defendant, *at his place of residence, in said township of York*, true copies, &c." The defendant fyled an *exception à la forme*, alleging that the writ of summons was null and void, not having been returned into court within thirty days after service, being the time limited in the endorsement upon the writ. Further, that the affidavit of service showed that the service had been made at a place wholly different from that described in the writ and declaration as the residence and domicile of the defendant. The Court below allowed the plaintiff to amend the endorsement on the writ, and extended the time to forty days, but, holding the service to be insufficient, maintained the *exception à la forme*, and dismissed the action. The plaintiffs appealed from this judgment.

MEREDITH, J., dissenting, said it was contended, on the part of the respondent, that the judgment appealed from must be confirmed, unless it be held that service may be made at a place wholly different from that described in the writ and declaration as the residence and domicile of the defendant. His honor believed it was not impossible to make a legal service of process at a place wholly different from the place described in the declaration as the domicile of the defendant. For it was quite possible that the defendant might change his residence between the issuing of the writ and the service of process, and in such case the service of process would be necessarily made at a place different from that stated in the writ. If the de-