vraticien establishing the *reprises matrimoniales* at $4,023 was homologated. For this sum, it was held that prescription did not run against Madame Meneclier during the existence of the marriage, and while she was under marital authority. The plea of thirty years' prescription against the wife's *reprises* was therefore dismissed. It was also held that though by his will, dated 4th Nov., 1856, Meneclier constituted his wife his universal usufructuary legatee, with the condition that she was to discharge his debts, nevertheless, in this instance, there had been no confusion in her persen of these debts due her by her husband. By will dated 28th Dec., 1858, Madame Meneclier appointed the plaintiff her universal usufructuary legatee, and the latter had a right to claim the debts due by Meneclier to his wife at the time he died, and her dower as established by marriage contract.

Judgment confirmed unanimously.

Lafrenaye & Armstrong for appellant; Cartier, Pominville & Betournay for respondent.

MONTREAL, December 9th, 1865.

PRESENT: Justices Aylwin, Meredith, Drummond and Mondelet.

SPAULDING *et al.*, (plaintiffs in the Court below), appellants; and HOLMES (defendant in the Court below), respondent.

Petitory action. Dismissed owing to proof of plaintiffs' title not being sufficient.

This was an appeal from a judgment by Mr. Justice Short, dismissing the plaintiffs' action which was instituted for the recovery of a small piece of land in the village of Rock Island, being part of Lot No. 1, 9th Range of the Township of Stanstead. The plaintiffs claimed that this portion of land formed a part of an irregular piece conveyed by Charles Kilborn to one Sylvanus C. Haskell in 1825.

DRUMMOND, J., referred to the description of the property as being extremely vague. The defendant's plea of prescription by ten years' possession in good faith, could not be maintained, as the plaintiffs resided on the other side of the line. After going over the pleadings and evidence at considerable length, his honor came to the conclusion that although the defendant had failed to prove title by prescription, yet as the plaintiffs had not succeeded in proving their title to the land claimed, the judgment dismissing the action was correct.

Judgment confirmed unanimously.

R. N. Hall for appellants; Sanborn & Brooks for respondent.

GUERTIN, appellant; and O'NEIL, respondent.

Record remitted to the lower court because judgment had been prematurely rendered.

DRUMMOND, J.—In this case the Court was not called upon to say anything as to the merits. The respondent brought a petitory action in the Court below, and the attention of the judges had been directed to the fact that the judgment in the Court of original jurisdiction had been pronounced while there was a petition *en desaveu* actually in the record and undisposed of. This petition was regularly made on the 13th October, 1863. The judgment was premature and must be set aside without any opinion being given on the merits of the case. The record must be remitted to the Court below that the petition may be adjudicated on. No rule would be made as to costs.

BOWKER (defendant in the Court below), appellant; and FENN (plaintiff in the Court below) respondent.

HELD.—*That a promissory note is considered to be absolutely paid and discharged, if no action be brought thereon within five years from maturity; and that prescription is not interrupted by an acknowledgment of the debt in writing, or a payment on account within said five years.*

AYLWIN, J., dissenting, said in this case he could not concur in the judgment about to be rendered. The action was brought to recover $391.66, the balance of a promissory note, and $56.30 on an account, making in all $447.96. Judgment was rendered in favour of the plaintiff. The first plea set up prescription against the note, which bore date 15th Sept., 1856, the action being brought 16th July, 1862. The second plea admitted that the defendant had received teeth from the plaintiff to the value of $40, being two of the items charged under date September, 1856, and sought to be recovered; but alleged that this sum, and certain other charges in the account were overpaid by the sum of $50, improperly credited by the plaintiff on the note. That the expenses charged in the account should have been detailed. The plea then alleged that the plaintiff, as agent of the defendant, had agreed to get possession of certain lands in Lima, in the State of New York, under a power of attorney, dated some 8 years previously, but had failed to do so; alleging, also, that damage had accrued to the defendant by the plaintiff's neglect. No evidence was adduced to support these allegations. To the first plea the plaintiff fyled special answers. 1st. Alleging interruption of prescription by acknowledgment to owe and promise verbally and in writing to pay, and that "he had paid the plaintiff monies on account thereof, and on the interest accrued thereon." 2nd. An answer setting up that at the date of the note, the defendant was indebted to the plaintiff in $348.16 for money lent and advanced, goods sold. and interest accrued, and that for such indebtedness he gave the note sued on, which he failed to pay. There had been an examination of the defendant on *faits et articles*. The 62nd question was to this effect: Is it not true that you have within the period of five years immediately preceding the institution of this action, given the plaintiff to understand, in some way or another, that you would pay him the amount due him on the said promissory note? The defendant's answer was: I have written what was in the letter sent by me. I have not made any acknowledgment or promise to pay the note since it was acknowledged, or before, as a pur-