wife for more than a year occupied certain rooms in the house, the deceased continuing to carry on a boarding house in the other portion. The evidence did not clearly shew whether the defendant paid anything to his mother during this period; but it could not with any show of reason be said that in these circumstances the deceased was, during that period, accumulating a claim against her son which the administrator of her estate would be entitled to enforce years afterwards.

It could not reasonably be maintained that, when the defendant and his wife, as a result of a quarrel with the deceased, instead of remaining in and taking possession and control of the house, and thus forcing the deceased to change her position of mistress of the household to that of a lodger, decided or agreed to permit her to continue in possession, and themselves move to other quarters, the defendant did not thereby give and the deceased did not in fact receive and accept something valuable in lieu of what she was entitled to receive under the covenant.

The deceased intended to and did accept the situation and its benefits and advantages in lieu of and in satisfaction of the benefits contracted for by the covenant. Her course of conduct for upwards of 20 years was inconsistent with any other intention.

The appeal should be dismissed with costs.

MAGEE, J.A., agreed with FERGUSON, J.A.

HODGINS, J.A., agreed with FERGUSON, J.A., not without some doubt as to whether it could be said that inaction was equivalent to abandoning the claim of the deceased.

MEREDITH, C.J.O., read a dissenting judgment. He said that the defendant was examined as a witness on his own behalf and did not say or suggest that there was any agreement or understanding between his mother and him to the effect now suggested; and it was impossible to draw any such inference. Besides, to draw such an inference would be in effect to substitute for the Limitations Act another statute of limitations of the Court's creation. In the absence of evidence to the contrary, a debt once proved to exist is presumed to remain unpaid: Jackson v. Cameron (1809), 2 Camp. 48, 50, 11 R.R. 658. The plaintiff was not suing for equitable relief, but to enforce a legal right, and therefore laches was no answer to his claim. There was no answer to the plaintiff's claim for the damages sustained by the deceased owing to the breaches of the defendant's covenant.

Appeal dismissed (MEREDITH, C.J.O., *dissenting*).