

This view of the section gives it a complete interpretation recognizing that it intended changing the law in one particular only, namely, presentation before suit, but at the same time so protecting the maker that at most he would be required to pay the debt without cost, if there was no default on his part.

If this be the correct interpretation of the statute, the affidavit is sufficient, as presentation not being necessary before suit, that statement that it was made is not essential; the one essential, viz., that the note has not been paid, being sworn to; and no question of costs arises as the defendant does not suggest in the affidavit upon which this rule was granted, that he had the money at the place named in the note to answer it when it fell due and thereafter.

The second ground raises a more difficult question, and again, on the construction of a statute, apparently not drawn with any definite intention.

It resolves itself into one question, does our absent Debtor Act apply to non-resident defendants? I eliminate all questions as to where the contract was entered into, or as to its effect upon persons coming to the province merely for a temporary purpose, and then returning to their residence abroad; as the locality of the debt, and the temporary presence of the defendant in the province, appear to me to be wholly immaterial. The statute covers "any debtor," which means every debt no matter where contracted, the enforcement of which is within the jurisdiction of our Courts; and the temporary presence of the defendant is nowhere suggested in the statute as affecting its application.

The decisions quoted before the Court do not greatly assist in determining this question—our own Court in *McKean v. McKenzie*, 1 H. & W. 203, having the interpretation of the older statute of 20 Geo. 3rd, cap. 9—which contemplated the "case of non-residents, as well as of resident inhabitants absenting themselves," to quote the language of the judgment of the Court in that case, declined to decide "whether it intended to include persons who have never been here, as well as persons here for only a temporary purpose," basing their judgment solely on an acknowledged abscondency.

And the earlier decision of *Cochran v. Duncan*, 3 N. S. Rep. 80, though it decided that a debtor might be proceeded against under the Absent Debtor Act of that province, although he might never have been present there, was evi-