

note for \$59.90, sue the defendant as the maker of the same. The note is dated at St. Johnsbury, in Vermont, on the 25th Feb., 1878, payable there in seven months after its date, and consequently became exigible on the 28th Sept., 1878. The action was instituted on the 24th June, 1885, more than five years after such note was so due.

The plaintiff alleges that when this note was made, the defendant was domiciled in Vermont, and that the controversy must be governed by the laws of that State; that the defendant soon after came to this province where he has ever since been domiciled; that by the laws of Vermont, the defendant having left the State, prescription does not run against the note, and that the payment of the same may be enforced here. This state of the laws of Vermont is proved by a professional witness examined in the cause.

The defendant meets the suit by the prescription of five years under our code, and denies the legal propositions submitted by the plaintiff, to the effect that payment of a note in such a case could be enforced here.

The case cited, and relied upon by both parties, is that of *Wilson & Demers*, 14 L. C. J. 317; but there is a very material difference between that case and the present one. There the *motif* of the action was that the defendant had absconded to Canada and kept himself in concealment so that the plaintiff was not in a position to adopt his remedy, and upon the correct principle *contra non valentem agere nulla currit prescriptio*, the Court condemned the defendant. Again, the prescription there invoked was under ch. 64 of the C. S. L. C., section 31, which was restricted to notes payable in Lower Canada, and it was a matter of doubt with one of the judges whether that prescription could apply to a note made and payable in a foreign country. In this case there is no pretence of evasion or concealment by the defendant, and it is admitted that the defendant left Vermont in 1879, and has since resided in this province, so that during all that time the Courts here were open to the plaintiff. Then the prescription under our Code makes no distinction as to the place of payment, and is absolute in its terms,

and after five years (2267) denies any action or remedy thereon.

I am quite at one with the counsel for the plaintiff, in his contention that the law of the place of the contract governs the contract itself; but there is no issue here as to the contract as contained in the promissory note or any part of it. It is not contested that the contract is a good one, but what is denied is the remedy on that contract. Is that to be governed by the laws of this province, where the remedy is sought, or by the laws of Vermont?

It appeared to me at the hearing that the question being one as to the right of action here, it was one of procedure and regulated by our law. The plaintiff's right of action in Vermont still exists by reason of the law regulating prescription there. The defendant contends that by the law regulating prescription here the action has been barred.

I find that I am supported in my impression by that learned judge Mr. Justice Badgley who, in rendering judgment in the case of *Wilson & Demers*, says, "all such limitations are necessarily matters of procedure, that is, in the use of local Courts for the enforcement and defence of contentious litigation, and it is plain that if the law of a country will not allow its Courts to be used for a particular purpose, after the expiration of a limited period of time, this is a law of procedure which does not reach the merits of the contract. The foreign suitor coming into our Courts does not bring his foreign procedure with his contract. He, having resorted to our Courts and our procedure, is therefore subject to the restrictions and limitations of our local law (*lex fori*) which, in that respect, sets aside the limitation and incidents of the *lex loci contractus*."

Story, in his conflict of laws, expresses the same opinion, §576: "In regard to statutes of limitation or prescription of suits and lapse of time, there is no doubt that they are strictly questions affecting the remedy, and not questions upon the merits. They go *ad litem ordinationem*. §577. It has, accordingly, become a formulary in international jurisprudence, that all suits must be brought within the period prescribed by the *lex fori*, otherwise the suit will be barred.