

this restrictive proviso was unnecessary, it being already a principle of the common law. The Code Napoleon contains no such proviso; and yet all the jurists and courts of justice reject absence of plaintiff or defendant as a cause of interruption of prescription in commercial matters.

The *Coutume de Paris*, in order to make absence a cause of interruption of prescription of real rights or actions, made a special enactment to that effect, which would have been unnecessary if the common law had been as alleged.

Heretofore in Lower Canada, prescription in commercial matters was generally of one year, under the article 126 of the *Coutume de Paris*; but no provision was made for cases of absence, minority, interdiction, or any other like disabilities; and as Pothier remarks, \* no interruption could be presumed. †

The same rule has been maintained with regard to the prescription of five years of arrears of *rentes constituées*. The ordinance of 1510, which introduced that prescription, has no disposition with regard to minors, absentees, or other like persons; and consequently absence, minority, or any other disability was not considered a cause of interruption of that short prescription. ‡

Finally our statutes of limitations in commercial matters have been framed upon the English statutes of limitations; still they do not contain the exception made in favour of persons "beyond seas," by the statutes of James and Anne. The 10-11 Vict., c. 11, enacts that no action, of a commercial nature, shall be maintained unless commenced within six years; and it is remarkable that the only exception provided for is where there has been an acknowledgment of the debt in writing or a partial payment. While the Promissory Note Act contains no exception whatever. Therefore absence, or any other disability, not being mentioned in either of these statutes, the Legislature clearly intended that absence, minority, or any other disability, should not be held a cause of interruption, for the simple reason that prescriptive laws are laws of public order and policy.

Moreover, has not our Provincial Legislature expressly sanctioned this rule, by enacting special exceptions in favour of absentees and

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\* Des obligations, p. 717.

† See also arrêt of the 3rd February, 1630, reported by Grillon, Recueil des arrêts.

‡ Arrêt of the 1st June, 1548, Traité des Minorités par Mesle, p. 502.