

LEX LOCI CONTRACTUS—LEX FORI.

soit réglée par la loi du domicile qu'avait le débiteur au moment où il s'est obligé, bien que, s'il y a eu changement, le paiement ne doit pas être fait à ce domicile."

Marcadé on art. 2219 of the *Code Napoléon*, in turn attacks the opinion supported by Troplong and Massé :

"M. Troplong," he observes, "qui tient pour la loi du pays où le paiement devait se faire, en donne cet incroyable motif, que la prescription extinctive des obligations étant la peine de la négligence du créancier, c'est la peine établie dans le lieu convenu pour le paiement que ce créancier doit subir, puisque *c'est dans ce lieu qu'il a été négligent*. Nous avouons que loin de trouver une pareille raison fort simple, nous la trouvons au contraire fort bizarre, et aussi fausse que bizarre, fausse deux fois pour une, comme on va le voir bientôt."

"Ainsi, de quelque côté qu'on se tourne et quelque ordre d'idées qu'on prenne pour point de départ, on se trouve toujours ramené à cette conclusion, conforme à la doctrine des anciens auteurs, que c'est uniquement le domicile du débiteur qu'il faut considérer ici."

Such is the state of opinion on the continent of Europe, upon the question now before us; and it will be conceded that if we had no other resource than those authorities, we should find it difficult, if not impossible, to arrive at a satisfactory conclusion. The review we have just made, clearly shows that no less than eight different systems prevail on the continent:—

1. *The law of domicile of the creditor in all cases*, supported by Pothier and Dumoulin.

2. *The law of domicile of the debtor at the time of the institution of the action in all cases*, supported by John Voët, Pöhl, Thöl, Bar, Berroyer and Laurière on Duplessis, Arrêts of the *Parlement de Flandre* (17th July, 1692, and 30th October, 1705), Bruxelles, (24th September, 1814), Merlin, Marcadé, Félix, Arrêts de Cologne, (7th January, 1836, 4th April, 1839, and 14th December, 1840), Cour de Cassation of Berlin, (8th October, 1838.)

3. *The law of the place of the contract in all cases*, supported by Hert, Mansord, Rocco, Reinhardt, Schaffner, Demangeat; Douai (16th August, 1834); Paris, (7th February, 1839. Alger, 18th August, 1848, and 18th January, 1840.)

4. *The law of the place of the contract, and when a place of payment is specified, the law*

of that place, supported by Wachter, Koch, Brunnemann and Savigny.

5. *The law of the domicile of the debtor at the time of the institution of the action, and when a place of payment is specified, the law of that place*, supported by Christin, Burgundus, Mantica, Casaregis, Favre, Boullenois, Troplong and Massé.

6. *The law of the domicile of the debtor at the time of making the contract, and when a place of payment is specified, the law of that place*, supported by Pardessus.

7. *The law of the domicile of the debtor at the time of the making of the contract in all cases*, supported by Dunod.

8. *The law of the place where the action is brought, in all cases*, supported by Paul Voët, Hommel, Huber, Weber, Tittman, Mayer, Glück, Mittermaier, Mühlenbruch, de Linde, and by the English and American decisions, as will be seen hereafter.*

From this synopsis, it may be seen that the *lex loci contractus* or *solutionis*, is held only by four German writers, while the *lex domicilii debitoris* is sustained by most of the old and the new French jurists and commentators.

It is evident that the question of controversy is not a question of local, but of international law, *une question d'école*, upon which the jurisprudence of all nations ought to be properly consulted and weighed. It is necessary that upon matters of this highly practical importance not only to a special community, but to the commercial world at large, there should be uniformity of decision. It is equally beneficial to the people of this country and to foreigners, when they deal with each other, that they should know that the obligations arising out of their transactions are submitted to the same rules of international law. There has been in England, Scotland, and the United States, a uniformity of jurisprudence on this point, and it would be against public policy for our courts to rule differently.

We find in the nature of the English Statute of Limitations, adopted by the United States and the British Colonies, another reason for adopting the *lex fori*. On the European continent, prescription is essentially a presumption of payment, which may be rebutted by contrary evidence; it is more an exception

* In Scotland another system, still assented to by Guthrie on Savigny, prevailed in former times, viz., the law of the domicile of the debtor during the whole currency of the term of prescription.