

interest of a creditor. If such reasoning were logical, no one could be astonished at the ruling of the honourable court.

It is because prescription is a law of public order and policy that no attention should be paid to the fact that the defendant was absent or had absconded from a foreign country, and that the protection of that law which has been enacted to secure the peace of the whole community should be extended to all, to foreigners as well as to residents. Is the maxim *privatum incommodum publico bono pensatur*, not applicable in this as in all civilized countries? Clearly, the reasoning of Mr. Justice Badgley should have led him to a conclusion absolutely the reverse of the one at which he arrived.

In the case of *Lippman v. Don*,* the defendant, Sir A. Don, had left France for parts of England unknown to his French creditor; and yet the counsel and judges in the case never for a moment entertained the idea of invoking the maxim *contra non valentem agere non currit prescriptio*. Still, the English statutes of limitations contain an exception in favour of persons "beyond seas," whether they be creditors or debtors, provided that the limitation had not commenced to run. But this exemption was never applied to foreign prescription.

In virtue of what law, moreover, can absence, fraud, or any other disability of a creditor to bring his suit in due time, be held a cause of interruption of short prescriptions, such as prescriptions of five or six years in commercial matters. Not a single authority was quoted or indeed can be quoted in support of this novel proposition. It is true that absence is a cause of interruption of long prescriptions, such as those affecting real rights, because the *Coutume de Paris*, which is part of our common law, expressly declares and enacts that prescription can be thus interrupted; but that law never extended this rule to short prescriptions. †

True, the ordinance of 1673, in an express article, declares that the five years prescription of bills of exchange runs *à l'égard des mineurs et même des absents*. But as the commentators observe,

* *Infrà*, p. 140.

† *Massé*, 1 Dr. Com. 257, 492; *Rivière*, Répétitions Ecrites, 395; *Pardessus*, Lettre de Change, No. 331; *id.* Dr. Com. No. 1990; *Merlin*, Répertoire, Sup. t. xvii, p. 589; *Troplong*, Prescription, t. 2, No. 1038; *Paris*, 23 avril 1836, Dev., 26, 2, 258; *Delangle*, t. 2, p. 727; *Bédaride*, Des Sociétés, t. 2, p. 699; *Pothier*, Lettre de Change, p. 206.