

## LEX LOCI CONTRACTUS—LEX FORI.

with the names of Huber and Paul Voet, we will soon have occasion to shew that the doctrine laid down by his Lordship rested, not upon fallacies or upon the *dictum* of Story, but upon the soundest reasoning. Suffice it to say at present, that, notwithstanding the objections of Westlake and Bateman, the decision in *Lippmann v. Don* has been recognized as an authority in both Great Britain and the United States, and is taken, along with the other precedents, as fixing the law of those countries, as the following array of authorities will show :

13 Peters, 327; 2 B. & Ad. 413; 1 id. 284; 10 B. & Cresw. 903; 3 Burge's Com. on Col. and For. Laws, 883; 4 Cowen, 528, note 10; Id. 530; 1 Gall 371; 2 Mason, 151; 6 Wend, 475; 1 Green's N. J. Rep. 68; 3 Peters, 270, 277; 5 id. 466; 8 id. 361; 13 id. 312; 13 id. 378; 13 Serg. & R. 395; 2 Rand. 303; 3 J. Marsh, 600; 8 Vern, 150; 3 Gilman, 637; 1 Meigs, 34; 7 Missouri, 241; 9 How, U. S. 407; 7 Maine, 337, 470; 36 Maine, 362; 1 Penn. State R. 381; 2 Mass. 84; 13 id. 5; 17 id. 55; 3 Conn. 472; 2 Bibb. 207; 2 Bailey, 217; 1 Hill, S. C. 439; 2 Dall. 217; 1 Yeates, 329; 1 Caines, 402; 1 Johns, 139; 3 id. 190; 3 id. 263; 11 id. 168; 4 Conn. 49; 2 Paine, C. C. 437; 2 S. & M. 682; 1 Ross' Leading Cases, 559-605; Angell on Limitations (ed. 1869), p. 52-64, No. 64-68; Parsons on Bills, p. 881-891 (ed. 1867); Phillimore on International Law, vol 4, p. 573; Dickson on Evidence, pp. 532-537; Tait on Evidence, 3rd ed. pp. 460-465; Henry on Foreign Law, appendix, p. 237; 5 Johnson, N. Y., 152; 10 B. & C. 816; 1 Smith, Leading Cases (ed. 1866), p. 954, N. 786; Story, Conflict of Laws, § 876, p. 766 and *seq* (ed. 1865); Wheaton, International Law, p. 187; 1 Bing. N. C. 111; 2 id. 202; 3 Conn. 54; 1 Wis. 131; 10 Pick. 49; 11 id. 36; 6 Cush. 238; 13 East, 439; 2 Q. B. Rep. U. C. 265; 9 Martin's Rep. 435; 2 an. Louis. Rep. 815; id. 646; 3 id. 221; 4 id. 235; The English Jurist, 1851 to 1855, p. 122; *Ruckmaboys v. Mottichund* (1852), 8 Moore, Privy Council, p. 4,

That the *lex fori* is still the English rule is evident from the following authorities.

In the second edition of his Leading Cases on Commercial Law (1868), Mr. Tudor in reviewing the English jurisprudence on the matter, says (280): "The limitation of actions clearly does not belong to, and will not be de-

termined by, the law of the country where the contract was entered into, but by the law of the country where proceedings are taken to enforce."

Mr. Forsyth in his Opinions on Constitutional Law, just published in London (1869), also remarks, (p. 249): "The *lex fori* applies to all modes of enforcing rights, and governs as to the nature, extent and character of the remedy, including statutes of limitation."

In the case of *Harris v. Quine*, L. R. 4 Q. B. 653, decided in the Court of Queen's Bench, 7th June, 1869, by Cockburn, C.J., and Blackburn and Lush, JJ., the authority of *Huber v. Stayner*, and other cases above cited were fully sustained. It must be admitted that the Chief Justice felt inclined to adopt the *lex loci contractus*, but he would not undertake to derogate from the well settled jurisprudence of England. "If the matter," he said, "were *res integra* and I had to form an opinion unfettered by authority, I should be much inclined to hold, when by the law of the place of contract, an action on contract must be brought within a limited time, that the contract ought to be interpreted to mean: 'I will pay on a given day or within such time as the law of the place can force me to pay.'" His decision was, however, was in the following terms: "On the question as to whether the judgment on the plea in the Manx Court is a bar to bringing an action in the courts of this country. I think we are bound by authority that it is not, *Huber v. Stayner*, and other cases, having decided that such a statute of limitations, as the present simply applies to matters of procedure, &c., not to the substance of the contract."

The Judges Blackburn and Lush, while concurring in the decision of the Chief Justice, expressed no opinion as to the soundness of the rule of the *lex fori*, but merely admitted the same to be the law of England.

In Scotland, however, the *lex fori* does not appear to be well established, and, there, another system, which has not yet been noticed anywhere else, was in former times strongly supported. Mr. Guthrie, in his late translation of Savigny, Conflict of Laws, (1869), Note B., p. 219, says:—

"The Scottish Courts, since the middle of last century, decidedly preferred the prescription of the debtor's domicile . . . But they looked not to the debtor's domicile at the time of the action,