

in support of this ruling the learned judge quoted Symond's Law Making, p. 413. He concluded his opinion by the following remarks:

"Volumes have been written on the domicile of the debtor, as affecting the remedy or the suit; about his domicile, at the time of the contract, at the time of the suit; on the place of the contract, the place for payment, &c. The Bar is familiar with the reasonings *pro* and *con*. As many authors are on one side as on the other. The old ones were divided, and so are the new. *Pothier* has been attacked for his opinions by *Troplong*, and lastly *Troplong* by *Marcadé*. A refuge can be found only in the old general rule, that the *lex fori* must prevail in cases of personal action such as the present one." \*

The case having been taken into the Court of Queen's Bench, by Wilson, the decision of the Court of Review was reversed, upon the ground that the defendant absconded from the United States, and that his creditor did not discover his whereabouts until shortly before the institution of the action, their Honors applying to this case the maxim of the Roman law: "*Contrà non valentem agere nulla currit præscriptio*." †

Mr. Justice Badgley, however, held that in general and ordinary cases, the *lex fori* should rule in matter of limitation of personal actions, 1st, because prescription affects merely the remedy; and 2nd, because prescription is a law of public order and policy.

The honourable Chief Justice and Mr. Justice Monk expressed no opinion whatever as to the *lex loci contractûs* or the *lex fori*, and simply concurred with Mr. Justice Badgley in holding that, as the defendant had been guilty of fraud against his creditor by absconding from the United States and by not informing his creditor of his removal to Valleyfield, the laws of Lower Canada could not be invoked for his relief.

Mr. Justice Caron concurred in the judgment of the Court, for, amongst other reasons, the following: "*D'après notre droit commun applicable*," he said, "l'absence du défendeur telle que prouvée a interrompu la prescription et l'a empêché de courir au préjudice du demandeur."

It is admitted that prescription is a law of public order and policy; and yet the public interest is superseded by the private

\* 13 L. C. Jurist, 24.

† 14 Ibid.