

from the United States, as their Honors held; for it is quite immaterial to the decision of his case whether he did or did not leave his American domicile suddenly, secretly, and fraudulently. Demers has ever since the beginning of the year 1858 resided at Valleyfield. Wilson alleging that he became acquainted with the whereabouts of his debtor only on the 19th of April, 1866, and that by the laws of the State of New York and the State of Wisconsin, the said promissory note was not prescribed, brought his action thereon before the Superior Court in Montreal, against Demers.

The defendant first demurred to this demand, upon the ground that that court had nothing to do with those foreign laws, prescription being governed by the *lex fori* exclusively. This demurrer was maintained by the court below, his Honor Mr. Justice Berthelot holding that "the prescription of a promissory note made in a foreign country, and payable there, is to be governed by the *lex fori* and not by the *lex loci contractûs* or *lex loci solutionis*." * This decision having been appealed from to the Court of Queen's Bench, was reversed on a point of procedure; and the question at issue was reserved until the final determination of the case on the merits.

The defendant also pleaded, 1st, the general statute of limitation of six years, 10 Vict. c. 11; 2nd, a special prescription of five years, under 12 Vict. c. 22, applicable to bills of exchange and promissory notes *due and payable in Lower Canada*.

These pleas were dismissed by His Honor Mr. Justice Mondelet, before whom the case was argued on its merits, the learned judge holding that the true rule of both the old and the new French jurisprudence, which should prevail in Lower Canada, is the *lex loci contractûs* or the *lex loci solutionis*, when a place of payment is specified. †

Brought before the Court of Review, in Montreal, the decision of Mr. Justice Mondelet was reversed by Mackay and Torrance, JJ., on the 30th of November, 1868. His Honor Mr. Justice Mackay, for the Court, maintained that both pleas were well founded, that the statute of limitations fully applied to this as a commercial case, that the Promissory Note Act equally applied, and that the words "due and payable in Lower Canada," therein used, involved no more than "due" or "due and exigible"; and

* 12 L. C. Jurist, 222.

† Ibid.