

LEX LOCI CONTRACTUS—LEX FORI.

DIARY FOR JUNE.

1. Wed. New Trial Day, Common Pleas.
2. Frid. New Trial Day, Queen's Bench.
4. Sat., Easter Term ends.
6. SUN. *Whit Sunday*.
6. Mon. Last day for notice of trial for County Court.
11. Sat., *St. Barnabas*. Last day for service for County Court, York.
12. SUN. *Trinity Sunday*.
14. Tues. General Sessions and County Court Sittings in each County except York. Last day for Court of Revision finally to revise assessment rolls.
19. SUN. *1st Sunday after Trinity*.
20. Mon. Accession of Queen Victoria, 1837.
21. Tues. Longest Day.
22. Wed. Declare for County Court York.
24. Frid. *St. John Baptist*.
26. SUN. *2nd Sunday after Trinity*.
29. Wed. *St. Peter*.
30. Thur. Half-yearly School returns to be made. Replicatious County Court York to be filed. Deputy Registrar in Chancery to make return and pay over fees.

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By D. GIBOUARD, Esq., *Advocate, Montreal*.*(Continued from page 118.)*

The law of prescription in force in Lower Canada being borrowed from the English one, it ought to be governed by the same rules in case of conflict of prescription, viz., by the *lex fori*; and such was the opinion of the *Codificateurs* (3rd report, *Titre Prescription*, Art. 8), and their opinion is moreover in accordance with our jurisprudence.

In the case of *Côté v. Morison*, 2 L. C. *Jurist*, p. 206, a note made in Mackinaw, State of Michigan, was declared to be subject to our quinquennial prescription (12 Vic. chap. 23), by the Superior Court of Montreal, and in Appeal that judgment was confirmed on other grounds, the Court remaining silent on the question of prescription.

In the case of *Fenn v. Bowker*, 10 L. C. J. p. 121, the Court of Appeals maintained a plea of prescription of five years in an action on a promissory note made at Rochester, State of New York.

In the case of *Adams v. Worden*, 6 L. C. Rep. p. 287, an action was brought upon a promissory note made at Plattsburg, New York. The defendant pleaded the Statute of Limitations of the State of New York. To this plaintiff demurred: 1. Because the defendant cannot set up any foreign law or sta-

tute of Limitations; 2. Because in Lower Canada there is no such law of prescription as is alleged in the exception. On the 15th December, 1852, judgment was rendered by the Superior Court at Montreal, composed of Day, Smith and Mondelet, J.J., dismissing the said plea of limitation, on the ground "that the laws of the State of New York whereby the pretended limitation is created, have no force or operation in this Province." In appeal the Court held this judgment premature, because the statute of the State of New York had not been proved.

In all the above cases, no place of payment was specified, but the above decisions do not the less conclusively lay down the principle that prescription is governed by the *lex fori* and not by the *lex loci contractus*.

What could have been the cause of the conversion of Chief Justice Mondelet from the opinion he held in *Adams v. Worden*? In his decision in *Wilson v. Demers*, the learned judge does not even notice his judgment in the former cause.

Finally with regard to Lower Canada, the decision of Mr. Justice Mondelet was overruled in Review, by Messrs. Justices Mackay and Torrance, at Montreal, on the 30th of November, 1868: "Volumes, said Mr. Justice Mackay for the Court, 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 of 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."

It must, however, in justice, be added that the said judgment has been appealed from, and is now pending before the Court of Queen's Bench, the highest Court in the Province.

In Louisiana, another French colony, which like Canada, has been transferred to a nation governed by the common law of England, and which, like Lower Canada, has adopted many of the commercial laws of Great Britain, it is not surprising to find the English principle