that the *lex loci* and not the *lex fori* should govern, whereas Pothier never speaks of any but the *lex domicilii creditoris*. Mr. Guthrie, p. 219, in turn, says that Pardessus and Boullenois favor the *lex domicilii debitoris*, and does not notice the distinction which both these commentators make, when a place of payment is specified. Mistakes have even been committed by writers in their citation of works composed in their own language. Thus, Félix asserts that Dunod favors the *lex domicilii debitoris* at the time of the institution of the action, whereas it is the *lex domicilii debitoris* at the time of making the contract which is supported by Dunod. These examples, to which many others might be added, show the importance of a careful and detailed investigation of the subject.

To begin with our own country, I find a diversity of opinion. In a late case of *Wilson* v. *Demers*, his Honor, Mr. Justice Mondelet, held that the true rule of both the old and new French jurisprudence, which should prevail in Lower Canada, is the *lex loci contractus*, or *lex loci solutionis*.

It appears that Boullenois holds the law of the domicile of the debtor, if no place of payment be specified. "True," said Mr. Justice Mondelet, "Pothier is of a different opinion, whereupon Troplong says: 'C'est une erreur difficile à comprendre dans un jurisconsulte d'un aussi grand sens.'" Duranton, vol. 21, s. 113, as usual, without expressing his own view, replies: "Ou M. Troplong n'a pas lu avec attention le passage de Pothier, ou l'erreur qu'il lui reproche devrait être reprochée aussi à Dumoulin, qu'il cite cependant en l'approuvant."

Dunod (*Des Prescriptions*, part i. ch. 14), contends that the law of the domicile of the debtor should rule, but only of the domicile at the time of the contract..

It should be borne in mind that Boullenois does not advocate the *lex loci contractus*.

The old French jurisprudence, moreover, does not appear to concur in the opinion of Boullenois. Merlin, *Répertoire*, vo. *Prescription*, s. 1, § 3, par. 7, quotes two *arrêts* of the Parlement de Flandre, the first, of the 17th July, 1692, the second, of the 30th October, 1705, which held the law of domicile of the debtor at the time of the institution of the action to govern in case of conflict of prescriptions; and he further reports another case which originated before the code, and was decided in the same sense by the *Cour de Bruxelles*, on the 24th September, 1814. Berryer and Laurière on Duplessis, *Traité de la Prescription*, liv. 1, chap. 1, express the same view. And if to the above authorities we add the old civilians Huber and Voet, and also Merlin, who evidently wrote under the influence of the then prevailing notions on the matter, it seems that the old French Common Law does not admit the *lex loci contractus*.

It is contended that the weight of modern French authority is against the doctrine of the *lex fori*.

But what is the present opinion in France? Mr. Justice Mondelet thought it useless to recapitulate all the authorities which are to be found in France touching this point.

"Suffice it to say, with Félix, (*Droit International Privé*, vol. 1, art. 96, p. 209)," he said, "that, '*les lois romaines ont déjà consacré le principe que la matière du contrat est réglée par la loi du lieu où il a été passé.*' And when the contract is to be executed elsewhere, then it must be governed by the law of the place of execution. As he says at page 214, '*ce principe a été emprunté à la loi romaine*, 421, *de obli. et act. Elle repose sur la circonstance qu'en fixant un lieu pour l'exécution du contrat, les parties sont censées avoir voulu faire tout ce que prescrivent les lois du même lieu.*'

"It is true that Merlin (*Quest. de Droit* vo. *Prescription*) expresses the opinion that the *lex fori* or that of the domicile of the debtor, will govern a case like the present, but as he has failed to take into account the circumstances of a debt being due and payable in a particular place, and as he speaks of a debt made payable generally, we have to refer to those writers who have not omitted the distinction between the one and the other case. Boullenois, t. 1, pp. 530; 2, 488, and Pardessus, Droit Comm., No. 1495,(*) clearly draw the distinction, and hold that when the contract is to be executed in a particular place, it is the law of that place which is to govern. Félix cites as holding that opinion, Christin, Burgundus, Mantica and Favre.

"On reviewing most of those writers, one finds, especially with Savigny, that the true doctrine is that the prescription of the place of payment must govern, and where the place of payment is not specified, then that of the place where the contract was created. We may join *Troplong* with the others, for he says: '*L'action personnelle*

(*) Pardessus does not entirely agree with Boullenois as will be seen hereafter.