controversies, or in whose tribunals they are properly parties to any suit."

"A person," said Lord Tenterden, in *De La Vega* v. *Vianna*, "suing in this country must take the law as he finds it; he cannot by virtue of any regulation of his own country enjoy greater advantages than other suitors, and he ought not therefore to be deprived of any superior advantage which the law of this country may confer. He is to have the same rights which all the subjects of this kingdom are entitled to."

Troplong and Massé urge that the *laches* of the creditor to sue must be considered as existing at the place of payment, and consequently must be dealt with according to the law of that place.

"La raison en est simple," says Troplong, No. 38, "la prescription afin de se libérer est, en quelque sorte, la peine de la négligence du créancier. Or, dans quel lieu le créncier se rend-il coupable de cette faute? C'est évidemment dans le lieu où il doit recevoir son paiement. Donc il encourt la peine établie dans ce lieu: donc la prescription qu'il doit subir se règle par la loi du même lieu."

"Ainsi," Marcadé repliés (sect. 6, p. 12), "soit une dette contractée par un Piémontais domicilié à Turin envers un Français domicilié à Paris, mais avec convention que le remboursement sera fait à Rome (où d'ailleurs il faut supposer qu'il n'a pas été fait élection de domicile par le débiteur, puisqu'alors la question n'existerait plus, Rome devenant ainsi le lieu du domicile); c'est d'après la loi de Rome, quoique le débiteur n'y eut pas de domicile, que la dette se prescrire, et la raison en est simple, dit M Troplong, puisque *c' est à Rome que le créancier a été négligent!* . . Comment! cet homme *qui n'a jamais quitté Paris*, vous me dites que pendant quinze ans, vingt ans ou plus, *il a été négligent* à Rome! C' est à Rome qu'il est resté dans cette longue inaction, à Rome qu'il s'est endormi dans cette insouciance prolongée, à Rome, *lui qui n'y a jamais* mis le pied! . . . . . Il faut donc ici encore, comme au No, IV., rappeler à M. Troplong que *priùs est esse qudm esse tale*, et que pour avoir été n'importe quoi à Rome, pour y avoir été nêgligent ou soigneux, insouciant ou vigilant, pour y avoir été tout ce qu'on voudra, il faut tout d'abord avoir été à Rome . . . . Qu'on nous dise que ce crêancier a négligé son affaire *de Rome*, à la bonne heure: mais cette affaire de Rome où l'a-t-il négligée? C' est à Paris."

Mr. Westlake modestly says that Lord Brougham's opinion in *Lippman* v. *Don*, rests on two fallacies:—

"First, 'the argument that the limitation is of the nature of the contract, suppose that the parties look only to the breach of the agreement. Nothing is more contrary to good faith than such a supposition.' But this is to confound the interpretation of the contract with the operation on it of the *lex loci contractus*. . . . . Secondly, 'it is said that by the law of Scotland'—the *lex fori*, which it was proposed to apply as governing the remedy—'not the remedy alone is taken away, but the debt itself is extinguished. . . . I do not read the statute in that manner. . . . The debt is still supposed to be existing and owing.' There is, however, little or no meaning in saying that a debt subsists that cannot be recovered."

As to the first of Mr. Westlake's objections, it would perhaps be sufficient to remark, that Lord Brougham referred merely to the intent of the parties, irrespective of the operation of the law upon their contract. The question, moreover, is not the effect or operation of the *lex loci contractus*, but of the *lex fori*; and if the contracting parties contemplated a breach of the contract, and a suit upon the same, they must have had reference to the law of the place where that suit would be brought, or for everything relating to that suit. But, as the noble jurist observes, and his observations are a complete answer to the remarks of Chief Justice Cockburn:

"Nothing can be more violent than that supposition that the breach of the contract is in the contemplation of the parties, and indeed nothing more contrary to good faith. It is supposing that when men bind themselves to do a certain thing, they are contemplating not doing it, and considering how the law will help them in the non-performance of a duty. If the law of any country were to proceed upon the assumption that contracting parties have an eye to the period of limitation, and only bind themselves during that period, it would be sanctioning a faithless course of conduct, and turning the provisions which have been made for quieting possession after great *laches* on the part of the creditors, and possible destruction or loss of evidence, into covers for fraudulent evasion on the part of debtors."

In the second place, Mr. Westlake cannot discern a distinction between a debt that cannot be recovered *en justice*, and a debt extinguished *in se*. There is a wide difference between the two. 1. It is well known that a debt extinct *in se* is not susceptible of payment, and the action *condictio indebiti* would then lie. But a debt declared prescribed may be paid, without danger of such an action; 2.