REPORTS AND NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Montreal, June 22, 1878.

Present:—DORION, C. J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

CUVILLIER et al., Appellants; and SYMES et al., Respondents.

Donation entre Vifs—Survenance d'Enfans—Revocation.

An unmarried lady whose estate was equal to about a million dollars, made donations to relatives amounting to $100,000, of which the interest was paid regularly until some years after her marriage. The donations were made before the coming into force of the Code of Lower Canada. One of the donations, of $10,000, was in question in the cause. *Held*, Chief Justice Dorion and Mr. Justice Cross dissenting, that the donation was not revoked by the donor's marriage and the birth of children.

The question was whether a certain donation of $10,000, being one among several amounting in all to $100,000, made by the respondent to a relative before her marriage to the Marquis of Bassano, was revoked by her marriage and the birth of children, issue of the marriage. The Court below held that the donations were revoked, and dismissed the action brought against the Marquis de Bassano for overdue instalments of interest on the donation of $10,000 which was particularly in question in the present suit.

DORION, C. J., dissenting, considered the judgment right and that it should be confirmed. Miss Symes had made these donations, amounting to about one-tenth of her fortune, several years before her marriage in 1872, and the interest was paid until 1876, when she refused to continue the payments any longer, the ground being that the donations had been revoked by her marriage, and the birth of two children. According to the French law, if a donor gave the whole of his property or *aliquam partem*, the donation was liable to be revoked if he married subsequently. There was a variety of opinion among the authors on the subject, but the rule seemed to be that if the donor had given such a portion of his fortune as he would not have given if he had contemplated marriage and having children, the donation would be revoked by his marriage. But a trifling gift would not be revoked. Here the donations must all be considered together, and it seemed improbable that if Miss Symes had contemplated the possibility of having children, she would have given so large a sum as $100,000 to her relatives. There was no apparent motive for the act, for these relatives were not in need. At the time of her marriage, there was a clause put in the draft of marriage contract, proposing to ratify the donations, but the English solicitor, into whose hands the draft came, considered such a donation so extraordinary that he struck it out. This indicated the view of a professional man accustomed to deal with business of this kind. His Honor considered that the ordinance of 1731, which made such donations revocable by marriage, if not actually in force in Lower Canada, might be considered as adopting the jurisprudence which previously existed, or as deciding between conflicting jurisprudence. It was said that there was a ratification of the donation, by the respondent continuing to pay the interest after her marriage. But she had no knowledge of the law, and her husband was a foreigner who was unacquainted with it. And moreover, the donation being absolutely revoked and null, could not be ratified. Upon the whole, the Chief Justice considered that the action was properly dismissed.

CROSS, J., also dissenting, concurred with the Chief Justice.

RAMSAY, J., rendering the judgment of the majority, remarked that no such question could ever arise again. A very few months after this occurred the law was entirely changed, (C. C. art. 812), and donations are no longer subject to revocation by the birth of children to the donor. On the general principles of law which governed the case, he thought the Court was unanimous; the whole difference was as to the application of the law to the particular circumstances of the case before the Court. There was evidence that the respondent considered the donation a small one in view of her wealth. Circumstances which transpired subsequently could not be taken into consideration. The authorities, in his Honor's opinion, did not bear out the view that a donation of so inconsiderable a part of the donor's fortune was annulled by the birth of children.

TESSIER, J., concurring, considered that the donation of $10,000, which was alone in question in the present case, must be considered