

'rights which I or they can in any way demand or pretend in or upon all or any of the immoveable property heretofore belonging to the said Austin Cuvillier in the City of Montreal or elsewhere, as the whole is therein more fully explained. And whereas I am desirous to secure unto myself and my said husband and his children all the pecuniary advantages therein granted: I, the said Charlotte Cuvillier, do hereby appoint M. Cuvillier my lawful attorney, to renounce for me as well as for my children born or to be born of my marriage with the said A. Cuvillier to all dower and right of dower and all other matrimonial advantages which I myself and my said children can or could in any way have, demand or pretend to have in or upon all the real and immoveable property hereinafter described, that is to say, &c., &c. ;

" Considérant que parmi les lots décrits dans la susdite procuration, le lot possédé par la défenderesse ne se trouve pas, mais que néanmoins la dite procuration et l'acte de renonciation fait par M. Cuvillier rendent évidente l'intention de la demanderesse, et qu'elle a virtuellement renoncé à son douaire sur ce lot, quoiqu'il ne se trouve pas décrit, puisqu'elle accepte la dite donation, la confirme et ratifie, que c'est une simple omission dans la désignation des immeubles sur lesquels la demanderesse a réellement entendu renoncer à son douaire ;

" Considérant qu'il est prouvé que le dit feu Austin Cuvillier et les demandereses ont profité de la dite donation, laquelle a eu tout son effet en leur faveur par suite de leur acceptation d'icelle et de la dite renonciation de la dite Dame Erichsen ;

" Considérant que les dispositions de l'article 1029 du Code Civil, par lesquelles il est dit qu'on peut stipuler au profit d'un tiers, lorsque telle est la condition d'un contrat que l'on fait pour soi-même, ou d'une donation que l'on fait à un autre, rendent inadmissible la prétention de la demande que la condition imposée à la demanderesse de renoncer à son douaire ne pouvait pas profiter à la défenderesse ;

" Considérant que cette disposition au profit de la défenderesse peut être acceptée tant qu'elle n'est pas révoquée, et que son acceptation est une acceptation suffisante, maintient l'exception en premier lieu plaidée par la défenderesse et ren-

voie l'action de la demanderesse avec dépens distracts, &c."

RAMSAY, J. The appellants are the widow and daughter of the late Austin Cuvillier, who was brother of the respondent, Madame Delisle. It appears that Austin Cuvillier and his brothers and sisters became proprietors of the property described in the declaration in this cause, as heirs at law of their father, who died on the 11th July, 1849, and by a deed of the 4th of December, of the same year, by which their mother made over to her said children all rights of property movable and immovable belonging to her, as having been *commune en biens* with her late husband.

On the 4th of August, 1849, that is, between the death of the father and the cession by the mother, Austin Cuvillier married in England the appellant, Charlotte Erichsen. The other appellant is the only issue of this marriage. It further appears that on the 4th of January, 1855, the heirs Cuvillier, that is, Austin Cuvillier, his sisters and brother, made a *partage* of the land in question, by which *partage* lot 4 became the property of Austin Cuvillier. On the 30th July of the same year, he sold his share to his sister, Madame Delisle, now respondent.

On the 31st October, 1857, Mrs. Austin Cuvillier obtained judgment *en séparation de biens* from her said husband, which was duly executed, and by the *rapport de praticien* it was established that the said Mrs. Cuvillier renounced to the *communauté de biens* theretofore existing between her and her said husband, and that she held to her right to dower over the share of her husband in the said property. On the 28th September, 1858, this report was homologated by judgment. Austin Cuvillier died in England on the 11th February, 1869, and his widow and daughter brought their action against Madame Delisle and her husband to recover back one half of the share of the said Austin Cuvillier in the lot of land described.

The respondents met this action by the general issue, and by several special pleas, by which last they contended,—1st. That as Austin Cuvillier and the appellant, Dame Erichsen, were married in England, the English law governs the case, and that by that law dower did not accrue. 2nd. That the niece