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ADVOCATE AND CLIENT.

The case of *Larue & Loranger*, noted in the present issue, brought before the Court of Appeal a question of considerable interest to the profession, which was discussed twenty-two years ago in *Devlin* v. *Tumblety* (2 L.C.J. 182), and subsequently in *Grimard & Burroughs*, 11 L.C.J. 275. The case of *Larue & Loranger* is much like the first of those above mentioned, because the client distinctly admitted that, being well aware that his case made unusual demands upon the time and attention of his counsel, he had promised him something extra by way of indemnity. By this *quelque chose*, it appeared, he had understood a sum of only $50. His counsel, when he came to settle with him, asked $200, and proved that the services were well worth that sum. The question was whether under a vague promise to pay "quelque chose" proof of *quantum meruit* was admissible. Judge Mackay, in the Superior Court, held the negative, but thought he might allow the $50 which the client appeared to have admitted. In Review, the majority of the Court considered that they might go further than this, and allow the proved value of the services, which was fully equal to the $200 asked. The Court of Appeal, however, has restored the original judgment, which was also concurred in by Judge Torrance, who differed from the majority in Review.

The principle of *Devlin* v. *Tumblety* has, therefore, been sanctioned by the Court of Appeal. In that case the client admitted an indebtedness of $200, and judgment went in accordance with his admission. Judge Day laid down the rule, which is now formally sustained by the authority of the Court of Appeal: "Advocates must take their choice of two courses, either to trust entirely to the honor and liberality of their clients to do them justice for their high and confidential services, or to make an arrangement beforehand, and say, I cannot undertake your case unless I receive such a fee. The latter is the safe plan: no mistake can arise from it." The same learned Judge made some appropriate observations upon the difficulty of assigning a value to intellectual services. "The instances of France and England," he said, "are mentioned to show how much the difficulty has been felt of placing a money value on such an intangible and variable commodity as intellectual labor. There is no ascertaining it with any approach to precision. The circumstances under which the labor is performed will modify or increase its value to an immeasurable extent. A lawyer of great reputation might give advice for which he would make such a charge as his position in the profession warranted, and yet which might be unsound and be the means of bringing great loss upon his client. On the other hand, a lawyer of inferior standing might give the most able advice, and yet not feel justified in making more than a comparatively moderate charge. In such cases it would be impossible to name a rate of fees." Some of the remarks imputed to Judge Day would seem to support an action for services capable of being definitely valued, but the judgment went no further than to allow the sum at which the client himself estimated the services rendered.

INTEREST ON MONEY UNDULY RECEIVED.

Article 1047 of our Civil Code is not explicit as to a case which has arisen very frequently of late in the City of Montreal,—as to the right to interest on taxes collected by the City under assessment rolls which have subsequently been declared illegal by the Courts. As far as the Code goes, it would appear that interest is exigible only from the date of the demand of repayment, because the City exacts the money in good faith, and the Code says that "if the person receiving be in good faith, he is not obliged to restore the profits of the thing received." The question in *Wilson & City of Montreal* was whether the exaction of the money under threat of an execution places the party paying in a more favorable position. In *Baylis & City of Montreal*, 2 L. N. 340, this question does not seem to have attracted special attention, but the judgment allowed interest only from the date of demand. That principle has been expressly decided in *Wilson & City of*

Montreal, noted in this issue, and the judgment does not appear to be open to objection, for there is nothing to prevent a person who has paid under coercion from bringing an action the next day for the recovery of his money, and then he will lose no interest. If he chooses to forbear, he places himself, as regards the period of forbearance, in the position of one who has paid voluntarily, and no interest is due.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, June 19, 1880.

Sir A. A. DORION, C. J., MONK, J., RAMSAY, J., TESSIER, J., CROSS, J.

WILSON et al. (plffs. below), Appellants, & THE CITY OF MONTREAL (deft. below), Respondent.

Money unduly paid—Interest is allowed only from date of demand of repayment if received in good faith—Payment under coercion.

The judgment appealed from was rendered by the Superior Court, Montreal, Mackay, J., April 30, 1878, condemning the respondent to repay to the appellants, as executors of the late Hon. Charles Wilson, the sum of $1264.34, which had been collected from Mr. Wilson under an illegal assessment roll made to defray the cost of widening Place d'Armes Hill. The observations of the learned Judge who rendered the judgment in the Court below will be found in Legal News, Vol. 1, p. 243.

The judgment was appealed from in so far only as it refused interest from the date the tax was paid and allowed it merely from date of service of process. The *considérant* of the judgment below on this point was as follows :—

"Considering under all the circumstances that the defendants may be seen to have been obliged by quasi-contract to repay said $1236.31 and $28.03, to plaintiff on demand; that up to the institution of the present action, these moneys had not been demanded, and that therefore, and by reason of the defendant's good faith, and plaintiff's knowledge of the law and facts when he paid, they, the said defendants, are not bound to pay interest on the said sums except from date of service of process; the plaintiff when he paid was aware of the law and of the facts, the taking of said money by defendants was not immoral, and plaintiff had been advantaged by defendant's operations widening the Place d'Armes Hill referred to, for his, plaintiff's property, had been improved (according to the opinion of Thomas Wilson, one of the plaintiffs *par reprise*;) Doth adjudge and condemn the said defendants," &c.

The appellants contended that Wilson paid the tax only because he was threatened with a seizure. Such being the case, the following authorities were cited by them to show that under the circumstances the obligation to return the capital involves the obligation to pay interest as well, from the date of the payment.

"Merlin, Rep. Vo. intérêts § No. 3, 'celui qui a payé volontairement ce qu'il ne devait pas, et qui le répète en justice, ne peut exiger les intérêts que du jour de la demande, mais s'il n'a payé que comme contraint ce qu'il ne devait pas, les intérêts lui sont dus à compter du paiement.'

"Rousseau de Lacombe, Vo. intérêts No. 9, and Guyot Rep. Vo. intérêts, lay down the same doctrine.

"And such also is the opinion of writers under the Code Napoléon. In particular Rolland de Villargues Dict. Vo. intérêts, Nos. 100 and 101 says :—'Il faut aussi décider que lorsqu'un individu a été injustement poursuivi et forcé de payer ce qu'il ne devait pas, il a droit aux intérêts de la somme indûment payée, à partir du paiement.

"'Mais celui qui, sans y être contraint, aurait payé par erreur, ne pourrait réclamer contre celui qui a reçu de bonne foi les intérêts de la somme par lui payée que du jour de sa demande, attendu que le paiement a été volontaire.' Cites Lecamus 76. Henrys 2. 4, Bretonnier qu. 32.

"See also Journal du Palais (Ledru Rollin) Vo. Intérêts No. 194."

Sir A. A. DORION, C. J. In 1868 the late Hon. Charles Wilson was assessed on an assessment roll for certain improvements for enlarging the Place d'Armes Hill. He paid the assessment in 1869 and obtained this receipt :—

"Received from the Hon. Charles Wilson the above amount which he declares he pays under protest and to save the proceedings in execution with which he says he is threatened.

(Signed,) JAMES F. D. BLACK,
City Treasurer."

In 1876 Wilson instituted an action against the Corporation, alleging the illegality of the assessment roll, and claiming to be re-imbursed the above amount, with interest from date of payment. The Corporation pleaded that they were not bound to re-imburse the money; that it had been paid for a work which benefited the property of Wilson, and that it was not a case in which the party was entitled to get it back. The Court below gave judgment for the principal, but allowed interest only from the date of the summons, instead of from the 19th January, 1869, date when the money was paid to the Corporation. There is no difficulty about the capital; the Corporation does not appeal from the judgment rendered. But the executors of Mr. Wilson institute an appeal and say that interest should be allowed from the time the money was received by the Corporation; that Wilson paid under coercion, being threatened with proceedings in execution. It is not contended that Wilson would be entitled to interest if the payment had been voluntary; the appellants admit that where the payment is voluntary, interest is awarded only from the date of putting *en demeure*. But the appellants urge that when a party pays because he is threatened with an execution he is entitled to interest from the date of payment. The Code does not provide for this case. Art. 1047 says, he who receives what is not due to him, through error of law or of fact, is bound to restore it. If the person receiving be in good faith, he is not obliged to restore the profits of the thing received. Art. 1049 says, if the person receiving be in bad faith he is bound to restore the sum paid, with the interest from the time of receiving it. It has been contended that there was bad faith on the part of the Corporation. We do not see that such was the case. They made an assessment roll, and for some irregularity the roll was set aside. There is no evidence of bad faith in that. The only case, therefore, provided for by the Code, viz., the case of bad faith, does not arise here. The case of *contrainte*, or payment under threat of execution, is not provided for. This would seem to settle the case. But we have been told that the Code in this particular did not alter the law as it existed before the Code, and that according to the old law this case would be decided differently. The authority of Merlin is cited. This author merely says that when a person is *contraint*, he is entitled to interest from the time of payment. He is merely referring to Bretonnier who says, "unless he has been forced to pay." There is nothing positive in this, and no decision is to be found, and none has been cited, which meets the present case. I have looked at the decisions under the Code Napoléon, and have found two cases. In one case, in the Journal du Palais, the party was condemned to pay interest only from the time of the judgment. In another case, in 1828, the arrêt condemned the party to refund the amount with interest from the date of the payment. This case was under a disposition similar to one contained in our Code, that a person who is condemned may appeal by giving security for the costs, and if he gets the judgment reversed he is entitled to recover the amount with interest from the date of payment. I think this article is to be interpreted adversely to the pretensions of appellants; for if it had been the general rule that a party who pays a sum of money by *contrainte* has a recourse for interest from the date of payment, there would have been no necessity for this article in the Code. But it was because there was no such general rule that the Code says the party is entitled to interest. And there is a good reason for the distinction, because a person who pays money under coercion may bring an action immediately for the recovery of the money paid; but in the other case he has to wait until the appeal is decided, and unless he had the right to interest under the Code, he would only get interest from the date of his action. A case of *Sutherland & City of Montreal* has been referred to by the appellants. In that case Dr. Sutherland had paid an amount for which he was assessed for the widening of Little St. James Street. A very short time after, he brought an action for the recovery of the money, and he asked for interest from the date of payment. He obtained judgment and the judgment was confirmed by the Privy Council. The question of interest was not raised in our Courts, and the judgment of this Court and of the Privy Council merely granted the conclusions of the declaration, by which interest from the date of payment was prayed for. That judgment, therefore, is not a precedent which can be invoked by the present

appellants. Another case relied on by the appellants is *Caron & The Corporation of Quebec* (10 L. C. J. 317). Caron owned several houses, and was notified that the water would be cut off because the water rates had not been paid some years before by a former tenant. Caron paid under protest, and within a week instituted an action for the recovery of the amount as having been illegally exacted. The Court gave judgment with interest from the time of payment. But the amount in that case was a mere trifle. The only other case which bears on this question is that of *Baylis & City of Montreal* * decided last year. Baylis had been assessed in a large sum several years ago for a special improvement, and had paid it under execution, a warrant having issued from the Recorder's Court. Two or three years afterwards he instituted an action to set aside the assessment roll, and to be repaid the money which he had paid. The Court below dismissed the action. He came to this Court, and got judgment for the amount, but with interest only from the date of the institution of the action. The judgment in the present case follows the same principle.

MONK, J., (*diss.*) thought that under the old law a party paying under coercion was entitled to interest from the date of payment, and that the same rule should prevail now.

Judgment confirmed.

Barnard & Monk, for Appellants.

R. Roy, Q. C., for Respondent.

MONTREAL, June 22, 1880.

Sir A. A. DORION, C. J., MONK, J., RAMSAY, J., TESSIER, J., CROSS, J.

LARUE (plff. below), Appellant; & LORANGER et al. (defts. below), Respondents.

Advocate and client—Extra remuneration—In the absence of a special agreement, an advocate cannot recover from his client more than the tariff fees, though he may have performed services not adequately provided for by the tariff, and for which the client promised to pay something extra.

The appeal was from a judgment of the Court of Review, which will be found at p. 155 of Vol. 2, Legal News. The question was whether the respondents, a firm of attorneys, were entitled to charge the sum of $200 for extra services in conducting a case for the appellant. This sum, according to the pretention of the respondents, was not charged as a retainer, but under a special agreement with their client by which the latter promised to compensate them for the extra work involved in the examination of a large number of witnesses. The precise figure was not fixed, but the respondents contended that, the agreement being proved, they had a right to prove by witnesses the value of the extra services. This pretention was maintained by the Court of Review, Torrance, J., dissenting.

The appellant contended that there was no legal proof of agreement to pay a retainer or extra compensation; there was no *commencement de preuve par écrit*, nor any *aveu* of the party.

Sir A. A. DORION, C. J. The respondents were engaged as the attorneys for the appellant, who was defendant in a certain cause before the Superior Court. The evidence in that case was very long and extended over sixty days. Part of the record was lost, and there was a settlement between the appellant and his lawyers. Then the record was found, and the case went on, and the present appellant was successful. The judgment was taken to appeal and was confirmed. During the litigation Larue paid $239.75 to his lawyers, on account of costs, and after the case was closed the lawyers received these costs from the losing party. Larue now asked his lawyers to refund the amount advanced to them. The answer to the action is this: We have received our costs from the other party; but we have a right to keep this sum of $200, because it was agreed during the trial that, on account of the great trouble we were put to, we should be paid a handsome retaining fee. The Court below (Mackay, J.) held that there was no proof of any promise of a fee, except of $50 which Larue seemed to have admitted, and he got judgment for the balance. In Review that judgment was reversed, and the Court declared that the respondents were entitled to the $200. In England the barrister has no action for his fees. In France the law does not prohibit him from suing, but if he sues he is disbarred at once. In this country the professions are blended; but there is a tariff of fees, and when a lawyer

* 2 L. N. 340; 23 L. C. J. 301.

takes a case without making a special agreement he is supposed to take it on the understanding that he shall be paid according to the usual tariff of fees. If he makes a special agreement to be paid more, the Courts will not say that the agreement is wrong; but in the absence of a special agreement there is a tacit agreement that the tariff shall govern. In this case Larue seems to have taken special care to see what he was to pay. At one time there was a kind of settlement, and Larue paid his lawyers the costs incurred up to that time, with a stipulation that if the case was continued the respondents would finish it for $50. Then, there was another receipt given for the $50, which was stated to be the balance of costs, in case the judgment should be reversed in appeal. The judgment was confirmed in appeal. There was nothing said, in the receipt as to the costs in appeal; the costs in appeal were paid by the other side; and it was not pretended that the $200 was for extra trouble in the Court of Appeal, but for the enquête in the Court below. There is no doubt that the amount charged for extra services is small for the trouble; but it is difficult to go back against the positive receipts, and the agreement contained in them that no more should be charged. There is no doubt that Larue belongs to that class of clients who express their willingness to do anything while the trial is going on, but afterwards they will not pay the smallest retainer. It is with reluctance that the Court is bound to adopt Larue's view of the case. The Court below allowed $50 which Larue admitted. This judgment will be confirmed and the judgment of the Court of Review must be set aside. We think we have a discretion as to costs, and we deny the appellant his costs here.

MONK, J. (diss.) I think, as a retainer was promised, it is competent to prove the *quantum meruit* by parol testimony. It is certain that the amount of labor performed by the respondents was very great. It was a case of an unpleasant character, and the tariff rate was inadequate to compensate counsel. According to the present judgment it may be necessary for counsel to fix the amount beforehand which they intend to charge, and I think it will often be difficult for them to determine in advance the value of the services they may be required to render.

The judgment is as follows:—

"Considérant que les intimés n'ont pas prouvé par une preuve légale que l'appelant ait promis de leur payer un honoraire additionnel aux frais taxés au-delà de ce que la cour de première instance leur a accordés;

"Et considérant qu'il y a erreur dans le jugement rendu le 30me jour d'avril 1879, par les juges de la Cour Supérieure siégeant en révision, casse et annule le dit jugement, et confirme le jugement rendu par la cour de première instance le 17me jour de janvier 1879, avec dépens, et condamne les dits intimés à payer les frais encourus en première instance, chaque partie payant ses frais tant en cour de révision que sur le présent appel [*Dissentiente* M. le Juge Monk]."

Lareau & Lebeuf for Appellant.

Loranger, Loranger, Pelletier & Beaudin, and *Mousseau & Archambault* for Respondents.

MONTREAL, June 19, 1880.

Sir A. A. DORION, C.J., MONK, J., RAMSAY, J., TESSIER, J., CROSS, J.

ERICHSEN et al. (plffs. below), Appellants, and CUVILLIER et al. (defts. below), Respondents.

Customary Dower, Law governing—Renunciation by wife of dower—Stipulation for the benefit of a third person.

The right of dower is regulated by the law of the place where the immoveable is situate, and therefore accrues to the wife on an immoveable in the Province of Quebec, although the consorts may have been domiciled, at the time of the marriage, in England by the laws of which dower would not accrue.

Where the wife agrees to renounce her right to dower on property for a valuable consideration received by her, such renunciation is binding on her though not made expressly in the form prescribed by the C. C. 1444.

The appeal was from a judgment of the Superior Court, Montreal, Rainville, J., dismissing an action for customary dower, brought by Charlotte Erichsen, widow of the late Austin Cuvillier, and her daughter, born of her marriage with Austin Cuvillier. The *douaire coutumier* was claimed on certain property situate on Sherbrooke Street, in the city of Montreal.

The defendants-respondents pleaded that the marriage of Austin Cuvillier and the plaintiff Charlotte Erichsen took place in England, and there was no right of dower according to English law—the law of the matrimonial domicile. Further, that Miss Symes, defendant's niece, had made a donation *entre vifs* to Austin Cuvillier and his wife Charlotte Erichsen, with the condition that the latter should renounce for herself and her children her pretention to customary dower, and that Charlotte Erichsen accepted the donation subject to that condition.

The Court rendered the following judgment dismissing the action :—

" La cour, etc....

" Considérant que la demanderesse Dame Charlotte Erichsen, a, le 4 Avril 1849, épousé Austin Cuvillier, et que de ce mariage est née l'autre demanderesse, Charlotte Agnes Claire Cuvillier, mariée à Arthur Abraham Fraser ;

" Considérant que le trente-et-un Octobre 1857 a été rendu un jugement en séparation de biens entre la dite Dame Charlotte Erichsen et le dit Austin Cuvillier ; que le 12 Août 1858 la dite Dame C. Erichsen par acte reçu devant Mtre Doucet, Notaire, a renoncé à la communauté qui avait existé entr'elle et le dit Austin Cuvillier, son mari ; que les seuls droits qu'elle avait alors étaient son douaire coutumier sur les immeubles qui pouvaient y être sujets, et que jugement a été rendu homologuant le dit rapport de praticien et réservant à la dite Dame C. Erichsen son droit à tel douaire que de droit ;

" Considérant que le dit Austin Cuvillier est décédé le onze Février 1869 ;

" Considérant qu'avant le mariage de la dite Dame C. Erichsen avec le dit Austin Cuvillier, le père de ce dernier, l'Hon. Austin Cuvillier, était décédé le 11 juillet 1849, *ab intestat*, laissant cinq héritiers au nombre desquels était le dit Austin Cuvillier ;

" Considérant que le 4 Décembre 1849 Dame Marie Claire Perrault, veuve du dit feu Hon. Austin Cuvillier, donna à ses cinq enfants, au nombre desquels était le dit Austin Cuvillier, tous ses biens meubles et immeubles lui appartenant comme ayant été en communauté de biens avec le père du dit Austin Cuvillier ;

" Que parmi les biens dont le dit Austin Cuvillier a ainsi hérité tant par la succession *ab intestat* de son père, que par le dit acte de donation de sa mère, se trouvait un certain lopin de terre situé sur la rue Sherbrooke ;

" Considérant que par acte de partage entre les dits héritiers, passé le 4 Janvier 1854, devant Doucet, notaire, le dit lot de terre, décrit au dit acte de partage comme lot No. 4, échut au dit Austin Cuvillier ;

" Considérant que par acte de vente passé le 13 Juillet 1855, le dit Austin Cuvillier vendit le dit lopin de terre à la défenderesse, qui en prit possession et le possède encore ;

" Considérant que le douaire coutumier est soumis à la règle des statuts réels, et que les biens situés dans la province de Québec sont sujets au dit douaire en faveur de la femme et de ses enfants, indépendamment du domicile des parties lors de leur mariage, et qu'en conséquence, aux termes de l'article 1484 du C. C. du Bas-Canada, le dit lot de terre est devenu, par suite du mariage de la dite Dame Charlotte Erichsen avec le dit feu Austin Cuvillier, sujet au dit douaire ;

" Mais, considérant que le 29 Mai 1866, Dame Marie-Anne-Claire Symes, nièce de la défenderesse et propriétaire d'une part indivise dans les biens laissés par le dit feu Hon. Austin Cuvillier et son épouse Dame Marie-Claire Perrault, fit un certain acte de donation au dit Austin Cuvillier et à Dame Charlotte Erichsen, à la condition que cette dernière renoncerait tant pour elle que pour ses enfants, à sa prétention au dit douaire ; et que la dite Dame Charlotte Erichsen a ensuite fait telle renonciation, par acte passé le 28 Janvier 1867, devant Théo. Doucet, notaire ;

" Que la dite Dame C. Erichsen a fait cette renonciation y étant autorisée par son époux, et agissant par M. Cuvillier, son procureur, nommé par un acte de procuration conçu dans les termes suivants : ' We after having taken ' communication of a certain deed of donation ' (l'acte ci-dessus mentionné) do approve, ratify ' and confirm and accept the said donation, to ' all intents and purposes, and whereas by the ' said deed of donation it is stipulated that it ' will be inoperative as to us, the said Austin ' Cuvillier and Charlotte Cuvillier (Erichsen) ' and to the children of the said Austin Cuvil- ' lier unless I, the said Charlotte Cuvillier, do ' renounce for myself and the children born or ' to be born of my marriage with said Austin ' Cuvillier to all dower and other matrimonial

'rights which I or they can in any way demand 'or pretend in or upon all or any of the im- 'moveable 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 Cuvil- 'lier, 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 ad- 'vantages which I myself and my said children 'can or could in any way have, demand or pre- 'tend to have in or upon all the real and im- 'moveable 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 demanderesses 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 renvoie l'action de la demanderesse avec dépens distraits, &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

of the said Austin Cuvillier had made a donation to the said Dame Erichsen, in order to induce her to renounce to her right to dower in that case, and that she had accepted the said donation. And 3rd. That the said appellants had done acts of heirship, and accepted the legacies under the will of the late Austin Cuvillier, and that the subsequent renunciation to the succession of the said Austin Cuvillier is null.

I think it can hardly be said that the evidence establishes that Austin Cuvillier had at the time of his marriage renounced the domicil of his birth. But the question of domicil is of no importance in this case. Dower is a real right which is regulated by the laws of the place where the immovable is situate. 1442 C. C. Whatever, then, was the domicil of Austin Cuvillier at the time of his marriage, the right of his wife and child to dower arose.

There can be no doubt that the wife can renounce to her dower over her property her husband sells, alienates or hypothecates, either by the deed by which he so alienates or by any other subsequent deed (1444), and such renunciation absolutely bars the dower not only of the wife but of the children, and this so effectually that neither can claim any compensation out of the other property of the husband or of his succession (1445). Directly, and in so many words, Mrs. Austin Cuvillier did not renounce to her dower over the share of her late husband in the property in question sold to Madame Delisle. But, during her husband's life, her husband's niece, Miss Symes, made a donation to her uncle, Austin Cuvillier, and to his wife, subject to the express condition that the said donation "n'aura d'effet qu'en autant "et après que Dame Charlotte Erichsen, son "épouse actuelle, aura renoncé tant pour elle-"même que pour ses enfants nés et à naitre de "son mariage avec le dit Austin Cuvillier, à "tous douaire et autres avantages matrimo-"niaux quelconques qu'elle ou qu'ils pour-"raient en aucune manière, avoir demander ou "prétendre en ou sur toutes et chacune les pro-"priétés immeubles ci-devant appartenant au "dit Austin Cuvillier en la cité de Montréal "ou ailleurs, et dont la plus grande partie a été "acquise chez le Shérif dans l'intérêt de la dite "Demoiselle Symes, comme représentant sa "mère décédée, et par Dame Marie Angélique "Cuvillier, épouse d'Alexandre Maurice Delisle, "écuyer, et Demoiselle Luce Cuvillier, ses "tantes, la dite donation n'admettant pas toute-"fois que la dite Dame Austin Cuvillier ou ses "enfants aient ou puissent avoir aucun tel "douaire ou autres avantages matrimoniaux sur "les dites propriétés."

On the 8th January, 1867, Mrs. Cuvillier authorized by her husband, along with her said husband, made a deed, under seal, at London, England, in and by which she formally recognized the said donation, and the condition of renunciation therein expressed, and upon the fulfilment of which the said donation depended, and accepted the said donation subject to the said condition. She then goes on to say that whereas she, the said Charlotte Cuvillier, was desirous to secure unto herself and to her said husband and his children all the pecuniary advantages granted unto them by the said deed of donation, she, with the authority of her said husband, named and appointed Maurice Cuvillier to be her attorney for her, and in her name to renounce for her, as well as for her children, "to all dower and right of dower, and all other matrimonial advantages which she herself and her said children can or could in any way have demand, or pretend to have, in to or upon all the real and immovable property *hereinafter described.*"

[Continued on p. 290.]

—The case of *Pooley* v. *Whethan*, just decided in the Court of Appeal (W. N. 1880, p. 149), is of great importance with regard to the effects of extradition. Affirming the decision of Vice-Chancellor Bacon, the Lords Justices decided that the 19th section of the Extradition Act, which protects a person delivered up under an extradition treaty from being tried for any other offence than that with which he was originally charged, until he has had full opportunity of returning to the country of his asylum, does not protect from arrest under an attachment. The *ratio decidendi* appears to have been, that attachment is not a proceeding in the nature of a criminal charge, but one for the purpose of enforcing obedience to an order in a civil suit. The Lords Justices, however, held that, if the criminal charge—which was, in the case before them, one of offences against the bankruptcy laws—had been brought with the indirect purpose of bringing the accused within reach of an attachment order, the attachment could not be enforced. As there was some ground for suspicion that this had been the motive in the particular case, they went into evidence on the point; the result, however, was to dissipate the suspicion, and the attachment was accordingly upheld.—*Ex.*