

THE DISTRIBUTION OF THE ESTATE OF INTESTATES IN UPPER AND LOWER CANADA.

In our calendar for this year issued with the January number will be found a Table of distribution of Personal Estates of Intestates, according to the laws of Upper Canada, and a similar Table according to the laws of Lower Canada.

Any one who reads them through, comparing them as he reads, will discover a difference between the two Tables. The reason of disagreement is attributable to the fact that the law in each section of the Province has a different origin. That of Upper Canada is as old as the Statute 22 & 23 Car. II. cap. 10, which was passed in the year 1670, and is without alteration or amendment the Law of England to this day. That of Lower Canada is the old French Law preserved to that part of the Province by the Quebec Act, 14 Geo. III. cap. 87.

The question is, which of the two is the more equitable? We cannot help thinking that ours is not. The Student of the Civil Law finds in it traces of the Theodosian Code in its roughest state, unsoftened by the Novels of Justinian, while in the Table of Lower Canada he finds an offspring of the *Corpus Justinianicum*. We require no further proof of this than what we may be allowed to call the *patria potestas*—the right, according to our law, of the father of an intestate to the property of the latter to the exclusion of the intestate's brothers and sisters. This, as mentioned in an article elsewhere, for which we are indebted to the English *Law Magazine and Review*, was the Roman Law until the 118th Novel of Justinian. The Law of Lower Canada is not open to the same objection. If it had nothing more to recommend it than the absence of the *patria potestas*, we should upon this ground alone, all other things being equal, conceive it entitled to rank before ours.

Our object is not, however, urgently to demand an amendment of the Law of Distribution. No such change is positively required, because no hardship is generally felt. Besides, there is not the disposition to change. Many will say that the parent country having for two centuries been contented with the Act of Charles the Second without amendment, it would ill become us to show dissatisfaction. That respect which age begets surrounds the handiwork of Sir Walter Walker, (see 1 Lord Ray'd. Rep. 574) and may probably preserve it for generations to come.

Most men who die intestate leaving property are married men having families. When such is the case, the widow is in Upper Canada entitled to one-third, and the children to the remaining two-thirds. In Lower Canada the children take the whole of their late father's personal property, to the exclusion of the mother. But owing to the *Communi-*

navité de biens, a rule of law which exists in Lower, but not in Upper Canada, the widow is not in such case left destitute. Though giving the preference to the law of distribution in Lower Canada, we do not think it free from objection. There are points in each Table of Distribution open to objection; from which circumstance we argue that a better table than either might be produced from a combination of both.

It is seldom that an Upper Canadian lawyer gives himself any trouble about the Laws of Lower Canada, or *vice versa*; but we hope to see the day when such will no longer be the case. As Upper and Lower Canada compose one Province, having one Legislature, it ought to have one set of laws, civil as well as criminal. From what we know of the laws of Lower Canada, there are many good things which we might adopt with advantage. Those in Lower Canada who know anything of our laws will, we believe, return the compliment. The truth is, that neither system is perfect, and that neither section of the Province will adopt the whole law of the other to the entire exclusion of its own. The first step towards assimilation is inquiry. Until our legislators deem it wise to have the inquiry made by means of committees or otherwise, we must remain as we are—alien to each other. Our country is the same. Our wants are the same. Our hopes are the same. Our destiny is, we trust, the same. We are subjects of the same Queen, and should be governed by the same laws.

The recent codification movement of Mr. Cartier, the Attorney General of Lower Canada, is deserving of support. The more the law of Lower Canada is reduced and systematized the better shall we be able to understand it. The more we understand it, the better we shall like it. The more we like it, the more likely shall we be to assent to a fusion, and the less likely in so doing to create confusion.

Judging from the speech of the Governor General on the opening of Parliament, (noticed elsewhere,) an effort will be made during the present session to assimilate the commercial law of Upper and Lower Canada. We hail the announcement with delight. Every such step is an advance in the right direction—a partial realisation of an end most devoutly desired.

COUNTY CROWN ATTORNEYS' ACT.

In our February Number we drew attention to two or three of the provisions of the County Crown Attorneys' Act, and offered some suggestions in reference to the prohibition contained in the fourth section by which County attorneys and their partners in business are debarred from acting or being concerned for a party charged with a criminal offence.