

## COMMON LAW.

Q. B. ELDER v. BEAUMONT Nov. 6, 11.  
*Bankruptcy—Equitable plea of proof in bankruptcy—Effect of splitting a debt.*

A creditor of a bankrupt may prove for a part of his debt, and give credit to the estate for another part, for which he is secured by a policy; and a covenant by the bankrupt to pay the premiums on the policy as they become due, is a subsisting covenant to pay the premiums as they become due, after the debtor has been declared a bankrupt and received his certificate.

Q. B. ENGLAND v. BLACKWELL. Nov. 20.  
*Practice—Bill of sale—Residence of attesting witness.*

By 17 & 18 Vic. cap. 36, the attesting witness to a bill of sale is to give his residence and occupation. *Held*, that looking at the purport of the Act, it is complied with by the witness giving as his residence, the place where he carries on his business, and where he is to be found during the working hours of the day.

Q. B. HENEKY v. EARL AND OTHERS. Nov. 9, 10.  
*Right of unpaid vendor to stop in transitu—Rescission of contract—Acceptance by vendee.*

Where goods have been sent off by an unpaid vendor, and delivered on the premises of the vendee, but against his will, the vendor is not entitled to have back his goods, the vendee becoming a bankrupt, unless he demand them before the transitus has determined and unless before the vendee becomes bankrupt there has been a mutual rescission of the contract.

EX. LEE v. COOK. Nov. 18.  
*Distress—Second distress—Removal of goods by party distrained upon after sale.*

A bean stack upon the plaintiff's land, was distrained for a rate due at the plaintiff and sold by auction. The plaintiff prevented its removal by the purchaser, and himself took down and removed the beans and the purchase money was never paid. *Held*, that a second distress was regular.

Q. B. NORRIS v. IRISH LAND COMPANY. Nov. 17.  
 17 & 18 Vic. ch. 125, sec. 68—*Mandamus—Public duty under Royal Charter—Personal interest of plaintiff.*

This Court will grant a writ of Mandamus to enforce the fulfilment of a duty in which the plaintiff is personally interested where such duty is not in the nature of a mere personal contract—therefore where a company incorporated by Royal Charter, and bound by their deed of settlement to keep a register of shareholders, and to enter in such register the names of the representatives of deceased shareholders, had refused so to do; *Held*, that this Court had power to grant a writ of Mandamus to compel such registration, being a matter in which the plaintiff and the public are both interested.

C. C. R. REGINA v. ELLEN JOHNSON.  
*Evidence—Larceny—Proof of intestacy and property in ordinary—Absence of evidence as to majority of articles specified—Effect of evidence of intestacy in support of an indictment for larceny when the property is laid in the ordinary.*

When a count for larceny charges the stealing of a great number of things, a general verdict of Guilty will be supported by evidence that any one of the things mentioned has been stolen, notwithstanding there is no evidence as to the rest.

Where a prisoner was found guilty upon a count charging her with stealing a number of articles alleged to be the property of the ordinary and there was evidence that some of the articles had belonged to an intestate, and that they had been seen and missed after her death, but as to the majority of the things no evidence was given. *Held*, that as there was evidence as to some of the things that they were stolen after the death, the property in them was properly laid in the ordinary, and the conviction right.

## REVIEW OF BOOKS.

THE LOWER CANADA JURIST. John Lovell, Montreal. \$4 per annum.

We welcome the commencement of the second volume of this publication. The promises made when it was first announced, have been more than performed. The intention was to issue in a year twelve parts of twenty-eight pages each, or in all three hundred and thirty-six pages. This has been done, and more too, for the first volume contains no less than three hundred and seventy-six pages, or forty pages more than promised. The first number of volume II., now before us, contains in part the report of a very interesting and important case recently decided in appeal, (*Wilcox v. Wilcox*.) In a historical point of view, it is of value to Upper, as much as Lower Canadians. One and the chief question decided is that neither by the conquest, nor by the proclamation of 1763, nor by the Quebec Act of 1774, (14 Geo. III. cap. 83,) was the law England as regards civil rights, introduced into Canada. The judgment of the Court which displays great historical research and knowledge of constitutional law, was read by Sir L. H. Lafontaine, Baronet. In this judgment Justices Duval and Caron concurred, and from it Justice Alwyn dissented. The judgment of the latter is not yet published. We shall when we receive it give it more than ordinary consideration. The question involved is one which was previously before the Courts of Lower Canada, in a case of *Stuart v. Bowman* reported in 2 & 3 L. C. Reports. Then, as now, there was some difference of opinion. The truth is that no judgment can be delivered which will satisfy the minds of all men. Opinions pro and con have been given by Attorney General Yorke, Solicitor General De Grey, Attorney General Thurlow, Solicitor General Wedderburne, Attorney General Masereq, Chief Justice Hay, and others of the Judges and Crown Law officers of England and Canada. The preponderance of authority favors the opinion expressed by Sir L. H. Lafontaine.—[Jun'r Ed. L. J.]

THE RULES, ORDERS AND REGULATIONS AS TO PRACTICE AND PLEADING IN THE COURTS OF QUEEN'S BENCH AND COMMON PLEAS, FOR UPPER CANADA; Under the Common Law Procedure Act, 1856, with Notes Practical and Explanatory. By Robert A. Harrison, Esq., B.C.L., Barrister at Law. Maclear & Co., Toronto. Price \$1.50.

In this work Mr. Harrison has given the profession a large amount of information, well and conveniently arranged.

The great body of the rules are taken from the English Rules. Many of them have been long in force in Upper Canada. All have received judicial explanation both in England and in this country, and the Reports disclose a host of cases, upon their construction and application.

In this view it was obviously important to trace out the origin of our present rules, and to collect and properly distribute the numerous cases on each. This it has been an object with the author to accomplish, and he has done the work well. Not only are all the cases of importance found in the Reports brought under view, but many cases decided in our own Courts on the Common Law Procedure Act are not contained in the authorized Reports, which are carefully collected and noted in the work.

Long before Mr. Harrison was in any way connected with the writer, in the conduct of the *Law Journal*, the Editors felt bound to notice favourably "parts" of his Common Law Procedure Act, and the writer can see no good reason for withholding an opinion which he believes the Judges and the Profession entertain, viz:—that Mr. Harrison has displayed immense industry as well as ability and legal acumen in the various legal works he has produced. His chief work, the Common Law Procedure Act, would do credit to any legal writer. The present work is carefully written, and contains