MONTHLY REPERTORY.

BANKRUPTCY.

June 30.

Ex parte Caldwell. Re Strahan, Paul and Bates.

Proof of debt by residuary legatees—Executor declining to act—Practice.

Where the executor under the will of a creditor of a bankrupt firm, declines to make proof against the estate of the bankrupts, on the ground that he is ignorant of the circumstances under which the debt accrued, the court will allow proof by the residuary legatees under the writ, subject to a direction for payment of the dividend to the executor. (13 W. R. 952.)

COMMON LAW.

L. C. Green v. Crockett. July 20

Practice—Compromise of suit—Petition to confirm minutes agreed on by counsel.

Where the terms of the compromise of a suit had been agreed on by counsel, and one of the parties afterwards repudiated the authority of his counsel and refused to be bound by the agreement, the Court refused, on the petition of the other party, to enforce the compromise, or to make a decree according to the proposed minutes. (13 W. R. 1052.)

Q. B. T. T., 1865.

Ontario Bank v. Muirhead et al.

Writs against goods and lands—Right to issue concurrently—Practice—Right to move.

A plaintiff cannot at the same time deliver to the sheriff a writ against goods and another against lands, both to be acted upon.

The plaintiffs issued a writ against defendants' goods to the sheriff of W., which on the 22nd of April was returned *nulla bona*, with the consent of one of the defendants, and on that day *fi. fas.* against lands issued to the same and to other sheriffs, and an *alias fi. fa.* goods to the sheriff of W., on which latter writ he seized certain stock. A motion to set aside these writs was made on behalf of two of the defendants, and of the Bank of British North America, to whom they had given a mortgage of lands on the 17th of May, 1865; the objections being that there had been no proper issue and return of writs against goods and that the writs against land and goods were concurrent.

Held, that the return of *nulla bona*, if any of the defendants had goods, could be only an irregularity, against which the Bank could not move, nor the defendants who had consented to it; but

Held, also, that as the alias writ against goods issued on the same day as the writs against lands, and had been acted upon, the latter writs were illegal, and must be set aside.

Held, also, that the mortgage to the Bank could not have prevailed against the writs, which bound the lands from their receipt by the sheriff. (24 U. C. Q. B. 563.)

Q. B. T. T. 1865.

Lett v. The Commercial Bank of Canada.

Married Women's Act, C. S. U. C. ch. 73—Construction of—Property purchased after marriage out of the wife's separate estate.

In an interpleader issue the plaintiff, a married woman, claimed goods seized under an execution against her husband. It appeared that the property consisted of stock, farming implements, and growing crops, and was seized upon a farm on which she and her husband were living, and which had been devised by the plaintiff's father to trustees for her benefit, the rents to be payable to her for her separate use; and that most of it, except the crops, had been purchased by the husband at sales, but paid for by the claimant out of the rents of other lands devised in the same manner. She had been married before the 4th of May, 1859, without any settlement.

Held, in the absence of any evidence to the contrary, that the reasonable presumption was that the husband was tenant of the land, and if so the crops would be his.

2. As to the other property, that, apart from our statute, it would not be the claimant's merely because it had been purchased by money which belonged to her under the will.

3. That as to the statute, it should be construed as creating a settlement before marriage in the terms of the first and second sections; and if in this case the property was bought by the wife to enable her husband to carry on the farm for his own benefit and that of his wife and family, it would be liable to satisfy his debts.

In the County Court it was left for the jury to say whether the property claimed did not belong to the husband, he having reduced it into possession. *Held*, that this was an insufficient direction, and that their attention should have been drawn more explicitly to the effect of the statute, to the presumption arising from the husband being the head of the family, occupying and farming the land, to the use to which the property was put, and to the wife's apparent object in purchasing it.

Quære, if this had been trespass instead of an interpleader, whether the wife could have sued alone.

S. C., Cal. Hooper v. Wells et al. U. S.

Liability of common carriers and forwarders.

The liabilities of common carriers and forwarders, independent of any express stipulation in the contract, are entirely different.

The common carrier who undertakes to carry goods for hire is an insurer of the property intrusted to him, and is legally responsible for acts against which he cannot provide, from whatever cause arising; the acts of God and the public enemy alone excepted.

Forwarders are not insurers, but they are responsible for all injuries to property, while in their charge, resulting from negligence or misfeasance of themselves, their agents or employees.

Restrictions upon the common law liability of a common carrier, for his benefit, inserted in a receipt drawn up by himself and signed by him alone, for goods intrusted to him for transporta-