The Respondent, in her answers upon *faits et articles*, states that her late husband, so far from admitting to her that he was indebted to the Appellant, stated that the Appellant was indebted to him. That this assertion of the Respondent is at variance with statements by Bailey to others upon the same subject will appear by reference to the evidence of the witnesses Hyndman and Burns already referred to. Let us see how far it is corroborated by the acts of the Respondent after her husband's death. When the Appellant presented his account to her she did not express any surprise at finding the indebtedness of her husband so considerable, nor did she then remember the pretended statements of the late Mr. Bailey, in regard to the balance of account being against the Appellant, but she merely wished to look over the accounts. It will be observed that, at this time, the Respondent had in her possession the account, Defendant's Exhibit No. 10, which is an account of Nelson and Butters and contains the charge of £6. 5s. 0d., afterwards claimed to be due by the Appellant. It is but fair to presume that while the account of the Appellant was in the Respondent's hands for inspection she wrote to Nelson and Butters for information respecting those of her husband's business transactions with which the Appellant was connected, and received in reply the letter Defendants Exhibit No. 9, dated 23th April, 1854. A few days afterwards (May 4th) the Respondent transferred to the Appellant moveable property to the amount of £28 15s. 0d. in part payment of the Appellant's account against the late Mr. Bailey.

The fact that no charge appears in the books of account of Bailey against the Appellant, of the moneys in question in this cause, tends strongly to establish the pretension of the Appellant that they were immediately accounted for by him to the late Joseph Bailey. His books of account were kept with accuracy and care, as will appear in comparing many of the charges in the Appellant's account for orders paid and the charges in the accounts (Nos. 25, 26, 27, 28 and 29 of the Record) copied from Bailey's account books. The force of this fact (the absence of any charge against Appellant) was felt by the Respondent for with her approbation, if not upon her express direction, charges were made in the books by her son of the sums alleged to be unaccounted for by the Appellant.

A few days after the Appellant brought the £79 16s. 4d., from Montreal for Bailey, the latter paid to the witness William Brooks, upon a promissory note, the sum of sixty pounds. It is extremely improbable that this sum came from any other source than from Nelson and Butters. It represents almost the exact balance which would remain in Bailey's hands after deducting the £20 credited by the Appellant upon his account. It is natural to suppose that when Bailey wrote to Nelson and Butters that he was in need of money and wished to have the balance due him remitted he had particularly in view the note due to Brooks which was shortly to mature.

After the witness Burns was examined, the Appellant ascertained that he could prove material facts, upon which he had not been interrogated. The Appellant therefore petitioned to be permitted to examine Burns a second time. This application was refused. The Appellant would refer the Court to his petition and affidavit and also to the vague and unusual terms of the counter affidavit of the Respondent. The rejection of the Petition of the Appellant would, he conceives, under the circumstances, warrant the reversal of the judgment of the court below.

It is hardly necessary for the Appellant to comment upon the evidence in the cause. Besides the facts and circumstances alluded to it is established that the moneys in dispute, were not received in the regular way of business but rather as the friend and neighbor of Bailey, and for his accommodation. Upon this point the Appellant would refer to the depositions of the witnesses Butters, Brooks and Thomson.

Had the late Joseph Bailey lived to effect a settlement with the Appellant, the suit which gives rise to the present appeal would probably have been unnecessary. Nor, under ordinary circumstances, would the Appellant have troubled this Honorable Court with a matter so trifling in amount. But he conceived that the assertions of the Respondent put in question his character for integrity and that his duty to himself required him to submit the judgment of the court below to revlewal of this Court.

The Appellant is confident that a just appreciation of the evidence of record in the cause must lead to a reversal of the judgment appealed from.

THOMAS W. RITCHIE,
For Appellant.

Montreal, February 1859.