

Province of Canada, }  
LOWER CANADA, TO WIT: }

# COURT OF QUEEN'S BENCH.

## APPEAL SIDE.

ALBERT G. WOODWARD,

(Plaintiff in the Court below.)

APPELLANT.

AND

HANNAH BELKNAP,

vs qualit,

(Defendant in the Court below.)

RESPONDENT.

## APPELLANT'S CASE.

THE PRESENT APPEAL is from a judgment rendered by His Honor, Mr. Justice Short, in the Circuit Court for the District of Saint Francis, on the 30th day of June, 1858.

The action of the Appellant was to recover the balance of an account due by the late Joseph Bailey, the husband of the Respondent, and the amount of a small account due by her as Tutrix to her minor children, heirs of the late Joseph Bailey. The pleadings are referred to at length in the Petition in Appeal which is printed in the Appendix. Owing to the fact that the Appellant, during a great part of the time specified in his account, had no clerk in his employ, and the inability of the Respondent in her quality of Tutrix to give admissions in the cause, a great deal of evidence had to be adduced in proof of the account of the Appellant. Inasmuch, however, as by the judgment of the Court below, the account of the Appellant is formally declared to have been proved, by far the largest portion of the evidence adduced in the cause has no bearing upon the question to be determined by the present appeal. All those parts of the evidence which the Appellant conceives affect the points at issue are printed in the Appendix.

The only question that arises in this appeal is, whether the Appellant accounted to the late Joseph Bailey for the sum of £79 16s. 4d., and the sum of £6 5s. 0d., received by the Appellant from the firm of Nelson and Butters, at Montreal, to be carried to the late Joseph Bailey, at Sherbrooke. The former sum was received by the Appellant on the twenty-fifth day of May, 1853, the latter on the 13th day of September of the same year.

The pretension of the Respondent is that these sums were never accounted for by the Appellant and they are set up by her in compensation of the Appellant's account. That this position is untenable will appear, as the Appellant humbly maintains, from the statements and declarations of the late Joseph Bailey a short time before his death, from the acts of the Defendant herself after the death of her husband, from the nature of the dealings between the Appellant and the late Joseph Bailey and from many circumstances which are brought out in evidence. The Appellant will briefly advert to the facts relied upon by him in this appeal.

On the 26th day of May 1853, the late Joseph Bailey was indebted to the Plaintiff in the sum of £19 14s. 4d. It is hardly necessary to remark upon the improbability that the late Mr. Bailey, requiring to use actively in his business as a manufacturer, the whole of his available means, would make an advance to the Appellant of more than £60, or would allow him to retain such a sum in his possession for a period of ten months without comment or remonstrance. That sum, together with the contra account of Bailey was sufficient to pay the whole account of the Appellant for nearly a year in advance, and to leave a balance in favor of Bailey, at the time of his death, of upwards of £20. The witness Thomson, who was a neighbor and intimate friend of Bailey, speaks strongly from his knowledge of Bailey's position and business, of the extreme improbability of his leaving sums so considerable in the hands of the Appellant for so long a time.

The statements of Bailey a short time before his death agree with the pretension of the Appellant that he accounted to Bailey for all moneys received. He stated, not long before his death, to Appellant in the presence of the witness Hyndman that he (Bailey) was deeply indebted to the Appellant. The same admission, in substance, was made by Bailey in the hearing of the witness Burns. It is inconceivable that Bailey could have been so greatly in error, as the pretensions of the Respondent would indicate him to have been.