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Re-Examine.—The said Defendant's Exhibit N. 10, was accepted by the said Joseph Bailey as a settlement of ac-
counts by him with our firm. I take it that it was so, as we have not heard anything to the contrary.

EXTRACT from the Deposition of JOHN MACMILLAN, of MONTREAL, SALESMAN; taken 3rd April, 1859.

The said Joseph Bailey frequently corresponded with the said firm (Nelson and Butters) from said 24th of May up to the time of his death. I have examined the letters received from him carefully, and I find no intimation in any of them that the said money had not been received by him. In the balancing of accounts between said firm and said Bailey the said firm of seventy nine pounds sixteen shillings and four pence, currency, was charged as cash paid to him, and in my statements of accounts furnished to him it was so charged, and we invariably send statements of accounts on settlement. We had frequent settlements with the said Bailey after the said 24th of May, and in none of them did either the said Bailey or the Defendant in this case object to the said charge or intimate that the money had not been received by the said Bailey. In fact I consider that he tacitly acknowledged the same since he did not object to the said charge. And it was one of the items of settlements had with him at that time. I was intimate with the said Mr. Bailey in his life-time and frequently did business with him, and consider that if he had not received the said amount of seventy-nine pounds sixteen shillings and four pence, currency, he would have taken it if, since it was charged to him, and that he would have claimed it in the after settlements had with him by the said firm.

EXTRACT from the Deposition of WILLIAM BROOKS, of SHERBROOKE, TRADER; taken 12th December, 1856.

The whole entry on the forty-seventh page of said Ledger, a copy of which is seen on said Exhibit N embraced with-
in the letters C and D is in the handwriting of Andrew Bailey, as are also the words "carried page 47" as seen written across the Ledger at page 4 in manner as shown in said Exhibit N; the words "carried page 47" and the said entries on page forty-seven have been added since this book was in my possession, and since it was delivered by me to the Defendant in the summer of 1854. I posted up our Plaintiff's account only what I found entered in said Day Book. It is usual for Traders in Sherbrooke to bring out monies for each other from Town, and to take money into Montreal and pay it for each other, this is done merely as a friendly act, and not considered as a matter of business. I should not in such case think of taking a receipt on the payment of money, as I should on the payment of an Invoice of goods I had purchased, and unless there were particular reasons for asking for a receipt I would not do so.

EXTRACT from the Deposition of ALEXANDER THOMSON, of SHERBROOKE, Esquire; taken 10th December, 1856.

Question.—State what you know about some property having been sold to Plaintiff by Defendant about the month of May, 1854, on account of the debt due Plaintiff by the late Joseph Bailey?

Objected to by Defendant's attorneys as tending to prove admissions by Defendant, as Tutrix, of an indebtedness by the late Joseph Bailey to Plaintiff. (Reserved.)

Answer.—The property described in the account annexed to the writ of Summons, viz: one wagon, one Horse Cart, Harness, one Wagon Harness, one Riding Bridle, one old Saddle, and Two Horse Carts, amounting to twenty-eight pounds, sixteen shillings, currency, was sold by Defendant to the Plaintiff in the spring or in the summer of 1854, as I supposed and believed to apply upon the debt due by the late Joseph Bailey to Plaintiff, and I have no doubt it was to apply on the said debt.

Question.—State whether any receipt was taken by the said Defendant for the said property and if so what was the purport of said receipt?

Objected to by Defendant as parol evidence of a written document, no such receipt being produced. (Reserved.)

Answer.—I cannot give the exact words of the receipt, the purport of the receipt was, something to show property had been properly sold and delivered, and of course I thought it was to apply upon the debt due Plaintiff by the late Joseph Bailey. I do not remember whether for the Plaintiff wrote the receipt; I acted as a neighbor in advising the Defendant in settling the affairs of her late husband's estate occasionally, I probably went down to Plaintiff's store with regard to the sale of the property above referred to. I might have gone but I am not positive. I was present when Plaintiff requested of Defendant the amount of an account which he claimed to be due to him, by the late Mr. Bailey or herself, but my impression is that the account or most of it must have been against the late Joseph Bailey before his death, I do not know whether any other papers were presented to Defendant by the Plaintiff at that time there might have been.

Question.—Have you ever heard Defendant say what amount was due from her in her capacity as Tutrix to her minor children, to the Plaintiff?

Answer.—I thought that at the time the above property was turned out by the Defendant to the Plaintiff, that it only formed a part payment of the debt due Plaintiff, and that there was a balance remaining due to him, I have had access occasionally to the account books of the said late Joseph Bailey, but am not particularly acquainted with them. I saw them once or twice shortly after Mr. Bailey's death.

Objected to by Defendant on the ground that admissions by a Tutrix are inadmissible to prove indebtedness by her in that capacity. (Reserved.)

Evidence resumed on the Eleventh day of December, 1856.

I know there was an attempt to settle the accounts between Plaintiff and Defendant a year ago last summer by arbitration.

Question.—What did Plaintiff offer at that time to the Defendant to obtain such arbitration?

Answer.—I think I was the person who suggested the arbitration to the Plaintiff, this was in Mr. Woodward's store. Plaintiff stated that Defendant might pick or choose her man and that he would choose his or, she might choose both arbitrators. I went and saw Defendant she consented to it, but hesitated a good deal about whom she would select as arbitrators. I mentioned a number of gentlemen to her. She objected to most all of them. She at one time told me she would select both arbitrators, but I objected to it. Defendant mentioned the names of Charles Brooks and Albert P. Bell as arbitrators.

Question.—Did you not state to the Plaintiff and was it not the fact, that she named herself those two gentlemen above mentioned as arbitrators, and that she afterwards declined doing so?

Answer.—She merely mentioned their names in a casual way. She made up her mind to no particular men as arbitrators. I remember Plaintiff at the time was anxious that the arbitration should proceed and offered to pay the expense of the arbitration bonds, and was in daily expectation of said arbitration proceeding and in consequence deferred this suit being brought.

I know that the said Books (the Books of account of the late Mr. Bailey) were after the death of the late Mr. Bailey put into the hands of Mr. William Brooks of this Town, Merchant, for the purpose of being brought up and posted. The said accounts are correctly copied and are true copies of the said accounts so found in said Ledger. I find that charges are entered in the handwriting of the late Joseph Bailey down to the item entered under date of January 24th, 1854. That item and the two following items are posted up in the handwriting of said William Brooks in the said Ledger, and appeared to have been posted up from the other small Day-Book or Blotter, where corresponding entries are made in said blotter. The said account marked Exhibit N, appears on its face a transcript both in form and in fact of the account found in said Ledger against the said Plaintiff. The entry on page 47, appears to have been subsequent to the account being closed on page 4, by Mr. Brooks, and are in a different handwriting. I cannot positively state in whose handwriting the entry on page 47 is, but I am positive that it is not in the handwriting of the late Mr. Bailey, nor of William Brooks. I think, although I will not be positive, that the whole of said entry is in the