

thereof due, but merely wished "to look the accounts over" and afterwards, and also since the death of her said husband, delivered to your Petitioner effects to the amount of twenty-eight pounds and fifteen shillings, in part payment of your Petitioner's said account.

Eighthly—Because by an interlocutory judgment rendered in the said cause on the twenty-second day of April last, the petition of your Petitioner to be permitted to examine one Alexander D. Burns, a second time, as a witness on his behalf was improperly rejected, and your Petitioner was thereby prevented from adducing material evidence in the said cause, whereas the said petition ought to have been granted.

Ninthly—Because your Petitioner established in evidence the material allegations of his said declaration, and special answers, and the Defendant failed to prove the allegations of her said plea or any of them.

That the security required by law has been duly given by your Petitioner as will appear by certified copies of the Appeal Bond and Affidavits of Justification herunto annexed.

All which your Petitioner avers to be true, and the same will verify when and as this Honorable Court may direct.

Wherefore your Petitioner humbly prays that by the judgment of this Honorable Court, the said final judgment of the Court below now appealed from be reversed and that this Honorable Court will render such judgment as the Court below ought to have rendered and will adjudge and condemn the said Hannah Belknap in her said quality to pay to your Petitioner, the said sum of Twenty-six pounds and one shilling currency, with interest, from the *demande judiciaire* in the Court below, and costs, as well in the Court below, as in this Court, of which costs the undersigned attorney prays distraction.

THOMAS W. RITCHIE,
Attorney for Petitioner.

Dated, 22d July, 1853.

DEPOSITION OF HORATIO A. NELSON, of MONTREAL, MERCHANT; taken 3rd April, 1853.

I am a partner with Isaac Butters a witness in this cause, and do business under the name of Nelson and Butters. I know the plaintiff in this cause, and knew Joseph Bailey the late husband of the Defendant in this cause, and had frequent business transactions with him in his lifetime and also with the defendant in this cause, since said Bailey's death.

On the 25th day of May 1853, our firm balanced accounts with the said Bailey, and also on the 16th of August and 17th of September of same year, and on the 18th of January and 10th of April of next year, to wit, 1854, and also with the defendant in this cause on the 29th of June same year. On or about the 19th of May 1853, the said Joseph Bailey requested us to ascertain how accounts stood between him and us, and to send whatever balance there might be coming to him, to him at Sherbrooke, by the plaintiff in this cause. We accordingly sent him the sum of seventy-nine pounds sixteen shillings and four pence, currency, by the plaintiff, taking his receipt for the amount which receipt we have, and of which receipt Defendant's Exhibit No. 7, is a true Copy.

In subsequent settlements had by our firm with the said Joseph Bailey in his lifetime, and with the Defendant in this cause, since his death, our firm never had any intimation that the said sum had not been received by the said Joseph Bailey. In fact no reference was made to it, though the said amount was charged in our books, and in statements of account, which were doubtless rendered, as cash paid to him. In the balancing our accounts on the said 25th May, the said amount of seventy-nine pounds sixteen shillings and four pence, appears as an item of cash paid to the said Bailey, said sum was by Witness sent to said Bailey through the plaintiff in this cause on his Bailey's order to do so. On one other occasion we had sent monies to said Bailey by a party residing in the Township, and which were charged in the same way as the item of seventy-nine pounds sixteen shillings and four pence, currency, from which our firm as witnesses recollects had not any direct word from, but were always allowed us by said Bailey in subsequent settlements.

CROSS EXAMINED.—The promissory note filed in this cause as Defendants Exhibit No. 4, was by the firm of Nelson and Butters paid at the City Bank in Montreal, on the 13th of September, 1853, at the request and of aid for the said late Joseph Bailey, and the sum of £31 0s 11d., currency, mentioned in said note and so paid, was charged against the said Bailey in our books. The letter, Defendant's Exhibit No. 9, in this cause, is in my hand-writing, is signed by me in the name of our firm, and was by us sent to the Defendant in this cause, on the 13th of September 1853. The sum of six pounds five shillings was paid by our said firm to the Plaintiff in this cause, on the written order of the said Joseph Bailey.

Re-EXAMINED.—The said Exhibit No. 10., was accepted by the said Bailey as a settlement of our accounts with him, as far as witness knows.

DEPOSITION OF ISAAC BUTTERS, of MONTREAL, MERCHANT; taken 3rd April, 1853.

He knows the Plaintiff in this cause, but does not know the Defendant personally. He knew Joseph Bailey her late husband mentioned in this cause, and had frequent business transactions with him, in his lifetime.

The firm of Nelson and Butters, of which witness is a partner, have also had business transactions with the Defendant in this cause, since the said Bailey's death. On the twenty-fifth of May 1853, the said firm of Nelson and Butters had a settlement of accounts with the said Joseph Bailey. We also had settlements on the 10th of August and 17th of September in the same year, also upon the 18th of January and the 10th of April of the next year, that is 1854. The said firm also had a settlement of accounts with the said Defendant after the said Bailey's death on the 29th of June 1854. On or about the 19th of May, 1853, the said Mr. Bailey informed our firm, that he was in need of money, and requested us to ascertain how accounts stood between us, and to send any balance that might be coming to him to Sherbrooke by the plaintiff in this cause who was then in Montreal.

We found that there was due to said Bailey the sum of seventy-nine pounds sixteen shillings and four pence, currency, which sum we sent out to him by the hands of the Plaintiff in this cause, taking Plaintiff's receipt for the amount, which receipt we now hold and of which receipt the Defendant's Exhibit No. 7, is a true Copy.

The said amount of seventy-nine pounds sixteen shillings and four pence, currency, was merely sent to Mr. Bailey by Mr. Woodward, but was not a payment to the Plaintiff on account of Bailey. That is the money was sent by Mr. Woodward through Mr. Bailey's order.

In subsequent settlements had after the 24th of May, 1853, by Nelson and Butters, with the said Joseph Bailey and with the said Defendant in this cause, no intimation was ever given to our firm either by said Bailey, or by Defendant that the said sum so sent by the Plaintiff had not been received by the said Joseph Bailey. The said amount was charged by our firm to the said Bailey, and our settlements with him were made on accounts rendered shewing the said sum of seventy-nine pounds sixteen shillings and four pence currency, as so much money paid by our firm to the said Joseph Bailey. He settled with us on that ground, and never to my knowledge intimated that the amount had not been received by him. Our firm had on other occasions sent out monies, to the said Bailey by the Plaintiff, before the 24th of May, 1853, which were charged to Bailey in the same way as the said sum of seventy-nine pounds sixteen shillings and four pence, currency, and were included in settlements in precisely the same manner, and which were considered as money paid to Bailey. In some cases, the said Bailey sent us an order to pay monies to the Plaintiff, but on the occasion of the 24th of May, 1853, it was an order to send any balance that might be due, by the Plaintiff.

CROSS EXAMINED. The account filed in this cause as Defendant's Exhibit No. 10, is a statement of account rendered by the firm of Nelson and Butters to the said late Joseph Bailey. The item charged in said account as cash paid, to A. G. Woodward, 13th September, 1853. £6 5s. 0d., was for the sum of six pounds five shillings, paid on that day by the said firm of Nelson and Butters to the Plaintiff in this cause, on the written order of the said Joseph Bailey. The letter, filed in this cause as the Defendant's Exhibit No. 9, now shown to me, is a letter from the said firm of Nelson and Butters, to the Defendant in this cause, and is in the hand-writing of Mr. Nelson, a member of our firm.

* Note. This is evidently an error. The letter referred to bears date 29th April, 1854.