

2. Because the irregularity referred to in said decision is not waived by the pleas pleaded herein.

3. Because the fourth and sixth pleas pleaded herein are a good defence to this action, and do not waive the said irregularity.

4. For that the judgment of this honorable court is in favor of the plaintiff, whereas said judgment should have been for the defendants, or some of them, because the steps necessary to entitle the plaintiff to recover against the bail,—that is to say the said Lorenzo A. Barnaby and Thomas J. Payne were not taken by the plaintiff, and no right of action against said bail ever accrued to the plaintiff. 260

5. Because the plaintiff on the twenty-sixth day of June, A. D., 1880, recovered judgment in this honorable court against the said defendant William R. Heney, and on the same day issued an execution upon said judgment, directed to the Sheriff of the County of Halifax, and said execution was returned non est inventus, by the said Sheriff, on the 5th day of July, A. D., 1880, that in consequence of such return, the said defendants were not permitted the time allowed them by law, wherein to render the said defendant William R. Heney, as appears by the evidence returned in this cause and thereunder the defendants Lorenzo A. Barnaby and Thomas J. Payne were entitled to judgment. 270

6. Because said judgment is against all the defendants, whereas the principal, William R. Heney, was never served.

Because the issuing of the capias is not set out in the writ of summons herein as required by law.

And it is further ordered that all proceedings herein on the part of the plaintiff be stayed until said appeal be determined.

Dated at Halifax, this 9th day of December, A. D., 1880.

BY THE COURT.

M. I. WILKINS,
Clerk.

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On motion of Mr. Menger.

"F."

Know all men by these presents that we, William R. Heney, merchant, Thomas J. Payne, clerk, and Lorenzo A. Barnaby, all of the City of Halifax, are held and stand jointly and separately bound unto Joseph Bell, Sheriff of the County of Halifax, in the Province of Nova Scotia, in the sum of one hundred and seventy-seven dollars and fifty cents, to be paid to the said Sheriff, his lawful attorney, heirs, executors, administrators or assigns, to which payment well and truly to be made we jointly and severally bind ourselves, our and each of our executors and administrators firmly by these presents, sealed with our seals, dated the 26th day of April, the forty-third year of the reign of our Sovereign Lady the Queen, and the year of our Lord one thousand eight hundred and eighty. 290

The condition of this obligation is such that, if the above bounden William R. Heney do appear in the County Court at Halifax within ten days from the date hereof, to answer to the suit of John A. Watson, and in case judgment shall be obtained against the said William R.