Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

☑ Additional comments:/ Commentaires supplémentaires: Docket title page is bound in as last page in book but filmed as first page on fiche.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
										✓	

In the Queen's Bench.

APPEAL SIDE.

ALBERT G. WOODWARD,

Appellant.

vs.

HANNAH BELKNAP, ES QUALITE,

Respondent.

RESPONDENT'S CASE.

PROVINCE OF CANADA,
LOWER CANADA TO WIT. } In the Queen's Bench,

APPEAL SIDE.

ALBERT G. WOODWARD,
Plaintiff in the Court below,
APPELLANT.

vs.

HANNAH BELKNAP, es qualite,
Defendant in the Court below,
RESPONDENT.

RESPONDENT'S CASE.

Woodward, Plaintiff in the Court below, sued Defendant, on an account of £93 4 0 for goods sold, orders paid, &c., all of which was alleged to have accrued against Defendant's husband, before his decease, except £1 5 4 charges for goods had immediately after his decease. The Defendant was sued solely in her quality of tutrix to the minor children of her late husband, Joseph Bailey. There is no direct proof of her quality, nor is it specially denied. The Defendant's special plea, was to the effect that Plaintiff was indebted to the estate of the late Joseph Bailey in the sum of £18 8 0 price of pails sold him, and in £28 15 0 for waggon, horse, and other articles sold him, and in two certain sums of money, namely, £79 16 4 and £6 5 0; the former received 24th May, 1853, and the latter 13th August, 1853, by Plaintiff of Nelson & Butters of Montreal, to and for the use of the late Joseph Bailey. The first two items mentioned above are acknowledged by the Plaintiff and credited in his account, and of the cash the receipt of £20 is also admitted in Plaintiff's account sued upon. The main issue between the parties was upon the remaining £66 1 4 which Plaintiff pretends to have accounted for to the late Joseph Bailey. The proof of this fact devolved upon him. How has he attempted to establish it? Not by producing any voucher or receipt of any kind, but by evidence of the vagnest and most inconclusive character. He says he received the moneys as a friendly act, and has attempted to prove that persons very frequently take moneys in this manner without exacting a receipt upon delivery of the money. The most that could be inferred from such proof under any circumstances, is that persons are frequently careless and do business in a very insecure manner. But unfortunately for him, his own acts preclude any such inference as that the money was taken simply as a friendly act. He carried an order from Bailey to Nelson and Butters, and gave them a receipt which was a discharge from Bailey to them. Is it a reasonable inference that having given such a receipt, as a business man, he would not, had he paid over the money to Bailey, have taken a receipt from him? But there is a still stronger presumption against Plaintiff from his own acts. According to his own statement he kept £20 of that money. If it were brought simply as the act of a friend, why was any of it retained? By what right? There is another significant fact. In an account rendered long prior to the institution of this action by Plaintiff, produced by Defendant in her Exhibit No. 2, there is no sum of money credited to Bailey, but there is an entry on the credit side, in the following words:

"Cr. by contra acc.

1853, May 26."

This shews that Plaintiff was intending to credit Bailey's account, which had not then been furnished, and afterwards there was something else to credit on 26th May, 1853, two days after he received the sum of £79 16 4 of Nelson & Butters in Montreal, being just about the time he would return to Sherbrooke. All these facts preclude the inference that this money was taken by him as a friendly carrier and delivered to Bailey. It strongly favors the supposition that he retained the money, to be accounted for on settlement. This view of the case is rendered more probable from the fact that Bailey was at the time carrying on a Pail Factory, and Woodward as a trader, and dealer in provisions, was furnishing supplies for his men, and Bailey died in 1854, before any settlement could take place. The Plaintiff has placed much emphasis upon the fact that the charge for these moneys does not appear in Bailey's books, until entered by his representatives. This proves too much for Plaintiff's purpose, if the sums £79 16 4 and £6 5 0 should appear as charged in Bailey's books if had by Woodward, then *a fortiori* the £20 had by him, which is credited, should appear in Bailey's books, because this £20 according to Woodward's pretensions, must have been had by him of Bailey, by his express consent, and as a matter of course, would have been charged. So much for the probabilities of the case. Respondent takes, however, bolder ground. She maintains that the proof by Nelson & Butters, that Woodward received these sums of money, and gave a formal receipt therefor, devolves upon him the necessity of proving, in a direct manner, that he accounted for the same to Bailey.

If any other ground than this were admissible there would be no safety in business transactions. If one person receives money for the use of another, proof of the receipt of this money must devolve upon the recipient the necessity to account. And how account? By shewing after a man is dead how great or how moderate was the friendship exsiting between the parties, in order to measure the probabilities of their abandoning the ordinary precautions which men usually take in their dealings with one another? Appellant demands reversal of the final judgment because the Honorable Judge in the Court below refused the application to examine witness Burns *a second time*. This refusal was most proper. There were no facts stated that could be proved by Burns, and even if there were, if these were facts within the knowledge of witness, when first examined he was bound to state the whole truth, and Plaintiff was required to know what he could state; and further, there is affidavit of defendant showing good grounds to suppose that injustice would be done her if Burns were examined a second time.

The Plaintiff attempts to prove that late Joseph Bailey's circumstances were such that he could not have spared the money charged to Woodward. This is not proved. It was shown that at times he was in need

of money for his business, but this could be proved of most business men. His credit was always good, and he left a good estate, while it may well be inferred that Woodward's need of the money was much more pressing than Bailey's, inasmuch as he has twice been *en etat de faillites*. The following was the judgment appealed against, rendered by the Honorable Edward Short, J. S. C., at Sherbrooke, 30th June, 1858 :

"The Court having heard the parties by their respective Counsel, and examined the pleadings, evidence and proceedings of record in this cause, and on the whole deliberated, considering that the Plaintiff hath established that the said Defendant, in her said quality was indebted to him in twenty-six pounds one shilling, the balance of Plaintiff's account for goods, wares and merchandize sold and delivered by the Plaintiff to the the said late Joseph Bailey, and to the said Defendant, and that the same was and is compensated by the sum of eighty-six pounds one shilling and four pence received by the said Plaintiff, of Nelson & Butters of and for the use of the said Joseph Bailey, as pleaded by the said Defendant, doth adjudge and declare the sum of twenty-six pounds one shilling to have been before the institution of this action fully paid, and compensated, and doth dismiss the Plaintiff's action, with costs, distraction of which is awarded to Messrs. Sanborn & Brooks, the Defendant's Attorneys."

SANBORN & BROOKS,
Attorneys for Respondent.