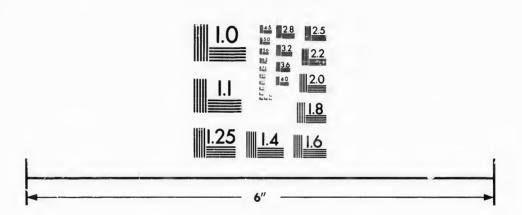


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QUEEN'S BENCH,

APPEAL SIDE.

ALBERT G. WOODWARD,

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HANNAH BELKNAP,

APPELLANT'S CASE.

Sile 5: Mars 1859

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Probince of Canada,

COURT OF QUEEN'S BENCH.

APPEAL SIDE.

ALBERT G. WOODWARD,

(Plaintiff in the Court below.)

AND

HANNAH BELKNAP,

de qualité,
(Defendant in the Court below,)
RESPONDENT.

APPELLANT'S CASE.

THE PRESENT APPEAL is from a judgment rendered by His Honor, Mr. Just tice Sbort, in the Circuit Court for the District of Suint Francis, on the 39th 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 Appellant, heirs of the late Joseph Bailey. The pleadings are referred to at length in the Petition in Appellant his account, had no clerk in his empley, and the laability 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 secount of the Appellant ie 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 eum of £79 16s. 4d., and the suta of £6 5s. 0d., received by the Appellant from the firm of Nelson and Butters, at Montreal, to be cerried to the late Joseph Bailey, at Sherbrooke. The former sum was received by the Appellant on the twenty-fifth day of May, 1855, 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 ber 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 sets of the Defendant herself siter the death of her husband, from a short time before his death, from the sets of the Defendant herself siter the death of her husband, from the nature of the dealings between the Appellant and the late Joseph Bailey and from many circumstances the nature of the dealings between the Appellant will briefly advert to the facts relied upon by him in

On the 20th 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 14s. 4d. It is hardly necessary to remark upon the improbability that the late Mr. Bailey, requiring to use actively in bis 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 pertod 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 to the street of the sum of the street time.

The statements of Bailey a short time before his death agree with the pretension of the Appellant that the accounted to Bailey for all moneys received. He stated, not long before his death, to Appellant in the he accounted to the witness Hyndman that he (Bailey) was deeply indebted to the Appellant. The same adpresence of the witness Hyndman that he (Bailey) was deeply indebted to the Appellant. The same admission, in substance, was made by Bailey in the beating of the witness Burns. It is inconceivable that mission, in substance, was made by Bailey and the witness Burns. It is inconceivable that mission is added to the Appellant would indicate him to have been.

Probince of LOW ER CANADA

The Respondent, in Nor answers upon faits at articles, states that her late hasband, so far from admitting to her that he was indebted to the Appeliant, stated that the Appellant was indebted to him. That this assertion of the Respondent is at variance with statements by Bailey to others upon the same subject. will appear by reference to the cridence of the witnesses Hyndman and Burns already referred Let us see how far it is corrobotated by the acts of the Respondent after her husband's death. When the Appellant presented his account to her she did not express any surprise at finding the Indebtedness of her husband so considerable, nor did she then remember the pretended statements of the late Mr. Bailey, in regard to the balance of account heing against the Appellant, but she merely wished to look over the accounts. It will be observed that, at this time, the Respondent had in her possession the account, Defend-ant's Exhibit No. 10, which is an account of Nelson and Butters and contains the charge of £6. 5s. 0d., afterwards claimed to he due by the Appellant. It is but fair to prosume that while the account of the Appellant was in the Respondent's hands for inspection she wrote to Nelson and Butters for information respecting those of her husband's business transactions with which the Appellant was connected, and received in reply the letter Defindants Echitit No. 9, dated 23th April, 1854. A few days afterwards (May 4th) the Respondent transferred to the Appellant movemble property to the amount of £28 15s. Od. in part payment of the Appellant's account against the late Mr. Balley.

The fact that no charge appears in the hooks of eccount of Bailey against the Appellant, of the moneys in question in this cause, tends strongly to establish the prete sion of the Appellant that they were immediately accounted for hy him to the late Joseph Builey. His books of account were kept with accuracy and care, as will appear in comparing many of the charges in the Appellant's account for orders paid and the charges in the accounts (Nos. 25, 26, 27, 28 and 29 of the Record) copied from Bailey's account books. The force of this fact (the absence of any charge against Appellant) was felt by the Respondent for with her approbation, if not upon her express direction, charges were made in the hooks by her son of

the sums alleged to be unaccounted for by the Appellant.

A few days after the Appellant brough: the £79 16s. 4d., from Montreal for Bailey, the latter paid to the witness William Brooks, upon a promissory note, see sum of sixty pounds. It is extremely improhable that this sum came from any other source than from Nelson and Butters. It represents almost the exact halance which would remain in Bailey's hands after deducting the £20 credited by the Appellant upon his account. It is natural to suppose that when Bailey wrote to Nelson and Butters that he was in d of money and wished to have the balance due him remitted he had particularly in view the note due to Prooks which was shortly to mature.

After the witness Burns was examined, the Appellant ascertained that he could prove material facts, upon which he had not been interrogated. The Appellant therefore petitioned to be permitted to examine Burns a second time. This application was refused. The Appellant would refer the Court to his petition and affidavit and also to the vague and unusual terms of the counter affidavit of the Respondent. The rejection of the Petition of the Appellant would, he conceives, under the circumstances, warrant the rever-

and of the judgment of the court below.

Surther

It is hardly necessary for the Appellant to comment upon the evidence in the cause. Besides the facts and circumstances alluded to it is established that the moneys in dispute, were not received in the regular way of business but rather as the friend and neighbor of Bailey, and for his accommodation. Upon this point the Appellant would refer to the depositions of the witnesses Butters, Brooks and Thomson.

Had the late Joseph Bailey lived to effect a settlement with the Appellant, the suit which gives rise to the present appeal would probably have been unnecessary. Nor, under ordinary circumstances, would the Appellant have troubled this Honorable Court with a matter so trifling in amount. But he conceived that the assertions of the Respondent put in question his character for integrity and that his duty to himself required him to submit the judgment of the court helow to reviewal of this Court,

The Appellant is confident that a just appreciation of the evidence of record in the cause must lead to a reversal of the judgment appealed from.

THOMAS W. RITCHIE,

Montreal, February 1859.

APPENDIX.

COPY OF PETITION IN APPEAL.

Probince of Canada, OWERGANADA. TO WIT:

COURT OF QUEEN'S

APPEAL SIDE.

To the Honorable the Chief Justice and Justices of the Court of Queen's Bench, holding the said Court on its Appeal Gide:

THE PETITION OF Albert G. Woodward, of the Town of Sherbrooke, in the District of Saint Francis, Trader, Plaintiff in the Court below, HUMBLY SHEWETH:

That heretofore, to wit, on the twenty-first day of February, one theusand sight hundred end fifty-six, your Petitioner instituted an action in the Circuit Court, at the tuen Sherbrooke Circuit, against Hannah Belknap of the said Town of Sherbrooke, widow of the late Joseph Bailey, a his lifetime of the same place, Pail Manufacturer, in her quelity of Tutrix duly eppointed to Andrew J. Belley, Hanneh Bailey, Edwert Pailey, Joseph Bailey, Jeane Beiley, Lumiy Bailey, Prederick Bailey and Ellen Beiley, imaor children, issua of har marriage with the said late Joseph Bailey, deceased, Defendant in the Court below, for it a sum of twenty-six pounds and one shilling, currency, for the balance of an account (ennexed to the declaration in the said cause) for goods, wares and meschandize, by your Petitioner sold and dalivered, and money lent to the said late Joseph Bailey, at his request, and far money hy your Petitioner paid, laid out and expended to and for the use of the said late Joseph Bailey, and at his request; and for good, wares and merchandize, by your Petitioner sold and delivered end money lent to the said Hannah Belknap, in her said quality and at her request, cud for money hy your Petitioner paid, laid out end expended by your Petitioner to and for the use of the said Hennah Belknap in her said quality, and at her request, the whole at Sherbrooke eforesald, in the then Sherbrooke

Cheuit.

That to the said socier, and demends of your retitioner in the said Circuit Court, the said Defendant in her said quality, pleeded amongst other things that on the thirteenth day of September, one thousand eight hundred and fifty-three, your Petitioner hecome and was indebted to the liste Joseph Bailey, in the sum of eighty-six pounds one shilling and four pence oursency as and for so much money then and theretofore by him received of and belonging to the said late Joseph Bailey, from Nelson and Butters, traders, in the City of Moutreal, end not accounted for or paid to the late Joseph Bailey, or to the Defendant, is qualite, and that the account of your Petitioner had been paid, compensated and discharged by the said sum so alleged to have been received by your Fetitioner from the said Nelson and Butters.

To this plea of the Defendant in the Court below, your Petitioner answered that in all his transactions with the said Nelson end Butters in relation to the moneys of the said late Joseph Bailey, your Petitioner merely ested as the friend and agent of the said late Joseph Bailey, and always accounted to him for all moueys received by him, said Plaintiff, from said Nelson and Butters on account of the said late Joseph Bailey to his entire satisfaction, and sever received any moneys belonging to the said late Joseph Bailey for the use and benefit of him the said Plaintiff, to wit, yaur Petitioner.

any moneys belonging to the said late Joseph Balley for the use and benefit of him the said Plaintiff, to wit, yaur Petitioner.

That heretofore, to wit, on the thirtieth day of June now test past, final judgment was rendered in the said cause by the Honorable Edward Short, one of the Judges of the Superior Court in tha Circuit Court for the District of Saint Francis, having jurisdiction over the said cause, by which said final judgment the amount claimed by your Petitioner, to wit, the num of twenty-six pounds end one shilling currency, was and is declared to whe been and to be peld and compensated by the said sum of eighty-six pounds, one shilling and four penca curveney, and the action of your Petitiet's was dismissed with costs against your Petitioner.

Thet the said final judgment is croneous, illegal and unjust and your Petitioner la aggelaved thereby, to well as by a cartain interlocutory judgment rendered in the said cause, and hereinafter referred to, and the action of your Petitioner was dismissed whereas judgment ought to have been rendered against the said Hannali Belknep in her said quality for the said aum of twenty-six pounds and one shilling, ourrency, with Interest and costs.

Secondly—Because the Defendant failed to establish that your Petitioner covar-received for his own use and benefit from the said Nelson and Eutters of the maneys of the said late Joseph Bailey, the said sum of eighty-six pounds and antifuling and four pence, or any other sum, but on the contrary, your Petitioner established that the same was merely reserved by him as the friendly agent of the said iste Joseph Bailey to be brought from Montreal to Sherbrooke.

Thirdly—Because the said Nelson and Butters during the lifetime of the said late Joseph Bailey, rendered divers statemants of account to him, the said lets Joseph Bailey, in which the said sum on savey made can make any plaint shat the money had been retailed by your Petitioner.

Peurthly—Because in the Books of secount of the said late Joseph Bailey, which were kept

aum of shout twenty pounds, end was in want of all the money which was due to him to meet his husiness engage-ments, that the principal amount of the receipts of his husiness as a monufacturer come from the said Nelcon and ments, that the principal amount of the receipts of his natures as a manufacture orms the said Neicha and Butters, and that a few days after the time when the Defendant alleges your Petitioner revied a sum of seventy-nine pounds sixteen shillings oud four pence, the ing part of the said at a dawn of eighty-six pounds one shilling and four pence) of the moneys of the said late Joseph Balley from the said Nelson and Butters, the said late Joseph Balley paid to one Williem Brooks, a sum of about sixty pounds, the possession of which last mentioned sum by the said Joseph Belley can only be accounted for upon the supposition that the said sum of seventy-nine pounds aixteen shillings and four

pence had been received by him the said into Joseph Battey.

Beventhly—Beccuse the said Defendant fraudulently caused the said rum of eighty-six pounds, one shilling and four pence to be entered and charged after the deeth of her husband, in his books of account egainst your Petitioner, and when called upon by your Patitioner for payment of his account, did not dany that the same was correct and the amounts

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

Eightly—Because by an interlocutory indement rendered in the said cause on the tweoty-second day of April last, the priltion of your Petitioner to be permitted to examine one Alexander D. Burns, a second time, as a witness on his be-ball was improperly rejected, and your Petitioner was thereby prevented from adducing material evidance in the said cause, whareas the said petition ought to heve been granted.

Minthly—Because your Petitioner established in evidence the material allegations of his said declaration, and special smarrers, and the Defendant falled to prove the allegations of her said plea or any of tham.

Thus the security required by isw has been duly given by your Petitioner as will appear by certified copies of the Ap-

seal Bond and Affidavits of Justification hereunto annexed. All which your Peritioner avers to be true, and the same will verify when and as this Honorable Court may direct

Wherefore your Petitioner humby 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 Henorable Court will render such judgment as the Court slow onght to have rendered and will adjudge and condemn the said Hannah Beiknap lu her said quality to pay to your Petitiocer, the said sum of Twanty-aix pounds and one shilling corrency, with interest, from the demande judiciare in the Court below, and costs, as well in the Court below, as in this Court, of which costs the undersigned attorusy praya

THOMAS W. RITCHIE,

Dated, 22d Joly, 1858.

Attorney for Petitioner.

DEPOSITION OF HORATIO A. NELSON, OF MONTREAL, MERCHANT; taken 3rd April, 1858.

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

On the 25th day of May 1853, our firm balanced accounts with the said Beiley, and also on the 18th of August and 17th of September ot same year, and on the 18th of January and 10th of April of next year, to wit, 1864, 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 Balley requested us to ascertain how accounts stood between him and us, and to send whater y balance there might be comrequested us to secretain now accounts and occurrence where the second of the second of the second of the second of secently nine pounds sixteen shillings and four pence, currency, by the plaintiff, taking his receipt for the amount which receipt we held, 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 th's name, since his death, our firm never hed any intimation that the said sum had not been received by the said Joseph Balley. In fact no reference was made to it, though the said amount was charged in our books, and in statements of account, which were doubiless rendered, as easb paid to him. In the balancing our accounts on the said 25th May, the said amount of seventy-uine pounds eixteen shillings and four pence, appears as an item of cash pald to the said Bailey, sald anm was by Witness sent to said Belley through the plaintiff in this cause ou his Bailey's order to do so. On one other occasion we had sent monies to said Bailey by a party residing in the Townships, 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 witness recollects had not any direct word from, but were always allowed us by said Balley in subsequent settlements.

CROSS EXAMINED.—The promissory note fyled 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 and for the said hate Joseph Bailey, and the sum of £31 0s 11d., currency, mentioned in said note end so paid, was charged against the said Bailey in our books. The letter, Defendant's Exhibit No. b, in this cause, is in my hand-writing, is signed by me in the name of our firm, and was by ne sent to the Defendant in this cause, ou the 13th of September 1853. The sum of six pounds five chillings 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 E chibit 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, 1859.

He knows the Plaintiff in this cause, hut does not know the Defendant personally. He know Joseph Bailey her late hashand mentioned in this cause, and hed frequent husiness transactions with him, in his lifetime.

The firm of Nelson and Butters, of which witness is a partuer, have also had business transactions with the Defendant in this cause, since the said Balley's death. On the twenty-fifth of May 1833, the said firm of Nelson and Butdant in this cause, since the sun cause of the said Joseph Bailey. We also had a stitements 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 hed a settlement of accounts with the said Defendant after the said Builey's death on the 29th of June 1864. On or about the 19th of May, 1863, 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 Sherrooke hy 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 a receipt for the amount, which receipt we now hold and of which receipt the Defeudant's Exhibit No. 7, is a true Copy.

The said amount of seventy-nine pounds sixteen shillings and four pence, currency, so, in a redy sast to Mr. Bailey by Mr. Woodeard, but was not a payment to the Plaintiff on account of Bailey. That is the money was sout by Mr. Woodeard. ward through Mr. Balley's order.

In subsequent settlements had after the 24th of May, 1853, by Nelson and Butters, with the said Joseph Balley and with the said Defendant in this cause, no intimation was ever given to nur firm either by said Bailay, or by Delence that the said sum so sent hy the Plaintiff had not been received by the said Joseph Balley. The said amount was charged by onr firm to the said Belley, and our settlements with him were made on eccounts rendered shewing the said sum of seventy-nine pounds sixteen abillings and four pence currency, as so much money pald by our firm to the said Joseph Balley. He settled with us on thet ground, and never to my knowledge intimated that the amount had not beer received by him. Our firm had on other occasions sent out monles, to the said Bailey by the Pisintliff, hefore the 24th of May, 1863, 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 settlementa in precisely the same manner, and which were considered a money puld to Balley. In some cases, the said Bailey sent us en order to pay moules to Plaintiff, but on the occasion of the 24th of Mey, 1853, it was an order to send any balance that might be due, by the Plaintiff.

CROSS EXAMINED. The account fyled in this cause as Defendant's Exhibit No. 10, is a statement of account render ed by the firm of Nelson and Butters to the said late Joseph Balley. The Item cherged in said account as cash pald, 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. by the same arm of Aresia same as the Defendant's Exhibit No. 9, now shown to me, is a letter from the said farm.

Nelson and Batters, to the Defendent in this cause, and is in the hand-writing of Mr. Nelson, a member of our farm.

Note. This is evidently an error. The latter referred to hears date 28th April, 1854.

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HJE, Petitioner.

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f account rendert as cash paid, to paid on that day id Joseph Haileyn the said firm of her of our firm. Ra-Examinar.—The said Defandant's Exhibit No. 10, was accepted by the said Joseph Balley as a actitement of accounts by him with our firm. I take it that it was so, or we have not heard anything to the contrary.

EXTRAO? from the Deposition of John MacMillan, of Morrhell, Saleman; taken 3rd April, 1858. The said Joseph Bellev frequently corresponded with the sail dim (Nelson and Buttern) from said 24th of May up to the time of his death. I have axamined the letters received from him car failty, and find no intimation in any of tham that the said money had not been received by him. In the best roing of accounts between said firm and sold Balley that said leem of sevanty nine pounds extreen chillings and four pence, currency, was charged as each paid to him, and in any statisments of accounts of him it was so charged, and we invariably render statements of accounts on settlement. We had frequent settlements with the said Balley after tha said 24th of May, and in none of them did eitherths end Balley or the Defindant in this cause object to the said chirje or intimits that the maney had not been received by the was one of the literal part of the said with him at that time. I was intimate with easily Mr. Saidev in the life-time and frequently dil business with him, and consider that if he int not received the said amount of assembly-size pounds eiters actilizes actilizes and four pence, currency, he would have to have or the said true.

EXTRACT from the Deposition of WILLIAM BROOMS, of SHERBROOME, 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 within the letters C and D is in the handwriting of Andrew Hailey, as are also the words "carried page 47" as seen written across the Ledger at page 4 in menner as shown in said Exhibit N; the words "carried page 47" and the said entries on page forty-seven have been added since his book to si in my possession, and since it was delivered by me to the Defendaut in the summer of 1851. I posted up on Plaintiff's ecount only what I found entered in said Day Book. It is usual for Traders in Binerbrooke to bring out monles for each other from Town, and to take money into Moutreal and pay it for each other, this is done merely as a friently act, and not considered as a mitter of business. I should not in such ease think of taking a receipt on the peyment of money, as I should en the payment of on Invoice of goods I had purchosed, 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, Esquiro; tuken 10th December, 1856.

Question—State what you know about some property having been sold to Plaintiff by Defendent about the month of May, 1834, on account of the debt due Plaintiff by the late Joseph Beiley?

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 ennexed to the writ of Summons, viz t one weggon, one House Cart, Harness, one Waggon Harness, one Riding Bridle, one old Søddle, and Two Horse Carts, amounting to twenty-eight pounds, filteen shillings, currency, was sold by Defendant to the Plaintiff in the spring or in the summer of 1854, as I supposed ond believed to apply upon the debt due by the late Joseph Balley to Plaintiff, and I have no doubt it was to apply apon the weit debt.

Question.—State whether eny receipt was taken by the said Defendant for the said property end 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.)

Aniwer—I cannot give the exact words of the roceipt, the purport of the receipt was, something to shaw property
had been properly sold and delivered, end of course I thought it was to apply upon the debt due Plaintiff by the leta
Joseph Bailey. I do not remembar whether I or the Plaintiff word the receipt; I acted as a neighbor in edvising tha
Defondant in settling the affairs of her late husband's estate occasionelly, I probably wont down to Plaintiff's store with
regged to the sais 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 en account which he claimed to be due to him, but late Mr. Builey
or herself, but my impression is that the ecount or most of it must have been against the late Joseph Bailey before his
cath, I do not know whether any other papors were presented to Defendant by the Plaintiff at that thue there might
have been.

Question-Have you ever heard Defendant say what amount wes due from her in her cepaelty as Tutrix to her mi-

Answer—I thought that et the time the above property was turned out by the Dafendant to the Plaintiff, that it only formed e pert payment of the debt due Plaintiff, and thet there was a balance remaining due to him, I have had access occasionally to the account dooks of the said late Joseph Bailey, but on not particularly acquainted with them. I saw

Of lected to by Defendant on the ground that edmissions by a Tutrix are inedmissible to prove indabtedness 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 lest summer by arbitration.

Question-What did Plaint! f offer at that time to the Defendant to obtain such arbitration?

Answer—I think I was the person who suggestel the arbitration to the Plaintiff, this was it. 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 arrators. I went and saw Defendant she consented to it, but hesiteted 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 arbitrators, but I objected to it. Defendant mentioned the names of Charles Brooks and Albert P. Bell as

Question—Did you not state to the Pieintiff and wes it not the fact, that she nemed herself these two gentleman above mentioned as arbitrators, and thet she efterwards declined doing so?

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

I know that the said Books (the Hooks of secount of the lete Mr. Bailey) were after the death of the late Mr. Bailey put into the hends of Mr. William Brooks of this Town, Merchaut, for the purpose of being brought up and posted. The said accounts are correctly copied and are true copies of the said accounts ee 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, 1844. That Item and the two following items ere posted up in the hendwriting of vaid William Brooks in the said Ledger, and appeared to have been posted up from the other smell Day-Book or Blotter, where corresponding entries are made in eald blotter. The said account marked Exhibit N. appears on its face a trenscript both in form and in fact of the account found in said Ledger seginat the said Plaintiff. The entry on page 47, appears to have been subsequent to the account being closed on page 4, by Mr. Brooks, end are in a different hendwriting. I cannot positively tate in whose hendwriting the entry on page 47 is, but I em positive that it is not in the handwriting of the late Mr. Bailay, nor of William Brooks. I think, sithough I will not be positive, that the whole of said entry is us the

hand writing of Andrew Bailey, Defendant's son. I have exemined the coid Blotter or Day Book and And this there are no corresponding entries under the dates May 26th, and Saxiember 13th, as they appear in said Ledger at Page wi, and in the said account marked "N." From what I know of the business of the late Joseph Belley, it seems to me extremely improbe's that he about have allowed such a sum, as a sum of seventy-nine pounds sixteen shillings and fore pense to be main's the Plaintiff's hands from the 24th day of May 1853, and the further sum of six pounds five chillings from the 13th September, up to the 12th day of March, the period of his death. I knew that it sand for pears has been the habit for men of business in Sharbrooks, to accommodate each other seving money into Montreel, and paying it to their rection, and of bringing money from Mostreel for others, and paying it immediately over. I done so mustif different times when I was in business, and I never thought under such circumstances of taking a receipt on paying over the money. Such things were considered a neighborly act, and were never looked on as a matter of business.

Cross-Examinen—It is impossible for me to state the precise conversation which took place between Mrs. Belley and the Plaintiff, but my impression then was and at life, that these things were surned out by her in pair payment of a debt due to the Plaintiff by her late Ausband. When I went into the Room, Plaintiff and Mrs. Bailey were together, and Mr. Woodward was enclose that the should pay the account, so he wished to go to Montreal, and she declined doing so, saying that she wished to look the accounts over. Mrs. Bailey did not say anything either at the time when Mr. Woodward was enclosed to the the should pay the account, or at the time when she sold the goods in part payment of Mrs. Bailey and by Mrs. and all Busters' to Plaintiff.

Extract from the Deposition of Alexander D. Burns, of Skerbbooke, Carpenture: taken 18th

EXTRACT from the Deposition of ALEXANDER D. BURNS, of SHERBBOOKE, CARPENTER; taken 16th

Ducember, 1856.

"ils

December, 1930.

I remember a conversation that took place between Mr. Bailey and the Fieintiff shortly before Bailey's death, this was in Plaintiff's store, Mr. Woodward wished or asked Mr. Bailey to cettle his account. Bailey said there was no harry as he was expecting several hundred Dollars from Montreal, and also money from Stantsead, to whom he had cold pails, and then when he received that he would pay Mr. Woodward money. I do not remember what was ald about the emount but I understood from what they both said, that the amount was considerable which Bailey then assed. I do not recollect now what was said about the emount, or whether anything was said about the amount but I got the impression then

EXTRACT from the Deposition of WILLIAM RITCHTE, of SHERBROOKE, ESQUIRE; taken 20th April,

In 1863 I had business transections with the Printiff, I should think that in Mey of that year the Plaintiff was of good standing in regard to money matters, and was not particularly pressed for money. The late Joseph Balley, in that year carried on the samufacture of palls which was his only employment to my knowledge, and most of the palls meds by him he was in the hebit of ending to Neisso and Butters of Moutresi, and I should suppose that the principal neys received by him would come from them.

EXTRACT from 2nd Deposition of WILLIAM BROOKS; taken 20th April, 1858.

In January 1853, the late Joseph Bailey gave me a note for sixty pounds three shillings and six pence, currency, payable by him on the 2nd day of June following, at the City Hank of Montreal, on the first day of June of the same payable by him of the said yet of take up the note, I made no charge it may Hooks egainst the said late Joseph Bailey, on econnt of the said note which was due by him to me, sod I have no doubt that he paid it to me about the time it became due. The said late Joseph Balley was then menufacturing pails which was his principal business and the largest part of the pails were sent to Nelson and Butters, of Montreal.

EXTRACT from the Deposition of CARRY M. HYNDMAN, of SHERBROOKE, ESQUIRE; taken 21st April,

I remember at the time of the conversation of the boiler plate and the large tub of sugar not long before his death, hearing him (the late Mr. Balley) say that the firm of Nelson and Butters, of Montreal, were owing him a large sum of money for palls he bed sent them, and that he expected the money soon, and the when he get it. he would let him have some on account, as he was deeply in with him. I understood from the conversation of Balley that he was a good deal in dobt to Plaintiff at that time.

nd that there are up a it in a to to me extremely four pena to re-illings from the sen the habit for a their creditors, and times when I i. Such things

Mrs. Bailey and ment of a debt re together, and declined coing chan Mr. Wordy her about any

taken 16th

lay's death, this
tre was no hurry
deold pails, and
out the amount
do not recollect
timpression then

s 20th April,

Plaintiff was of Bailey, in that the pails made at the principal

pence, ourrency, une of the same a Bailey, on acthe time it bes and the largest

en 21st April,

before his death, him a large sum ould let him have as a good deal in

