

tion and the manner of life of the now disputants) charge the husband with interest and rests as claimed. Did I feel obliged to do so, I should certainly vacate the alimony judgment and let an amount be fixed afresh, in view of the changed financial condition of the defendant. But, in charging only the amounts actually received by him as indicated, I do not feel pressed to disturb the consent judgment.

The distinction as between the receipt of the corpus and the interest or income by the husband of the wife's separate estate, when they were living together for many years, is well defined. If the husband claims that there has been a gift of the corpus, that must be made out clearly and conclusively or he will be held to be a trustee for her. As to the income however, the burden of proof is the other way. She must establish with like clearness and conclusiveness that this yearly increment expended for their joint purposes and advantages was dealt with by her husband by way of loan, and for which he was to be held to account: *Rice v. Rice*, 31 O.R. 59, affirmed 27 A.R. 121. The counsel for the wife stated in open Court that he only desired to charge against the husband that which was fair and just; and I think that my present ruling should satisfy him in this respect.

I find that the money of the wife was expended in the purchase of the piano in the pleadings mentioned—and that the sum paid was \$325. This is to be allowed to the husband as a proper payment, and the piano is declared to be the property of the plaintiff and to be forthwith delivered to her.

The other chattels claimed were to be ascertained and their identity determined by the intervention of the daughter, who was accepted by both sides as a suitable referee to adjust the adverse claims, and her decision I do not propose to disturb. The articles should be handed over to the plaintiff according to the determination of the daughter, and they need not be mentioned in the judgment.

I would fix the amount of liability thus:—

Deposit receipts endorsed over to the defendant at the time the plaintiff left for England.....	\$1,721
He had also drawn out before	587
On the 15th May, 1896	650
And on the 6th October, 1896	500
	<hr/>
	\$3,458
Less paid to her at sale of house	1,170
	<hr/>
	\$2,288