

Save as to the \$600.32, it is impossible, I think, on the evidence, to find that the money paid to Hartman Jones was the money of the father. . . .

Leaving out the evidence of statements made by the father—and these were inadmissible on the issue as to the ownership of the money which was paid to Hartman Jones—it is impossible, I think, except as to the \$600.32, to find that defendant has satisfied the onus which rested upon him of shewing that the money paid to Jones was the money of the father.

The \$600.32 was undoubtedly on 11th December, 1901, the money of the father, and the onus was on plaintiff to shew that it had become his; that he, in my opinion, failed to do. . . .

I entirely agree with the view of my brother Anglin that it was not competent for the Master, upon such a reference as was made to him, to enter into any inquiry as to, and still less to adjudge, the specific performance of a contract by the father with defendant to pay off the mortgage. No such case was, moreover, made upon the pleadings . . . and, if it had been, it should have been dealt with at the trial or referred to the Master for trial, and neither was done, and, in my opinion, had the inquiry been open, the evidence fell far short of proving a contract by the father to pay off the mortgage for the benefit of defendant—at most all that was shewn was an expression of intention, which the father was at liberty to change, if he were so minded. . . .

I am of opinion that it has not been shewn that the mortgage was paid off, but that defendant is entitled to credit upon the mortgage for \$600.32 as paid on account of principal on 11th December, 1901, and that the order of my brother Anglin should be varied by substituting for the declaration made by it a declaration that defendant is liable for \$889.68 for principal money remaining due on 11th December, 1901, with interest from 1st December, 1902, at 5 per cent. per annum, and by substituting for the provision as to costs an order that there be no costs to either party of the former reference or of the appeal to my brother Anglin or of this appeal. . . .

MACMAHON, J., gave reasons in writing for the same conclusion.

IDINGTON, J., dissented, giving reasons in writing for supporting the finding of the Master that the mortgage was paid with the father's money.