

On examination of the deeds in question it will be found that the purchase money stipulated for in the deed of 1837 was payable by annual instalments, but that the Respondent had the privilege of paying "the whole sum of £150 within a shorter period if he should think proper to do so." And a comparison of the dates at which these several instalments became due, with those at which payments were made, and with the sums paid, will shew, that when some of the payments were made, interest was due and payable under both deeds, but no principal under the deed of 1843; when others were made, the amount of interest due and payable under both deeds, with the principal under that of 1837, exceeded such payments, and no principal was then due under the deed of 1843; and at other dates of payment, both interest and principal were due and payable under both deeds.

This premised, the Appellant contends for the following rules of imputation:—

- 1st. That the interest payable under the deed of 1838, should be first extinguished.
- 2nd. That the payments should next be applied to the interest, payable under the deed of 1843.
- 3rd. That any principal actually payable under the deed of 1837, should be next extinguished.

- 4th. That the principal due under the deed of 1843, should be last extinguished.

The Court below adopted the rules of imputation contended for by the Appellant, except that they ordered that the principal under the deed of 1837 should be extinguished before any imputation was made even upon the interest due on the debt of 1843, and so far as the enunciation of these rules extends, the first proposition of the Appellant is fully borne out by the Judgment. It is couched in these terms:

"The Court considering that the payments made by the Defendant in this cause should be imputed firstly in extinction of the interest due by the Defendant under the deed of sale of date the 29th day of December 1837, secondly towards the capital due under the said deed, thirdly in extinction of the interest due under the deed of sale of date the twenty ninth day of May, 1843, and lastly on account of the capital due under the said last mentioned deed of sale; and considering that it appears by the inventory of the estate of the late John Casson that on the 14th April, 1851, there was due to his estate the sum of £152 19s. 6d., which should be adopted as the point from which such imputations should commence; and considering that the Defendant hath established the payment to the said Dame Mary Aery, of the sum of £49 18s. 3d. cy., on the 20th December 1851; and considering that the Plaintiff hath established that he is the proprietor *en usufruit* of the amount due by the said Defendant under the said deed of sale of date May 29th 1843; and considering also that there was due by the Defendant to the Plaintiff, at the date of the institution of the present action the sum of £61 12s. 11d. cy., as the balance of the said amount due and payable to the said Plaintiff by the said Defendant, after deduction of the said sum of £49 18s. 3d. cy., and of the instalments thereof which had not matured at the date of the institution of the present action, from the amount mentioned in the said inventory and after adjustment of interest, and that the tender of the Defendant was therefore insufficient; doth condemn the Defendant to pay and satisfy to the Plaintiff the said sum of £61 12s. 11d. current money of this Province of Canada, due for the causes, matters, and things mentioned and set forth in the declaration of the Plaintiff in this cause filed, with interest thereon from the 1st November 1854, until paid and costs of suit."

For the purpose of exhibiting the results of the mode of imputation suggested by the Appellant, and of that fixed by this Judgment of the Court below; the Appellant has caused two statements to be carefully prepared, shewing every calculation in detail, and exhibiting both the amount really due by the Respondent at the date of the Inventory of the Estate of John Casson, and that which he owed at the date of the institution of the action in the Court below. One of these statements forming Appendix A is constructed upon those principles of imputation which the Appellant considers correct; and the other, Appendix B, upon those established by the Court below. The dates of the payments and their amounts have been taken from the Respondent's exhibit K, filed with his exception and referred to in it; though in doing so the Appellant admits the 2nd and 4th items of the credit side of that exhibit, which are open to some objection.