to have been made to him. It appeared [that the parties had made no application of the payments, therefore it was the duty of the Court to make the application to the most onerous debt. This was the mortgage for the unpaid purchase] money. The judgment of the Court would, therefore, be reformed; $80 to be deducted from the amount of the judgment, which had properly reduced the consideration money by a proportionate reduction of the price for the short extent of the land sold.

SMITH *v.* NOAD.

HELD—That in an action of ejectment, where no rent is due, the costs will be taxed according to the amount of the annual rent.

BADGLEY, J.—This was an appeal from the district of Richelieu. The plaintiff entered into a notarial lease with defendant at the rate of £34 a year. At the expiration of the year, the defendant continued in possession of the premises. An action in ejectment having been brought against him, he pleaded that in January or February last, a bargain was entered into between him and plaintiff, by which he was to continue in the house at a rent of £40. It appeared that though there had been some conversation on the subject there had been no bargain. Admitting then that defendant had held over wrongfully, there arose a question of costs: The judgment condemned the defendant to pay the costs of suit, and the costs had been taxed according to the amount of the annual rent. The defendant contended that he should only have been condemned to pay costs of an action of the lowest class Circuit Court, because the Act in amendment of the Lessor and Lessees' Act says the costs are to be taxed according to the amount of the judgment, and if the defendant had owed a month's rent in the present case, he would only have had to pay costs as of the lowest class, Circuit Court.

The Court considered that the judgment was correct, the costs being according to the amount of the rent.—Judgment confirmed, with costs as in an action for £34.

JOHNSON *et al*, *v.* LORD AYLMER.

HELD—That the executors only, and not the usufructuary under the will, can take proceedings to support the rights of the estate. 2. Where a property, supposed to contain minerals, was sold with a stipulation that the purchaser was to cause it to be explored, but without any time for such exploration being fixed; held that the purchaser may await the result of the exploration of an adjoining lot, it being proved by scientific testimony that the working of the latter would indicate what success was to be anticipated in the lot sold.

BADGLEY, J.—This was an appeal under the following circumstances:—Geo. Johnson was the owner of a lot of land at Ascot, and becoming very much excited about the reports of mineral deposits, he endeavoured to make a very large fortune at once without any difficulty. The owner of the adjoining property was a company established in England, and carrying on mining operations to a considerable extent upon it, with Lord Aylmer as their agent. Mr. Johnson, supposing that his land contained mineral deposits, sold it to Lord Aylmer for a period of 99 years. The Court called this a sale, though termed by the parties a lease. This deed made over to Lord Aylmer all the profits to be derived from the mines and minerals, whether silver, gold or copper, that might be found on this land; and the sole consideration was that Mr. Johnson should receive out of the net profits a royalty of one-tenth. There was a stipulation in the deed that the purchaser should proceed to the examination of the ground to ascertain whether there were any mines or not; but there was no time fixed within which this was to be done. The defendant caused a series of explorations to be made, extending over some months, but in October, Mr. Johnson finding that he had not made the great fortune he expected, determined in his own mind that the bargain was not binding at all, and asserting that the mine had been abandoned, he entered into a contract with a notary at Sherbrooke, with whom he bargained for the transfer of all his rights, not only in the lot of land itself, but also in the mines and minerals, the right over which he had conveyed to the defendant. This notary undertook to institute an immediate action against the defendant to rescind the agreement made between Johnson and the defendant. He was to pay $2,000 at once to Johnson, and the balance of the $4,000 at a subsequent period. This consideration money was the consideration for the whole. Shortly after, within a week or two, Mr. Johnson died. By his will he gave his widow the usufruct and enjoyment of all his estate, and he gave to his son the whole of the property that he died possessed of. The present action was now brought by the widow and the universal legatee in their respective testamentary qualities. But they were not the representatives of the estate. The usufructuary had no right to bring an action of this description to set aside a lease or sale. Executors were appointed under the will, to whom administration was intrusted by the testator beyond the year and day, and until the final accomplishment of the will. The executors ought to be parties to this action in some way or other. The estate was in their hands, and not in the hands of the usurfuctuary. As the representatives of the estate till the final fulfilment of the will, it was for the executors to take such proceedings as might be necessary to support the rights of the estate against the defendant. But beyond all this, as already stated, there was no limitation in the lease of the time within which the mines were to be worked. Proceedings had been adopted to explore the adjoining property, and it had been proved by scientific men that the work on the adjoining lot would shew whether there were mineral deposits on the defendant's lot or not; and that it would be useless to lay out money upon the latter till it was seen how the other lot was worked, there being only two veins that need be looked for, and which appeared to run from the one to the other lot of land, diagonally across both. This testimony of scientific men was met on the other side by that of self-constituted miners, one of whom had been a shoemaker, another a small bookseller at Sherbrooke, and so on. Under these circumstances