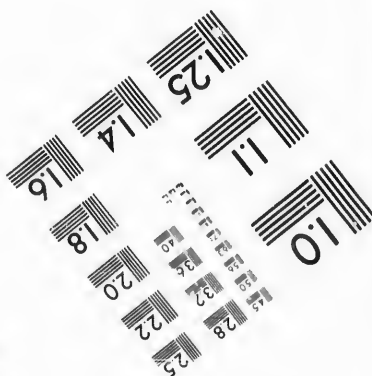
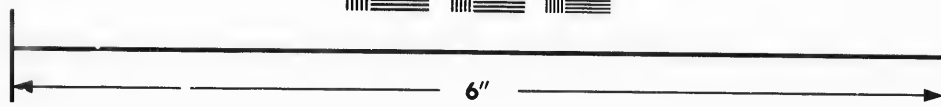
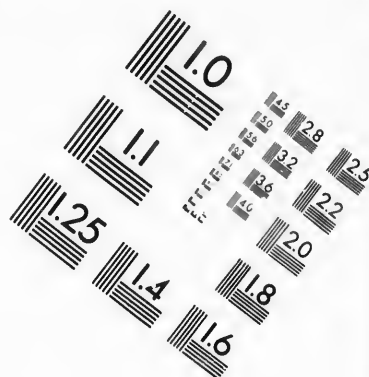




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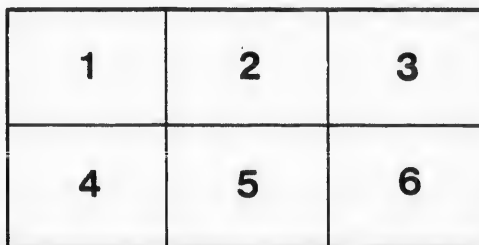
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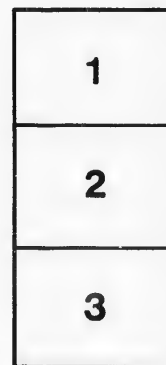
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Queen's Bench.

Appeal Side.

THOMAS CASSON,

(Plaintiff in the Court below.)

APPELLANT;

AND

ANDREW THOMPTSON,

(Defendant in the Court below.)
RESPONDENT.

Appellants' Case

1857

Queen's Bench.

Appeal Side.

PROVI
DISTR

In the Queen's Bench.

APPEAL SIDE

THOMAS CASSON,

(Plaintiff in the Court below,)

APPELLANT;

AND

ANDREW THOMPSON,

(Defendant in the Court below,)

RESPONDENT.

This appeal is from a final judgment in the Court below, whereby the Respondent was condemned to pay the Appellant the sum of £64 12s. 11d., which the Appellant contends is much less than he is entitled to recover. The points upon which the parties differ are not numerous, but are rendered somewhat embarrassing by the necessity for calculations of considerable extent and intricacy.

The declaration alleges the following facts as the basis of the Appellant's claim.

That on 29th May 1843, the late John Casson sold the Defendant Lot No. 23 in the 3rd Range of Farnham, for £350, payable by annual instalments of £25 each, commencing on November 1st 1845, with interest to be computed from November 1st 1843, and that for security of these payments the said lot was hypothecated.

That the late John Casson by a will made in November 1848, constituted his wife, Daine Mary Aery, his universal usufructuary legatee, and that the price of the said farm belonged to him at his death and formed part of the estate so devised to her *en usufruit*.

That on the 24th of April, 1852, widow Casson transferred all her rights under the said will in the said estate to the Appellant, in consideration of a monthly stipend during her life.

That at the time of the said transfer, the whole of the instalments which had previously become due, amounting to £250 with interest, remained unpaid; for which sum the Appellant claimed a judgment.

The Defendant and Respondent filed an exception to the declaration, which though incorrect in point of calculation, and inconsistent and erroneous in its conclusions, is inserted here at full length as the best means of exhibiting fully, the pretensions of the Respondent. It is as follows:

"Le défendeur pour exception péremptoire à cette action allègue:

"Que pendant l'année mil-huit-cent-trente-sept, il aurait acheté du nommé John

"Casson, mentionné en la déclaration en cette cause, père du demandeur, une terre pour une somme de £150 courant.

"Que sur et en déduction du prix de cette terre, il aurait avant le 1er Janvier 1841, payé au dit John Casson diverses sommes de deniers, en extinction des intérêts et du capital, ce qui est constaté par certains reçus à lui accordés, par le dit John Casson, pendant les années 1839 et 1840, ci-produits et auxquels il est référé.

"Que le 1er Janvier 1841, il aurait de nouveau payé au dit John Casson, à compte de la susdite créance £2 courant, et là et alors, dans un endroit appelé "Grande Ligne," dans le dit district, le dit John Casson lui donna un reçu pour la dite somme de £2, qu'il signa ou qu'il fit signer par quelqu'un par lui autorisé, et par ce reçu qui fut ainsi accordé au Défendeur, le dit John Casson déclara que la balance qui alors lui restait due par le Défendeur était une somme de 389 piastres égale à £97 5s. courant, avec intérêt.

"Que tous les intérêts dûs avant cette dernière époque avaient été payés au dit John Casson par le défendeur.

"Que le 29 mai 1843, le Défendeur a acheté du dit John Casson une autre terre pour la somme de £350 courant, qui fut stipulée payable par paiements annuels de £25,

" courant chaque, le premier desquels devait se faire le 1er novembre 1815, avec intérêt
 " annuellement sur tout le capital à compter du 1er novembre 1813, et le Défendeur prit
 " possession du dit immeuble en dernier lieu mentionné.

" Que le 1er novembre 1851, dix des installlements sur ce dernier prix de vente sont
 " devenus échus, formant, pour iceux, £250 courant, avec intérêt, sur le capital £350, du
 " 1er novembre 1813.

" Au 1er novembre dernier 1854, la balance du capital, de la première vente ci-haut
 " relatée, et l'intérêt calculé sur icelle, à compter du 1er janvier 1841, s'élevaient ensemble
 " à £177 18s. 6d., et à la même époque, premier novembre dernier, les dix paiements
 " échus sur la dernière vente, et l'intérêt calculé sur tout le capital de telle vente à
 " compter du 1er novembre 1813, s'élevaient ensemble à une somme de £181, total £658
 " 18s. 6d.

" Que ces diverses sommes réunies formaient le 1er novembre dernier 1854, un total
 " de £658 18s. 6d. dit cours, que le défendeur aurait alors dû, s'il n'eût rien payé en dé-
 " duction de ces sommes ; mais le défendeur allégué :

" Que depuis le 1er janvier 1841, il a à différentes reprises payé au dit John Casson
 " et au dit Demandeur, agissant et représentant le dit John Casson, et à la dite dame
 " Mary Aery, et ce avant le transport fait au Demandeur, des sommes considérables de
 " deniers, et que le dit jour 1er novembre dernier la seule somme qu'il dut et dont il fut
 " redevable au dit demandeur, représentant les dits John Casson et Mary Aery, et cession-
 " naire de cette dernière, sur les dites créances, était une somme de £52 11s. 6d. courant,
 " en capital et intérêt, sans préjudice néanmoins aux termes de paiements à échoir à
 " l'avenir sur le dernier acte de vente, et tel que le tout appert plus amplement par les
 " divers reçus et par l'état produits par le Défendeur au soutien des présentes et auxquels
 " il réfère spécialement.

" Que tous les dits reçus sont sous seing privé, à l'exception d'un seul qui a été
 " accordé au Défendeur par la dite dame Aery, par acte reçu en la cité de Montréal, dit
 " district, devant maître Cadieux et son confrère, notaires publics, le 20 décembre 1851.

" Qu'à l'époque où la présente action a été intentée, la seule somme qui fut due au
 " Demandeur était la dite somme de £52 11s. 6d. dit cours, avec intérêt du 1er novembre
 " dernier (1854).

" Le Défendeur dit de plus que le 4 juin 1851, il ne devait à la succession de feu
 " John Casson sur tout le prix de vente du 29 mai 1843, mentionné dans l'action qu'une
 " somme de £182 19s. courant pour balancer, avec intérêt du 14 avril 1851, ainsi qu'il est
 " constaté dans l'inventaire produit en cette cause, et que le 20 décembre 1851, il aurait
 " payé une somme de £49 18s. 3½d. courant, sur et à compte de la dite somme de £182
 " 19s., dit cours à la dite dame Aery (cédante du Demandeur) qui lui aurait accordé quit-
 " tance de cette somme par acte reçu dans le dit district, devant maître Clément et son
 " confrère, notaires publics, copie de laquelle quittance est déjà produite en cette cause
 " et que par tel acte de quittance du 20 décembre 1851, il fut déclaré par la dite dame
 " Aery, tant en son propre et privé nom que comme légataire de feu son époux au profit
 " du Défendeur acceptant, que la somme de £49 18s. 3½d. qui lui était ainsi payée par
 " le Défendeur, l'était sur et en déduction de la dite somme de £182 19s. dit cours, porté
 " dans le dit inventaire, et que la dite dame Aery par la dite quittance du 20 décembre
 " 1851, a reconnu que la seule somme qui lui fut due, le 20 décembre 1851, avant d'a-
 " voir reçu les £49 18s. 3½d. par le Défendeur, sur tout le prix de vente porté dans l'acte
 " du 29 mai 1813, était la somme de £182 19s. dit cours, avec intérêt du 14 avril 1851.

" Qu'à l'époque où la dite dame Aery a accordé au Défendeur la dite quittance du
 " 20 décembre 1851, la seule somme qui était alors exigible sur les £182 19s. dit cours,
 " portés dans l'inventaire était celle de £7 19s., balance sur £25, pour un terme de paie-
 " ment échu au 1er novembre 1851, avec intérêt sur les £182 19s. dit cours à compter du
 " 14 avril 1851, au 1er novembre de la même année, lequel intérêt s'élevait à la somme
 " de £5 9s. 9d., formant réunies ces deux sommes celle de £13 8s. 9d. dit cours, et par
 " conséquent la somme de £49 18s. 3½d. dont le Défendeur a eu quittance le 20 décembre
 " 1851, a éteint la dite somme de £13 8s. 9d. pour tout ce qui était dû le 1er novembre
 " 1851, et le surplus de l'argent payé à cette époque là a dû être appliqué sur le capital
 " qui n'était pas exigible, et que le Défendeur d'après son contrat avait la faculté d'ac-
 " quitter avant son échéance.

" Que le 1er novembre 1854, la seule somme qui était due et exigible en capital et intérêt, sur le prix de vente du 29 mai 1843, était la somme de £53 11s. 6d. courant.

" Et le dit Défendeur allègue :

" Quoiqu'il ne fut redevable au Demandeur que de la balance, il a cependant le 1er mars courant 1855, par le ministère de maître Viueclotte et son confrère, notaires publics, offert et fait offrir au dit Demandeur, non seulement la susdite balance à lui due, avec l'intérêt dû sur icelle, à compter du 1er novembre dernier, jusqu'au dit jour, 1er mars courant, mais encore quelque chose au-delà, savoir, une somme de £50 17s. 6d. courant, pour montant de la susdite balance et pour les intérêts accrus sur icelle jusqu'au dit jour, 1er Mars courant, et de plus par le ministère des dits notaires, le dit Défendeur aurait là et alors, le dit jour, 1er Mars courant, offert et fait offrir au Demandeur une somme de £3 15s. courant, pour les frais d'action, sauf à parfaire, lesquelles dites offres auraient été faites à bourse déliée et deniers déconvertis et en monnaies légales, le tout conformément à la loi, et le dit Demandeur aurait refusé telles offres, tel qu'il appert plus amplement par l'acte d'offre que les dits notaires auraient fait tel que susdit, le dit jour, 1er mars, et dont ils ont fait acte là et alors au dit lieu de St. Athanase, duquel acte copie authentique ci-produite et à laquelle il est référé.

" Et le Défendeur met de plus en fait que subséquemment au dit jour, 1er mars courant, et avant le rapport de cette action en cour, il a offert à M. Abbott, avocat du Demandeur, conformément à la loi, le montant des susdits frais d'action, savoir la dite somme de £3 15s. dit cours, sauf à parfaire, mais que le dit M. Abbott a refusé telles offres.

" Que la somme totale que le Défendeur a offerte tel que susdit s'est élevée au chiffre de £59 12s. 6d. dit cours, et quoique cette somme excède de quelques louis celle que le Défendeur devait à l'époque où les dites offres ont été faites, il est cependant disposé à offrir et offre de nouveau le même montant au dit Demandeur, et il en fait dépôt devant la dite cour, en espèces légales.

" Que les susdites acquisitions sont les seules que le Défendeur ait jamais faites de la famille Casson.

" A ces causes le dit Défendeur conclut à ce qu'il lui soit donné acte par cette cour de l'offre qu'il fait et réitère au Demandeur de la dite somme de £59 12s. 6d. dit cours et du dépôt qu'il fait ensemble avec son exception de la dite somme de £59 12s. 6d. courant, et ce pour dette, intérêt et frais, sauf à parfaire, si le cas y échet, accrus jusqu'au 1er Mars courant 1855, tout en demandant acte encore, comme quoi il consent à ce que jugement intervienne contre lui en faveur du Demandeur aussi ceux du rapport de l'action devant cette cour, et soit condamné à payer tous les dépens accrus dans la cause, depuis qu'icelle a été rapportée devant cette cour, et pour cette somme de £59 12s. 6d. dit cours, et il conclut à ce que le Demandeur conclut même à une condamnation contre le Demandeur de tous dépens et frais accrus sur l'action depuis l'époque des dites offres : desquels dépens les soussignés demandent distraction en leur faveur."

No defense au fonds en fait, or denial of the rights claimed by the Appellant was pleaded by the Respondent.

To the exception the Appellant replied by special answer, in effect as follows ;

That on the 14th of April 1851, the date of the last payment previous to the making of the inventory, and after deduction of that payment, there was due to the estate Casson in principal and interest £260 18s. 11½d. which at the date of the inventory, (the 4th June, 1851) amounted to £263 3s. 6d.

That the entry in the inventory was erroneous, inasmuch as the payments made previous to its date had been erroneously imputed, and the calculations of interest erroneously made : to establish which, the identical memorandum of calculations upon which the entry in the inventory was based, was produced.

That at the time of the execution of the notarial discharge of date the 20th December 1851, the widow was very aged, infirm both in body and mind, and incapable of managing her affairs with ordinary prudence or discretion : and was moreover under the influence and control of the Respondent, who obtained the said discharge from her without consideration : That the incidental mention in that discharge of the amount

inserted in the inventory, was not intended to be, and was not, any sanction by the widow of the correctness of the calculations upon which it was based, and that in fact she was utterly incapable of making or of verifying such calculations.

That the principles of imputation adopted by the Respondent in his calculations were entirely erroneous: the result he arrived at grossly incorrect; and the tender wholly insufficient.

The Appellant also filed a general answer to the exception.

The facts of the case, which are not disputed, are as follows:

On the 29th day of December, 1837, the Respondent purchased from the late John Casson (erroneously called Thomas in the deed,) a lot of land, for £150, payable by twelve annual instalments of £12 10s. each, commencing on the 1st of January, 1839; with the privilege, however, of paying the price at an earlier date if he thought proper.

Having made sundry payments on account of this purchase money, a settlement of account took place between the Respondent and the late John Casson on the 10th March, 1842, by which the balance then due was established at £97 5s. currency bearing interest.

On the 29th May, 1843, the Respondent purchased from John Casson the farm for the price of which the present action is brought, upon the terms already adverted to in the recital of the declaration in the court below.

He continued from time to time to make payments to John Casson, after his death to his widow, and also to the Appellant, the dates and amounts of which payments are detailed in Respondent's exhibit statement K, and no imputation of them appears ever to have been agreed upon.

In May, 1851, John Casson having died and left his widow, his universal usufructuary legatee, his executors made an inventory of his estate, to which neither the widow nor the Respondent were parties, and in this inventory, it was stated that the amount due the estate by the Respondent on the 14th April, 1851, was £182 19s. The estate was afterwards handed over to the widow as usufructuary, by the Executors, and she transferred her rights to the Appellant.

The exception filed by the Respondent appears to tender issue upon the following propositions.

1st. That the result of a proper imputation of the payments made to the Cassons, upon the purchase money of the two farms and interest, would be the reduction of the Appellants demand to the sum of £52 11s. 6d.

2nd. That the entry in the inventory is correct, and that by adopting it as a starting point, the result would be the same.

The Appellant accepts the issues thus offered and trusts to be able to shew:

1st. That the calculations by which the Respondent arrives at the balance of £52 11s. 6d. are erroneous in principle, and;

2nd. That the entry in the inventory was based upon similar calculations, and therefore proportionably incorrect.

The following is the statement filed by the Respondent with his exception.

"Mr. Andrew Thomson to Thomas Casson, representing John Casson and Mary Aery, Dr.

" 1841, January 1st—To balance of capital due this day on purchase of Farm in 1837,	£97 5 0
" 1854, Novemb. 1st—To interest on balance from 1st January 1841,	80 13 6
" 1854, Novemb. 1st—To 10 Instalments on the price of farm bought 29th May 1843,	£177 18 6
" before D. Morison, Notary Public,	250 0 0
" To interest on £350 amount of capital from 1st November 1843, to	
" 1st November 1854,	231 0 0
	481 6 0
" 1854, Novemb. 1st—Amount in capital and interest due and which might be claimed,	658 18 6

CREDIT.

"Moules paid by Thomson and interest allowed on same, up to 1st November 1854, as per receipts.

" 1842, March 10th, paid.....	£12 14 1
" Interest to 1st November 1854.....	10 8 5
" 1843, May, 1st, paid.....	10 0 0
" Interest to 1st November 1854.....	6 18 0
" 1844, February 20th, paid.....	17 10 3
" Interest to 1st November 1854.....	11 3 5
" 1845, February 11th, paid.....	4 2 9
" Interest to 1st November 1854.....	2 6 1
" 1846, February 24th, paid.....	50 7 10 1/2
" Interest to 1st November 1854.....	26 4 4
" 1847, March 12th, paid.....	48 8 0
" Interest to 1st November 1854.....	22 1 10
" 1848, March 8th, paid.....	37 10 0
" Interest to 1st November 1854.....	14 18 4
" 1849, June 16th, paid.....	18 15 0
" Interest to 1st November 1854.....	7 2 3
" 1849, March 23rd, paid.....	60 0 0
" Interest to 1st November 1854.....	19 11 4
" 1849, May 8th, paid.....	12 5 0
" Interest to 1st November 1854.....	3 19 11
" 1850, March 6th, paid.....	25 0 0
" Interest to 1st November 1854.....	6 19 7
" 1850, June 15th, paid.....	24 0 0
" Interest to 1st November 1854.....	6 5 9
" 1851, March 3rd, paid.....	31 5 0
" Interest to 1st November 1854.....	6 16 10
" 1851, April 15th, paid.....	31 5 0
" Interest to 1st November 1854.....	6 12 6
" 1851, October 9th, paid.....	12 10 0
" Interest to 1st November 1854.....	2 5 7
" 1851, December 20th, paid.....	49 18 3 1/2
" Interest to 1st November 1854.....	8 11 0
	606 7 0
" 1854, 1st November, balance in favor of Casson.....	52 11 6
" To interest on this balance from the 1st November 1854 to 1st March 1855.....	1 1 0
	52 12 6

In making up this account, it is evident that the Respondent has disregarded the rule of imputation which provides for the payment of interest before principal. Taking the first entry to his credit as an example, it appears, that interest is claimed from the 10th March 1842 on a payment on account, of £12 14s. 1d., which is equivalent to an imputation of the whole towards the capital then due. But at that very time there was due of interest £6 19s., which should have been extinguished before any diminution was made in the principal. The difference only between £12 14s. 1d. and £6 19s., viz, £5 15s. 1d. should therefore have been imputed towards the principal. The entry to be correct should stand thus:

1842, March 10th, paid.....	£12 14 1
Interest on £5 15s. 1d. (amount imputed towards the principal) to the 1st Nov. 1854.....	4 7 7
	17 1 8

Thus placing to the Respondent's credit £17 1s. 8d., instead of the two sums of £12 14s. 1d., and £10 8s. 5d., amounting together to £23 2s. 6d.; equal to an excess of 40 per centum over the correct amount. Many subsequent payments were made, when interest exceeding their amount was due:—yet interest is charged upon them; or in other words, they are imputed upon the Capital, by the Respondent; thus creating errors still greater in proportion to the amount paid, than in the entry just examined.

It is evident therefore, the Respondent's process being incorrect, that the first step towards the adjustment of the amount due must be the establishment of the rules under which the imputation of the amounts paid, is to be made upon the purchase money of the two farms.

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.

The only change made in the Respondent's own statement of his payments, is by the alteration of the date, 9th October 1851, to the true date, 9th October 1850.

By appendix A, it appears that the amount due on the 1st November, 1851, instead of being only £52 11s. 6d., as pretended by the Respondent, really amounted to £136 11s. and an examination of Appendix B. shews an indebtedness at the same date of £123 12s. 0d. These results are obtained from the very same *data*, as those made use of by the Respondent in his calculations, and whichever of them may be considered correct, it is manifest that the principles of imputation he has adopted are most glaringly erroneous. He must therefore fail in sustaining the pretensions enunciated in the first part of his exception.

A similar conclusion the Appellant submits must necessarily follow an examination of the second pretension of the Respondent, viz: that the amount entered in the Inventory of Casson's Estate as then due, is correct; and that, on credit being given him for the sum of £49 18s. 3d. mentioned in the discharge of date the 10th Dec., 1851; his tender of £53 12s. 6d. will be found sufficient. In reality the attempt at a solution of the difficulties in this case, by ignoring all transactions previous to the Inventory, leads to the judgment which was rendered by the Court below; and by exactly following the pretensions enunciated by the Respondent in the second part of his exception, the balance due will be found to exceed his tender considerably. But the Appellant considers himself entitled to take a wider view of the matter now in controversy, and to examine the entry in question upon its merits. The materials for such an examination are furnished in a great measure by the Respondent himself, who has in his own plea and in his statement in support of it, placed upon record, in detail, the whole of the payments he ever made to the Appellant, or to the parties he represents; and it is respectfully contended that no rule of law, nor any matter peculiar to the present action, either prevents the Appellant from shewing an error in such an entry, or sustains the Respondent in relying upon it, if it be really erroneous. The judgment of the Court below is evidently founded upon a wrong impression of the facts of the case. All the payments, the imputation of which is in dispute, were made *before* the date of the Inventory. Therefore, contained in the first part of the judgment, upon the questions of imputation, was therefore totally useless and irrelevant, if the entry in the Inventory was to be adopted without examination, as conclusive. On the other hand, if the rules of imputation adopted by the Court were correct, and were to be made use of in the case, the second part of the judgment was inconsistent with the first, inasmuch as it acknowledged as correct, that which its own previous declaration proved to be wrong. In other words the judgment of the Court below, established rules of imputation which conclusively shewed the inventory to be grossly incorrect, and then in effect declared it to be right. This could not have been intended: and in all probability was caused by the mistaken impression of the Court below that the payments under discussion, were made subsequent to the date of the Inventory, instead of before it. If this error had not found its way to the minds of the members of the Court below, there would probably have been little need of the present appeal. It is plain, however, that the Appellant has not now to contend against any decision of the Court below, establishing the infallibility of the Inventory; but on the contrary there is a fair presumption from the judgment, that it was the opinion of the Honorable Judges there, that its binding effect upon the parties should depend upon its correctness.

The Appellant therefore confidently submits in this connection, that an entry in the inventory of the estate of a deceased person made by his executors, is not conclusive against his heirs or representatives in favor of a stranger, as establishing the amount of a debt due by such stranger; and that if the entry be shewn to have been made in error, the amount actually due may be recovered. It is considered that this proposition admits of no question and will be conceded without argument. To establish the incorrectness of the entry upon which the Respondent relies, it is only necessary to compare the results shewn by statements A and B with that entry; and whichever of those statements may be adopted as correct, the inventory will be found to be wrong to a large extent. But the Appellant succeeded in causing to be produced and filed as part of the evidence, the very calculations upon which the Notary based the entry in question; by which it

will be seen not only that he adopted the Respondent's erroneous mode of making up the statement, but computed the interest on £350, the purchase money due under the deed of 1843, from the 1st November 1844, instead of 1843, thus making a difference against the estate of £21 in that item alone. It was contended on behalf of the Respondent at the argument in the Court below, that the declaration by her in the Notarial discharge of date the 20th December 1851, that the sum therein mentioned was received "on account and in deduction of the amount or balance thereof mentioned in the inventory of the estate of the late Mr. John Casson;" was a ratification and sanction by her of the entry in the inventory which she could not retract; and which prevented the Appellant as her representative, from attacking that entry in any manner whatever. In answer to this pretension the Appellant submits, that such a declaration even in the mouth of a person competent to manage such business, and to make such calculations as the present inquiry involves, would by no means debar him from shewing a mistake, if a mistake should be afterwards discovered; and in fact is not in itself such a deliberate sanction, as should carry with it any weight; but made by an aged, decrepid, infirm, and imbecile woman, unable even to write her name, it cannot for a moment be regarded as depriving her of any rights to which she had previously been entitled. It must therefore be concluded that the entry in question may be disregarded if erroneous, and that it is incorrect to a very serious extent.

Having thus disposed of the issues tendered by the Respondent's exception, the only remaining question is as to the amount for which the Appellant should have judgment. This may easily be arrived at, after the establishment of the principles upon which the computation is to be made, by deducting from the balance due on the 15th April 1851 the payment since that date, due regard being had to the adjustment of interest. That balance, the Appellant respectfully contends, should be the amount shewn in Appendix A, and the sum which should be awarded to him will therefore be £136 11s. 0d., with the costs of both Courts.

Montreal, September, 1857.

ABBOTT & BAKER,

For Appellant.

APPENDIX A.

Shewing amount due by Respondent at the date of the Inventory, upon the principle of imputation contended for by the Appellant: and also the amount due at the time of the institution of the action in the Court below.

Dates of Payments.	Principal unpaid under deed of 25th Dec. 1837.	Interest due under that deed.	Interest due under deed of May 1838.	Balance of interest unpaid after imputation of payments.	Total interest due under both deeds.	Amount of payments.	Proportion of payments to be imputed on the principal.
1842.	£ s. n.	£ s. n.	£ s. n.	£ s. n.	£ s. n.	£ s. n.	£ s. n.
March 10, 1843.	97 5 0	0 19 0	None.	None.	6 19 0	12 14 1	5 15 1
May 1, 1843.	91 9 11	0 5 2	None.	None.	6 5 2	10 0 0	3 14 10
Feb. 25, 1843.	87 15 1	4 7 9	None.	None.	4 7 9	17 10 0	13 2 3
Feb. 11, 1843.	74 12 10	4 6 2	27 1 2	None.	31 7 4	*4 2 0	None.
Feb. 24, 1847.	74 12 10	4 12 0½	21 11 0	27 4 7	53 8 1½	†50 7 10½	None.
March 12, 1848.	74 12 10	4 13 5	21 16 2	3 0 3	29 9 10	48 8 0	18 18 2
March 8, 1849.	55 14 8	3 6 3	20 15 4½	None.	24 1 7½	37 10 0	13 8 4½
Jan. 16, 1849.	42 6 3½	0 13 11	5 15 1	None.	6 9 0	18 15 0	12 6 0
March 23, 1850.	30 0 3½	1 7 4	15 18 9	None.	17 6 1	60 0 0	42 13 11
"	Amount imputable on principal of deed of 1837,						30 0 3½
"	Amount due under deed of 1837,						12 13 7½
"	Balance to be imputed on principal of deed of 1843,						350 0 0
"	Therefore deduct it from that principal,						
May 8, 1850.	Balance of principal due this day,						337 8 4½
"	Interest to date,						2 12 1
"	Total,						339 18 5½
"	Deduct cash on account,						12 5 0
March 6, 1850.	Balance of principal,						327 13 5½
"	Interest to date,						16 5 4
"	Total,						344 18 9½
"	Deduct cash on account,						25 0 0
June 15, 1851.	Balance of principal,						319 18 9½
"	Interest to date,						5 6 2½
"	Total,						325 5 0
"	Deduct cash on account,						24 0 0
October 9, 1851.	Balance of capital,						301 5 0
"	Interest to date,						5 15 10
"	Total,						307 0 10
"	Deduct cash on account,						12 10 0
March 3, 1851.	Balance of capital,						294 10 10
"	Interest to date,						7 0 4½
"	Total,						301 11 2½
"	Deduct cash on account,						31 5 0
April 15, 1851.	Balance of capital,						270 6 2½
"	Interest to date,						1 18 3½
"	Total,						272 4 0
"	Deduct cash on account,						31 5 0
"	Balance due this day,						£240 19 0

* Insufficient to cover interest by £27 4s. 7d.

† Insufficient to cover interest by £3 0s. 3d.

The entry in the inventory, therefore, under this method of imputation, is incorrect to the extent of £58 0s. 6d., or nearly one-fourth of the entire debt. The balance due the 1st November, 1851, is shewn as follows:—

	£	s.	d.
1851. April 15, Amount of capital due as above,	240	19	6
Decr. 30, Interest to date,	10	5	2
“ Total due,	251	4	8
“ Deduct amount of discharge,	49	18	3½
“ Balance of capital,	201	6	4½
1854. Novr. 1, Interest to date,	35	4	7½
	236	11	0
Deduct 4 instalments not matured, each £25,	100	0	0
Amount recoverable in present action,	£136	11	0

APPENDIX B.

Shewing amount due at the date of the Inventory, 4th June, 1851, according to the rules of imputation fixed by the Court below.

	£	s.	d.
1841, January 1, Balance settled as being due under deed of 1837	97	5	0
1842, March 10, Interest to date	6	19	0
Total due	104	4	0
Cash on account	12	14	1
Capital due	91	9	11
1843, May 1, Interest to date	6	5	2
Total due	97	15	1
Deduct Cash on account	10	0	0
Capital due	87	15	1
1844, February 26, Interest to date	4	7	9
Total due	92	2	10
Deduct Cash on account	17	10	0
Capital due	74	12	10
1845, February 14, Interest to date	4	6	2
Total due	78	19	0
Deduct Cash on account	4	2	9
Capital due £11 12s. 10d., Interest 3s. 5d.	74	16	3
1846, February 24, Interest on £14 12s. 10d. to date	4	12	0½
Total due	79	8	3½
Deduct cash on account	50	7	10½
Capital due	29	0	5
1847, March 12, Interest to date	1	16	2
Total due	30	16	7
Cash extinguishing Principal and Interest, due under deed of 1837	48	8	0
Leaving to be imputed on the Interest, due under the deed of 1843	17	11	5
Interest on £350 purchase money, under deed of 1843, from the 1st November, 1843 to date	70	12	8
Balance of Interest, due on deed of 1843	53	1	3
1848, March 8, Interest on £350 to date	20	15	5
Total Interest due	75	16	8
Deduct cash on account	37	10	0
Balance of Interest due	38	6	8
June 16, Interest on £350 to date	5	15	1
Total Interest due	43	1	9
Deduct cash on account	18	15	0

Balance of interest due.....	23 6 9
1849, March 23, Interest on £350 to date	16 3 1½
Total interest	39 9 10½
Cash extinguishing interest	60 0 0
Leaving a balance to impute on principal of	20 10 1½
Amount of principal due.....	350 0 0
Balance of principal due	329 9 10½
" May 8, Interest to date	2 10 11½
Total interest and principal	332 0 10
Deduct cash on account, extinguishing interest	12 5 0
Balance of principal.....	319 15 10
1850, March 6, Interest to date	15 10 10
Total interest and principal	335 15 8
Deduct cash on account extinguishing interest	25 0 0
Balance of principal	310 15 8
" June 15, Interest to date	5 4 3
Total interest and principal	315 19 11
Deduct cash on account extinguishing interest	24 0 0
Balance of principal.....	291 19 11
" October 9, Interest to date	5 11 4
Total interest and principal	297 11 3
Deduct cash on account extinguishing interest	12 10 0
Balance of principal.....	285 1 3
1851, March 3, Interest to date	6 16 10
Total interest and principal	291 18 1
Deduct cash on account extinguishing interest	31 5 0
Balance of principal.....	260 13 1
" April 15, Interest to date	1 16 10
Total interest and principal.....	262 9 11
Cash on account extinguishing interest	31 5 0
Balance of principal at date of inventory.....	231 4 11

The Inventory under this mode of imputation, is therefore incorrect, to the extent of £48 5s. 11d. currency, or a little more than one-fifth of the entire debt. The balance due the 1st November, 1854, is shewn as follows:

1851, April 15, Amount of capital due under the deed sued upon.....	231 4 11
" December 20, Interest to date	9 9 1
Total due	240 14 0
Deduct amount mentioned in Notarial discharge of this date	49 18 3½
Total due	190 15 8½
1854, November 1, Interest to date	32 16 3½
Total amount due	223 12 0
Deduct four instalments of £25 each not matured.....	100 0 0
Amount recoverable in the present action.....	123 12 0

