

The statement of claim alleges that the mortgages mentioned were transferred to defendants as trustees for John Logan, and that they should be re-assigned to him whenever he required that to be done, or, in the alternative, that the mortgages were assigned in trust to divide the money, when realized, among the lawful children of John Logan as he might direct.

There is no question in this case of fraud or undue influence or want of capacity on the part of John Logan, or want of legal advice. John Logan is exceptionally clear and bright and active for a man of his years. He went to his own solicitor, of his own mere motion, and gave instructions for the transfers as they were afterwards drawn up and executed.

The evidence put forward as evidencing a trust is that of the solicitor John R. Logan. He said that when the assignments were drawn both mortgages and assignments were to be left in his possession, and that John Logan said (he would not say that Mrs. Drew so said), "make it clear that both are to be present when mortgages taken away." The solicitor says Mrs. Drew said, "You know, father, I am not asking for this for myself—it is in the interest of the family." The solicitor thinks Mrs. Drew said she would divide the proceeds as her father might direct. The solicitor advised some writing, but the parties did not assent to that, and it does not in any way appear that if John Logan wanted any writing, or any understanding in regard to these mortgages, there was anything to prevent his getting it.

The evidence of John Logan was that he should get the mortgages back when he wanted them. No question about division, but he says, "They did say they would divide the money in case of my death." He also stated that if his son had not brought suit, he would have let matters stand as they were.

In the absence of fraud or undue influence or weakness of mind or want of professional advice, it is an unheard of condition to set aside a transfer of property at the instance of a mere assignee for the purpose of litigation, when his assignor would have allowed the matter to rest. That being the case down to the trial, it does not add to the strength of plaintiff's case merely to add John Logan as a party plaintiff.

As against plaintiff's case is the evidence of the defendants. Then the affidavit of John Logan, made in the ali-