

## COLERIDGE V. DAVIS—SUTHERLAND, J.—JUNE 7.

*Mortgage—Action on—Defence—Failure to Prove—Counterclaim.*—Action by the administrator of the estate of Selina Ann Coleridge, deceased, upon a mortgage of land made by the defendant to the deceased to secure the sum of \$600. The plaintiff sought a personal judgment for the amount due upon the mortgage and, in default of payment, sale of the land. The land was conveyed to the defendant by the deceased by a deed which stated the consideration to be \$700, and the mortgage for \$600 was made by him at the same time. The defendant pleaded that the deed to him was a mere trust deed for sale, that it was not intended that the mortgage should be paid, and he said that he was willing to turn over the property to the plaintiff as administrator. The defendant counterclaimed for some chattels alleged to have been left by him for safekeeping with the deceased. The action and counterclaim were tried without a jury at Walkerton. SUTHERLAND, J., in a written judgment, stated the facts and carefully considered the evidence. He found the facts against the defendant, gave judgment for the plaintiff as prayed with costs, and dismissed the counterclaim with costs. Sir George Gibbons, K.C., for the plaintiff. A. S. Clarke, for the defendant.