afterwards Julia Hart, being entitled in fee simple to the lands in question as her separate estate, on the 1st April, 1888, conveyed them to one Palmer, Samuel Softley (her husband) joining in the deed as a grantor, for the consideration of $5,000—"$1,000 in cash and a mortgage for $4,000 for the balance." The mortgage for $4,000 was taken in the name of Samuel Softley, instead of Julia Softley. The evidence did not shew the reason for this, but did shew that Samuel was accustomed to do his wife's business in his own name. This mortgage had never been discharged. Palmer conveyed the lands to one Hagar, who gave a second mortgage thereon to one Henderson; and, on the 30th November, 1891, Hagar, reciting his inability to pay the $4,000 mortgage, conveyed the lands to Samuel Softley, in consideration of $50 and a release of all claims and demands in respect of the $4,000 mortgage. Softley then paid Henderson $50 and received a discharge of his second mortgage.

Samuel died in February, 1899, and Julia in January, 1917.

Julia specifically devised the lands in question to the plaintiff.

The defendants the Methodist Church were the residuary devisees and legatees under the will of Samuel.

Julia was sole executrix of the will of Samuel. When she died the Toronto General Trusts Corporation were appointed in her stead.

The inventories and valuations sworn to by Julia in her application for letters probate of Samuel's will contained the words, "Farm 45 acres, Township of Toronto" (the lands in question), "held in trust for Mrs. Softley, $5,000." It was contended for the plaintiff that these words were admissible in evidence in this action as a declaration by Julia in the course of duty as executrix.

Reference to The Henry Coxon (1878), 3 P.D. 156, 158, as shewing that entries in a document made by a deceased person can be admitted as evidence only when the entries relate to an act or acts done by a deceased person and not by third parties.

The inventories etc. did not comply with these tests and were not admissible; nor were they admissible as declarations against interest—they were in fact self-serving declarations.

There was nothing in the evidence to bring the case within Clergue v. Plummer (1916), 37 O.L.R. 432, 38 O.L.R. 54.

There was, however, a presumptive or resulting trust in favour of Julia, in the circumstances. No evidence was adduced that any consideration passed from Samuel to Julia which would justify the mortgage being taken in the name of Samuel; no evidence to rebut the presumption of a resulting trust, and no evidence of a gift. The onus of proving such a gift was upon those claiming under Samuel: In re Flamank, Wood v. Cock (1889), 40 Ch. D. 461.