find as a fact the due execution of the instrument attacked. At most, the registration is made prima facie evidence of the execution as a fact; not that the grantor understood the same: Canada Permanent Loan and Savings Co. v. Page, 30 C. P. 1. . . .

In my opinion the defendant has not discharged the onus cast upon him . . . of clearly establishing that the transaction is one which, under all the circumstances, ought to be sustained.

. . . .

[Reference to Barry v. Butlin, 2 Moo. P. C. 480; Fulton v. Andrews, L. R. 7 H. L. 460; Adams v. McBeath, 27 S. C. R. at p. 23; Collins v. Kilroy, 1 O. L. R. 503; British and Foreign Bible Society v. Tupper, 37 S. C. R. 123; Mayrand v. Dussault, 38 S. C. R. 480; Anderson v. Elsworth, 3 Giff. 154; Cooke v. Lamotte, 15 Beav. 234, 239; Walker v. Smith, 29 Beav. 394; Coots v. Acworth, L. R. 8 Eq. 558, 567; Huguenin v. Baseley, 14 Ves. 273; Forshaw v. Wellesley, 30 Beav. 343; Bridgeman v. Green, 2 Ves. Jr. 627; Turnbull v. Duval, [1902] A. C. at p. 435; Chaplin v. Brammall, [1908] 1 K. B. 233; Slater v. Nolan, I. R. 11 Eq. 367, 386; Mason v. Seney, 11 Gr. 447; Smith v. Alexander, 12 O. W. R. 1144; Wigmore on Evidence, Can. ed., vol. 4, sec. 2503.]

Applying the foregoing authorities to the present case, I am clearly of opinion that—having regard to the position of the parties, the age, condition, and helplessness of Malloy, the fact that, so far as there was evidence at all, it is to the effect that he desired a will and not a deed—that the transaction is in substance a gift from Malloy to the defendant, and that the defendant procured the preparation of the deed—the onus was clearly upon him to establish the perfect fairness of the transaction, and that the donor clearly and perfectly understood what he was doing, and realized that by signing the deed he was in effect giving away all his property.

I think there should have been a power of revocation in the deed, under certain conditions; that the rights and obligations of the parties should be clearly explained to and understood by the donor. The defendant having failed to shew that Malloy understood the transaction, and realised what he was doing, has failed, I think, in establishing the fact of a valid transfer of the property.

I am left wholly in doubt as to what really took place, with a grave suspicion, amounting to probability, that Malloy did not understand what he was doing, and only supposed that he was making some arrangement which would last during his lifetime.

I think this is a case in which a strong inference against the defendant ought to be drawn from the fact that he did not see fit