The defence was: that no moneys were advanced by the deceased upon the mortgage; that, without request or consideration therefor, the defendant voluntarily executed the mortgage for the purpose of securing to the deceased, who was his aunt, an income during her lifetime; that the mortgage was never delivered; and that it came to the hands of the plaintiff with full knowledge on his part that there had been no delivery and that no moneys had been advanced.

The action was tried without a jury at Woodstock.

W. T. McMullen, for the plaintiff.

R. McKay, K.C., for the defendant.

Sutherland, J., in a written judgment, after setting out the facts, said that he was asked by the defendant to find that there was a gift inter vivos of the $3,500; that there was an agreement between him and his aunt that he should pay interest on that sum for her life as part of her income; that there was in reality no advance of the consideration named in the mortgage; that the mortgage was intended to be and was in fact only a security for the interest or income; and that there never was any delivery of the mortgage to the aunt or for her which would make it an effective instrument.

The evidence fell short of that satisfactory proof necessary to make out a complete gift of the money by the aunt to the defendant. If there was no gift, there was consideration for the mortgage, as the defendant received the moneys, and so expressly admitted.

The mortgage was in fact registered, even though, as was said, the defendant did not give instruction to that end, and the solicitor employed to draw the mortgage registered it as a matter of usual practice. It came back into the possession of the defendant with the certificate of the registration on it, and that was prima facie evidence of the registration of the instrument and of its due execution: Registry Act, R.S.O. 1914 ch. 124, sec. 50.

The defendant admitted that the document was intended to be an immediate and effective security to his aunt to the extent at least of interest on the consideration-money named therein, for her lifetime, and he in fact paid interest up to a certain time, although he testified that his aunt was unaware of the existence of the mortgage. It was difficult to believe the story that the transaction was not intended to be just what it purported on its face to be, or that knowledge of it was not conveyed to the aunt in her lifetime. The instrument was in fact in the terms intended; and there was a delivery in the legal sense. The aunt was living with the defendant at the time of the execution and registration of the mortgage and when the defendant received it from the solicitor