

MIDDLETON, J.

NOVEMBER 30th, 1917.

TORONTO GENERAL TRUSTS CORPORATION
v. PETERSON.

Evidence—Action upon Mortgage Brought by Executors of Deceased Mortgagee—Release of Part of Mortgage-moneys Asserted by Mortgagor-defendant—Fabrication of Documents in Corroboration of Story of Defendant—Perjury in Face of Court—Effect as to Weight of other Evidence—Disbelief of Trial Judge—Effect of Corroborative Testimony Given on Foreign Commission.

Action by the executors of James J. Foy, deceased, upon a mortgage for \$9,000 made by the defendant in favour of the deceased.

The action was tried without a jury at Toronto.

D. L. McCarthy, K.C., and T. L. Monahan, for the plaintiffs.
R. McKay, K.C., for the defendant.

MIDDLETON, J., in a written judgment, said that the defence was, that, by agreement between the defendant and the deceased, credit was given to the defendant upon the mortgage of an amount which reduced the principal to \$4,000; and that, in addition, the defendant had rendered services to and incurred expense at the request of and for the benefit of the deceased, the value of which should be set off against any balance which the plaintiffs might claim. At the trial, the defendant testified that the deceased had signed a release of \$5,000, part of the principal money; that she gave the document to the deceased for safekeeping; and that it could not now be found. The claim for services and expenses was not supported at the trial.

The existence of the release depended entirely upon the defendant's evidence and that of a Miss Beach. The defendant sought to corroborate her evidence by the statement that each gale-day after the alleged rebate of principal, she made out and gave the deceased a cheque for interest computed on the balance only, but that the deceased either destroyed the cheques or did not cash them. She produced stubs of cheque-books which shewed, apparently in due course, the entry of these cheques, and identified the stubs as the actual stubs of the various cheques.

It appeared, in the course of the trial, to the surprise of counsel for the defendant, who was of course not informed of it, that the