RIDDELL, J., in a written judgment, after setting out the facts, said that three issues were presented in regard to the bank document of the 6th November, 1916. (This was a direction to the Bank of Hamilton to open a joint account in the names of Joseph A. Ott (since deceased), Catherine Ott (his wife), and Minerva E. Barrick (his daughter), and authorising the bank to pay out moneys deposited to the credit of the account to any one of the three and the survivor, etc. The document was signed by the three. The money deposited to the credit of the account (about $3,200), was that of the deceased; and the plaintiff, the only other child of the deceased, claimed her share of it under the will of the deceased).

The first question was, whether the deceased was induced by fraud, duress, or undue influence, to execute the document. The answer to this question must be against the plaintiff. There was no evidence of fraud or improper conduct of any kind.

The second question was, whether the deceased was competent to understand and did understand the effect of the document. The deceased was of normal capacity. Several trivial matters were alleged against his capacity, but none of them was of more consequence than the trivialities alleged in Empey v. Fick (1907), 13 O.L.R. 178, 15 O.L.R. 19 (C.A.)

The third question was, whether the document was so improvident that it should be set aside. However the case would have stood if the action had been brought by Joseph A. Ott in his lifetime, the law in Empey v. Fick should be accepted as shewing that the plaintiff could not, after her father's death, succeed. The defendant Minerva E. Barrick set up as her defence an agreement which she alleged was made by her father with herself and her husband, that, in consideration of their giving the father a home, he would give them all his property—and the bank document was intended to evidence that agreement. This defence was abundantly supported by the evidence, and the evidence was believed by the trial Judge. The language used in Empey v. Fick, 15 O.L.R. at p. 22, was applicable.

The appeal should be dismissed with costs.

ROSE, J., agreed with RIDDELL, J.

MEREDITH, C.J.C.P., in a written judgment, after setting out the facts, said that from the testimony two things appeared certain: (1) that there was no concluded contract between the parties; and (2) that, if there had been, it was so manifestly improvident and incomplete that in a Court of Equity it must be considered ineffectual.