

HON. MR. JUSTICE CLUTE:—The plaintiff, as the executor of Elizabeth Kenny, deceased, brings this action to recover \$542.17 from the defendant Esther Dunkley, and the Canadian Bank of Commerce. This sum stood to the credit of the testatrix, Elizabeth Kenny, in the Canadian Bank of Commerce at the time of her death, which occurred on the 27th February, 1912.

On the 9th March, 1912, the defendant, Esther Dunkley, withdrew this sum from the bank and placed the same to her own credit in the same bank, and now claims it as her own.

The circumstances under which this claim is made, are as follows: The testatrix, Elizabeth Kenny, being ill, gave to her daughter, Esther Dunkley, a memorandum in writing in the following words: "Arrange my money in Esther Dunkley's name so she can draw it. Elizabeth Kenny, Chatham, August 18th, 1911."

It is not disputed, as the evidence shews, that this was intended for the local agent of the Canadian Bank of Commerce, at Chatham. This instrument was taken to the bank, and on the 26th August, 1911, the defendant, Esther Dunkley, drew from the bank \$5 and gave a receipt therefor in her own name, the money being in the savings bank department. On September 2nd, 1911, Elizabeth Kenny drew \$5 from the bank, signing her own name to the receipt, and on the 29th October a further sum of \$35, signing her own name to the receipt.

On the 9th March, 1911, the defendant, Esther Dunkley, had the whole amount placed to her credit by signing a receipt therefor to the bank. The defendant claims this money upon two grounds: First, that there was a verbal trust declared in her favour by her father, whereby she was to receive certain moneys, of which this formed a part, after her mother's death. The trial Judge has found against this claim, and I think justly so. The evidence falls far short, in my opinion, of creating a trust in her favour.

A further claim is made that the late Elizabeth Kenny authorised a joint account and upon her death the right to the money in the bank survived to Esther Dunkley. The memorandum above referred to was signed by Elizabeth Kenny while in the hospital; that on the day it was signed