

fit mental condition and perfectly competent to do what she did.

Esther Dunkley, to establish her claim that the moneys in question were held by the mother in trust for her, after her mother's death, claims that in 1896, a purchase of some property was made by Esther Dunkley's father, Lewis Kenny, and that the deed thereof was made to his wife, Elizabeth Kenny, on the understanding that the daughter, Esther Dunkley, would have it after her death. The father died about eleven years ago, and Elizabeth Kenny in 1909, sold the property, and the daughter claims that \$800 out of the proceeds of the sale was deposited in the Canadian Bank of Commerce in the account now in question, and that the moneys sued for are part of that \$800.

To support her contention she produced a will made by her mother, in January, 1899, when she was suffering from an attack of typhoid fever, by which she purported to devise to her husband, Lewis Kenny, and this daughter, the lands acquired by her in 1896, to hold to them jointly during the lifetime of the husband, and at his death to the daughter, her heirs and assigns.

To corroborate this, John H. Barnes, one of the witnesses to that will, was called, and swore that at the time of the making of the will he heard Mrs. Kenny say she wanted Mrs. Dunkley to have the place, that that was the understanding between her and her husband.

Mrs. Liddy says she was in the adjoining room when the will was being made, and that she heard Mr. and Mrs. Kenny say the property would go to the daughter after their death.

The evidence of Charles Kenny, on the other hand, is that at the time the prior will was made his mother was so ill as not to be able to recognize him, and that a few months before her death she informed him she did not know of the will until two weeks after she had been returned from the hospital after recovery from the fever.

There is some doubt, too, about the ownership of the money with which the purchase of the property was made in 1896, and I am unable to say on the evidence that it is clear that it belonged to Lewis Kenny and not to his wife.

I am not prepared to accept the evidence of the trust as sufficient to establish it. I believe the defendant Esther Dunkley's account of the terms of the alleged understanding that the property was to be hers on the death of both