

The assets, as claimed by the executor, consisted of some household furniture and the moneys so on deposit.

Defendant, Esther Dunkley, is the only daughter of the deceased, and is a half-sister of the plaintiff.

Deceased by her will gave to the executor \$300 to be used by him for the benefit of another son, Charles Kenny, subject to certain directions as to the control thereof, and as to the conditions on which payment was to be made to Charles. The household furniture was given to the executor in trust for the use and benefit of Charles, with the right to the executor to retain possession of it until Charles should "alter his present mode of living," and all the rest of the estate was given to the plaintiff.

Defendant, Esther Dunkley, claims to be the owner of the money under the circumstances hereinafter set forth, and alleges in her defence that her mother at the time of making the will was not of sound mind, memory or understanding, and that if she signed the will, her signature was obtained by undue influence on the part of the plaintiff and his wife and others acting with them.

At the trial the claim of undue influence was abandoned, and there is no evidence that any such existed.

The defences, therefore, relied upon by defendant, Esther Dunkley, are, first, that the moneys in question were held by her mother in trust for her after her father's death, under an alleged understanding between her father and mother in 1896; secondly, that the money in the bank was held by the mother and this defendant in joint account with a right of survivorship in the latter; and, thirdly, that the mother was mentally incapable of making the will.

Dealing with the last of these claims, I find that at the time of making the will the testatrix was of sound mind and fully capable of making a will and disposing of any assets which she had.

The evidence shews that the testatrix had at times suffered from neuralgia, that on November 8th, 1911, she was taken ill in her rooms where she lived with her son Charles, and from that date until November 13th, her daughter stayed with her a considerable part of the day time, but not at night. The daughter says that during that time her mother was in a condition in which she did not at times understand what was taking place around her, that she had delusions, she did not recognize her or other members of the family who called