

BURKETT v. OTT.

1918
Dec. 11
Dec. 23

ON APPEAL FROM THE APPELLATE DIVISION OF THE
SUPREME COURT OF ONTARIO.

Contract—Money in bank—Instructions to banker—Undue influence.

APPEAL from a decision of the Appellate Division of the Supreme Court of Ontario (1), affirming, by an equal division of opinion, the judgment for the defendants (respondents) at the trial.

The plaintiff, Emma Burkett, brought action to have it declared that money in a bank, formerly belonging to her deceased father, was the property of his personal representatives. The defendants, plaintiff's mother and sister, claimed the money as their own.

The father, not long before his death, executed a document addressed to the bank in which he had on deposit some \$3,000 and directing an account to be opened in the name of himself, his wife Catherine Ott, and his married daughter, Minerva Barrick (the two latter being defendants in this action), the money to be drawn out on the cheque of any one of the three. The defendants alleged an agreement to maintain the father and mother while they lived as consideration for this agreement. The trial judge held that the money belonged to the defendants, there being good consideration and no fraud nor undue influence proved. On appeal, that judgment stood affirmed by equal division in the Appellate Division.

The Supreme Court of Canada reversed this judgment, holding that it was an improvident arrangement which should not be allowed to stand.

Appeal allowed with costs.

Colter for the appellant.

Morwood for the respondents Ott and Barrick.

Bradford for the respondent Bank of Hamilton.