

SUPREME COURT.

Tuesday, June 20.

CIVIL SITTINGS.

Before his Honour Mr. Justice Chubb and a jury of four.

Hendle and Others v. Qualtrough and Another.

Mr. Stumm, with him Mr. Fewings (instructed by Messrs. Atthow and M'Gregor), for the plaintiffs; Mr. E. M. Lilley (instructed by Messrs. Roberts and Roberts) for the defendants.

The trial of this action, in which William James Hendle, a butcher, residing at Nundah, and his wife, Lucy, and W. J. Heirdsfield were the plaintiffs, and Walter H. Qualtrough, a plumber, and Elizabeth Matilda Qualtrough, widow of William Qualtrough, deceased, were the defendants, was resumed.

Lucy Hendle, continuing her evidence, said she received some money as rent from W. H. Qualtrough for the Lutwyche property. Mrs. Qualtrough told her that the property was in her name, but she found out afterwards that it was in the name of W. H. Qualtrough. Mrs. Qualtrough paid her the balance of £25 some time after the inspection of the property at Lutwyche, and witness gave her a receipt. On that occasion Mrs. Qualtrough said she had a share of the money for two of her brothers in the bank. Witness was told that the reason the Brunswick-street property was placed in the name of Mr. Qualtrough was because her father was drinking, and would probably have lost it. Mrs. Qualtrough said the property was only worth £100 when she got it. Witness received the tin box which she had given to her brother from his widow after his death. It contained a document, and witness knew the signature to be that of Mrs. Qualtrough.

Cross-examined by Mr. Lilley: She had not contributed towards her father's support, but her brother George had done so. She did not turn her father from her door.

Can you understand a man who had property worth £2200 living and dying at Dunwich?—Because he could not get the money. He could not sell the property.

Can you tell me why you children allowed him to die at Dunwich if he had property worth £2200?—Yes; he was always drinking, and we could not put up with it, because we are not drunkards ourselves.

Who supported your father and your sister Lizzie?—My brother George supported my father while he stayed with him, and paid for him while he was at Dunwich. He supported Lizzie till she was 19, when she got married.

I suppose your father knew the circumstances under which he transferred the property better than any one else?—I suppose he did.

Can you understand your father consenting to be dependent upon your brother if he owned this property?—He could do nothing with the property while Qualtrough had it.

In answer to other questions witness said

with the property while Qualtrough had it.

In answer to other questions witness said the Lutwyche property had been settled on her for life, and on her children afterwards. She did not think that was a wise provision. She considered she had the right to do what she liked with her own. Property had been settled on her sister Lizzie in the same way.

George Jones, a deputy registrar of titles, produced the documents connected with the land in question.

W. J. Heirdsfield, a miner, residing at Gympie, and a son of the late George Heirdsfield, stated that in 1890 he visited Mrs. Qualtrough's house, and she told him there was £100 for him, but she would not give him any of it until he went away. She also said that only for her brother George she would not give him a penny. She gave him the £100 the day before he returned to Gympie. At the same time she said there was more coming to him, but she would wait to see how he got on with that—before she gave it to him. She added that she intended to put the money for his two brothers in the bank until they were able to take care of it. She told him not to go to his sister Lucy, or she (Lucy) would get every penny of it from him, and not to go to his brother George's wife, or she (Mrs. Qualtrough) would not give him a penny more. Witness paid 12s. 6d. a month for his father at Dunwich, and he believed his brother paid a similar amount. Mrs. Qualtrough said that it had taken a good deal of the money to pay for his father's keep at Dunwich. Witness next saw Mrs. Qualtrough in 1893, when he asked her who authorised her to sell the property, and he and Mrs. Hendle, who was also there, were ordered out of the house.

Cross-examined by Mr. Lilley: He had not set up this claim earlier, because he had been so much away from home and he did not bother. He intended to litigate the matter as soon as he had money. He first decided to make a claim in 1893. His father did not claim the property because he could not. He always understood it was his mother's property. He could not suggest why she had not claimed it.

Thomas Mylne, civil service commissioner, gave evidence with regard to an endorsement upon the transfer.

Thomas C. Port, a fisherman, deposed that he lived next door to the Heirdsfields in 1867.

as the tenant of Mr. W. Qualtrough. He arrived in the colony in 1866. He had a conversation with Mr. W. Qualtrough just before the latter died. Qualtrough said, "I feel thankful that I have done right to Heirdsfield's wife and children." Subsequently, Mrs. Qualtrough told him, in the presence of his wife, that the land belonged to the children, and she would see that Heirdsfield never had the handling of it.

William Brunditt, accountant in the Intestacy and Insanity Office, stated that the deceased, George Heirdsfield, went to Dunwich in October, 1886, left there on 4th August, 1887, and returned on 29th September, 1887. He was again discharged on 31st

ber, 1887. He was again discharged on 31st August, 1888, and returned on 12th February, 1889. He left on 8th May, 1889, and returned on 29th May, remaining until he died in 1890. The son, George Heirdsfield, contributed £9 15s. 10d. towards his father's support, and William J. Heirdsfield £14 10s. 5d.

Cross-examined: His records did not show that Mrs. Qualtrough had not paid anything towards the maintenance of the deceased.

Elizabeth Port, wife of Thomas C. Port, gave evidence corroborating her husband's testimony.

This closed the case for the plaintiff.

Mr. Lilley applied for a nonsuit, on the ground that there was no evidence of a trust in favour of the plaintiffs.

Mr. Stumm maintained that the distribution by Mrs. Qualtrough of upwards of £1200 among the Heirdsfields was the strongest evidence of a resulting trust.

His Honour said he was inclined to let the case go to the jury for several reasons. One of these was that if he were wrong in granting a nonsuit, he would put the parties to the expense of a fresh trial. He did not wish to do that, and he would, therefore, let the case go to the jury.

Mr. Lilley then opened the case for the defendants.

The court then adjourned until 10 o'clock on the following morning.