

SUPREME COURT.

Wednesday, June 21.

CIVIL SETTINGS.

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.

Elizabeth Matilda Qualtrough, one of the defendants, stated that she was co-trustee with her son, W. H. Qualtrough, of her husband's will. She was originally co-executor with the late T. B. Stephens, but the latter died in 1877, and she then appointed her son, W. H. Qualtrough, in his place. The late Geo. Heirdsfield asked her late husband to buy the land in Brunswick-street. Witness tried to dissuade him from buying it, but he urged as a reason that Heirdsfield owed him £60, and wanted him to give him £20 more to enable him to settle up some bills. Heirdsfield owed the £60 for a dray and for money lent. He was constantly borrowing from witness's husband. The latter agreed to take the property and pay him the £20 that he wanted. It was not agreed that it should be held in trust for Heirdsfield's children, but Mrs. Heirdsfield being in very delicate health, it was arranged that they should continue to live there during her lifetime, on condition that they paid the rates. After that transaction Heirdsfield never claimed the property as his own. When he went to Dunwich she paid for whatever he required. Before he went she clothed him and gave him £1 in his pocket. At that time he said that as the land had improved in value since he had sold it she could afford to do something for him. About two or three months after the purchase of the property her husband gave her the deed of the land to take care of. She put it in a drawer, and it was there until her husband's death. She did not miss it until George Heirdsfield brought it to her and said it was no use to him. He made no claim on the place; it belonged to her husband. He could not say how the document got out of the drawer. In 1890 she was very well off. As she was getting nothing from the land in question she decided to sell it. Before doing so she consulted Mr. Pring Roberts, and then sold it through G. T. Bell and Co. Being desirous of helping the Heirdsfield girls she bought and furnished a house for Lizzie and a house for Lucy Hendle. She gave Geo. Heirdsfield £450, or

house for Lizzie and a house for Lucy Hendle. She gave Geo. Heirdsfield £450, or £100 more than his sisters, because he had brought up and educated his sister Lizzie to be good to his mother. These were all presents. Mrs. Hendle was very pleased with the house which was bought for her, and it was at her special request that it was settled on her for life, and after her death on her children. She did not ask for land to be bought at Nundah for her, neither did she or any of the others ever make a claim on the proceeds of the sale of the Valley land. She gave W. J. Heirdsfield money, but only on the persuasion of his elder brother George. If she had been left to herself she would not have given him a penny, because he was a bad boy to his mother. On the persuasion of his brother, however, witness gave him £100. She denied that she had ever told Mrs. Hendle that there was £350 coming to her, or that she informed the witness Port that the land belonged to the Heirdsfield children.

Cross-examined by Mr. Stumm: She thought her husband paid £500 for the corner block adjoining the land originally held by the Heirdsfields. She knew he lost £200 by the transaction. Witness's husband never considered that he held this land for the Heirdsfields, or that they had any claim on it. Witness when she decided to sell the property did not resolve to divide the proceeds between the Heirdsfields.

J. F. Buckland, commission and land agent and valuator, said he carried on the same business in Brisbane in 1866. He came to Brisbane in 1862. He knew the piece of land in dispute in the Valley. In December, 1863, the land market was in such a condition that it was almost impossible to value land at all. He thought £80 a rather high value for this property at that time. The land market was very depressed at that time, in consequence of the failure of the Queensland Bank, and of the bank with which the Government did business in London.

Cross-examined by Mr. Stumm: In 1866 there was a three or four roomed brick cottage on the land, which was worth about £70. The unimproved land was worth from £30 to £40.

G. T. Bell, manager of the National Mutual Insurance Company of New York, and formerly an auctioneer, stated that he sold the land in question. He valued it at £2000, and it realised £2205, which he thought was good value. He did not think unimproved it would realise more now.

William Shanke, a miner, residing at Gympie, stated that he had a conversation with W. J. Heirdsfield in December last. Heirdsfield told him that he had a lawsuit on with his aunt. Witness advised him to keep out of it if he could, and he replied that he had no intention of going to law but for his sister. He also said that his aunt had made a present of £100 to him, and had been very good to him.

W. H. Qualtrough, plumber, residing in Stanley-street, stated that he was one of the trustees of his father's will. The late George Heirdsfield never preferred any claim to the property in question, though he had

George Heirdsfield never presented any claim to the property in question, though he had frequent conversations with him before his death. The first intimation he had of a claim was in 1893. After the property had been sold his mother bought two houses from him for £300 each, and one was given to Mrs. Hendle, the other to her sister. His mother gave George Heirdsfield, Jun., £400 as a present. He understood that the houses were also gifts to Mrs. Hendle and her sister.

D. F. Pring-Roberts, solicitor to the defendants, stated he had in his possession all the papers belonging to his father (the late Mr. D. F. Roberts), dating back to 1849. His father acted as solicitor for the Qualtroughs. He had been unable to find among his father's papers any documents relating to the Heirdsfields. In 1890 Mrs. Qualtrough and her two sons called at his office and told him that they desired to make a distribution among certain members of the Heirdsfield family of the proceeds of the sale of the Brunswick-street property. They did not at that time know what they would give those children. Witness perused the late Mr. Qualtrough's will, and found that the two sons were equally interested in it after their mother's death. He then told them

they could not give any of it away without the consent of all the beneficiaries. As they did not know how much they were going to give to any member of the Heirdsfield family, he advised the execution of a general consent to enable Mrs. Qualtrough, who was really doing the whole thing, to do as she liked.

This closed the defendant's case.

Thomas Weisby, accountant, gave evidence with regard to the signatures on certain documents which had been put in in evidence.

Lucy Hendle, recalled, stated, in contradiction to a statement by defendants that two rooms were added to the house in Brunswick-street at the expense of the late Mr. Qualtrough, after the property was brought under the Real Property Act, that the house contained only four rooms so long as she could remember.

T. Port, recalled, said, as far as he could remember, the Heirdsfield's house only contained four rooms. He did not remember any additions being made to it while he lived in the vicinity.

Elizabeth Port, wife of the previous witness, said that when she resided near the property in question the Heirdsfields' cottage was not fit for anyone to live in.

This closed the plaintiff's case.

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