

SUPREME COURT.

Thursday, June 22,

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.

The foreman of the jury applied for increased fees, the trial having entered upon its fourth day.

His Honour granted £2 2s. each a day, in addition to the ordinary fees.

Mr. J. W. Sutton, one of the jurymen not impanelled, applied for leave of absence during the remainder of the sittings, as he desired to leave Brisbane on important business.

His Honour, in view of the fact that only one case remained to be tried, granted the leave asked for.

Mr. Lilley then addressed the jury on behalf of the defendants.

Mr. Stumm addressed the jury on behalf of the plaintiff.

His Honour summed up, and the jury, at 1 o'clock, retired to deliberate on their verdict.

The court then rose until 3 o'clock.

After the jury had been in retirement from 1 o'clock till 3 o'clock, they returned into court, and the foreman (Mr. E. Markwell) stated they wished to know what was the date on which the property at the corner adjoining the land in question was sold by the deceased G. Heirdsfield, sen., to the late W. Qualtrough for £500. They were informed that the transaction took place on 25th August, 1866; that the consideration expressed in the documents was £500; and that at the time of the sale there was a mortgage on the property of £300. The jury then retired.

After they had left the court, Mr. Lilley asked his Honour to allow him to give some evidence with regard to that particular transaction, with a view to showing what Heirdsfield's circumstances were at the time.

Mr. Stumm objected to the case being reopened at that stage.

His Honour pointed out that, if the jury attached importance to the matter, they might draw a wrong inference from the evidence they had. He, therefore, thought it would be well to ask them if they desired further evidence to be given.

The jury were accordingly called in, and his Honour asked them if they thought

The jury were accordingly called in, and his Honour asked them if they thought further evidence on this point was necessary?

The Foreman said most decidedly they would like to know whether George Heirdsfield had this money at the time he sold the other property.

His Honour said in that case he would get what evidence he could. He would have the case reopened for that purpose.

Mrs. Qualtrough, recalled by Mr. Lilley, said she remembered the sale of the corner allotment by the late George Heirdsfield, sen., to her husband. It was sold for £500, but there was a mortgage on it of £300. When it was sold after her husband's death, £200 was lost on the transaction. At the time of the original sale, Heirdsfield owed several debts. He was a man who never had any money. She supposed that the £200 went in paying his debts and his household expenses.

Cross-examined by Mr. Stumm: She did not know how much of the £200 was paid away by Heirdsfield.

The jury having retired.

Mr. Stumm asked his Honour to direct the jury that, if they answered the first question—"Did William Qualtrough, deceased, give any consideration to George Heirdsfield, sen., deceased, for the land in question?"—they need not trouble about the others.

Mr. Lilley objected to that being done.

At this stage (5.30 o'clock) the jury returned into court, and the foreman asked his Honour if he had advised them that the deed of transfer from G. Heirdsfield to William Qualtrough was clear evidence that the £80 passed?

His Honour said he had not done that. What he had said was that the transfer giving the consideration for the land as £80 was evidence, from which they might draw a strong inference that the transfer was for value, but that that could be disproved by evidence. It was for the plaintiffs to prove their case, not for the defendants to disprove it.

The jury again retired.

His Honour then said he would not alter the questions, or give any fresh directions to the jury.

At 8 o'clock the jury were still unable to agree, and the foreman said there was no hope of their being able to.

Mr. Lilley stated that he was willing that they should be discharged, it apparently being useless to keep them longer.

Mr. Stumm pointed out that as the case had been reopened at about 4 o'clock the jury had not actually been in deliberation for seven hours. He could not consent to their being discharged yet, because his clients were poor people, and could not afford the expenses of another four days' trial. He did not think it was hopeless that they would agree. He had known juries equally confident that they would not agree come to a verdict after a little more deliberation. He did not wish to punish the jury in any way, but he thought that if they deliberated for a little longer they might agree.

The jury, who had been absent during this discussion, were called in, and his Honour asked them to give a verdict.

discussion, were called in, and his Honour asked them to give a little more consideration to the case. He then redirected them upon the more important questions.

The jury having agreed, his Honour took their verdict at a quarter-past 10 o'clock. They answered the questions put to them as follow:—1. Did William Qualtrough, deceased, give any consideration to George Heirdsfield, sen., deceased, for the land in question?—Yes. 2. What consideration, if any, was given?—£80. 3. Did George Heirdsfield, sen., deceased, transfer the land to W. Qualtrough, deceased, in trust for Emma Rosetta Heirdsfield, wife of George Heirdsfield, and her children?—No. 4. Did the defendant E. M. Qualtrough in December, 1890, declare herself to be a trustee for the children of the said George Heirdsfield of the proceeds of the sale of the land?—No. 5. Did the defendants on or about December, 1890, declare themselves to be trustees respectively for the plaintiff Lucy Hendle of a sum of £350, part of the proceeds of the sale of the land?—Yes. 6. Did the defendant E. M. Qualtrough in or about February, 1891, declare herself to be a trustee for the plaintiff William J. Heirdsfield of a one-sixth part of the purchase money of the said land?—No. 7. Did the defendants in or about December, 1890, pay the plaintiff Lucy Hendle, £25 and purchase for her the land mentioned in paragraph 17 of the statement of claim, as for, and alleging the same to be, her share of the proceeds of the land?—Yes. 8. Were the £25 and the land a gift from the defendants?—No. 9. Was the £100 paid to plaintiff, W. J. Heirdsfield, paid to him—(a) on account of his share in the proceeds of the

land?—No. (b) Or a gift from the defendants?—Yes.

His Honour, at the request of counsel, adjourned the motion for judgment until after the close of the next case for trial.

The court then adjourned until 10 o'clock on the following morning. The jury empannelled in the case, in consideration of their having sat four days, were discharged from further attendance.