

[HIGH COURT OF AUSTRALIA.]

WILLIAM JOHN McDOWELL AND ANOTHER APPELLANTS;
DEFENDANTS,

AND

JOHN McDOWELL RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

Prohibition—County Court of Victoria—Jurisdiction—Suit in equity—County Court Act 1915 (Vict.) (No. 2636), sec. 121. H. C. OF A.
1918.

Sec. 121 of the *County Court Act 1915* (Vict.) confers jurisdiction upon County Courts "in all suits for the execution of trusts in which the trust estate or fund does not exceed in amount or value the sum of five hundred pounds."

MELBOURNE,

March 7.

Barton,
Gavan Duffy
and Rich JJ.

In an action in the County Court the plaintiff claimed £430 for money had and received, being, according to the particulars, £550 received by the defendants on the sale of a hotel of which the plaintiff was the owner less £120 which was owing by the plaintiff to the defendants. The plaintiff had executed a conveyance of the hotel to the defendants, the consideration stated being the release of a debt of £120 owing by the plaintiff to the defendants, services rendered and natural love and affection. Evidence was given for the plaintiff that the conveyance was executed pursuant to an arrangement that the defendants should sell the hotel and pay the proceeds, less the amount of the debt and the costs of the sale, to the plaintiff. The case was tried before a jury, who gave a verdict for the plaintiff. The Supreme Court having discharged an order *nisi* for prohibition which had been obtained on the ground that the action was in substance a suit for the execution of a trust in which the value of the trust estate or fund was over £500,

Held, that on the facts there was no ground for a prohibition.

Decision of the Supreme Court of Victoria affirmed.

H. C. OF A. APPEAL from the Supreme Court of Victoria.

1918.

McDOWELL

v.

McDOWELL.

An action was brought in the County Court at Melbourne by John McDowell against William John McDowell and Samuel McDowell by which the plaintiff claimed £430 for money had and received by the defendants to the use of the plaintiff. By the particulars that sum was alleged to consist of a sum of £550 received by the defendants on the sale of a hotel of which the plaintiff was the owner less a sum of £120 which was owing by the plaintiff to the defendants. The action was heard before a jury. It appeared in evidence that the plaintiff executed a conveyance of the hotel to the defendants in which it was stated that the consideration was the release of a debt of £120 then owing by the plaintiff to the defendants, services rendered by the defendants to the plaintiff, and the natural love and affection which he bore to them. Evidence was given on behalf of the plaintiff that the conveyance was made pursuant to an arrangement between him and the defendants that they should sell the hotel and pay the proceeds of the sale, less the amount of the debt and the costs of the sale, to him. The defendants denied that there had been any such arrangement. Objection was taken on behalf of the defendants that the plaintiff's claim was for the execution of a trust in which the trust estate or trust fund exceeded in value the sum of £500, and therefore that the County Court had no jurisdiction under sec. 121 of the *County Court Act* 1915. The jury gave a verdict for the plaintiff for £427, and judgment was entered for the plaintiff for that amount. The defendants applied to the County Court Judge for a new trial, but the application was refused. Through the alleged mistake of the defendants' then solicitor security for an appeal to the Supreme Court was not lodged in time, so that the defendants lost their right of appeal. The defendants then obtained from the Supreme Court an order *nisi* for a prohibition on the ground (*inter alia*) "that the cause in respect of which the judgment or order was obtained or made was in substance though not in form a suit for the execution of a trust and the trust estate or fund exceeded in value the sum of £500 and was therefore outside the jurisdiction of the County Court."

The Full Court discharged the order *nisi* with costs.

From that decision the defendants now, by special leave, appealed to the High Court.

H. C. OF A.
1918.

McDOWELL
v.
McDOWELL.

Owen Dixon (T. C. Brennan with him), for the appellants.

Schutt and Cussen, for the respondent, were not called on.

The judgment of the COURT, which was delivered by BARTON J., was as follows :—

We do not think that there was any ground for prohibition; and therefore the Supreme Court was right in refusing to make the order *nisi* absolute. It seems to us that there is nothing here but at best an objection, valid or not, on the part of the defendants that the plaintiff had not substantiated the cause of action set up by him. That was all that was of concern in the County Court. Whatever the force of the jury's finding as to the rightness or wrongness of the claim, we have nothing to do with that on this appeal. There never was any foundation for a prohibition. The appeal will therefore be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants, *Courtney & Dunn*.

Solicitor for the respondent, *G. F. A. Jones*.

B. L.