[HIGH COURT OF AUSTRALIA.]

TURNER AND OTHERS . . . . . APPELLANTS;
PLAINTIFFS,

AND

TURNER . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1918.

PERTH, *October* 17.

Barton, Gavan Duffy and Rich JJ.

Contract—Family settlement—Services in working farm—Compromise of action—Evidence.

The wife and children of the owner of a farm alleged that he had verbally agreed that, in consideration of their future services in working the property, it would belong to him and them in equal shares; and that after the commencement of an action to enforce this agreement an agreement to compromise the action had been made.

Held, that there was no evidence to support the jury's finding that either of these agreements had been made.

Judgment of the Supreme Court of Western Australia (*McMillan* C.J.) affirmed.

APPEAL from the Supreme Court of Western Australia.

In 1892 John Purser Turner purchased 928 acres of land from the Government of Western Australia under the Crown Lands Regulations, and took up his residence on the land with his wife and children. As his children grew up they assisted in working and developing the farm. About 1915 Turner left the farm and subsequently contracted to sell it. The wife and children then instituted an action against him in the Supreme Court, alleging that he had agreed that in consideration of their future services on the

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farm it would belong to him and them in equal shares. After the commencement of the action an interview took place between one of the children and the defendant, and the plaintiffs alleged that a compromise of the action had been then agreed to on certain terms. There was no writing to support either of the alleged agreements. The defendant pleaded the *Statute of Frauds* to the first alleged agreement, and, by leave of the Supreme Court, the case was treated as though the Statute had been pleaded to the second also. The case was tried before *McMillan* C.J. and a special jury of six. The jury found for the plaintiffs as to both agreements, but the learned Chief Justice entered judgment for the defendant, holding that there was no part performance to take the first agreement out of the *Statute of Frauds*, and that the Statute was also an answer to the second agreement.

The plaintiffs now appealed from the judgment, and the defendant cross-appealed from the findings of the jury.

R. S. Haynes K.C. (with him *Harold Haynes*), for the appellants.

Villeneuve Smith K.C. (with him *Hensman*), for the respondent.

BARTON J. The appellants rely on two agreements. The first may be regarded as a family settlement under which the respondent is supposed to have undertaken to dispose of his property among the members of his family in consideration of their future service, or, one may suppose, the promise of it, in helping him to work and develop his farm. That agreement would be a very extraordinary one: we know that people who are settlers on the land are in the habit of utilizing the labours of the members of their families, whether such members are infants or are of mature age, and that the question of payment or compensation for that labour seldom arises. We cannot shut our eyes to the ordinary facts of life. We know that some children, as they arrive at maturity, prefer to go abroad to earn their living, and others choose to remain at home sometimes with, but generally without, express arrangements for adequate or any payment. But an agreement like that alleged here is a very different thing from any kind of understanding with which we are

familiar, and requires clear evidence to support it. The case really rests on some expressions of the father that the family would come into the property in the end—whatever that may mean. I have not known a case since I have been on the Bench in which a finding of the jury has been supported by less substantial evidence, and I do not think any reasonable man could have come to the conclusion at which they have arrived.

The second agreement requires more consideration. Par. 15 of the statement of claim alleges that there was a verbal agreement between John Walter Turner and Richard Martin Turner, on behalf of the plaintiffs, and the defendant that a suit instituted to enforce the agreement to which I have already alluded should be compromised. It is conceivable that in the interests of family peace the defendant might have been willing to make such a compromise, and the jury have found that he did so. The learned Chief Justice, who tried the case, felt himself bound by the finding, and contented himself with saying that the alleged agreement for compromise was one which required to be evidenced by writing under the *Statute of Frauds*. That would probably be so if we assumed the agreement to have been proved? But was it proved? In the first place, it is clear that John Walter Turner on the date of the alleged agreement had no authority from the other plaintiffs to make such an agreement on their behalf, and there was no ratification by them at any relevant time; and, in the next place, the conversation which is relied on as an agreement was evidently a mere negotiation and subject to a settlement to be made with the purchaser, Bell, otherwise there would be a purchase of what the Scotch call a "pig in a poke."

By the agreement of the parties we are at liberty to consider whether the findings can stand. I think that both the findings are entirely wrong, and are such as no reasonable man could have arrived at.

The appeal must be dismissed with costs.

GAVAN DUFFY J. By the consent of the parties we are at liberty to determine whether the findings of the jury can stand. I think they cannot, and for that reason the judgment entered for the defendant by the learned Chief Justice is right.

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RICH J. It appears that a motion was made to the State Full Court by the present respondent to set aside the verdict of the jury. That motion was allowed to stand over pending this appeal as Mr. *Haynes* for the appellants raised no objection to the verdict and findings of the jury being impeached in the respondent's cross-appeal. We are thus enabled to deal with the verdict of the jury. I have no difficulty in holding that there is no evidence to support the jury's finding as to the agreement. With regard to the compromise it is clear from the evidence that John had no authority from the other members of the family to enter into a compromise, and that before there was any ratification on their behalf the respondent definitely broke off the negotiations for a compromise. In these circumstances I agree that the appeal must be dismissed.

Appeal dismissed with costs.

Solicitors for the appellants, *Richard S. Haynes & Co.*

Solicitor for the respondent, *A. D. Smith*, Katanning, by *Nicholson & Hensman.*

N. McT.