

The appeal was heard by MULOCK, C.J. Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

D. L. McCarthy, K.C., and T.L. Monahan, for the appellants.

H. J. Scott, K.C., and J. C. Thompson, for the defendants, respondents.

CLUTE, J., in a written judgment, said that the plaintiffs, Mabel Faye and Gertrude Faye, sued an executrices and trustees under the will of Susan Roumegous, the deceased wife of the defendant. The plaintiffs alleged that the defendant and his wife were the owners of an hotel business during the years 1900 to 1907, and that the wife was entitled to a half interest in the profits of the hotel business during those years; that the defendant received all the profits; that in September, 1907, the business was sold for \$25,000, \$10,000 of which was then paid to the defendant, who had not paid any part thereof to the deceased wife or to the plaintiff; that in August, 1905, the deceased wife lent the defendant \$2,200, and in August, 1914, \$500; and that the profits of the business and the proceeds of the sale were expended by the defendant in the purchase of a property at Cooksville. The plaintiffs claimed: (1) a half-interest in the Cooksville property; or (2) a declaration that the plaintiffs were entitled to a one half share of the profits of the hotel business; (b) judgment for \$5,000 and interest; (c) one half of the interest on the balance of the purchase-money for the years 1907 to 1912; (3) judgment for \$2,200 and interest; (4) judgment for \$500 and interest.

The learned Judge, after reviewing the evidence, and referring particularly to the agreement under which the hotel business was purchased in 1900 (which was not before the trial Judge), said that upon the argument the plaintiffs limited their claim to one half of \$7,500, with interest, being part of the first payment of \$10,000, less a portion thereof used in the payment of the debts of the business; the wife having received during her lifetime one half of two payments of \$5,000 each and interest.

It was not disputed that the husband had received the \$10,000, being the first payment on the purchase-money; and it further appeared from his evidence that he had expended the money received from the business in the purchase of the Cooksville property; also that he had received the \$500 from his wife on the date mentioned.

It sufficiently appeared from the evidence that the partnership liabilities were paid from time to time out of the profits of the business, and that the purchase-money on the sale represented the net assets of the business, less about \$2,500 of liabilities, which were paid out of the \$10,000.