Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of McElhone and others v. *Browne and others, from the Supreme Court of New South Wales; delivered December 8th,* 1885.

Present:

LORD MONKSWELL.
LORD HOBHOUSE.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

IN this case the question as to the validity of the will was tried before a Jury of twelve, and the learned Judge who tried the case has stated in his Judgement on appeal, at page 223, the mode in which he left the case to the Jury. He said:—"First, as to this will, I told them that "they were not to rest upon the presumption in "favour of sanity by the mere fact that the "testator executed the will with all the formalities "that the law required, and that while it was "not necessary that the testator should be able "to view his will with the eye of a lawyer "and comprehend its provisions in their legal "form, the Plaintiffs must satisfy them that at "the time he executed it he knew all, understood "all, and approved of all its contents; and "further, that he was then of sound mind, "memory, and understanding, which was to say "that he had sufficient intelligence to remember "and understand the nature of his property, "what it consisted of, who the persons were "to whom he was leaving it, and also whom he "was leaving out; in fact all those who by "personal relationship or otherwise might have "claims upon him, and would be, in the natural

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" course of things, objects of his bounty. All " these matters of law were before the Jury, and " their verdict shows that they considered the " Plaintiffs had established all necessary facts." The Jury having before them this direction of the learned Judge, and having heard and seen all the witnesses who gave evidence before them, and all those particular parts of the evidence to which our attention has now been called, came to the conclusion that the will was a valid one, and that the testator knew and understood what he was about when he executed it. They had Mr. Dalton before them. No doubt every observation that could be made with reference to Mr. Dalton's testimony was made before them at the trial, and they believed Mr. Dalton and they found their verdict in favour of the Plaintiffs.

Now the learned Judge who tried the case approved of the verdict, and he says :—" With " regard to the question as to whether he was " of sound and disposing mind, as their Honours " have pointed out, there was abundant evi- " dence to show that he thoroughly understood " what he was about." Then he says : —" If the " verdict had been the other way there might " have been very substantial grounds for sending " the case back again for further investigation."

Under these circumstances their Lordships would, by interfering with the verdict of the Jury, be violating the rule under which the verdict of a Jury ought to be established, unless there are sound and sufficient grounds for showing that the Jury came to an erroneous conclusion, or that they came to their conclusion under a mistaken direction from the Judge.

Under these circumstances their Lordships will humbly advise Her Majesty to affirm the Judgement of the Supreme Court of New South Wales, with the costs of this Appeal.