Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Phillips v. Martin, from the Supreme Court of New South Wales; delivered January 28th, 1890.

Present:

LORD WATSON.
LORD MACNAGHTEN.
LORD MORRIS.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

THIS is an appeal from a judgment of the Supreme Court of New South Wales, dismissing the Appellant's application for a rule nisi for a new trial of certain issues directed to be tried in the matter of an application by the Appellant to bring certain lands under the Real Property Act, and in the matter of a caveat lodged by the Respondent. The issues were these: (1.) Did Caroline Martin sign a disentailing assurance, dated the 22nd January 1875? (2.) Did Caroline Martin sign a deed of conveyance of the 1st June 1875? On both these issues the jury found in the negative. No objection has been taken to the summing-up of the learned judge on the ground of misdirection, and the learned judge has expressed himself as entirely satisfied with the verdict, a matter not lightly to be disregarded.

The Appellant contends that the verdict was against the evidence or against the weight of the evidence. It is settled that a verdict ought not to be disturbed on that ground unless, to use the words of Lord Herschell in the *Metropolitan Railway Company* v. *Wright*, XI. Ap. C. 152, "it "was one which a jury, viewing the whole of the "evidence reasonably, could not properly find."

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Now, as regards the first deed, their Lordships think that the jury might properly find that that deed was not signed by Caroline Martin. She swore positively that she never signed it. Wright, who was brought forward as a witness to her signature, gave his evidence, according to the learned judge who tried the case, in an unsatisfactory way, and was not credited by the jury; and the scrawl which is said to be her signature, bears no resemblance to her admitted signatures, and very slight resemblance to the words which form her name.

Having come to this conclusion, and finding that Mrs. Martin admittedly got nothing for parting with her life interest, if indeed she did part with it, the jury might not unreasonably come to the conclusion that her alleged signature to the deed of conveyance was not written by her, although there is no imputation on Mr. Charlton, and although the signature to the deed of the 1st June 1875 bears a close and singular resemblance to her admitted signatures.

The question was one pre-eminently for the jury to decide. They saw the witnesses, and they had before them the original signatures on the deeds and on the caveat. Their Lordships think that on the whole there is no ground for disturbing the verdict, and they will therefore humbly advise Her Majesty that the appeal ought to be dismissed.