H. C. OF A. 1906.

EX PARTE GORDON.

1903, considering that, by the adoption of another form of appeal, an appeal might be brought without the leave of this Court. Without expressing any opinion as to the merits we think we should grant a rule *nisi*.

Rule nisi granted.

Solicitors, *Malleson, Stewart, Stawell, & Nankivell*, Melbourne.

B. L.

[HIGH COURT OF AUSTRALIA.]

HILL . . . . . APPELLANT;
PLAINTIFF,

AND

ZIYMACK . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1906.

SYDNEY *April* 6, 9, 10.

Griffith C.J., Barton and O'Connor JJ.

Action for conversion—Ownership of goods—Question of fact—Conflict of evidence—Verdict of jury conclusive.

In an action for conversion, the whole question for the jury was whether the goods were the property of the plaintiff or the defendant. There was a conflict of evidence, and the jury found a verdict for the plaintiff.

Held, that, although there was strong evidence upon which the jury might have found a verdict the other way, the verdict was one which reasonable men properly understanding the evidence could find, and should not be disturbed.

Where there is a conflict of evidence, the verdict of the jury will not be set aside, unless the evidence on the other side is overwhelming, or is supported by facts or documents as to which there can be no question.

Decision of the majority of the Supreme Court, 25th August 1905, reversed.

H. C. OF A. 1906.

HILL v. ZIYMACK.

APPEAL from a decision of the Supreme Court of New South Wales.

The appellant, administratrix of the estate of her husband, W. C. Hill, brought an action against her husband's mother, the respondent, for conversion of certain station stock and plant, which were alleged to have been given by the respondent to her son, and had been seized by her after his death. A very large amount of evidence was given on both sides, the details of which are not material to this appeal. The main question was whether the goods in question belonged to the plaintiff or the defendant, and on this point there was a conflict of evidence. The jury found a verdict for the plaintiff, and the Full Court (consisting of *Owen*, *Cohen* and *Pring* JJ.) on motion to set aside the verdict, by majority (*Cohen* J. *dissentiente*), set aside the verdict on the ground that it was unreasonable, and ordered a new trial; 25th August 1905.

From this decision, being interlocutory, the present appeal was brought by leave of the High Court.

J. L. Campbell and *Mitchell*, for the appellant.

Gordon K.C. and *Rolin*, for the respondent.

(The arguments of counsel are not reported, as they dealt wholly with the facts, and no question of law was involved.)

April 10th.

GRIFFITH C.J. This case has been very fully argued, and as we have had an opportunity during the adjournment of considering the matter, nothing would be gained by reserving it for consideration.

The action, which was for trover, was brought by the appellant as administratrix of the estate of her husband W. C. Hill against her husband's mother, to recover the value of certain stock, sheep, horses and station plant generally, which had been seized by the respondent after her son's death. The question for the jury was whether these goods were the property of Hill or of the respondent.

H. C. OF A. 1906.

HILL v. ZIYMACK.

Griffith C.J.

The jury found a verdict for the plaintiff, the appellant. The learned Judges of the Full Court set that aside on the ground that it was against evidence and the weight of evidence, a majority of them being of the opinion that it was a verdict which no reasonable men properly understanding the evidence could have found. *Cohen* J. who dissented from the opinion of the other Judges, thought the verdict of the jury was one to which reasonable men might come. *Pring* J. who had presided at the trial, was of the contrary opinion, and in that *Owen* J. concurred. We have not to determine whether the jury were right in the view which they took of the facts, but whether their verdict was one to which reasonable men might have come, on the evidence before them. There was a conflict of evidence, and so far as there was such a conflict it was for the jury to say which version they believed. No doubt, when there is a conflict of evidence, if the evidence on one side is overwhelming, or is supported by facts or documents as to which there can be no question, then the jury as reasonable men are bound to accept it, and a verdict to the contrary will be set aside. In the present case part of the evidence was oral, and part in writing. It will be necessary to refer briefly to the evidence. [His Honor then dealt with the evidence and continued:] The question is whether on such evidence, there being a conflict, the jury as reasonable men could come to the conclusion that the version of the plaintiff's witnesses was the true version. The story itself is not at all an improbable one. The arrangement alleged is surely one which might well have been made between a mother and her son, to whom she wished to make some advancement, and the conduct of the parties is not in any way inconsistent with it. For my part I am not at all surprised that the jury came to the conclusion that the plaintiff's story was the true one, a conclusion which, in my opinion, was probably the correct one.

I agree with *Cohen* J. that the verdict ought not to have been disturbed.

BARTON J. The majority of the Supreme Court came, in this case, to a conclusion in which I regret that I am unable to concur. It is not necessary for me to say whether or not I should have come to the same conclusion as the jury. My learned brother

the Chief Justice has pointed out substantive evidence upon which the jury might reasonably have found as they have found. That being the case, we cannot disturb that finding consistently with the principle which guides Courts of Appeal in dealing with the verdict of a jury. I am therefore of opinion that the verdict must be restored.

O'CONNOR J. I agree that the verdict cannot be disturbed.

What was the real nature of the arrangement between the mother and son it is impossible now to say with absolute certainty. Courts have to do the best they can in determining questions on the materials before them. There is no doubt that the mother trusted her son absolutely. She intended to make some provision for him, and the parties to the arrangement understood each other thoroughly. In determining now what was the real nature of the agreement between them we are confronted by great difficulties. That question, with all the attendant circumstances, was submitted to the jury, and they have come to the conclusion that the plaintiff's view of the matter is the correct one. If we had the responsibility of deciding the question in the first instance, I am very much inclined to think that I should have taken the same view as the jury. It is not necessary for us to consider that now, nor to inquire whether the facts were not open to a different construction. It is only necessary to inquire whether such evidence as was given in support of the plaintiff's case was sufficient to justify reasonable men in finding a verdict in her favour, and I certainly think that it was. I entirely agree with what has been said by my learned brothers, and I think, therefore, that the verdict ought not to have been disturbed, and the appeal should be allowed.

Appeal allowed. Order appealed from discharged. Rule nisi discharged with costs. Defendant to pay the costs of the appeal.

Solicitors, for the appellant, *Minter, Simpson & Co.*

Solicitors, for the respondent, *Pigott & Stinson.*

C. A. W.