Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Want v. *Moss and Wife from the Supreme Court of New South Wales; delivered Thursday, February 22nd*, 1894.

Present:

THE LORD CHANCELLOR.
LORD WATSON.
LORD ASHBOURNE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by the Lord Chancellor.*]

IN this case an action was brought in the year 1886 by the Appellant against the Respondents. The Declaration in the action contained three counts. The first count alleged a sole right in the Plaintiff of occupying a certain box in the Theatre Royal, Sydney, during theatrical performances, for the term of a lease of the theatre by the proprietor to one Samuel Lazar. The second count alleged a sole right in the Plaintiff of occupying the box during theatrical performances on Tuesday, Thursday, and Saturday evenings in each week. Both these counts alleged that the female Defendant had obstructed the Plaintiff's enjoyment of the right alleged. The third count stated that the female Defendant became possessed under the will of Samuel Lazar of all his interest in the lease of the theatre; that before Lazar's death he granted to the Plaintiff the sole right of occupying the box as alleged in the first count; that the female Defendant disputed that right, and it was then

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" consideration was given by Want to Lazar, but " that Plaintiff subsequently arranged to allow " Defendants the use of the box on three nights " a week, viz., Monday, Wednesday, and Friday, " and was consequently only entitled to it on the " other three nights per week, Tuesday, " Thursday, and Saturday. Defendants did " interfere with Plaintiff's rights, for which we " assess the damages at 100*l*." Their Lordships cannot understand this special finding of the jury as meaning anything else but this, that the Plaintiff's rights did not extend to the whole of the six nights; that they extended to three only, and that as to the other three the Defendants were entitled. It seems, therefore, clear that the judgment roll as made up by the Plaintiff did not accurately represent that which really had been found at the trial.

It is said that the Defendants are estopped by the judgment roll from denying the exclusive right of the Plaintiff to occupy the box on all six nights of the week. It may be doubted whether in reality, looking at the whole of the judgment roll, any such estoppel can be said to be established, but admitting for the purposes of argument that the judgment roll as it stands would establish the estoppel, it is perfectly clear to their Lordships upon the true construction of the findings of the jury, that they did not intend to find any such exclusive right in the Plaintiff; and their Lordships do not think that they can go behind the terms of the findings, which seem to them perfectly capable of interpretation without any explanation.

In these circumstances a Court of Equity was not, in their Lordships' opinion, bound to grant the Plaintiff the injunction which he sought, but was perfectly justified, and indeed bound, to refuse him assistance such as he claimed, when upon the facts which had been proved, and which