[HIGH COURT OF AUSTRALIA.]

WILLIAMSON . . . . . APPELLANT;

AND

BROWN . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1914.

SYDNEY, *Sept.* 3, 4.

Griffith C.J., Isaacs and Gavan Duffy JJ.

Lunacy—Person deemed to be insane—Order for detention in hospital for insane—Jurisdiction of justices—Lunacy Act 1898 (*N.S.W.*) (*No.* 45 *of* 1898), *secs.* 4, 5, 6.*

Where a person deemed to be insane is brought before two justices in accordance with the provisions of sec. 4 of the *Lunacy Act of* 1898 the justices may satisfy themselves as to any one of the five matters mentioned in sec. 6, and if they are satisfied as to any one of them they may make an order accordingly.

A person was apprehended by a constable and brought before a stipendiary magistrate (who has the powers of two or more justices) as being a person deemed to be insane who was discovered under circumstances that denoted a purpose of committing some offence against the law.

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* The provisions of secs. 4, 5 and 6 of the *Lunacy Act of* 1898 are as follow:—

"4. Upon information on oath before a justice that a person deemed to be insane is without sufficient means of support, or is wandering at large, or has been discovered under circumstances that denote a purpose of committing some offence against the law, such justice may by order under his hand require a constable to apprehend such person and bring him before two justices; and every constable finding any such person so wandering or under such circumstances as are lastly above mentioned may without any such order apprehend him and take him before two justices.

"5. Any constable who has knowledge that any person deemed to be insane is not under proper care and control, or is cruelly treated or cruelly neglected by any relative or other person having or assuming the care or charge of him, shall forthwith give information thereof upon oath to a justice, and such justice upon such information or upon the information upon oath of any person whomsoever to the like effect shall either himself visit and examine such person and make inquiry into the case, or by an order under his hand direct and authorize some medical practitioner to visit and examine such person and make such inquiry and to report in

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Held, by *Griffith* C.J. and *Isaacs* J. (*Gavan Duffy* J. doubting), that the magistrate had jurisdiction under sec. 6 to make an order for the detention of the person in a hospital for the insane as being an insane person not under proper care and control.

Decision of the Supreme Court of New South Wales: *Ex parte Brown*, 14 S.R. (N.S.W.), 182, reversed.

APPEAL from the Supreme Court of New South Wales.

On 25th March 1914 Thomas Edwin Brown was brought before a stipendiary magistrate (who has the powers of two or more justices) as being a person deemed to be insane who was discovered under circumstances that denoted a purpose of committing some offence against the law. The magistrate thereupon proceeded to hold an inquiry as directed by sec. 6 of the *Lunacy Act of* 1898. Certificates of two medical practitioners were given in the form set out in the second Schedule to the Act that Brown was insane and a proper person to be taken charge of and detained under care and treatment. Other evidence was also taken, and the magistrate found that Brown was insane and not under proper care and control, and then made an order in the form prescribed by the third Schedule directing William Cotter Williamson, the superintendant of the Hospital for Insane at Parramatta, to receive Brown into the hospital. A rule *nisi* for

writing to such justice his opinion thereon, and if upon such personal visit, examination, and inquiry by such justice, or upon the report of such medical practitioner it appears to such justice that such person is insane and not under proper care and control, or is cruelly treated or cruelly neglected by any relative or other person having or assuming the care or charge of him, the justice may by order under his hand require any constable to bring such person before two or more justices.

"6. (1) The justices before whom any such person as aforesaid is brought shall call to their assistance any two medical practitioners who have previously examined such person apart from each other and separately signed certificates with respect to such person according to the form in Schedule Two of this Act, and if upon examination of such person and such medical practitioners and upon other proof (if any) such justices be satisfied that such person is insane and

(*a*) is without sufficient means of support; or
(*b*) was wandering at large; or
(*c*) was discovered under circumstances that denote a purpose of committing some offence against the law; or
(*d*) is not under proper care and control; or
(*e*) is cruelly treated or neglected by any person having or assuming the charge of him;

and is a proper person to be taken charge of and detained under care and treatment, the said justices may by an order under their hands according to the form in Schedule Three of this Act, ... direct such person to be removed into some hospital for the insane or licensed house to be named in such order, and such person shall be forthwith conveyed to, and upon production of such order, . . . and medical certificates, shall be received into and detained in such hospital or licensed house accordingly," &c.

a habeas corpus directed to Williamson was then obtained by Brown. On the hearing of the rule *nisi* the Full Court held that the order of the magistrate was made without jurisdiction, and invalid, and they ordered that a feigned issue in accordance with the provisions of the *General Legal Procedure Act* 1902 should be tried before a Judge and jury as to whether Brown was of sound mind: *Ex parte Brown* (1).

From that decision Williamson now, by special leave, appealed to the High Court.

Garland K.C. (with him *Pickburn*), for the appellant. Sec. 6 of the *Lunacy Act of* 1898 gives power to two justices to satisfy themselves as to any one of the five matters mentioned in that section and to make an order accordingly, whether the person deemed to be insane is brought before them under sec. 4 or under sec. 5. The words "such person" in sec. 6 mean a person deemed to be insane, and when such a person is lawfully brought before the justices there is no restriction on the power conferred by sec. 6. The provisions of secs 4 and 5 are directory only and not mandatory: *R.* v. *Inhabitants of Rhyddlan* (2); *R.* v. *Hughes* (3).

Knox K.C. (with him *Armstrong*), for the respondent. The *Lunacy Act*, being an Act interfering with the liberty of the subject, should be strictly construed: *McLaughlin* v. *Fosbery* (4). Sec. 6 should be interpreted as empowering justices to make an order in respect of the particular matter which was the cause of bringing the person before them. The provisions of secs. 4 and 5 are mandatory and not directory only. The two sections provide for two different classes of persons. Sec. 4 provides for persons whose immediate apprehension is necessary in the public interest, and sec. 5 for those whose immediate apprehension is not necessary. In respect of the latter class of persons sec. 5 provides certain safeguards which, if the contention of the appellant is correct, may be ignored.

Garland K.C., in reply.

(1) 14 S.R. (N.S.W.), 182.
(2) 14 Q.B., 327.
(3) 4 Q.B.D., 614.
(4) 1 C.L.R., 546, at p. 558.

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GRIFFITH C.J. The point for decision in this case, which is a short one, arises under secs. 4, 5 and 6 of the *Lunacy Act of* 1898.

Sec. 4 of that Act provides, in substance, that, upon information on oath before a justice that a person deemed to be insane is without sufficient means of support or is wandering at large or has been discovered under circumstances that denote a purpose of committing some offence against the law, the justice may require a constable to apprehend such person and bring him before two justices. It also provides that in the second and third cases mentioned, that is, where the person is wandering at large or has been discovered under circumstances that denote a purpose of committing an offence against the law, a constable may without any such order apprehend him and take him before two justices. That is to say, there are three cases in which a person deemed to be insane may be brought before justices, in one of them with, and in two with or without, a justice's order.

Sec. 5 deals with two other cases. When it comes to the knowledge of a constable that any person deemed to be insane is not under proper care and control or is cruelly treated or cruelly neglected by any relative or other person having or assuming the care or charge of him, the section enacts that it shall be the duty of the constable to give information to a justice, and that thereupon the justice shall make certain inquiries, and, if he thinks there is reason for so doing, shall make an order requiring a constable to bring the person before two justices.

There are, therefore, five distinct cases in which a person deemed to be insane may be brought before justices for inquiry into his sanity. In two of them he may be so brought by a constable of his own motion; in three of them, including those two, any person may induce a justice to make an order for that person to be so brought; and in the other two cases the constable is bound to seek the opinion of a justice.

Then sec. 6 provides what is to happen when these steps have been taken. "The justices before whom any such person as aforesaid is brought shall call to their assistance any two medical practitioners who have previously examined such person apart from each other and separately signed certificates with respect to

such person according to the form in Schedule Two of this Act, and if upon examination of such person" (that is, the person brought before them) "and such medical practitioners and upon other proof (if any) such justices be satisfied" of any one of the five facts which would justify bringing him before two justices or the issue of an order to bring him before two justices, and if they are also satisfied that he is "a proper person to be taken charge of and detained under care and treatment," the justices may make an order to that effect.

In the present case the respondent was brought before a stipendiary magistrate, who has the authority of two justices, by a constable exercising the power conferred by sec. 4. The cause for which he was brought there was that he was a person deemed to be insane who was discovered under circumstances that denoted a purpose of committing some offence against the law. He was therefore lawfully brought before the stipendiary magistrate; and the question is whether, he having been so brought before him, the magistrate could exercise the powers conferred by sec. 6 read literally, and make an order for any of the five causes mentioned in secs. 4 and 5, or whether sec. 6 is to be construed *reddendo singula singulis*, in the sense that the magistrate is confined to the particular matter alleged as the cause of bringing the person before him.

Secs. 4 and 5 are substantially old re-enactments of English law, the oldest Statute to which we have been referred being 8 & 9 Vict. c. 126, secs. 48 and 49, which contain provisions substantially the same as those in secs. 4 and 5. On consideration of those sections it was held in 1850, in *R.* v. *Inhabitants of Rhyddlan* (1), that the provisions were directory only, and that when a person was in fact brought before a justice the justice had jurisdiction to make the inquiry, and that his order was justified, no matter how the lunatic came to be brought before him. In the present case it is not necessary to go so far as to say that it does not matter how a person is brought before the magistrate. The terms of sec. 6 are in form quite general. It provides that if "any such person"—that is, in the most limited meaning of those words, a person in respect of whom any of the five conditions

(1) 14 Q.B., 327.

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mentioned in secs. 4 and 5 is alleged to exist—is lawfully brought before justices they shall have the jurisdiction stated. According to the literal terms of the section the justices may inquire whether any of the five conditions exists as to the person brought before them, not whether the fact originally alleged against that person has been established. If any of the five matters mentioned in sec. 6 is established, the section declares that they may make an order. I am unable to find any real ambiguity in sec. 6, and I do not see any reason why an ambiguity should be artificially imported into it. On the contrary, the five conditions run into one another, and it might well be that where, for instance, a constable had arrested a man supposed to be insane because he was wandering at large, it would be found after inquiry that it was more correct to say that he was not under proper care and control.

I think, therefore, that the case falls within the literal terms of sec. 6, and that the order of the magistrate was properly made. There was therefore no ground for granting a habeas corpus, and the rule *nisi* should have been discharged.

No question of the sanity of the respondent or of the propriety of his detention was involved on the application for the habeas if the order was properly made. If such a question had been involved I agree that the order made by the Supreme Court would have been a proper one to make.

ISAACS J. I agree with what has been said by the Chief Justice.

The argument for the respondent is that the opening words of sec. 6 must be read, so to speak, distributively—that the words "any such person" must be read as "any person deemed to be insane and against whom some particular one of the five sets of circumstances mentioned is alleged," and that the word "brought" is to be read with reference to the particular allegation or set of circumstances in question. I think that the word "any" is very strong to show that no such distributive limitation is intended, and with regard to the words "such person" I personally do not entertain any doubt that they mean "a person deemed to be insane."

Two matters seem to strengthen that position very much. The

first is that the same two words "such person" are used in the second limb of sec. 4—"every constable finding any such person" &c. Those words there must mean "a person deemed to be insane." And when we look at the third Schedule, which is the form of order mentioned in sec. 6 which the justices may make, I find that it recites that the justices have examined the person (naming him) "who has been brought before us as being deemed to be insane." Then it goes on to recite that the justices are satisfied that he is insane and that he falls within one of the five classes stated in sec. 6. Now, that convinces me that the words "such person" in connection with the word "brought" in sec. 6 mean simply the person previously mentioned as having been deemed to be insane.

Then the word "brought" is left general so far as the mode of doing it is concerned. On the lowest basis it applies with equal force whether the person is "brought" before the justices under the first limb or under the second limb of sec. 4 or under sec. 5. He is equally "brought" within the meaning of the Act in whichever of those ways he is brought. The object of the Act is, in the words of sec. 6, the care and treatment of the man. That is not penal but is protective, and I see no reason for limiting the words of an enactment which is obviously intended for the protection of persons who are supposed to be unable to protect themselves.

I agree in the order suggested by the Chief Justice.

GAVAN DUFFY J. After hearing the arguments which have been addressed to us I am not convinced that the view taken by the other members of the Court is correct, but I am not prepared to dissent formally from the conclusion at which they have arrived.

Appeal allowed. Order appealed from discharged. Rule nisi for habeas corpus discharged. Appellant to pay respondent's costs of the appeal.

Solicitor, for the appellant, *J. V. Tillett*, Crown Solicitor for New South Wales.

Solicitor, for the respondent, *W. Carter Smith.*

B. L.