Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of McLaughlin v. *Westgarth and another, from the Supreme Court of New South Wales; delivered the* 17*th May* 1906.

Present:

THE EARL OF HALSBURY.
LORD MACNAGHTEN.
SIR ARTHUR WILSON.
SIR ALFRED WILLS.

[*Delivered by The Earl of Halsbury.*]

THEIR Lordships are of opinion that this is an extremely clear case. The construction of the particular section of the New South Wales Lunacy Act is not a very important point for their Lordships to determine. It may be that modern statutes are drawn with greater particularity and minuteness. The misfortune in the framing of those statutes is that any body of persons, seeing a possibility of liability on their part, apply to Parliament to have special provisions inserted for their protection. That application is occasionally complied with, and then the argument arises which their Lordships have heard to-day, namely, that anybody who is not included in the enumeration of the particular persons so inserted must be taken to be excluded by the operation of the statute from protection just because they are not included, and others are.

The doctrine applicable to all such cases is that a great many things are put into a statute *ex abundanti cautelâ*, and it is not to be assumed that anybody not specifically included is for that reason alone excluded from the protection of the statute. Their Lordships, however, state this

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general position rather in view of the construction of statutes in general than as being specially relevant to this particular case. For the non-provision of any special protection for the Committee of the lunatic is accounted for by a very different class of considerations, by the fact, namely, that the Committee had the power to do what she did do—*viz.*, put the person found a lunatic in proper care and custody—either by her own hand or by the hand of someone else.

That is enough for the determination of this case. Although questions may have possibly arisen which justified the learned Judges in going at great length and with great care through the whole question of the Lunacy laws applicable to the Colony, yet in truth when one comes to examine the real question at issue it turns out to be a very short point indeed.

The person found to be a lunatic, and, as such, under the provisions of the Lunacy Act subject to authority and deprived of the liberty which otherwise he would possess, is, by the advice and under the direction of his Committee, placed in a Lunatic Asylum. What possible objection can there be to the propriety of conveying a person to a Lunatic Asylum by the authority of a Committee?

The learned Counsel for the Appellant has insisted with great care and diligence on the right of the subject to liberty. But that right must always be subject to this limitation: that if a person is not of sound mind he must be subject to the authority of others who are, and the suggestion that everything that is to be done by a Committee must be sanctioned by an Order of the Court would render the administration of the Lunacy laws practically impossible. In this case the learned Counsel has not suggested anything in the nature of excess or impropriety in the conduct pursued towards the lunatic. To

maintain that the Committee of a lunatic cannot, under proper medical advice and with due care and without excess or violence, confide to a properly qualified medical man, or to a properly constituted Lunatic Asylum, the care of the person whom it is her duty to protect and look after, seems to their Lordships an extravagant proposition.

Their Lordships will, therefore, humbly advise His Majesty that this Appeal should be dismissed. The Appellant will pay the costs.