

ration asked in paragraph (a), and for the sum of £38 to be deducted from the rent payable by the appellant under her tenancy of No. 21 Irwin Street.

1930.

LEWIS  
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SHELLEY  
AND OTHERS.

*Appeal allowed.*

Solicitors for the appellant: *Dwyer, Durack and Dunphy.*

*Northmore,  
J.*

Solicitor for the respondents: *R. D. Lane.*

## WRAY, APPELLANT.

### THE KING, RESPONDENT.

*Criminal Law—Insanity—Verdict of wilful murder with recommendation to mercy on account of youth and weak mind—Uncontradicted medical evidence that accused insane at the time of killing—Conviction quashed and verdict of acquittal on account of unsoundness of mind entered—Criminal Code, sections 26, 27, 689 and 693 (4).*

McMillan.  
C.J.  
Northmore,  
J.  
Draper, J.

The appellant, Wray, a shipping clerk, aged 19, who lived at Maida Vale some 14 miles from Perth, and cycled to and from the city each day, was tried and convicted of the wilful murder of a taxi driver named Patterson.

From statements made to the police by Wray, it appeared that on Friday, 8th August, 1930, he made an appointment by telephone with Patterson (who was a stranger to him) to meet him at the Victoria Park Post Office on the following Monday evening, and that having kept the appointment they proceeded in Patterson's car to a lonely spot near Maida Vale, where Wray shot Patterson in the head. Wray walked on to his home and told his father he had shot a man. Later Patterson was found dead in the driver's seat of the car.

Wray at first told the police that the revolver went off accidentally, but subsequently he made a statement in which he said, "I felt at the time I had to do something or bust. I was fed up having to ride the bike in and out to town."

The police discovered in Wray's pocket a document in his handwriting, containing notes of an elaborate but highly fantastic plan for gaining control of a motor car, kidnapping the manager of a bank, taking him to a deserted country house, returning to Perth, robbing the bank, abandoning the car in the bush, taking the train to Perth, putting his bag in the left luggage office, having a shave and reporting at work. Driving a motor car was apparently an essential part of the plan, but it appeared from the evidence that Wray could not drive one.

The only witnesses called for the defence were Wray's father, who told of a bad mental history in his own and also in his wife's family; and two doctors, namely, the Inspector General of the Insane, and the doctor of the Fremantle Gaol, who testified that Wray was suffering from *dementia praecox*, and was insane at the time of the killing.

At the trial the jury found Wray guilty of wilful murder, but recommended him to mercy on account of his youth and weak mind. The trial judge passed sentence of death. In the interval between the trial and the hearing of the appeal, Wray was removed from Fremantle Gaol to the Claremont Hospital for the Insane.

*Held* (i.) that the verdict of the jury was unreasonable and could not be supported having regard to the evidence; (ii.) that the conviction should

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be quashed and a verdict of acquittal on account of unsoundness of mind entered; and (iii.) that the appellant be detained in safe custody until His Majesty's pleasure is known.

Cases referred to:—

*R. v. Macnaughton* (10 Cl. and F., 200).

*Jackson v. The King* (16 W.A.L.R., 8).

Court of Criminal Appeal. The facts appear sufficiently in the headnote and the judgment.

*E. C. Moss*, for the appellant.

*Gibson* (Crown Prosecutor), for the respondent.

McMILLAN, C.J. The appellant, George Clifford Wray, has been found guilty of wilful murder, and sentenced to death. We are asked on this appeal to say that the verdict of the jury is against the evidence and the weight of evidence, that the said verdict was unreasonable, and that the said verdict cannot be supported having regard to the evidence. About the facts surrounding the killing there is no dispute. It was an unlawful killing, and, apart from the defence set up, it amounted to wilful murder. The only defence was that of insanity. By section 26 of our Code, sanity is presumed. The material section is section 27, which deals with insanity. It does it in these words: "A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission." In this case it was alleged that the accused lad, by reason of mental disease, was deprived of the capacity to control his actions. That section is taken verbatim from the Queensland Code, and in his introduction to that Code Sir Samuel Griffith, the author of it, said, dealing with criminal responsibility, "This most important and difficult branch of the law is dealt with in chapter 5. No part of the drafting of the Code has occasioned me more anxiety, but I may add that I regard no part of the work with more satisfaction."

Section 27 in that Code and in ours not only codifies the law, but alters it by enlarging the area of irresponsibility. The law in England, and it was the law here at the time of the passing of the Code, is to be found in the answers of the Judges in *Macnaughton's case*, and those answers have been accepted as laying down the law as to the definition of insanity in reference to

criminal responsibility. But they have been the subject of much consideration and criticism by the legal and medical writers, and Sir James Stephen came to the conclusion that there should be a further exemption, and that a person should not be punished for any act when he is deprived by disease of the power of controlling his conduct, unless the absence of control has been caused by his own fault.

Now, that view was inconsistent with a great number of English cases, but in a footnote in Archbold's Criminal Pleading (26th edn., p. 18), in the chapter dealing with defences of insanity, it states:—"Colonial and American views: The tendency of Judges and legislators in the United States and the British colonies is not to accept the *dicta* in *Macnaughton's case* as an adequate definition of insanity with reference to criminal responsibility. In the Queensland Code of 1899 (s. 27) drafted by the Rt. Hon. Sir Samuel Griffith, C.J., of that colony, after consideration of the English authorities and continental and American legislation, the view of Sir J. Stephen is in substance adopted."

The only question here, therefore, was whether the accused man had the capacity to control his actions at the time of doing the act. What was the evidence on that point? We have two doctors, who say that he had, what of course must be established in the first place, a diseased mind, that he was suffering from *dementia praecox*, and they say that a result of that particular disease would be to deprive him of the capacity to control his actions. That evidence was uncontradicted. No medical witnesses were called on the other side. We very often find doctors on this question, as on others, taking different views, and it is not to be wondered at in a borderline case, but here apparently there was no one to come forward and say that these two experts (who happened to be Crown experts, one the doctor of the gaol and the other one of the Hospital for the Insane) were wrong in the conclusion they came to, and it seems to me that their opinion is supported by all the facts of the case. We have here a bad family history. We have the act of killing, which could only be described as a mad act. Some attempt has been made to support the verdict by reference to the document which was found in the possession of the accused man, but that seems to me to be even madder than the act of the killing itself. The whole thing speaks of a diseased mind, and therefore

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there was much here to support the conclusion arrived at by the doctors. Under these circumstances, the evidence seems to me to be all one way. I am quite unable to understand how the jury arrived at their verdict, especially when they add to it the illogical recommendation which has been referred to.

The power of this Court to act is a question which was dealt with in *Jackman's case* (16 W.A.L.R., p. 8). In delivering judgment in that case I said, "The first matter to be considered is the principle on which we ought to deal with appeals like this, where we are asked to come to a conclusion on the facts different from that arrived at by the jury. I do not think that the rule which is applicable in civil cases, which only justifies a Court of Appeal in setting aside a verdict of the jury in cases in which the Court is prepared to say the verdict is an unreasonable one, applies. In order to see what our powers are, we must look at the section of the Act in question, section 689, which says, 'The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal, if they think that the verdict of the jury should be set aside on the ground that it is unreasonable.' Now, if the legislature had stopped there, one would have been driven to the conclusion that the intention was that the same rule should be applied in this Court as is followed in the civil court. Then the section continues, 'or cannot be supported having regard to the evidence.' We must give effect to these words. In England judges who have had to consider this point have always asked themselves whether the verdict in question is a satisfactory or an unsatisfactory one. The expression 'satisfactory' is perhaps somewhat wanting in preciseness, but I think its elasticity is an advantage. It is quite clear that we have on the one hand to guard against the danger of substituting trial in this court for trial by jury, but, on the other hand, we must not shirk the responsibility which has been placed on us by the legislature. I think, therefore, that the duty of this court is in every case in which there is an appeal on the facts to give the most careful consideration to those facts, and then to ask itself whether it is prepared to say the verdict of the jury is or is not a satisfactory one." I have no hesitation in saying that this is not a satisfactory verdict. I am prepared to go further, and say it is an unreasonable verdict. I think, therefore, this appeal must be allowed.

Then section 693 (4) of the Code applies, which says, "When it appears to the Court that a convicted appellant ought

to have been acquitted on account of unsoundness of mind, they may quash the conviction and direct a judgment and verdict of acquittal on account of unsoundness of mind to be entered, and shall thereupon order the appellant to be kept in strict custody until His Majesty's pleasure is known, and in any such case the Governor in the name of His Majesty may give such order for the safe custody of the appellant during the pleasure of the Governor, in such place of confinement and in such manner as the Governor may think fit." We therefore make an order under that subsection. As to the place of detention, under ordinary circumstances it is Fremantle, but here it appears that the appellant has found his way to his proper place. He will, therefore, be detained in the Hospital for the Insane, where he now is, until His Majesty's pleasure is known.

NORTHMORE, J. I agree.

DRAPER, J. I agree on the facts of this case with the decision the Court has come to.

*Appeal allowed, conviction quashed, and verdict of acquittal on account of unsoundness of mind entered. Appellant to be detained in Hospital for the Insane until His Majesty's pleasure is known.*

Solicitors for the appellant: *Jackson, Leake and Co.*

Solicitor for the respondent: *Crown Solicitor.*

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SAUNDERS, PLAINTIFF.

QUEENSLAND INSURANCE CO. LTD., DEFENDANT.

1930.

Oct. 6, 7.

*Insurance—Claim under fire policy—Non-disclosure in proposal of previous fire—Proposal signed by agent of assured—Provision in proposal that any question not answered deemed to be answered in negative—To usual question as to previous fires and claims on insurance companies, reply given "not to agent's knowledge"—This held no answer, and the question, therefore, deemed to be answered in negative—Untrue answer.*

*Northmore,  
J.*

In 1926 a property at Leederville belonging to the plaintiff had been destroyed by fire, and it was admitted that she had made a claim in respect thereof on the A. Insurance Company.

In 1929 (the plaintiff being then in Tasmania) her agent H., who knew nothing of the 1926 fire, signed on her behalf a proposal for fire insurance with the defendant company in respect of a property at Kalamunda. The proposal contained a clause which declared (a) that the answers given were true and correct, and that the proponent had not withheld any information likely to affect the acceptance of the proposal; (b) that the proposal and declaration should be the basis of the insurance contract; (c) that the person filling up the proposal form should be deemed

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