

IN RE PANAYIOTIS PEPES.

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(Criminal Appeal No. 3335).

*Mental Patients—Inquiry as to the mental state of a person—Sections 3 and 6(1) of the Mental Patients Law, Cap. 252—Procedure to be followed—As nearly as possible the procedure followed in criminal proceedings upon summary trial—Rule 7(1) of the Mental Patients Rules—Such procedure not followed in the instant case—Moreover, there has been no proper inquiry in the matter—Appeal allowed—Order of the District Court declaring the Appellant a mental patient and a proper subject of confinement set aside.*

The Appellant challenges the validity of an order made by the District Court of Nicosia, whereby he was adjudged to be a mental patient and a proper subject of confinement, under the provisions of section 6(1) of the Mental Patients Law, Cap. 252. This order was made on March 18, 1972, in the absence of the Appellant, though, on the undisputed medical evidence, he was fit to be present in Court. Moreover, counsel for the Appellant sought to question Dr. Malekides, who testified as a medical witness before the District Court, but he was not allowed by that Court to do so. Under rule 7(1) of the Mental Patients Rules the procedure to be followed at an inquiry for the purpose of ascertaining whether a person is to be adjudged to be a mental patient and a proper subject of confinement, shall be as nearly as possible the same as the procedure followed in criminal proceedings upon summary trial.

Setting aside the order appealed from, the Supreme Court:

*Held*, (1). It is obvious that not only was the procedure followed on March 18, 1972, (*supra*), not at all as nearly as possible that followed in a summary criminal trial, but that there was no proper inquiry at all.

(2) And this being a matter concerning the liberty and health of a citizen, the importance of compliance with the relevant Law and Rules was stressed in *Re Kepsis*, 24 C.L.R. 244.

*Appeal allowed. Order appealed from set aside.*

1972  
Mar. 30  
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IN RE  
PANAYIOTIS  
PEPES

Cases referred to:

*Re Kepsis*, 24 C.L.R. 244.

### Appeal.

Appeal by Panayiotis Pepes against the order made by the District Court of Nicosia (Papaioannou, Ag. D.J.) on the 18th March, 1972 (Mental Patients Appl. No. 42/72) whereby he was adjudged to be a mental patient and a proper subject of confinement, under the provisions of section 6(1) of the Mental Patients Law, Cap. 252.

*L. Georghiadou (Mrs.)* with *E. Lemonaris*, for the Appellant.

*Cl. Antoniadis*, Counsel of the Republic, for the Respondent.

The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, P.: The Appellant challenges the validity of an order, made by the District Court of Nicosia, whereby he was adjudged to be a mental patient and a proper subject of confinement, under the provisions of section 6(1) of the Mental Patients Law, Cap. 252.

The order was made on the 18th March, 1972, in the absence of the Appellant, though, as appears from the evidence given by Dr. G. Malekides, who is the Medical Officer in charge of the Male Section of the Mental Hospital, where the Appellant was under observation, the Appellant was fit to be present in Court.

The Appellant was represented before the Court below by one of the two counsel who appear before us today; counsel's appearance is not shown in the Court record for the 18th March, 1972, but counsel concerned has made a statement today that on the date in question he sought to question Dr. Malekides, who testified as a witness, and, also, to call evidence, but the Court below disallowed both such courses.

Counsel for the Respondent has confirmed what counsel for the Appellant has stated, as above, adding, very rightly, that he does not support the order appealed from.

Under rule 7(1) of the Mental Patients Rules the procedure

to be followed at an inquiry for the purpose of ascertaining whether a person is to be adjudged to be a mental patient and a proper subject of confinement, shall be, as nearly as possible, the same as the procedure followed in criminal proceedings upon summary trial.

1972  
Mar. 30  
—  
IN RE  
PANAYIOTIS  
PEPES

It is obvious from the foregoing that not only was the procedure followed on the 18th March, 1972, not at all as nearly as possible that followed in a summary criminal trial, but that there was no proper inquiry at all; and this being a matter concerning the liberty and health of a citizen, the importance of compliance with the relevant Law and Rules was stressed in *Re Kepsis*, 24 C.L.R. 244.

The order appealed from is set aside. If the authorities have reason to believe that the Appellant is a mental patient and a proper subject of confinement, they are at liberty to take proceedings afresh, and we trust that care will be taken that such proceedings will comply in every respect with the relevant legislation.

*Appeal allowed.*