

1928.

*Present* : Driebert J.*In re Lunacy of GARLIS SINNO.*

536—D. C. Kalutara, 1,280.

*Lunacy—Proceedings initiated on inadequate material—Regularity of adjudication—Ordinance No. 1 of 1873, ss. 5 and 6.*

The failure to observe the requirements of section 5 of the Lunacy Ordinance does not render invalid an adjudication under section 6, which is otherwise regular.

**A** PPLICATION by the Solicitor-General for revision of an order of the District Judge of Kalutara.

*Dias, C.C.*, in support.

October 26, 1928. DRIEBERT J.—

This is an application by the Solicitor-General that the order of the District Judge of Kalutara adjudicating M. Garlis Sinno of Warakagoda to be of unsound mind be set aside and the case sent back for fresh proceedings in due course.

The Solicitor-General complains that the learned District Judge entered upon this inquiry under circumstances not authorized by the Lunacy Ordinance, No. 1 of 1873. This undoubtedly is so, and it is a matter for comment that the very clear provisions of the Ordinance should not have been observed.

Section 5 provides for proceedings being initiated by an application in writing that the state of mind of a person be inquired into, made to the District Court by an officer of the police force or a headman or any private person who has reason to believe that a person is of unsound mind. An application by a private person has to be accompanied by a certificate by a medical practitioner that the person suspected has been under his observation and that he believed him to be of unsound mind.

In this case Nonohamy, whose husband was a cousin of the suspect Garlis Sinno, brought Garlis before the Court and produced a report from the Police Vidane of Warakagoda in which he mentions matters which he was aware of and which would certainly have justified the Court in remanding the suspected person for observation. After examining Nonohamy the learned District Judge remanded the suspect for observation.

Now these proceedings were undoubtedly irregular. The Headman's report, though it mentions facts of importance regarding the man's condition, contains no request that his state of mind be

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inquired into, and it cannot therefore be said that the Court acted upon any application by the Police Vidane. So far as the proceeding can be regarded as initiated on the statements in evidence of Nonohamy, they are defective because Nonohamy's application, if any, should have been supported by the certificate of a medical practitioner.

The District Judge, however, remanded the suspect for observation, and the evidence of the Medical Officer of the Asylum, Angoda, was recorded on commission in Colombo, and on August 13, 1928, the District Judge adjudicated Garlis to be of unsound mind and committed him to the custody of the Fiscal pending directions from His Excellency the Governor.

The adjudications states that it proceeded upon the application of the Police Vidane. As I have pointed out, this is incorrect.

I am not prepared to say that the failure which occurred in this case to observe the requirements of section 5 of the Ordinance rendered the adjudication invalid and unlawful. It must be remembered that this is an adjudication by a Court of competent jurisdiction; the jurisdiction does not arise on the observance of the requirements of section 5, which merely indicate the manner in which the Court should be moved to take action. The jurisdiction is inherent in the Court.

The Court has had before it evidence which it has accepted and which justified the adjudication and the subsequent order made, and I cannot set the adjudication aside for the reason that the Court began this inquiry upon what is under section 5 inadequate material.

I am informed by Mr. Dias that it is by no means unusual for District Judges not to follow strictly the requirements of section 5. As I have observed, the provisions are very clear and there is no reason why they should not be strictly followed. Though in my opinion no harm has been done in this case for the reason that there was a valid adjudication upon sufficient material, cases may arise where the legality of a remand made upon an irregular application may be questioned. It is necessary, therefore, that there should be strict compliance with the requirements of the law on this point.

I disallow the motion of the Solicitor-General.

*Application refused.*