IN THE SUPREME COURT OF THE
TERRITORY OF PAPUA AND NEW GUINEA.

TAKAILI-MULI of GORU

PORT MORESBY.
MANN, C.J.

This case came on for trial before me at the Criminal Sittings held at Rabaul on 13th November 1959. I made the special finding provided for in Section 647 of the Criminal Code that the accused was not guilty and that he was acquitted on account of unsoundness of mind at the relevant time. According to the wording of the Section of the Code as it now stands the Court is required to order the accused person to be kept in strict custody, in such place and in such manner as the Court thinks fit, until Her Majesty's pleasure is known. This was a Circuit case and at the time difficulty was experienced by counsel and myself in finding some appropriate statutory provision to indicate whether in the Territory for the present purpose Her Majesty's pleasure should be expressed as the pleasure of the Governor-General or of the Administrator or otherwise.

The same doubt and difficulty extended to the word "Governor" in the context in which it is used in the second paragraph of Section 647. In the Order as to the custody of the accused I specified that he should be kept until the Governor-General's pleasure be known, but this now appears to be incorrect, and it is doubtful whether as the law now stands any substitution can be made for the phrase "until her Majesty's pleasure is known."

It appears that by virtue of Section 52 of the Insanity Ordinance 1912 (Papua, adopted) the "Lieutenant-Governor" may in cases such as the present direct that a person who has been found to be insane by the Court so that he cannot be tried upon an indictment, be removed to and detained in an asylum until he is duly certified to be of sound mind. Section 53 then provides for a person to be liberated from custody or confinement on such terms and conditions as the Lieutenant-Governor thinks fit.

The expression "Lieutenant-Governor" in Section 52 and in the second and third places where it is used in Section 53 should be read as the "Administrator" in order to give these provisions practical application, and the expression "Lieutenant-Governor's pleasure" as used in Section 53 must be read as "Her Majesty's pleasure" in order to fit the requirements of Section 647. Under the Ordinances Interpretation Ordinance 1949-1959 there is provision for the expression "Lieutenant-

Governor", as used in Papuan Ordinances, to be read as the "Administrator of the Territory of Papua and New Guinea." This causes some difficulty, for a similar provision does not appear to apply to Ordinances of the Territory of New Guinea, and the Insanity Ordinance with which I am now concerned has become by adoption part of the New Guinea legislation. However, in Section 17A of the Laws Repeal and Adopting Ordinance 1921-1939 it is provided in Sub-sections 3 and 4 that references to the Lieutenant-Governor shall be read as references to the Administrator and the Administrator is authorized to exercise the powers conferred by Papuan Ordinances adopted in New Guinea on the Lieutenant-Governor. Under Section 55 of the Ordinances Interpretation Ordinance 1949-1959 the words "the Administrator" as appearing in the New Guinea Ordinances are now to be read as a reference to the Administrator of the Territory of Papua and New Guinea.

The Insanity Ordinance being a Papuan Ordinance at the time of its adoption in New Guinea would today in its application to Papua be subject to the same substitution for the expression the "Lieutenant-Governor", and this by a shorter step, but I do not think that the shorter step can be taken, in the case of an Ordinance of the Territory of Papua, adopted, as part of the legislation of New Guinea before the Ordinances Interpretation Ordinance came into force. Therefore it is necessary to take the more roundabout course which I have indicated.

It does seem to me that the difficulty of how to express the discretion vested in Her Majesty under Section 647 remains, and I cannot see that I can substitute any other expression for the purposes of the Order which I am required to make. Similarly, I cannot see any way of altering the provisions of Section 53 of the Insanity Ordinance 1912 (Papua, adopted) so as to read "during Her Majesty's pleasure." It may be compulsory under the terms of Section 17A of the Laws Repeal and Adopting Ordinance 1921-1939 to read the expression the "Lieutenant-Governor's pleasure" as meaning "during the pleasure of the Administrator" (now the Administrator of the Territory of Papua and New Guinea). This, however, does not enable Section 53 to be matched precisely with Section 647 of the Code.

It appears at any rate that the power provided under Section 52 to order the accused to be removed to and detained in an asylum until he is duly certified to be of sound mind is a power which may be exercised by the Administrator upon a special finding as to insanity being made in terms of Section 647 of the Criminal Code. The exercise of this power does not depend in any way upon the precise form of Order which the Court may make in the meantime as to the custody of the accused, therefore the present Order has no limiting effect so far as Section 52 is concerned.

The power conferred by Section 53 is, however, directly related to the form of Order pronounced by the Court in relation to the custody of the accused, but since I cannot at the present time see any authority for me to make the Order so as to operate during the Lieutenant-Governor's pleasure or the Administrator's pleasure, there will inevitably be a mis-matching of language which may render Section 53 inoperable. In these circumstances I have been asked to revert for the purposes of the Order as to the custody of the accused, to the actual language of Section 647 of the Criminal Code, and I think that, although it may not be of any assistance at the moment, I should do so for the sake of complying with the literal requirements of the Code.

I would not think that my power to correct errors would extend to any part of the judgment of the Court for which purpose the general practice is to apply to the Appeal Court. However, there is a statement in Archbold, 34th Edition, at the end of paragraph 632 that errors in a commitment to prison founded on the judgment may be corrected by the Court of trial (although errors of law and fact in the judgment as drawn up are to be corrected by the Court of Criminal Appeal). There seems to be no direct authority for the trial Court's power of correction referred to. The nature of the Order required to be made under Section 647 of the Code I think throws further light on the question, for the Section appears to impose on the Court a continuing power which would operate at least until the "Governor" should exercise his power to make some other Order for the safe custody of the accused person. I think that it would be open to the Court to make one Order as to custody and subsequently to vary the Order as it saw fit. The first Order as to custody pronounced by me evidently does not comply with Section 647 and does not provide any solution to the problems which arise, and I think that whether that part of the Order had any effect or not, I should now pronounce a further Order to the effect that the accused be kept in strict custody in Bomana Corrective Institution as a patient under the care of the Assistant Director of Mental Health until Her Majesty's pleasure is known. It is intended that this Order should now operate in place of the Order originally pronounced, and I will direct that the records of the Court be endorsed accordingly.