

31st. October, 1949.

Judge :

The Hon. Mr. Justice W. Harding, B.Litt., LL.D.
The Police versus Walter Ham

**Mental Insanity — "Strict Custody" — Appeal —
Ar't. 619 and 425 of the Criminal Laws.**

It is quite in order for the Magistrate to appoint medical experts and to remit the accused to the Hospital for Mental Diseases, to be kept there under observation, when it is submitted by the Police that there are reasonable grounds to believe that the accused was insane at the time of the commission of the crime.

But it is only when the person accused is definitely found to be of unsound mind, that the Court orders the accused to be kept, not merely under observation, but under "strict custody".

But apart from the above, an appeal from such an order is admissible only when the order is given by the Court of Magistrates sitting as a Court of Criminal Judicature, and not when the Court is sitting as a Court of Criminal Enquiry. In this latter case no appeal lies from such an order.

The appellant was arraigned before the Criminal Court of Magistrates sitting as a Court of Criminal Enquiry, on the twofold charge of attempted violent indecent assault and voluntary bodily harm of a slight nature;

Before that Court (vide procès verbal fol. 6) the prosecution police officer submitted that he had reasonable grounds to believe that the accused was insane at the time of the commission of the crime;

The Magistrate then heard the evidence of Inspector Lewis Micallef, and by an order of the 27th. August, 1949, appointed three medical experts to enquire into the mental condition of the accused both at the time of the commission of the offence as well as at the time of the trial, and directed that the appellant be meanwhile remitted to the Hospital for Mental Diseases, to be kept there "under strict observation";

The appeal is from the aforesaid order;

During the hearing before this Court it transpired that the objection against the aforesaid order is limited to the word "strict". It was quite proper for the magistrate to appoint medical experts and to remit the appellant to the Hos-

pital for Mental Diseases to be kept there under observation; but, through inadvertence, the Magistrate used the adjective "strict". It is only when the person accused is definitely found to be of unsound mind that the Court orders that he be kept not merely under observation, but, as the wording of the law goes, "under strict custody" (sec. 619 Chap. 12);

This is being said for purposes of regularity. As for the appeal itself, Crown Counsel is correct in submitting that it is not admissible. If the order had been given by the Criminal Court of Magistrates sitting as a Court of Criminal Judicature, and if it had been an order remitting the accused to the Hospital for Mental Diseases to be kept under strict custody after having found him insane, then an appeal would have been admissible. This point was settled in the two cases "The Police vs. Bezzina", Crim. App. 16th. April 1913, and "The Police vs. Cassar", Crim. App. 10th. June 1939. But here we have an order given by the Court of Magistrates as a Court of Enquiry, and, besides, it is only an order appointing medical referees to enquire into the mental condition of the accused, who, as usually done, is meanwhile kept under observation by the experts so appointed at the aforesaid hospital. It is obvious that no such appeal can be brought under section 425 Chapter 12;

The appeal, therefore, is not admissible, and for that reason is dismissed.
