

PAPUA.



No. 15 of 1920.

AN ORDINANCE

To Amend the Criminal Code.

J. H. P. MURRAY.

[L.S.]

12th November, 1920.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Criminal Code Amendment Ordinance, 1920.* Short title.

2. Section eighteen of the *Criminal Code* is amended by adding at the end thereof the words “The punishment of whipping shall not be inflicted without the consent of the Lieutenant-Governor.” Amendment of s. 18 of the Criminal Code.

3. Section three hundred and fifty of the *Criminal Code* is amended by adding at the end thereof the words “with or without whipping.” Amendment of s. 350 of the Criminal Code.

Amendment of
s. 389 of the
Criminal Code.

4. Section three hundred and eighty-nine of the *Criminal Code* is amended by omitting therefrom the words "by a jury" and inserting in lieu thereof the words "before the Central Court."

5. After section four hundred and twenty of the *Criminal Code* the following new section is inserted:—

Trespassing
with intent to
insult etc.
females.
Cf. Fiji 6 of
1884.

"420A. Any person who enters or is in or upon any dwelling-house of another or any verandah or passage attached thereto or any yard garden or land adjacent to or within the curtilage of such dwelling-house with intent indecently to insult or annoy any female inmate of such dwelling-house is guilty of a misdemeanour and is liable to imprisonment with hard labour for one year with or without whipping:

Provided that such whipping shall not be inflicted without the consent of the Lieutenant-Governor."

Amendment of
s. 444 of the
Criminal Code.

6. Section four hundred and forty-four of the *Criminal Code* is amended by omitting therefrom the words "by a jury" and inserting in lieu thereof the words "before the Central Court".

Amendment of
s. 571 of the
Criminal Code.

7. Section five hundred and seventy-one of the *Criminal Code* is amended by omitting therefrom the words "jury is sworn" and inserting in lieu thereof the words "accused person pleads to the indictment."

Amendment of
s. 577 of the
Criminal Code.

8. Section five hundred and seventy-seven of the *Criminal Code* is amended by adding at the end thereof the following words:—

Charge of
manslaughter.

"Provided also that upon an indictment charging a person with unlawfully killing any other person the accused person may be convicted of any of the offences following that is to say:—

(a) Unlawfully doing grievous bodily harm to such other person; or

(b) unlawfully assaulting such other person and thereby doing him bodily harm; or

(c) unlawfully wounding such other person; or

(d) unlawfully assaulting such other person

if any such offence is established by the evidence.

9. Section six hundred and four of the *Criminal Code* is amended by omitting therefrom the words "by a jury" and inserting in lieu thereof the words "according to law".

Amendment of s. 604 of the *Criminal Code.*

10. Section six hundred and eight of the *Criminal Code* is amended by omitting therefrom the words "has demanded" and inserting in lieu thereof the words "is entitled".

Amendment of s. 608 of the *Criminal Code.*

11. Section six hundred and thirteen of the *Criminal Code* is repealed and the following section is substituted therefor :—

"613. If where the accused person is called upon to plead to the indictment it appears to be uncertain for any reason whether he is capable of understanding the proceedings at the trial so as to be able to make a proper defence, then, if on a plea of not guilty to such indictment the accused person would be entitled to be tried by a jury, a jury of four persons to be chosen from the panel of jurors are to be impannelled forthwith who are to be sworn to find whether he is capable or no; or, if on a plea of not guilty to such indictment the accused person would not be entitled to a jury, the Court shall find whether he is capable or no.

Want of understanding of accused person

If the jury or the Court as the case may be find that the accused person is capable of understanding the proceedings the trial is to proceed as in other cases.

If the jury or the Court as the case may be find that he is not so capable the finding is to be recorded and the Court may order the accused person to be discharged or may order him to be kept in custody in such place and in such manner as the Court thinks fit until he can be dealt with according to law.

A person so found to be incapable of understanding the proceedings at the trial may be again indicted and tried for the offence."

12. Section six hundred and nineteen of the *Criminal Code* is amended by inserting therein before the word "jury" wherever it occurs the words "Court or".

Amendment of s. 619 of the *Criminal Code.*

Amendment of
s. 620 of the
Criminal Code.

13. Section six hundred and twenty of the *Criminal Code* is amended by inserting therein after the words "the evidence is concluded" the words "in a trial held before a jury".

Repeal of s. 625
of the
Criminal Code.

14. Section six hundred and twenty-five of the *Criminal Code* is repealed.

Amendment of
s. 630 of the
Criminal Code.

15. Section six hundred and thirty of the *Criminal Code* is amended—

- (a) by omitting from paragraph (2) thereof the words "a jury, the jury are to be charged" and inserting in lieu thereof the words "the Court, the Court is";
- (b) by omitting from paragraph (5) thereof the words "jury are then to be charged" and inserting in lieu thereof the words "Court is then";
- (c) by omitting from paragraph (5) thereof the words "and in that case it is not necessary that the jury should be sworn afresh, but the oath already taken by them is deemed to extend to such last-mentioned inquiry";
- (d) by omitting from the proviso at the end of the section the words "jury are required" and inserting in lieu thereof the words "Court is";
- (e) by omitting from the proviso at the end of the section the words "they inquire" and inserting in lieu thereof the words "it inquires".

16. Section six hundred and forty-five of the *Criminal Code* is repealed and the following section is substituted therefor—

Accused
person insane
during trial

"645. If on the trial of any person charged with an indictable offence it is alleged or appears that he is not of sound mind then if the accused person is being tried without a jury, the Court is to consider the matter, or, if the accused person is being tried by a jury, the jury are to be required to consider the matter, and if the Court or the jury as the case may be find that the accused person is not of sound mind the finding is to be recorded and thereupon the Court is required to

order him to be kept in strict custody in such place and in such manner as the Court thinks fit until he is dealt with under the laws relating to insane persons.

A person so found to be not of sound mind may be again indicted and tried for the offence."

17. Section six hundred and forty-six of the *Criminal Code* is repealed and the following new section substituted therefor:—

"646. If the accused person is found not guilty or any other verdict is given which shows that he is not liable to punishment he is entitled to be discharged from the charge of which he is so acquitted. Discharge of persons acquitted.

18. Section six hundred and forty-seven of the *Criminal Code* is repealed and the following new section is substituted therefor:—

"647. Provided that if, on the trial of a person charged with any indictable offence, it is alleged or appears that he was not of sound mind at the time when the act or omission alleged to constitute the offence occurred, then:— Acquittal on ground of insanity.

- (a) the jury, if the accused person is being tried by a jury, are to be required to find specially; or
- (b) the Court, if the accused person is being tried without a jury, is required to find specially—

if they or it find that he is not guilty, whether he was of unsound mind at the time when such act or omission took place, and to say whether he is acquitted by the jury or the Court as the case may be on account of such unsoundness of mind; and if the jury or the Court as the case may be find that he was of unsound mind at the time when such act or omission took place and say or says that he is acquitted by them or it on account of such unsoundness of mind, the Court is required to order him to be kept in strict custody in such place and in such manner as the Court thinks fit until His Majesty's pleasure is known.

Criminal Code Amendment Ordinance, 1920.

In any such case the Lieutenant-Governor in the name of His Majesty may give such order for the safe custody of such person during his pleasure in such place of confinement and in such manner as the Lieutenant-Governor in Council may think fit."

Amendment of
s. 678 of the
Criminal Code.

* **19.** Section six hundred and seventy-eight of the *Criminal Code* is amended by omitting therefrom the words "by a jury" wherever they occur in the section and by inserting in lieu thereof in each case the words "before the Central Court".

Passed in Council this twelfth day of November, in the year of Our Lord One thousand nine hundred and twenty.

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