In the present case, the court believes that the defendant should be given an opportunity to acknowledge the *leroij erik* and perform his obligations to her in the light of this decision. If he fails to promptly do so, the matter may be brought to the court for enforcement of the approved decision of the *leroij erik*.

Ordered, adjudged and decreed:—

1. That the plaintiffs are the *iroij erik* and successor to that title for Alwal *Wato* and for Bikelan Island (Loene *Wato*) Rita, Majuro Atoll.

2. That defendant as *alab* and *dri jerbal* for the land owes the obligations required under the custom to the plaintiffs. If defendant fails to promptly recognize and cooperate with plaintiffs, they may bring the matter to the court's attention for appropriate action.

3. Defendant is granted sixty days within which to bring an appeal.

HENRY IYAR, INNOCENCIO KUZUMA, JOHN C. SANTOS, Petitioners

v.

MARIANA ISLAND DISTRICT CHIEF OF POLICE, Respondent

Civil Action No. 82-73

Trial Division of the High Court

Mariana Islands District

November 26, 1973

Petition for habeas corpus. The Trial Division of the High Court, Burnett, Chief Justice, held that petition would be denied where there was an adequate remedy at law.

1. Habeas Corpus—Availability of Writ

Habeas corpus is not a substitute for trial, and petition for habeas corpus by person awaiting criminal trial, on ground certain statements were taken from him by police in violation of his rights and erroneously admitted at preliminary examination to determine whether he would be

held for trial, would be denied where the issue could be adequately decided at trial.

2. Habeas Corpus—Availability of Writ

Habeas corpus will not ordinarily lie where there is an adequate remedy at law.

BURNETT, *Chief Justice*

Defendants were charged, in Marianas District High Court Criminal No. 20-73, with murder in the first degree. The District Court, on November 9, 1973, following preliminary examination, found probable cause, and held defendants for trial before this court.

On November 23, 1973, counsel for petitioners filed Petition for Writ of Habeas Corpus, set down for hearing this date. He alleges as grounds therefor, the erroneous admission of certain statements taken from the accused, urges this court to examine the record made in the District Court, to find a denial of due process resulting in a void commitment, and to discharge petitioners.

The initial question is whether habeas corpus is available to petitioners at this stage. This court has previously held that the writ could not serve as a substitute for appeal following conviction. *In the Matter of the Application of Hsu Deng Shung and Hsu Dang Boo*, 6 T.T.R. 27.

[1, 2] Even more compelling is the conclusion that habeas corpus is not a substitute for the trial function. "Habeas corpus is indeed the 'Great Writ' and it is because of its stature that it remains an extraordinary remedy which will not ordinarily lie where there is an adequate remedy at law," *Bland v. Rogers*, 332 F.Supp. 989.

Whether the statements of petitioners were taken by police in violation of their rights can be tested in the ordinary trial process, through motion to suppress. The preliminary examination serves the purpose of determining whether there is probable cause sufficient to hold an

accused to answer on trial. If there is error on the part of the District Court, ample opportunity remains for the accused to so demonstrate in the trial process; this is not a proper function of habeas corpus.

> The writ of habeas corpus is not intended to serve the office of a writ of error even after verdict; and, for still stronger reasons, it is not available to a defendant before trial, except in rare and exceptional cases, as pointed out in *Ex parte Royall,* 117 U.S. 241, 29 L.Ed. 868, 6 Sup. Ct. Rep. 734. This is an effort to nullify that rule, and to depart from the regular course of criminal proceedings by securing from this court, in advance, a decision on an issue of law which the defendant can raise in the district court, with the right, if convicted, to a writ of error on any ruling adverse to his contention. That the orderly course of a trial must be pursued and the usual remedies exhausted, even where the petitioner attacks on habeas corpus the constitutionality of the statute under which he was indicted, was decided in *Glasgow v. Moyer,* 225 U.S. 420, 56 L.Ed. 1147, 32 Sup. Ct. Rep. 753. That and other similar decisions have so definitely established the general principle as to leave no room for further discussion. *Riggins v. United States,* 199 U.S. 547, 50 L.Ed. 303, 26 Sup. Ct. Rep. 147. *Johnson v. Hay* 33 S.Ct. 240.

Counsel cited various sections of 5 Wharton's Criminal Procedure, to show that habeas corpus is no longer restricted to purely jurisdictional considerations, and that its scope has been expanded to preserve constitutional safeguards. Nowhere, however, do I find anything in that text to support the proposition that the writ can take the place of orderly trial procedure.

See also 39 C.J.S. Habeas Corpus, Section 76. "Even constitutional and jurisdictional questions will not be determined on habeas corpus where the trial court has jurisdiction to determine them. . . . Habeas corpus is not intended to perform the functions of the trial court."

For the foregoing reasons, I conclude that the ordinary trial process affords petitioners ample remedy for the alleged errors, that habeas corpus does not lie at this stage

of the proceedings, and that the petition must be, and hereby is, Denied.

PETER P. GELZINIS, JR., Plaintiff

v.

LAGOON AVIATION INC., a CORPORATION, and JERRY KRAMER, Defendants

Civil Action No. 14-73

Trial Division of the High Court

Marshall Islands District

November 30, 1973

Action for balance due on note. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held the note payable in stock of borrower corporation pursuant to oral agreement made subsequent to written note and allowing for cash or stock payment.

1. **Bills and Notes—Promissory Notes—Persons Liable on Note**

   When a maker of a note signs as an agent or in a representative capacity, he is not personally liable on the note.

2. **Contracts—Oral Contracts—Proof**

   Evidence of oral agreement that prior, written, nonnegotiable note was to be repaid in either cash or stock of borrower, a corporation, was not barred by parol evidence rule in action to recover on the note.

3. **Bills and Notes—Promissory Notes—Construction**

   Whether or not agreement for repayment of promissory note by stock of borrower or cash specified it, repayment by stock would have to be with stock of cash or book value equal to that owed, not par value.

4. **Contracts—Usury**

   Promissory note for $5,000 loan, providing for payment of 15% interest in 12 equal monthly installments ($750 total interest) was usurious where statute allowed maximum of one percent per month on the balance due, which amounted to $500 for the loan in question. (33 TTC § 251)