

DEBATES

IN THE

LEGISLATIVE COUNCIL OF CEYLON,

On Friday, January 30, 1925.

Pursuant to adjournment the Honourable the Members of the Legislative Council met at the Council Chamber at 2.30 P.M. this day.

PRESENT :

- THE HONOURABLE MR. JAMES PEIRIS, VICE-PRESIDENT (COLOMBO TOWN, SOUTH).
- THE HONOURABLE COLONEL H. W. HIGGINSON, C.B., D.S.O., A.D.C., OFFICER COMMANDING THE TROOPS.
- THE HONOURABLE MR. CECIL CLEMENTI, C.M.G., COLONIAL SECRETARY.
- THE HONOURABLE MR. L. H. ELPHINSTONE, ATTORNEY-GENERAL.
- THE HONOURABLE MR. E. B. ALEXANDER, CONTROLLER OF REVENUE.
- THE HONOURABLE MR. W. W. WOODS, TREASURER.
- THE HONOURABLE MR. N. H. M. ABDUL CADER (SECOND MUSLIM MEMBER).
- THE HONOURABLE SIR PONNAMBALAM RAMANATHAN, KT., K.C., C.M.G. (NORTHERN PROVINCE, NORTHERN DIVISION).
- THE HONOURABLE MR. L. MACRAE, DIRECTOR OF EDUCATION.
- THE HONOURABLE MR. T. Y. WRIGHT (EUROPEAN RURAL MEMBER).
- THE HONOURABLE MR. H. A. LOOS (NOMINATED UNOFFICIAL MEMBER).
- THE HONOURABLE MR. W. DURAISWAMY (NORTHERN PROVINCE, WESTERN DIVISION).
- THE HONOURABLE MR. D. H. KOTALAWALA (PROVINCE OF UVA).
- THE HONOURABLE MR. E. W. PERERA (KALUTARA REVENUE DISTRICT).
- THE HONOURABLE MR. E. R. TAMBIMUTTU (BATTICALOA REVENUE DISTRICT).
- THE HONOURABLE MR. E. J. HAYWARD, C.B.E., V.D. (COMMERCIAL MEMBER).
- THE HONOURABLE MR. W. L. KINDERSLEY (GOVERNMENT AGENT, CENTRAL PROVINCE).
- THE HONOURABLE MR. C. W. W. KANNANGARA (SOUTHERN PROVINCE, WESTERN DIVISION).
- THE HONOURABLE MR. N. J. MARTIN (SECOND BURGHES MEMBER).
- THE HONOURABLE MR. W. T. SOUTHORN, PRINCIPAL COLLECTOR OF CUSTOMS.
- THE HONOURABLE MR. W. E. WAIT, CONTROLLER OF INDIAN IMMIGRANT LABOUR.
- THE HONOURABLE MR. M. T. AKBAR, SOLICITOR-GENERAL.

- THE HONOURABLE MR. K. BALASINGHAM (NOMINATED UNOFFICIAL MEMBER).
- THE HONOURABLE MR. A. CANAGARATNAM (NORTHERN PROVINCE, SOUTHERN DIVISION).
- THE HONOURABLE MR. H. R. FREEMAN (NORTH-CENTRAL PROVINCE).
- THE HONOURABLE MR. T. B. JAYAH (THIRD MUSLIM MEMBER).
- THE HONOURABLE MR. D. B. JAYATILAKA (COLOMBO DISTRICT).
- THE HONOURABLE MR. H. M. MACAN MARKAR (FIRST MUSLIM MEMBER).
- THE HONOURABLE MR. G. E. MADAWALA (NORTH-WESTERN PROVINCE, EASTERN DIVISION).
- THE HONOURABLE MR. A. F. MOLAMURE (KEGALLA REVENUE DISTRICT).
- THE HONOURABLE MR. A. H. E. MOLAMURE (RATNAPURA REVENUE DISTRICT).
- THE HONOURABLE MR. F. A. OBEYESEKERE (SOUTHERN PROVINCE, CENTRAL DIVISION).
- THE HONOURABLE MR. I. X. PEREIRA (FIRST INDIAN MEMBER).
- THE HONOURABLE MR. S. RAJARATNAM (NORTHERN PROVINCE, CENTRAL DIVISION).
- THE HONOURABLE MR. D. S. SENANAYAKE (NEGOMBO DISTRICT).
- THE HONOURABLE MR. M. M. SUBRAMANIAM (TRINCOMALEE REVENUE DISTRICT).
- THE HONOURABLE MR. S. R. MOHAMED SULTAN (SECOND INDIAN MEMBER).
- THE HONOURABLE MR. V. S. DE S. WIKREMANAYEKE (SOUTHERN PROVINCE, SOUTHERN DIVISION).
- THE HONOURABLE MR. G. A. H. WILLE (FIRST BURGHES MEMBER).
- THE HONOURABLE DR. G. THORNTON, ACTING PRINCIPAL CIVIL MEDICAL OFFICER.
- THE HONOURABLE MR. A. H. F. CLARKE, ACTING DIRECTOR OF PUBLIC WORKS.
- THE HONOURABLE SIR J. THOMSON BROOM, KT. (EUROPEAN URBAN MEMBER).

MR. W. E. HOBDAY, *Clerk to the Council.*

Papers laid.

THE HON. THE COLONIAL SECRETARY :—I beg, Sir, to lay on the table the following papers :—

Message of His Excellency the Governor dated January 29, 1925.

NOTICE OF QUESTIONS.

THE HON. MR. V. S. DE S. WIKREMANAYEKE (Southern Province, Southern Division) :—I give notice, Sir, of the following questions :—

1. How many lands and what extent have been sold in the Hambantota District for default of payment of water rate from 1908 to 1918 ?
2. What was the water rate payable then ?

QUESTIONS.

Estate Duty Ordinance.

THE HON. MR. S. RAJARATNAM (Northern Province, Central Division) :—I rise, Sir, to ask—(a) What was the duty payable on estates of deceased persons of the value of Rs. 75,000 and under before and after the Estate Duty Ordinance of 1919 ?

(b) What was the number of estates over the value of Rs. 75,000 administered in the District Courts of Jaffna and Galle during the years 1920, 1921, 1922 ?

THE HON. THE COLONIAL SECRETARY :—(a) Before the Estate Duty Ordinance came into operation the duty paid on probate or letters of administration was as under—

- (a) Estates under Rs. 1,000 in value Nil
 (b) Estates of Rs. 1,000 in value and over but less than Rs. 2,500 2½ per cent.
 (c) Estates of Rs. 2,500 and upward 3 per cent.

(Vide scale in Part III., Schedule B of Ordinance No. 16 of 1917 amending the Stamp Ordinance, No. 22 of 1909.)

After the Estate Duty Ordinance came into operation, estate duty was payable in lieu of probate duty, in respect of the estates of persons who died on or after July 1, 1919, according to the scale set out in the schedule to the Estate Duty Ordinance, No. 8 of 1919, namely :—

- Under Rs. 1,500 Nil
 Exceeding Rs. 1,500 and under Rs. 7,500 1 per cent.
 Exceeding Rs. 7,500 and under Rs. 15,000 2 per cent.
 Exceeding Rs. 15,000 and under Rs. 75,000 3 per cent.

and according to an ascending scale as set out in the schedule until the maximum of 20 per cent. is reached for estates exceeding Rs. 15,000,000.

In addition to the above duty, stamp duty in testamentary proceedings leviable on pleadings, exhibits, and so on, is paid according to the scale set out in Part III. of Ordinance No. 22 of 1909, as amended by Ordinance No. 16 of 1917 and Ordinance No. 10 of 1919. This scale is applicable to both classes of testamentary cases, that is, to estates paying probate duty under the old procedure and to estates paying the new estate duty.

(b) The number of estates over the value of Rs. 75,000 in the District Courts of Jaffna and Galle during the years 1920, 1921, and 1922 is as follows :—

		1920.		1921.		1922.
Galle	..	2	..	1	..	2
Jaffna	..	1	..	1	..	1

Supplementary Expenditure.

THE HON. THE COLONIAL SECRETARY :—I beg, Sir, to move that the items No. 55 to No. 60 of supplementary expenditure annexed to the Message of His Excellency the Governor, dated January 29, 1925, be referred to the Finance Committee.

THE HON. THE TREASURER seconded, and the motion was agreed to.

A Personal Explanation.

THE HON. MR. E. R. TAMBIMUTTU (Batticaloa Revenue District) :—Will you permit me, Sir, to make a statement of a personal nature with regard to the remarks made by me at a previous meeting of Council in connection with the motion on the police ? I have received a letter from the Honourable the Attorney-General dated January 26, calling my attention to remarks made by me, the reports of which appeared at the time being, I am sorry to say, not being quite correct. The first statement to which the Honourable the

Attorney-General calls my attention at the instance of the Inspector-General of Police is the following statement which I am reported to have made: "I think Mr. Dowbiggin topped everything when, on a certain night, after the incident of the Unofficial Members of Council walking out of this Chamber, when His Excellency the Governor returned from up-country, he lined the streets from the Fort station to Queen's House with police. The police who were guarding the sacred person of His Excellency the Governor would have looked upon us as mortal enemies of the Government." Mr. Dowbiggin informs the Attorney-General that the date on which the Unofficial Members walked out of the Council Chamber was September 29, 1922, and that he was out of the Island on that date. It is not entirely my fault that I was under the impression that the police were put to special duty in that connection, and I remained under that impression till I was corrected. I remember that on August 17, 1923, I referred to this incident in the presence of His Excellency the Governor, who must have known all about it, and who, as Honourable Members know, is always anxious to correct a mis-statement, and this is what I said. I am going to read from page 439 of Hansard: "But last year it was a matter of great surprise to most of us when we heard that Mr. Dowbiggin had armed his forces to the teeth and lined with them the road up to Queen's House, just because we happened to walk out of Council. Perhaps the police thought that we had designs on Your Excellency's person. I can assure Your Excellency that that was a spectacle that made people look aghast." If anything, this was stronger than what I said subsequently, but I was not corrected by His Excellency. However, if it is not the fact that Mr. Dowbiggin did not top everything in this matter and did not line the roads with police, I am sorry to have made a mis-statement, and I express my regret for doing so. But I am glad that the police are becoming a little sensitive to public sentiment.

The second point to which the Honourable the Attorney-General has drawn my attention is in connection with a personal incident. It is with regard to a Superintendent of Police having placed his foot on the table while he was conducting an inquiry. Personally I do not stand on dignity. The explanation is that the police officer was suffering from a bad foot, and he therefore placed it on the table and apologized to me for having to do it. I was so taken up with the affair in hand, that perhaps I had forgotten the fact or did not take note of the apology. However, Mr. Dowbiggin states that this gentleman had a bad foot and that my statement was likely to create the impression that this Superintendent of Police was wilfully discourteous to a Member of this Council. In view of that fact I wish to state emphatically that I did not mean any reflection on that officer. My complaint was that I wanted certain witnesses examined and could not have that done. I am sorry that I was led to make this statement, which might be considered as reflecting on the conduct of this officer as a gentleman. Therefore I wish to withdraw it.

In connection with my first statement, my honourable friend on my left (the Hon. Mr. C. W. W. Kannangara) calls my attention to the following remarks made by His Excellency the Governor in reply to mine with regard to the police lining the streets. This is what His Excellency said: "The Honourable Member has also called attention to another little matter in connection with

myself. He said that after a certain debate in this Council—I believe the debate on September 29 last year—the police were brought out fully equipped to prevent the people falling upon me. Now, I was under the impression that the people were going to shower on me their congratulations, and that all that the police desired was that I should not be impeded in my progress to a very late meal.” I do not think from this that His Excellency took my remarks so seriously as Mr. Dowbiggin appears to have done. However, I withdraw the statements.

The Pearl Fisheries Ordinance.

THE HON. THE ATTORNEY-GENERAL:—I beg, Sir, to move the second reading of “An Ordinance further to amend and to consolidate the Law relating to the Pearl Fisheries of Ceylon.”

THE HON. MR. M. T. AKBAR (Solicitor-General) seconded.

THE HON. MR. E. W. PERERA (Kalutara Revenue District):—Sir, I should like to make a few preliminary observations before I deal with the subject of the motion. First of all I should like to state why some of us objected to the Bill being taken yesterday. We objected to the principle of abruptly suspending Standing Orders. It had been the fashion for some years past for Standing Orders to be habitually suspended and legislation to be rushed through Council, the consequences of which were very disastrous and not in the public interest, and gave eternal trouble to the Judges of the Supreme Court. The Honourable the Attorney-General will agree with me that his predecessor found when he came here that amendment had to be made upon amendment of Ordinances. We also felt that a Bill of this character should have been before the public. It might be urged that the Bill was published in the *Government Gazette*, but that is no publication at all so far as the public of this country is concerned. What was more important was that the Honourable the Attorney-General's speech should be published and time given for its consideration, particularly in a Bill of this character, which affects not only ourselves, but the people of our great neighbour, who are very sensitive about these things. I therefore thought that both on the question of principle and of publicity, even if it was for twenty-four hours, that principle should be upheld.

Then, Sir, I would strongly press upon Government this principle of taking the public into its confidence. No doubt we are in a majority, technically, in this House—an Unofficial majority; but there is always a group of “King's friends,” to use an historic phrase—I will not call them the friends of the reigning bureaucracy—who will always help Government to carry measures through. A free and frank discussion both in and out of this Council, of matters which vitally affect the country and the public, will always be appreciated and always receive every support possible.

I am now going to call attention to previous legislation in connection with pearl fisheries. It was always urged by the predecessor of the present Attorney-General that previous legislation should be considered when dealing with new legislation on any particular subject; and in this case it is most important that a representative assembly like this should hark back to the past in connection with the pearl fisheries. I believe that for the past twenty-five centuries one of the most valuable assets that this

country possessed were the pearl fisheries. When the first Aryan invader landed in Ceylon, sword in hand, and had to coax a bride from the neighbouring continent, he sent gifts of pearls. I am surprised to see some foreign nations raising a question with regard to the right to the pearl banks, that they were beyond the three-mile limit, and according to international law, challenging, incidentally, our rights to it. I am very glad to find that this Ordinance has confirmed in clear and unmistakable terms the immemorial rights of this country to its valuable and ancient heritage. I am referring to section 3.

Strangely, for the first time, during the administration of the Island by Sir West Ridgeway, German experts were brought here and large sums of money were expended to find out how the culture of the oyster could be carried out and how the oyster beds could be made more profitable. On that occasion Sir West Ridgeway wanted to enlist the sympathy of this House with regard to the sums voted for getting out the experts and for the survey of the pearl banks. He therefore planned an expedition to the pearl banks and invited the Members of this Council to go with him. Lord Crewe, who was not holding office at that time, and who happened to be in Ceylon then, also formed a member of the party. What I wish to do is, incidentally to call attention to what happened on that visit. The party went to Marichchukkadai in a Government ship, and at Marichchukkadai the Government Agent of the Northern Province welcomed the Governor and the Members of the Council, who were State guests. Once there, the two Ceylonese Members were given over to the charge of the Maniagar, and the others were received and specially accommodated by the Government Agent. The two Ceylonese Members of Council, who, I might say, were long-suffering gentlemen, had to sleep the whole night in bug-laden cots, undergoing untold hardship. But the Government has since compensated them by making them both Knights. Well, they were transhipped and relanded at Jaffna. There again the Government Agent received the other guests of State and left these two Ceylonese Members of Council to shift for themselves. There are still Government Agents of that type. The tribe is not yet extinct. Not so very long ago, and not so very far away, a Government Agent annexed a Provincial resthouse for the exclusive use of a European club, but the Member for the Province of Uva appealed to Government and the Governor unsettled the settled fact.

Coming back to the pearl fishery. After Sir West Ridgeway got these reports his term of office expired and Sir Henry Blake came to Ceylon. A secret conference was held, to which Members of Council were summoned, but, it was stated, not as Members of the Council, and the pearl fishery lease was hatched in secret. The ultimate result was that an agreement was hatched privately between certain people in England and the Ceylon Government, the moving spirit on the other side being Sir West Ridgeway, pro-consul and company promoter. The agreement was passed in this House. There was strong opposition on the part of the public, and protest meetings were held. Representation was made to the Secretary of State for the Colonies. Mr. Winston Churchill was Under Secretary of State, and Mr. F. H. M. Corbet, on behalf of Ceylon, presented the case of the people. It was stated that Mr. Churchill was so indignant about it that he called for the

papers and upbraided the officials. He would have upset the whole thing, but, unfortunately for us, an illiberal Liberal, Lord Elgin, was Secretary of State for the Colonies, and he ratified the agreement. That was in the days of the Nominated Council. The Bill which was embodied in Ordinance No. 8 of 1906 leased the pearl fishery to this company for twenty years. The company paid no attention whatever to the pearl banks. They tried to get as much as possible out of them and scraped the spat and subsequently sold out. I do not know whether the spat were scraped out by machinery, but the banks remained unfertile for several years. That is a matter of detail.

After that the Secretary of State issued a circular to the effect that no Governor of a Crown Colony should be the Director of a company which was floated in connection with the industries of the Colony of which he had been Governor. The stable door was closed after the horse had been stolen!

Then came the Ordinance of 1918, which you will find in the first volume of the Ordinances, page 57. I shall call attention to certain sections when I come to those particular sections in the Ordinance. In the meantime I should like to indicate shortly how drastic some sections in the present Ordinance are. I appreciate the difficulties of the Honourable the Attorney-General in drafting this Bill. He is new to the country, but I am sure he is doing all he possibly can. However, as a lawyer I do not think he should have introduced certain principles into the present Bill. He told us that when he looked into previous rules and regulations he thought them so drastic that he came to the conclusion that they should be withdrawn and the Ordinance consolidated. But it looks as if the Attorney-General has concentrated all the stringency and severity of the old regulations into one or two obnoxious sections of the Ordinance. We will take some of these sections, but in the meantime I am glad to find that the Attorney-General has inserted a section which reads: "All regulations shall, as soon as conveniently may be, be laid before the Legislative Council, and may, at any of the next following three meetings, be rescinded by resolution of the Legislative Council, but without prejudice to anything already done thereunder, and if not so rescinded shall be deemed to be valid." I need not dwell on that section at this stage.

I should now like to call attention to section 8. Here is the poison that runs through this section: "If any pearls or pearl oysters are found in the possession, power, or control of any person on or in the vicinity of a pearl bank in such circumstances that there is reason to suspect that they were not lawfully obtained, then such pearls or pearl oysters shall be forfeited to the Government unless satisfactory evidence is given that they were lawfully obtained, and that person shall be guilty of an offence unless satisfactory evidence is given that he was not personally concerned in the unlawful obtaining thereof and that they were not dishonestly retained in his possession, power, or control with the knowledge that they had been unlawfully obtained." I do not think that in any civilized country, particularly in a Colony which is part of the British Empire, would these presumptions be passed without challenge. Here the presumption is that the man is dishonest, and he will be convicted on suspicion because he is presumed to be guilty unless his innocence is proved. It is contrary to principle and is vicious, and it should be withdrawn, or at least considerably modified.

Then we come to section 9, which deals with the seizure and forfeiture of poaching vessels. It reads thus: "If any vessel is found on a pearl bank anchoring or hovering and not proceeding to her proper destination as wind and weather permit, or is found on or near a pearl bank in circumstances giving rise to reasonable suspicion" The keynote of this Ordinance is suspicion. The section continues: "that she is being or has been or is intended to be used for the unlawful collection of pearl oysters, any pearl fishery guard may enter, seize, and search such vessel, and convey the same to some convenient place in the Island for adjudication."

There is worse to follow. Look at the second part of the section: "As soon as may be after the arrival of a vessel seized under this section, proceedings shall be commenced before a Police Magistrate against all persons found in the vessel and the owner thereof, if known and in the Island, alleging that the vessel has been used for the unlawful collection of pearl oysters, and in such proceedings, unless satisfactory evidence is given that the vessel had not been and was not intended to be used for the unlawful collection of pearl oysters, the Magistrate may impose a fine not exceeding two hundred rupees in respect of each person found in the vessel and declare that the vessel and her gear shall be forfeited to the Crown, unless the fine is paid within a time to be specified in the order, and shall also declare all gear appearing to be intended for the collection of pearl oysters or any pearl oysters or pearls found in the vessel to be forfeited to the Crown." In this case you must prove a negative, which, I understand, is against all the laws of logic. Perhaps it is a new logic! I do not think any reasonable Council will accept this provision as it stands. I had the privilege in 1906 of going to the banks in a sailing ship with the Honourable Member for the Eastern Province, just before the company took over, and we saw the white sailing vessels spread out in half-moon formation approaching the shore, and it recalled to memory what Pliny had described centuries ago. We were perilously near the vessels carrying oysters, and if the present law had been in force we might have been arrested.

THE HON. THE ATTORNEY-GENERAL:—It is not so. Supposing a ship is caught, it must be under reasonable suspicion that she was poaching. Let us say there are oysters found on this ship. It is impossible for the Crown to prove that any individual has collected those pearl oysters, and so what we say is, we will seize the ship, and that ship might be a ten thousand-ton liner, and Government will be entitled to forfeit it. That is the universal procedure in all this sort of Ordinances as far as I know. The penalty is limited by the total number of people on the vessel who could have been concerned in the poaching; and all the Crown says is this, that the ship shall be forfeited unless the penalty is paid.

THE HON. MR. E. W. PERERA (Kalutara Revenue District):—I withdraw the remark about arresting, but the soundness of my proposition remains. The section says: "the Magistrate may impose a fine not exceeding two hundred rupees in respect of each person found in the vessel." That means that each person found in the vessel is liable to pay.

THE HON. THE ATTORNEY-GENERAL :—It means a fine. The number of persons is the standard of the fine. No individual is liable to pay anything.

THE HON. MR. E. W. PERERA (Kalutara Revenue District) :— I am very much obliged to the Honourable the Attorney-General, and now pass on to section 12, which is the most virulent section. It reads: "In an inquiry under section 87 of chapter VII. of the Criminal Procedure Code, 1898 (which relates to security for keeping the peace or for good behaviour), as respects any person domiciled in India found in or attempting or proposing to enter a pearl fishery camp, the evidence of any member of the Indian police force that that person is an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or is an habitual aider in the concealment or disposal of stolen property, or that he is a dangerous character, shall be sufficient *prima facie* evidence of the fact and shall be admissible in evidence notwithstanding that it is hearsay evidence, if it is based on information obtained by him in the course of his duty and appears to the Magistrate to be true." I do not think that either this Legislative Assembly or the Indian public would tolerate this section for a moment. I am thinking of the protection of our great staple industry. One of the most important points to consider is the safeguarding of the influx of labour from the neighbouring coast, and I do think that even if we did not think of the question of material self-interest, this section should not be passed by any liberty-loving legislative assembly. To begin with, how are we to find that any person is domiciled in India? Besides, I do not like the status of the Indian police, whose evidence is to be considered sufficient to establish that a man is a habitual robber or thief; and we all know the way in which the Indian police are viewed by the Indian general public. In a country where ordinarily a person's worth is judged by his clothes, and sometimes by his complexion, this is a dangerous power to place in the hands of any responsible body, much less in the hands of the Indian police.

I will tell you what happened to me on my way back from England when travelling through Madras. We were travelling comfortably—I say it without any intention of unduly impressing the fact on the Assembly, but merely to show that even first class passengers are molested in the South Indian Railway. With me was a young Englishman coming out to take up an appointment in Ceylon.* He had been serving in the war. One of the Indian policemen entered our compartment and interrogated us in a most impertinent manner. He evidently took the young Englishman for a Bolshevik agent and me for a potential bomb thrower. We had showed the policeman our passports and all our credentials. I do not think any self-respecting man would care to travel in a country where you have men prowling about and interfering with you in that way.

This section I have been referring to places certain power in the hands of Indian policemen. We have no means of checking what the men would say, and all the odium and opprobrium will, therefore, rest on this Government. I say that this plenary power given to Indian policemen should never be placed in their hands, and that this section should never be tolerated even for a moment.

Then we come to sub-sections (2) and (3) of section 12. They too are in the same category.

Then as regards section 13, I should like to remind the House of what we read in the newspapers a little time ago, namely, that it is practically impossible, even under scientific investigation, to distinguish artificial pearls from natural pearls. The section reads: "No person shall, without the permit of the camp superintendent, bring into a pearl fishery camp, or into the vicinity of a pearl fishery camp with a view to its being brought into the camp, or have in his possession in a pearl fishery camp, any artificial pearl or any pearl not being a pearl the product of a pearl oyster lawfully taken from a pearl bank at and during the continuance of the pearl fishery for which the camp is established." What I would wish to know is, who is going to test whether a pearl is artificial or natural.

THE HON. THE ATTORNEY-GENERAL :—No test is necessary according to the wording of the section. The point is that nobody can tell a cultured pearl from a natural pearl. Therefore we prohibit all pearls.

THE HON. MR. E. W. PERERA (Kalutara Revenue District) :—Supposing a person got some pearls legitimately in the camp ?

THE HON. THE ATTORNEY-GENERAL :—He can in that case prove it. The section deals with the importation into the camp of pearls. It is a necessary part of the section that, supposing a person does succeed in bringing pearls into the camp, he should not be allowed to get off scot free.

THE HON. THE VICE-PRESIDENT :—I think the Honourable Member might proceed with his speech.

THE HON. MR. E. W. PERERA (Kalutara Revenue District) :—These are recondit sections, Sir; but I am very much obliged to the Attorney-General for speaking. However, I do not see the necessity for denuding anybody who goes into the camp. Well, the section goes on to say in sub-section (3): "All pearls seized under the foregoing power or otherwise coming into the hands of a pearl fishery guard and suspected to have been dealt with in contravention of the provisions of this section shall, as soon as possible, be brought before a Police Magistrate, who, if he considers that an offence was or was intended to be committed in respect of the pearls, may, in his discretion, either in addition to or without inflicting any other punishment, declare them to be forfeited to the Government, or he may order them to be detained by the police until the end of the pearl fishery. But so that neither the police nor the Government shall incur any liability for any loss or damage which may happen to any such pearl." Here again, Sir, I strongly object to being penalized on suspicion. It is against the whole principle of criminal law, and I cannot possibly accept the position that these sections, with their implication of suspicion, should be countenanced for a moment.

Then again, I take the same objection to sub-section (4) with regard to the burden of proof. The section reads: "In all proceedings under this Ordinance, the burden of proving that any pearl is the product of a pearl oyster lawfully taken from a pearl bank at and during the continuance of the pearl fishery for which the camp was established shall lie on the person alleging the same." Why should a man be urged to prove his innocence. It may be that a pearl of great price is involved, yet should a man be presumed to be guilty and be made to prove his innocence?

I also take strong exception to section 17: "It shall be lawful for any Police Magistrate before whom any person shall be convicted of any offence under this Ordinance to direct a portion of the fine actually recovered and realized, not exceeding one-half, to be paid to the informer." The informer now comes on the scene.

THE HON. THE ATTORNEY-GENERAL:—It is simply a reproduction of the old Ordinance.

THE HON. MR. E. W. PERERA (Kalutara Revenue District):—I thought the Honourable the Attorney-General wanted to remove the obnoxious features of the old Ordinance. I object to this section. There are the police to do this work, and why should a special brief be given, and special money be paid to these informers? They might very well levy blackmail.

Then I come to section 19, which reads: "Any pearls and pearl oysters appearing to be liable to forfeiture under this Ordinance may be seized by any pearl fishery guard, and, when seized, shall be conveyed to the nearest police station and there detained until the court having jurisdiction in the matter has determined how the same are to be dealt with."

There is some doubt as to whether this refers to the pearl or to a man. On the whole, Sir, I quite appreciate the necessity for an Ordinance. I also appreciate the difficulties that the Attorney-General had in framing this Ordinance. We are most anxious to protect the pearl banks and maintain order in camp; but at the same time this Bill will have to be very drastically amended, while giving all power to Government to protect themselves and the pearl banks, to do so without infringing the fundamental rights of the people of this country and of the neighbouring continent.

THE HON. MR. H. M. MACAN MARKAR (First Muslim Member):—I do not wish, Sir, to be silent over a subject which is very dear to my heart as Honourable Members all know, and besides, the subject is one upon which I can throw some explanation. The last speaker touched upon the points of law, so it is not necessary for me to say anything in that direction. With regard to the section dealing with the importation of pearls, I may tell the House that there are a number of expert merchants who, in ninety-nine cases out of a hundred, can detect the cultured pearl from the natural one. A well-known European gentleman, who often visits the pearl fisheries at Bahrein in the Persian Gulf, told me the other day that the Government there had made an order for the appointment of a number of experts, say up to the limit of five or six, who visit the fisheries, and their decision with regard to cultured

pearls is final. If these experts show the authorities that the pearl is a cultured one, the culprit is fined, and the fine too is very heavy. If some such thing were adopted here it would no doubt save trouble.

Genuine pearls should not be prevented from being imported. Merchants from all parts of the world will visit the camp bringing pearls with them. There will be two different classes of merchants at the camp, those who come there to buy and speculate on the oyster, and the others who go there to sell pearls. Among those who go to buy there will be a considerable amount of dealing, and I do not think that it will be in the interest of the country to prevent real pearls from being imported into the camp. The prevention of the cultured pearl from passing from hand to hand can be effected in the way it is done in the Persian Gulf. I am sure that there will be a large number of leading merchants from India who will be quite willing to serve in an honorary capacity as experts. The gentleman who supervises the fishery will very easily be able to find them out. The suggestion I make will save a deal of trouble.

With regard to section 12, I think that to give the police such great powers and to accept their hearsay evidence will be unfair, considering the large number of merchants who will assemble there. The number of Ceylon merchants who frequent these fisheries is very few. It appears to me that if we make it known that each individual who desires to be present at the camp should produce a passport or letter of identification from the police authorities in the district or town from which he comes showing that he is a *bona fide* merchant or a man of character, the object of the Government will be met. I hope the Honourable the Attorney-General will take into consideration the suggestions I have made.

THE HON. MR. I. X. PEREIRA (First Indian Member):—I am well aware, Sir, of the urgent necessity which the Government feels for passing this Ordinance into law as early as possible. In another three weeks the camp at Marichchukkaddai will be one seething mass of humanity, and it becomes essential that this Ordinance should pass into law in good time before the pearl fishery commences. Honourable Members of Council, I take it, have not the slightest idea of embarrassing, or in any way causing inconvenience, to the Government in the enforcement of laws which are, after all, for the efficient administration of the camp; but to us Unofficial Members of this Council it is very embarrassing that this subject should be brought forward for discussion at such short notice. It is not true that Honourable Members of this Council have been remiss in their duty, and have come here unprepared to tackle the various problems that have been brought up for consideration. The earliest intimation that we received of this Bill was in the advance Agenda for yesterday's meeting which we received about ten days ago. The Draft Ordinance was published on—

THE HON. THE VICE-PRESIDENT:—The Honourable Member should not read from his manuscript, although he may refer to it.

THE HON. MR. I. X. PEREIRA (First Indian Member):—I am not reading from a manuscript or notes. I was about to quote the date of the *Gazette*.

THE HON. THE VICE-PRESIDENT :—What I wanted to make sure of was that you were not reading.

THE HON. MR. I. X. PEREIRA (First Indian Member) :—The Draft Ordinance was published for the first time in the *Gazette* of January 23, and for the second time in a *Gazette Extraordinary* of January 28, a copy of which was received by Members only a few hours before yesterday's meeting commenced.

I have received several complaints from different quarters against some of the provisions in this Ordinance, and I have just begun to study those complaints. The remarks of the Honourable the Attorney-General yesterday in regard to the motion of the Hon. Mr. Balasingham on the Tesawalamai can with equal force be applied to Government in regard to this matter. If the Government had condescended to give us earlier notice of this Bill, better justice could have been done to this Bill and to the people whom this Bill affects. A pearl fishery is not an every-day event, the features of which the people can ordinarily be expected to be familiar with. As I understand it, a pearl fishery has got its well-defined traditions, if I may so call them, a disturbance of which would cause alarm to those who take part in it. The seafaring population of this Island and India look forward to a pearl fishery as a great event, and make preparations at very great expense to themselves. I understand that it costs on an average to bring a boat equipped with twenty to thirty divers and twenty to thirty linesmen, a sum of about Rs. 2,000 to Rs. 3,000. I have not had an opportunity of studying the regulations that governed the pearl fisheries in the past, but I understand that the levying of license fees was not resorted to until now. Although there is no reference to it in the substantive portion of the Bill, schedule 2 provides for a fee of Rs. 5 per ton. This, I submit, would work great hardship on these poor toilers of the deep. We have to remember that these people who bring these boats are taking a very great risk. Very frequently they have to sell all that they have, and even to borrow, to lease out these boats and advance money to the divers and linesmen, and I think they expect to be reimbursed for this, and save a little more for themselves in the pearl fishing, which is, after all, a speculative business. If the pearl fishery proves a failure, all these men will be ruined. It is therefore very unjust to ask these men, who in a very commendable and daring spirit come forward to help in the fishery, to pay a license fee. Another fact to be remembered is that Government does not give any remuneration to these boat owners and divers. The only remuneration they get is a one-third share of the oysters that are collected, and even this one-third share has to be divided between the owner of the boat, the lessee of it, the tindal, the assistant tindal, the twenty or thirty divers, and the twenty or thirty linesmen, and others. Any attempt at distribution of this burden of a licensing fee among themselves is sure to cause friction, and to hamper co-operation which is so essential among them. I therefore submit that the levying of fees be done away with, and that the old rule of granting licenses without fees be retained. I may further mention that it requires more than a day or two for these people to make their preparations. In fact, I understand that they commenced the preliminary work of renovating their boats so long ago as November, 1924; and to have kept them in the dark until now with regard to the altered

conditions is not quite fair to them. Most of them are not boat owners. They lease out the boats by pawning or selling their wives' and children's jewellery, and I am afraid that these provisions will mean serious hardship to these poor people. I trust that every Honourable Member of this House will agree with me that a very serious injury has been done to these men.

As a representative of the Indian community, I will be failing in my duty if I do not enter an emphatic protest against section 12, clause (1). If this clause is allowed to pass into the statute book of the Colony, it will be a stigma on the Indian nation and a blot on the fair name of Ceylon, which has so far showed no tendency towards class legislation. This is a piece of discriminating class legislation, and Honourable Members of this Council who are learned in the law can tell more effectually than I the magnitude of the evil which is opened up by this provision. As a layman I can picture to myself the dangers which lie ahead. Nothing in the world is so easy as to create hearsay evidence, and it is evident that in all judicial proceedings very little reliance is placed on hearsay evidence.

There is also another section of the Ordinance to which I take strong exception. That is section 17. Knowing my countrymen as I do, I realize that there will be a number of them ready to come forward to give information of all descriptions in the hope of receiving these miserable rewards.

Finally, Sir, I appreciate the fact that if this Ordinance is to be passed at all it must be passed without delay. The Government of Madras is anxious for the due protection and safeguard of the hundreds and thousands of Indians who will come to the fishery. This anxiety is no doubt due to what occurred during the last fishery. I will be doing violence to my conscience and to the feelings of those I represent if I in any way approve of these objectionable provisions without an opportunity being given us of scrutinizing them, and thus enabling us to afford relief to the extent at least of modifying to a great extent the hardships which the provisions of the Ordinance involve.

THE HON. MR. D. B. JAYATILAKA (Colombo District):—I wish to offer a few remarks, Sir, on the Bill before the House. Honourable Members will, I am sure, readily admit that special provisions are necessary to protect the pearl banks and regulate the fisheries; but in legislating for that purpose we must be very careful not to introduce provisions which run counter to established principles of justice. My honourable friend on my right (the Hon. Mr. E. W. Perera), who opened the debate this afternoon, referred to several provisions of the proposed Bill which seem to run counter to one established principle of law, namely, that every person is to be considered innocent until the contrary is proved. In this Bill some of the provisions seem to assume the contrary, namely, that a person found near a pearl bank with a pearl in his waist must be considered to have stolen it unless he has proof to the contrary. I hope that the Honourable the Attorney-General in his reply will give very strong reasons for setting aside the ordinary principle of law in this matter. I do not wish to labour that point.

I should now like to refer to the vagueness in some of the provisions in the Bill. Section 8 says: "If any pearls or pearl oysters are found in the possession, power, or control of any person on or

in the vicinity of a pearl bank” “The vicinity” may be interpreted in different ways; it may be one hundred yards away from the pearl fishery, or it may be half a mile away. I think the term ought to be more clearly defined, especially when you throw the burden of proof upon the person charged.

There is one other section on which Honourable Members have spoken. I refer to section 12. I object to that provision very strongly indeed for two reasons. In the first place, that provision discriminates against Indians. In the Statement of Objects and Reasons attached to the Bill, it is stated that this provision is introduced for the reason that somewhere in 1905 a dacoity was committed by some Indians. It seems to be assumed that robberies can therefore be committed only by Indians. We know that that is not so. Robberies, though they are not called dacoities, are committed even in the heart of London. It should not be assumed that dacoities can only be committed by Indians, and that this provision should be made against Indians especially is, I think, wrong. If a provision of this nature is necessary for the protection of the camp, I would suggest that it be a general one. Let any person, to whatever nationality or country he may belong, if he is suspected, be asked to give security, if it is considered necessary.

Then I object to the second part of this section, where the hearsay evidence of a policeman, perhaps a police constable from India, is accepted as establishing *prima facie* evidence against an Indian. It is inconceivable that such a provision should be included in legislation of this nature. It will be objectionable in any circumstances, but more so in the present circumstances of India, where every person who is opposed to the Government is considered a dangerous character. This was also the case in Ceylon at one time, when anyone who was opposed to the Excise policy of Government was considered to be a dangerous character who ought to be imprisoned. But we have happily left behind us those days. It is not so in India. There they have no Habeas Corpus Act, but they have special legislation, such as the Regulation iii. of 1818. Is it right, therefore, to give the Indian policeman the opportunity to come before the pearl fishery officers and say of, perhaps, a leading Indian, that he is a dangerous character, although he may not be a thief or a robber. It must be remembered that the Indian policeman will probably define “dangerous character” as Indian officialdom defines it. Perhaps an important merchant may be humiliated by this procedure. Apart from the inherent injustice and unfairness of that provision, in our own interest and in the interest of the pearl fishery it should not be introduced. This sort of thing will frighten away, as an Honourable Member has already said, our best customers. If Indian merchants come to hear that there is this provision under which an Indian policeman can give evidence against any person which will be accepted in the courts of Ceylon, they will most probably keep away. I do not think it is necessary to labour this point. It is against principle to accept hearsay evidence. We do not accept hearsay evidence even in the most trivial cases in our courts of law, but here we are going to accept it in cases against strangers, resulting it may be in their honour being questioned or in their being imprisoned or sent away from the Island. There is

also the attitude of our own police in regard to Indians. We recently had some exhibitions of that. Two Indian gentlemen of position, one the editor and the other the manager of a widely circulated newspaper, were treated very shabbily by our police. And what guarantee is there that our own policemen will not take similar steps in regard to visitors to the pearl fisheries? I sincerely hope that the Honourable the Attorney-General will most carefully reconsider this provision.

THE HON. MR. G. A. H. WILLE (First Burgher Member) :—I do not intend, Sir, to criticise this Bill in detail, because it is one which I think is eminently suited for a Select Committee. There is no doubt that from the point of view of legal principles the Bill is a reprehensible one, but we must remember that the Bill does not deal with normal conditions of civil life, but with very special circumstances. I do not say that the Bill is a perfect one. There are many points which can be amended, and I trust that the remarks of the First Indian Member and the First Muhammadan Member will receive particular consideration. The Honourable the Attorney-General, who is a lover of legal principles, and knows the value of the liberty of the subject, will, I am sure, accommodate the Members in Select Committee to the full extent of his power. There will, of course, be special circumstances to deal with, and the matter cannot be satisfactorily settled on general principles. Past experience in the pearl fishery camp will have to be taken into account, and also the difficulties which will have to be encountered by the administration. I hope that this Bill will pass its second reading to-day, and that it will receive at the hands of Government all the amendments of which it will reasonably permit.

THE HON. MR. W. E. WAIT (Controller of Indian Immigrant Labour) :—As one of the few officials in this Colony who have served in a pearl fishery, having been at the pearl fishery in 1905, at which the dacoity referred to occurred, I should like to state the actual difficulties with which section 12 is intended to cope. The matter is a very simple one. Officers of the Indian Criminal Investigation Department come over to assist our officers there and warn them as regards dangerous criminals. What we call "habitual criminals" here are known as "K. Ds.," known depredators, in India. In the 1905 fishery the Indian police co-operated with ours and brought to our notice that there were several K. Ds. in the camp. A very large number of merchants who come to the camp are Indians, and they are very nervous about these K. Ds. Now, the question is, how is it to be proved in a court of law that these men are K. Ds., apart from hearsay evidence. A C. I. D. officer could say that he knows perfectly well that a man is a K. D., but how is he to prove it except by hearsay evidence? He may know perfectly well that the man is a K. D., but how is he to produce the registers, and other evidence? It is to meet that difficulty that this clause has been put in, and not for the various reasons which some of the Unofficial Members have suggested.

THE HON. MR. E. R. TAMBIMUTTU (Batticaloa Revenue District) :—I wish to utter an emphatic protest against the powers which it is proposed to give to the police, either Indian or Ceylon.

Our police, petted and pampered as they are, are better paid than the Indian police. The Indian policeman was started at one time on Rs. 7 or Rs. 8 a month, and he rose to Rs. 15. They are to be brought to this rich Island, where they might, owing to these extraordinary powers, be suborned. I think that this pearl fishery should be conducted in an ordinary manner, and that merchants and others who attend the camp should have protection against thieves and robbers and bad characters. Well, the Government has got the legacy left to them by the customs of the last century. In olden times, when Government was placed in a difficult situation they infringed the right of the subject. I will illustrate this point. When the Government wanted protection for the pearl banks the Ordinance of 1843 was passed. According to that Ordinance no man was to fish within a point twelve miles from a point off Talaimannar and twelve miles from a point off Talavillu. A large area of water was thus kept away from the people living on the shore, the Government, of course, not caring whether the rights of the subject were thereby infringed. Another illustration is to be found in the Forest Ordinance under which the burden is cast on the person suspected of proving from where he got the timber. The same sort of thing is proposed to be perpetrated in 1925. If it is necessary to protect certain interests, we should seek methods that do not infringe the rights of the people.

Take a parallel case in England. I refer to Wembly, which must have attracted the biggest crooks in Europe and the Continent; but they did not pass an Ordinance like this. What the police there do is, I believe, watch and see that these men do not commit offences, and give the necessary protection to those who attend the exhibition for legitimate purposes. Instead of our policemen being made to line the streets here, they might be sent to the pearl fishery camp to see that the bad characters assembled there do not commit offences. Every man has a right to visit the place, and why should people be kept away on the information of a policeman when he has committed no offence. It may cost more money, but it is better that more money should be spent than that the rights, not only of Ceylonese, but also of visitors, should be infringed.

In connection with section 6, I should like to thank the Government for the generous manner in which they have removed the anomaly created by the Ordinance of 1843. By section 1 of that Ordinance no person was allowed the possession on land of any drifting net or other net, not being such as are used by men walking in the sea, or of any dredge or similar instrument, at any place within twelve miles of Talavillu, and Talaimannar, and so on. I am glad that that section is going to be repealed, and I wish to thank the Government for recognizing the rights of the people.

But the generosity of the Government might be extended a little further by relieving another hardship which some people in the north suffer. Incidentally, this might bring in extra revenue to the Government coffers. I refer to the matter of chanks which comes in under Ordinance No. 18 of 1890. There too there is a prohibition against fishing for chanks, the prohibited area being "eastward of a straight line drawn from a point six miles westward of Talaimannar to a point six miles westward from the shore two miles south of Talavillu." In 1921, 1,501,500 chanks were exported to India. These are valued at Rs. 80 per thousand. On that basis there is

Customs duty levied per thousand. I would submit that the Government should repeal this Ordinance,* or at least modify it. The industry is not a speculative one like the pearl fishery. I see from his report that the Government Agent of the Northern Province speaks of fishing for chanks as an important industry in the Province. Similar remarks are made in other reports. It is an industry that is carried on year after year, and it takes place during certain months. I hope that the Honourable the Attorney-General will do what he can in the matter.

THE HON. MR. A. CANAGARATNAM (Northern Province, Southern Division) :—I wish to say a few words, Sir, on the Bill. I am very glad to note the close scrutiny that has been made of this Bill by some of my honourable friends both from the legal and the political point of view. From the legal point of view the extraordinary presumptions involved in the criminal provisions have been very ably dealt with, and from the political point of view the inadvisability of dealing with Indian subjects in Ceylon in a particular way has been touched upon; but it must be remembered that the pearl fishery is a big fair, resorted to largely by Indians—perhaps more by Indians than any other people—and Government has drafted some provisions of this Ordinance more for the Indians who will arrive in Ceylon than for the Ceylonese. However, it is intended to protect both classes of people, and this being a special affair, it requires special provisions to deal with it. I admit the great difficulties presented by the legal aspects of the question, and that it is very difficult to deal with this legislation in the spirit in which we deal with ordinary legislation.

I admit that there is room for certain amendments in regard to the legal aspect of the provisions, and in Committee I expect that those provisions will be pruned down in a way that will satisfy the reasonable objections urged by some of my honourable friends. As regards the regulations concerning Indians, I must observe that Indians will not resent it, because there are no other people, whether Asiatic or European, who will resort to the pearl fishery camp. As regards the Ceylonese, they are local people, and the Ceylon police will be able to identify them. But there will be nobody to identify the Indian criminals, who will flock to the camp in order to make a livelihood by misdemeanours. It is for this reason that the Ceylon Government is getting the assistance of Indian police of the criminal investigation class. It is quite clear, therefore, that the Indian police are being introduced for the sake of the Indians and nobody else. Indian merchants must be protected from Indian criminals. I hope that the Ordinance will be enforced in the most liberal spirit, because the moment it is known that Ceylon officials have been hard on Indians, there will be an outcry in India and the merchants will go away. It is to the interest of Ceylon that there should be a large number of Indians in the camp, and I hope that the rules under the Ordinance will be administered in a spirit which will satisfy the Indians. Without Indians it will be impossible to conduct the fishery. The divers themselves are Indians and Arabs. If there is any trouble, it is to the Indian police that Ceylon will have to go for help. It is wrong to assume that the Ceylon Government intends this measure in order to do anything harmful to the Indians coming there. In fact, Ceylon has to invite Indians to come to the camp and make the fishery a success, and we should take such

measures as will satisfy the desires of the Indian Government and the Indian public in regard to the protection of person and property of the Indian population assembling there. These are legal and political aspects of the matter, which I am sure will receive attention in Select Committee.

There is another matter which I should like to touch on which concerns the local fishing industry. We have not only to safeguard the pearl fishery, but also the general fishing industry of the local population. I am very glad to know that this industry which was labouring under great hardship under the Ordinance of 1843 has been saved by section 6 of this Ordinance to a great extent. But even now there is room for further relief which the local fishing population are in need of. This section states: "No person shall on any pearl bank use or have in his possession, power, or control any net, dredge, or fishing line, or fishing tackle. (2) Nothing in this section shall apply to any dredge, net, fishing line or fishing tackle, the use of which is for the time being permitted by regulation." This section penalizes the possession of a net or fishing tackle in the pearl bank area. We might imagine a case where a fishing boat might be driven into this area by stress of weather or wind. I would like the Select Committee to insert an amendment which will meet such a case. Again, I would submit in the interest of the fishing industry, that the three-mile limit be extended to four miles at least. I understand that the pearl fishery is carried on at a distance of about six miles from the shore. I have been in communication with leading fishermen of Mannar, and I understand from them that all that is required is that the limit should be extended to four miles. This will also help those who fish for turtle.

THE HON. THE CONTROLLER OF REVENUE :—Objection has been taken to the delay in bringing forward this Ordinance. The delay was inevitable. The pearl fishery is a very big undertaking and involves an enormous amount of detail about which we had to have conferences and consultations of all kinds. We also had to approach the Indian Government on matters of detail. In point of fact we entered into communication with the Indian Government as far back as July last, and negotiations were not completed until after the Christmas holidays, when the seal was set upon them by the Hon. Mr. Wait, who proceeded to Madras for that purpose. That, I think, fully explains the delay. I do not think that the public has been greatly affected by the delay. Those sections of the public who might have been affected by it have been consulted, some of them through the Fisher Mudaliyar, others in the north by the Government Agent of the Northern Province and the Assistant Government Agent of Mannar. We have gone into their difficulties, and the Ordinance has been designed in such a way as to relieve them of those difficulties while maintaining sufficient protection of the banks.

Then as regards the provisions themselves, I am perfectly certain that a Government Agent of the experience of Mr. Smith will see that they are carried out in a reasonable manner. Mr. Smith has had over a quarter of a century's experience in Ceylon. Not only will he be there, but an Indian official of some eminence will also

be accommodated at the camp, and the Government Agent will have the benefit of his advice. The official from India will, no doubt, protect the interests of all the Indians in the camp who deserve protection. The Honourable the Attorney-General yesterday spoke of the difficulties and dangers in this camp from dacoits. I do not wish to deal with that any further, but would merely mention that the buildings in the camp are cadjan huts, that they are not burglar proof, and that they are very unsafe huts in which to have pearls or large sums of money.

The Honourable Member for the Kalutara District complained that the provisions of this Ordinance are of a virulent character. I hope he will not be surprised if I complain of the virulence of his remarks. I think he was distinctly unfair to the Ceylon Company of Pearl Fishers. I think he said that they took everything they could and left nothing, and that they even went so far as to drag off the spats from the banks. The thing is quite ridiculous. Over that lease the Government made a very good bargain. For several years we had a considerable amount of money as rent, and that company became absolutely bankrupt. It was not their fault. They spent far more than the Government had ever done in scientific work. They were compelled by the terms of the lease to do so. I wanted to get to know something about the pearl fishery in 1907, and Messrs. Bois Brothers very kindly let me have all their correspondence from 1907 to 1912, and I read all the letters. I know the enormous expense the company was put to, and the great disappointment the failure was to them. Sir Stanley Bois was the Managing Director of the company, and Sir Stanley Bois holds a very honoured name in this country. He may not be very well known to Honourable Members of the present Council, but he was very much respected by an earlier generation.

There was also a question about the section forbidding the introduction of pearls into the camp. We brought in that section at the request of the pearl merchants themselves. I was anxious not to bring it in at first, but that was over-ruled by repeated requests from a number of pearl merchants. The Hon. Mr. Macan Markar has stated that there is a fear that the merchants who will come to the camp to buy pearls will not be able to bring pearls for the purpose of comparison. Under that section they can do so, but they must get the permission of the Government Agent. The only reason why I wanted this Ordinance pushed through as soon as possible was that I might get that section, or whatever of it remains, printed and copies of it sent to every merchant who we know is coming to Ceylon. All that those merchants will have to do is to apply for permission, and that will be granted.

The Hon. Mr. I. X. Pereira spoke about the grievances of boat owners. He said that they were all ruined men, and that the crews were all ruined men. One wonders why they came to Ceylon to be ruined. At the same time the Honourable Member said that they were falling over each other to come and it was wrong to prevent them. The fact of the matter is this. We do not expect this year's fishery to be a very large one. It is to be a comparatively small one, and we expect to collect only about 30,000,000 oysters. Next year we hope to hold a really large fishery. We therefore do not want too many boats and too many divers this year. In the past the presence of too many divers and boats has led to a great deal of trouble. We had to have what was known

as the Blue fleet and the Red fleet, and these had to fish on different days. If we have too many boats we might have to employ all the colours of the rainbow, and part of the fleet might not get a chance of getting out at all. It will be better, therefore, to limit the number of divers and boats.

The Honourable Member for the Eastern Province referred to Wembley and drew a parallel, but I am afraid that he has been to neither Wembley nor Marichchukkaddai.

As regards the chanks, it is impossible to have a chank fishery at the same time as a pearl fishery. It is perfectly true that there are very valuable chanks in the same waters. They have been there for hundreds of years no doubt, and the divers in Jaffna are very anxious to get into those waters, but they have been prevented from doing so for the reason that if we permit a fishery we shall have thousands of men diving at the same time, some for chanks and others for pearls. Honourable Members can imagine how difficult it would be to control the divers. This matter of chank fishing will be gone into by me very carefully with the Marine Biologist as soon as the pearl fishery is over. I cannot hold out much hopes of a fishery being allowed, because it was not only objected to by my predecessor, who had very great experience of the waters on that coast, and who has written a very able report giving reasons why a chank fishery should not be held, but that report was endorsed by an old Civil Servant who had even greater experience than he had, Sir William Twynam. They were both against a fishery. However, the matter is being gone into, and if our advisers are perfectly certain that a fishery would not do any harm whatever the matter will be one for consideration.

THE HON. MR. E. W. PERERA (Kalutara Revenue District):— I rise, Sir, to make a personal explanation even at the risk of being charged again with being virulent. I least expected the Controller of Revenue to be an apologist of the pearl fishery lease. I did not say that the company wiped off the spat from the banks to spite the Ceylon Government, but rather that the company got as much as they possibly could without any regard for the future of the banks and then sold out. The company went bankrupt, and the lease had to be cancelled at great loss to the Colony.

THE HON. MR. M. T. AKBAR (Solicitor-General):— Sir, I should like to make a few remarks on section 12 of the Bill. A vehement attack was made on that section by members of the legal profession whose legal eminence goes without question. I have the greatest respect for their legal opinion, but I think they will agree with me on reflection that the objections to section 12 are not very substantial. They should, I think, in the first place, give the Attorney-General credit for having drafted this section, and for having made it quite clear that all proceedings are to be legal, that is, there will be regular trials with the right to appeal to the Supreme Court, and this will give members of the legal profession the opportunity of appearing and incidentally getting fees. I ask Honourable Members of the legal profession to consider section 12 and analyse it carefully. I do not think that Honourable Members have given

sufficient consideration to the words "shall be sufficient *primâ facie* evidence." There is a difference between *primâ facie* evidence and conclusive evidence.

Supposing my honourable friend for the Kalutara District is a Magistrate, and a member of the Indian police force gets into the witness box and says: "In my opinion this man is a habitual criminal." Opposed to that will be the protestation of the accused that he is not a habitual criminal. Well, the first thing the Magistrate will do will be to ask the policeman from where he got his information, and if the reply is that the evidence is merely hearsay the presumption will be displaced. It is quite pertinent for Honourable Members to ask: "Then why put in those words here?" I will give the reason, and I do so with great reluctance, because I hope this information will not reach the habitual criminal classes. If a police officer gets into the witness box and produces certain finger prints and says that those are the finger prints of a man who was convicted five times, and that those finger prints correspond with the finger prints of the accused, that would not be sufficient. Further evidence would have to be led, and the accused would have to be identified. But the curious thing about this is, that when a habitual criminal is confronted by a member of the police force, who is prepared to state that he is a habitual criminal, he stands mute and then confesses. That is the real reason why these words have been put in.

As the Hon. Mr. Wait remarked, the Indian police know quite well who these men are. Let us take the case of a respectable trader who is falsely accused by a police constable for reasons best known to himself. That man would have no difficulty in establishing his respectability by his own evidence and that of his friends. As was pointed out by the Honourable the Controller of Revenue, this measure is for the protection of every respectable Indian trader who will visit the camp, and it surely must be remembered that every respectable Indian merchant will fortify himself with a passport and other credentials to show that he is a man of good character.

I would wish to mention one other point. It might be possible to ask the Attorney-General in Select Committee for an amendment to the effect that no prosecution can be instituted without the permission of the Camp Superintendent, the Government Agent, Mr. Smith, a gentleman who is held in the highest respect in Ceylon. If a respectable trader appears before him and produces his credentials, the Camp Superintendent will surely not order a prosecution. Some of my honourable friends, in their innocence, do not appear to know very much about the criminal tribes of India. The Honourable the First Indian Member, unfortunately, hails from one of the most innocuous parts of India. I might tell Honourable Members that there are dangerous criminal tribes in India against whom special and drastic legislation has been framed, and whose whole occupation is the committing of serious crimes. There is no slur cast on the Indian public, nor is any slur intended. I was rather surprised to hear the remark of the First Indian Member that the whole Indian race was besmirched with mud as a result of this section. It must be quite clear to his mind that the section is brought in for the protection of Indian traders.

There is one other point which I should like to touch upon before I finish. I have been studying the doings of dacoits in India, and

I am sorry to see that one gang in Ceylon has followed the example of Indian criminals, namely, pricking pins into a man's fingers. It is possible that at the pearl fishery camp an attempt might even be made to set fire to the cadjan sheds.

With regard to section 8, some Honourable Members said that it was a violation of principle. That section is the law in England with regard to unidentifiable articles. If a man is found in possession of a quantity of mustard which cannot be identified, and he is seen coming from the enclosure containing the mustard plants, and he is suspected of having stolen it, then the burden of proving from where he obtained it is on him. In the same way, if any pearls or pearl oysters are found in the possession of a person on or in the vicinity of a pearl bank in such circumstances that there is reason to suspect that they were not lawfully obtained, the burden of proving from where they were obtained is cast on the accused. If an innocent man is arraigned before a Magistrate, he can surely through his demeanour and the evidence he is able to furnish secure an acquittal. All trials will be held in the eye of the public, and witnesses are liable to be cross-examined. I therefore fail to see why there has been all this criticism about this section, and I hope that Honourable Members on reconsideration will find that section 12 is not such a drastic bit of legislation as they have imagined it to be.

THE HON. MR. F. A. OBEYESEKERE (Southern Province, Central Division) :—I think, Sir, that the House is obliged to both the Honourable the Controller of Revenue and the Honourable the Solicitor-General for their lucid explanation of the stringent provisions of the Bill which have come under attack. I do not think that any one of us could help admitting the necessity for the charges that have been levelled against the sections of this Ordinance which have infringed known principles of law and procedure. It was very necessary, therefore, that explanation should have been made before this Assembly. Before we give our adhesion to any provision of this Ordinance, it behoves us, while satisfying ourselves as to the necessity for peculiar legislation in peculiar circumstances, to make an effort to safeguard the statute book from legislation which might appear to any one who looks at it as savouring of discrimination. We must try to modify those sections to the extent that will make it appear that this legislation is meant for this Island and not for the neighbouring continent. The Honourable the Solicitor-General indicated to us by his illustration that something over and above the *ipse dixit* of the Indian constable would be required. He said that the constable would have to produce finger prints. Well, let us have a provision requiring him to produce them.

With regard to sub-section (2) of section 9, it did seem strange to me as the Honourable Member for the Kalutara District explained his case, that there should be provision made against all persons found in the vessel and also the owner to have them dragged to court. The Ordinance does not indicate any provision for bringing home the offence to the real offender so that the innocent may get off. I should also like to see in Committee provision made for speedy and expeditious trial of all matters.

I also think that provision should be made for a special camp Magistrate to deal with the provisions of this Ordinance. In my opinion, the only expeditious way of dealing with the work would be by the appointment of a special Magistrate.

This House will, I think, accept the principle of this Bill, and the necessity for different legislation to meet the difficult circumstances which will obtain in the camp ; but some of us certainly will not permit the Ceylon statute book to be disfigured by provisions which savour of Indian legislation.

THE HON. THE ATTORNEY-GENERAL :—I do not propose to deal in detail with all the suggestions that have been made, like the appointment of a special Magistrate, but I can assure Honourable Members that they will be considered in Select Committee, or by the Executive. I should, however, like to make a few general remarks. In the first place, I join with the Honourable the Controller of Revenue in regretting the delay in regard to the introduction of the Bill, which he explained was unavoidable. I cannot help thinking that if Honourable Members had a longer opportunity of studying the Ordinance in detail, some of their speeches might, possibly, have been modified. I cannot blame them, of course, for that, but now that they have heard—

THE HON. MR. E. W. PERERA (Kalutara Revenue District) :—So far as I am concerned, I did not complain of the insufficiency of time. I complained that opportunity was not given to the public to study the Ordinance and the Honourable the Attorney-General's explanation of it.

THE HON. THE ATTORNEY-GENERAL :—If that is so, I am rather surprised. However, I was greatly interested in the display by Council of the old Gladstonian spirit—the watch-dog spirit. It is one of the fundamental principles of English law that a person is presumed to be innocent till he is proved to be guilty. But the contrary is also justified, and I hope to show this conclusively. The provisions on this point which were objected to so strenuously, at least by the Hon. Mr. Perera, are contained in section 8. There is nothing new there. What is contained there appeared in the Ordinance of 1906, and if Honourable Members take the trouble to look at the Manual on Ceylon Evidence they will find a similar provision. Besides that, as the Honourable the Solicitor-General has pointed out, it is common in England. The question now is, in the circumstances is the provision justifiable? The section says : “If any pearls or pearl oysters are found in the possession, power, or control of any person on or in the vicinity of a pearl bank in such circumstances that there is reason to suspect that they were not lawfully obtained,” and so on. Now, what will the prosecution have to prove? That the pearls or pearl oysters were found in the possession of the individual ; that they were found on or in the vicinity of a pearl bank ; and it would also be necessary to prove that there was reason to suspect that they were unlawfully obtained. I would ask Honourable Members to look at the peculiar circumstances under which pearl oysters are lawfully obtained. They are obtained only during a specified time of the year when a pearl fishery is on, and they are only obtained on the pearl banks ; they can only lawfully be obtained from the boats specially licensed, and at specified times of the day. Honourable Members are aware that

a signal is given for the fishing to begin, and a signal for it to cease. The oysters are taken to the shore and put in a place and carefully watched from the time they get there until the time that they are finally divided. If Honourable Members will bear that in mind, they will see that it is practically inconceivable that anybody could be found in possession of pearls or pearl oysters under circumstances which it would be reasonable to suspect that they were not lawfully obtained. That is my justification for this clause, and I think that it is hardly conceivable that any real injustice could be done. If such a chain of circumstances occurred that an innocent man found himself in such a position as to be suspected, it is inconceivable that he would not be able to prove his innocence by going into the witness box and speaking the truth. I have listened very carefully to the debate, but on that clause I do not see in what way Government could see its way to modify it ; but I will consider any suggestion to remove any injustice that may follow from it.

I do not think it is necessary to say more except on one point in section 12. At present I cannot see how the Government can do without it for this reason, that there are only two alternatives. I am sure that Honourable Members will agree with me that merchants must be properly protected. It has been suggested that a larger police force might be stationed at the camp. I do not see why the general taxpayer should be burdened unless it is necessary to serve the purpose of justice ; but, as the Honourable the Solicitor-General has shown, no real injustice can be done by section 12.

THE HON. MR. E. R. TAMBIMUTTU (Batticaloa Revenue District):—There is a separate account for the pearl fishery. It will be no cost on the taxpayer.

THE HON. THE ATTORNEY-GENERAL :—It all comes out of public money. However, I entirely agree with the suggestion of the Honourable the Solicitor-General that there should be a provision that prosecutions should not be launched except with the sanction of the Camp Superintendent. I also think on consideration that there is some theoretical, though not practical, force in the remarks of the Member for Colombo District with regard to the wording "that he is a dangerous character." I think they might very well be cut out without impairing the utility of the Ordinance.

THE HON. MR. E. W. PERERA (Kalutara Revenue District) :—Is the Bill to be referred to a Select Committee ?

THE HON. THE ATTORNEY-GENERAL :—Yes.

THE HON. THE VICE-PRESIDENT :—I put it to the House, that the Bill be read a second time.

The Bill was read a second time.

THE HON. THE ATTORNEY-GENERAL:—I beg to move that the Bill be referred to a Select Committee composed of the Hon. the Controller of Revenue, the Hon. Mr. G. A. H. Wille, the Hon. Mr. E. W. Perera, the Hon. Mr. A. Canagaratnam, the Hon. Mr. I. X. Pereira, the Hon. Mr. Macan Markar, and the Attorney-General as Chairman.

Adjournment.

THE HON. THE VICE-PRESIDENT:—I believe the Honourable the Attorney-General will be in a position to bring up the report of the Select Committee some time next week, and I therefore think that we can adjourn till Friday next at 2.30 P.M.

Council adjourned accordingly.