DEBATES

IN THE

LEGISLATIVE COUNCIL OF CEYLON,

On Friday, February 6, 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 MR. L. MACRAE, DIRECTOR OF EDUCATION.

THE HONOURABLE MR. W. DURAISWAMY (NORTHERN PROVINCE, WESTERN DIVISION).

THE HONOURABLE MR. E. W. PERERA (KALUTARA REVENUE DISTRICT).

THE HONOURABLE MR. E. R. TAMBIMUTTU (BATTICALOA REVENUE DISTRICT).

THE HONOURABLE MR. A. C. G. WIJEYEKOON (NOMINATED UNOFFICIAL MEMBER),

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 BURGHER 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. C. H. Z. FERNANDO (NORTH-WESTERN PROVINCE, WESTERN 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. MAHADEVA (WESTERN PROVINCE, CEYLON TAMIL).

THE HONOURABLE MR. A. F. MOLAMURE (KEGALLA 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 BURGHER 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.*

Minutes confirmed.

The Minutes of the Meetings of January 29 and 30, 1925, were confirmed.

NOTICE OF QUESTIONS.

Muslims in Government Service.

THE HON. MR. T. B. JAYAH (Third Muslim Member) :—I give notice, Sir, that at the next meeting of Council I will ask the following questions :—

(1) Will the Government be pleased to grant leave to Muslims in its service on Fridays between noon and 2 P.M. to enable them to attend Jumma ?

English Education for Muslims.

(2) In view of the widespread desire among Muslims for English education and owing to the difficulty of attracting Muslim boys to schools, where no provision is made for the study of Koran or Arabic, will the Government be pleased to convert where possible vernacular schools, primarily intended for Muslim boys, into Anglo-vernacular schools, providing facilities for the teaching of Koran or Arabic ?

The Supreme Court Bench.

THE HON. MR. D. S. SENANAYAKE (Negombo District) :—I give notice, Sir, of the following questions :—

(1) Is the circumstance that the majority of the occupants of the Bench of the Supreme Court has been Judges selected from abroad due to any rule restricting the number of appointments that may be made locally ? If so, when was such a rule formulated and what were the reasons for it ?

(2) If there is no such rule, is the circumstance that a majority of the Bench has hitherto been appointed from abroad been due to the opinion of Government that more appointments cannot be made in the Island with advantage to the public interest ?

(3) Has any communication been addressed to Government on the subject by the present or any past Chief Justice, and, if so, would the Government table it ?

QUESTIONS.

Railway Warrants to Government Vernacular Teachers.

THE HON. MR. F. A. OBEYESEKERE (Southern Province, Central Division) :—I rise, Sir, to ask—(1) What are the rules and regulations governing the issue of railway warrants to the Government vernacular teachers ?

(2) Are not second class tickets being issued to Government servants of other departments, whereas vernacular teachers drawing equal salaries are granted third class tickets ?

(3) Were not second class tickets issued to teachers drawing salaries of Rs. 480 and over some time back ?

(4) Will the Government be pleased to issue second class tickets to vernacular teachers drawing Rs. 480 and over as before ?

THE HON. MR. L. MACRAE (Director of Education) :—(1) The rules and regulations governing the issue of railway warrants to Government vernacular teachers are given in General Order 371 (new travelling regulations) and in General Order 1257.

(2) As vernacular teachers draw rates of salaries varying from Rs. 180 to Rs. 1,380 per annum this question is not clear.

According to General Order 358 (new travelling regulations) officers drawing salaries under Rs. 1,000 per annum are entitled to a combined travelling rate under Rs. 2·50, while under General Order 371 officers drawing combined travelling rates under Rs. 2·50 are entitled to third class travelling. It therefore follows that teachers drawing under Rs. 1,000 are entitled to third class travelling only.

(3) Yes ; but it should be noted that rate of salary mentioned, *i.e.*, Rs. 480 was the salary under the old scheme.

(4) On the representation of the Director of Education, Government has already granted a concession to Government vernacular teachers, by which all teachers drawing Rs. 720 (the equivalent under the new salaries scheme of Rs. 480 under the old scheme) and over are given second class warrants. Under the circumstances Government is not prepared to make any further concessions which would extend the privilege of second class travelling to teachers who were not entitled to this privilege under the old rules.

THE HON. THE COLONIAL SECRETARY :—The replies to questions Nos. 24 and 25 are not yet ready.

Civil Hospital, Trincomalee.

THE HON. MR. M. M. SUBRAMANIAM (Trincomalee Revenue District) :—I rise, Sir, to ask—In view of the lack of accommodation in the Civil Hospital, Trincomalee, and the unsatisfactory conditions of the buildings as admitted by the Principal Civil Medical Officer, will the Government be pleased to take early steps to construct a new hospital on a suitable site to meet modern requirements as promised by His Excellency the Governor on July 24, 1924 ?

THE HON. DR. G. THORNTON (Acting Principal Civil Medical Officer) :—The matter is receiving the attention of Government. When a suitable site for a new hospital has been acquired, the question of providing the necessary funds for building it will be considered.

THE HON. THE COLONIAL SECRETARY :—The replies to questions Nos. 27 and 28 are not yet ready.

Encouragement to Joint Stock Banking Enterprise.

THE HON. MR. S. R. MOHAMED SULTAN (Second Indian Member) :—I rise, Sir, to ask—Will the Government be pleased to consider whether, in view of paucity of joint stock banking enterprise in Jaffna, it could not divert a certain portion of its surplus treasury balance at Jaffna on current accounts with the Jaffna Mutual Benefit Fund Limited; and will the Government be pleased to state their intentions in regard to subsidizing the non-official joint stock banking enterprises in the Island ?

THE HON. THE COLONIAL SECRETARY :—The Government is not prepared to place any part of the cash balance at the Jaffna Kachcheri on deposit with the Jaffna Mutual Benefit Fund Limited. As regards the second part of the Honourable Member's question, it is not clear what is meant by "non-official joint stock banking enterprises," but Government has at present no intention of subsidizing any private banking enterprise. A proposal is, however, under consideration to establish a central bank with the object of financing co-operative credit societies, and the Honourable Member is referred to Sessional Paper XXIV. of 1924.

THE HON. THE COLONIAL SECRETARY :—The reply to question No. 30 is not yet ready.

Standing Committee on Finance.

THE HON. THE COLONIAL SECRETARY :—I beg to move, Sir, that the report of the Standing Committee on Finance dated January 30, 1925, be adopted.

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

Standing Rules and Orders of Council.

THE HON. THE COLONIAL SECRETARY :—Sir, I beg to move that a Select Committee of this Council be appointed to revise the Standing Rules and Orders of the Council. Very shortly after

the late Legislative Council came into being, a Committee was appointed in 1921 for the purpose of revising its Standing Rules and Orders. The work of that Committee was very beneficial. But during the lifetime of the late Council, and during the short period for which this Council has already been in existence, it has become clear that certain further amendments of the Standing Rules and Orders are necessary for the convenient dispatch of public business. I have had the opportunity of considering this matter informally with my colleagues, both official and unofficial, and I find that there is unanimity of opinion on the matter. It is therefore proposed to appoint a Committee, of which you, Sir, as Vice-President, have agreed to be the Chairman, and the other members of the Committee will be the Colonial Secretary, the Attorney-General, the Hon. Sir P. Ramanathan, the Hon. Mr. H. A. Loos, the Hon. Mr. E. W. Perera, the Hon. Mr. W. Duraiswamy, and the Hon. Mr. G. A. H. Wille.

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

The Pearl Fisheries Bill.

THE HON. THE ATTORNEY-GENERAL :—Sir, I beg to present the report of the Select Committee on the Pearl Fisheries Ordinance. I am sure that Honourable Members will be glad to hear that the Committee are agreed in recommending that the Bill be passed, subject to certain amendments. There is, however, one section to which two members of the Select Committee have recorded a rider to the effect that in their opinion it should be deleted. I think the best course will be if I explain the various amendments as they arise in the course of the Committee stage. I will, therefore, now move that the Council do resolve itself into a Committee of the whole House to consider the Bill clause by clause.

Council in Committee.
The Clerk read clause 1, which was agreed to.
The Clerk read clause 2.

THE HON. THE ATTORNEY-GENERAL :—There is one amendment which I wish to make, and that is to insert between the definition of "pearl bank" and "pearl fishery guard" the following: "The inspector of pearl banks means the person appointed for the time being by the Governor to act as such." This point was not discussed in Select Committee, but it occurred to me later. Various powers are given to the inspector, and I think his appointment should be legalized by his appointment being made by His Excellency the Governor.

Before the clause is put as amended, I would ask that the final putting of the clause be postponed because an alteration may be necessary in the schedule.

This was agreed to.
The Clerk read clause 3, which was agreed to.
The Clerk read clause 4, which was agreed to.
The Clerk read clause 5, which was agreed to.
The Clerk read clause 6.

THE HON. THE ATTORNEY-GENERAL :—I beg to move that the words "for use on such bank" be inserted between the word "control" and the word "any," so that the sub-section will read

"No person shall on any pearl bank use or have in his possession, power, or control for use on such bank any net, dredge, or fishing line, or fishing tackle."

THE HON. MR. E. R. TAMBIMUTTU (Batticaloa Revenue District):—Honourable Members will see that Ordinance 18 of 1843 and the later Ordinance of 1890 were introduced to safeguard the pearl banks. No ordinary fishing was allowed, nor fishing for chanks. Now that line fishing is allowed, I do not see why fishing for chanks should not be allowed. I do not know why it should be excluded.

THE HON. THE ATTORNEY-GENERAL:—As regards the immediate question as to why the subject has not been dealt with by this Ordinance, the Honourable Member must be aware that a section in the Chank Fishing Ordinance distinctly prohibits fishing on the pearl banks except by permission from the Executive. As to the merits of the case, the Government are not at present in a position to answer finally. The present view is that although there is no objection to the collection of chanks as such, there may be objection to letting such a large number of divers approach within near limits of the pearl banks that it might be very difficult to control them. The inspector of pearl banks is being asked to report on it, but we have not yet had his reply. But Honourable Members can rest assured that if it could possibly be done it will be done, but at present it is impracticable.

The clause as amended was agreed to.

The Clerk read clause 7.

THE HON. THE ATTORNEY-GENERAL:—I beg to move an amendment to this clause, namely, that the words "the proof whereof shall lie on him" at the end of the clause be deleted.

This will not really alter the effect of the Ordinance, because it is a rule of Ceylon law that the proof of matters which are within the knowledge of a person lies with him. The Committee are of opinion that it is best to delete the words.

The clause as amended was agreed to.

The Clerk read clause 8.

THE HON. THE ATTORNEY-GENERAL:—I beg to move that in clause 8 the following opening words be deleted: "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 the following substituted: "If any pearls or pearl oysters are found in the possession, power, or control of any person on a pearl bank, or proceeding from a pearl bank to the shore, or disembarking, or immediately after having disembarked, on coming from a pearl bank, and there appears to the magistrate to be *primâ facie* evidence that the pearls or pearl oysters were obtained in contravention of the provisions of this Ordinance." I think I had better explain what this clause means. It is intended to apply to a case where a person is found on or coming from a pearl bank with pearls or pearl oysters in his possession, at such time or in such circumstances

that it is clear on the face of it that some person has unlawfully collected these pearl oysters, and it may well be in such circumstances that there would be no evidence to prove that the person in the possession of the pearl oysters had actually poached them. In those circumstances this section will come into operation. It says in effect that where a Magistrate is satisfied that a *primâ facie* case exists that the pearls have been unlawfully obtained, then the person in possession is deemed to have committed the offence, unless he gives a satisfactory explanation of how he came into possession of the pearls or pearl oysters. It is a reasonable provision, and is an application of the doctrine of the law in England and also in Ceylon. The objection taken at the second reading was, I think, to the words " in such circumstances that there is reason to suspect that they were not lawfully obtained." That, perhaps, went a little too far, and we have therefore inserted the words "and there appears to the magistrate to be *primâ facie* evidence that the pearls or pearl oysters were obtained in contravention of the provisions of this Ordinance." Further, it was urged at the second reading, with some force, I think, that the words " in the vicinity of a pearl bank " were vague. I have therefore put in these words : " on a pearl bank, or proceeding from a pearl bank to the shore, or disembarking, or immediately after having disembarked, on coming from a pearl bank." This makes it absolutely precise.

The clause as amended was agreed to.

The Clerk read clause 9.

THE HON. THE ATTORNEY-GENERAL :—Honourable Members will remember that this is a clause which provides for the seizure and punishment of poaching vessels where the vessel is obviously implicated but where it is impossible to prove that any poaching has been committed. It is a very technical clause, and the Committee have redrafted it. I will read it and explain where the difference comes in. " 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 that she is being or has been used for the unlawful collection of pearl oysters." The original draft had it " in circumstances giving rise to reasonable suspicion that she is being or has been or is intended to be used." The Committee thought that this is possibly too drastic, and that a ship which is fortunate enough to be discovered before she is found committing this disgraceful act may be allowed another chance. The section goes on from the point I stopped at " any pearl fishery guard specially authorized by a Government Agent, Assistant Government Agent, or the inspector of pearl banks to act for the purpose of this section may enter, seize, and search such vessel, and convey the same to some convenient place in the Island for adjudication." By providing for the pearl fishery guard to be specially authorized we are endeavouring to prevent harassing of innocent fishermen by jacks-in-office.

The effect of sub-section (1) is that if one of the pearl fishery guards finds a ship on or near a pearl bank in circumstances giving rise to reasonable suspicion that she is being or has been used for the unlawful collection of pearl oysters, he may arrest this ship and take it to shore to be adjudicated on.

The next section says what is to happen when the ship arrives in port. The new sub-section reads as follows: "As soon as may be after the arrival of a vessel seized under this section, proceedings shall be commenced before a police magistrate against the person appearing to be in charge of the vessel and the owner thereof." The clause as it originally stood provided for proceedings to be taken against all persons in the vessel. The Committee, although it did not think that this would be what is called harassing, yet decided that proceedings should be commenced against the person appearing to be in charge of the vessel and the owner thereof. The others may come and give evidence to exonerate the ship. The section continues from the point where I left off "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 used for the unlawful collection of pearl oysters, the magistrate may declare that the vessel and her gear shall be forfeited to the Crown, unless a fine not exceeding one thousand rupees is paid within a time to be specified in the order." There is a very great difference here. In the original draft the Magistrate was empowered to assess the fine, the amount of which depended upon the number of persons in the vessel, the fine being Rs. 200 in respect of each person. The Committee considered that on the whole it would be more satisfactory to fix a maximum sum. This sum cannot be more than Rs. 1,000, and, of course, the Magistrate will, in cases which do not appear to be very serious, be able to diminish the fine as he considers necessary. This point must be remembered, that the fine is not imposed on any individual. No conviction can be recorded against an individual, nor can proceedings be taken against an individual if the fine is not paid. If the fine is not paid, then the Crown is entitled to forfeit the vessel. If a Magistrate imposes an excessive fine when the ship seized is a small canoe worth a hundred rupees, the punishment will be limited by the value of the ship. The section continues "and shall also declare all appliances found in the vessel and appearing to be intended for the collection of pearl oysters and any pearl oysters or pearls found in the vessel to be forfeited to the Crown." It was originally intended to use the word "gear", but I am sure that Honourable Members will agree with me that the word "appliances" is better.

Sub-section (3) is new. An Honourable Member suggested at the second reading that there should be no undue delay in the commencement of proceedings. The Committee quite agreed with him and so decided to add this clause: "If such proceedings are not commenced within one month from the arrival of the vessel, then, unless the delay is accounted for to the satisfaction of the magistrate, the magistrate shall, on the application of the owner, or the person in charge of the vessel, order the vessel to be released." The words "or the person in charge of" are not in the printed report. The Honourable the Member for the Kalutara District called my attention to the matter.

The substitution of the new clause was agreed to.
The Clerk read clause 10, which was agreed to.
The Clerk read clause 11, which was agreed to.
The Clerk read clause 12.

THE HON. THE ATTORNEY-GENERAL:—Honourable Members will remember that this clause gave rise to considerable trouble in the second reading; and I regret to say that there was also a certain amount of trouble in Committee, and that this was the one clause on which Members could not agree, the Hon. Mr. Perera and the Honourable the First Indian Member having recorded a rider to the effect that section 12 " is harsh and unnecessary and in our opinion ought to be deleted." I am afraid that the Government cannot accept their view, and we propose therefore to ask the Council to amend the clause first and then to pass it. The first amendment which we propose is this, to delete in the fourth line the words " domiciled in India." It was suggested in Council that these words might appear to make rather an invidious distinction, and might be construed as being a slur on our great neighbour. No slur, however, was intended. But it was decided in Committee that the same law should be administered to both persons residing in the Island and elsewhere. It is therefore proposed to amend the clause in the way I have indicated.

The next amendment which we propose is a line and a half further down. It is the deletion of the words " of the Indian police force " and the insertion of the words " of the police force of the country to which that person belongs." I also propose to add the words " or from which that person has come." It is possible that a man may come from India or elsewhere, but it might be difficult to say that he did belong to India.

The next amendment is a little further down. One of the circumstances which gave rise to this power of ordering criminals to give security is that they are dangerous characters. That was objected to on the ground that it would be possible for the Indian police to get their own back upon persons who had for political reasons excited their animosity. This was not the intention of Government; but I propose that we should add as an amendment, after the words " dangerous character " the words " by reason of his having committed a crime of violence." Then, the next amendment which it is proposed to make is to delete the words " notwithstanding that it is hearsay evidence." That amendment does have this advantage, that it removes what appears to me to be an indecent flaunting of a principle which may be considered objectionable. The deletion of these words will withdraw all possible sting which might otherwise remain in the section.

I propose another amendment which was not in the report of the Select Committee, and that is to add at the end of that sub-section words which will make it read " and if the magistrate is satisfied that in the circumstances it is impracticable to obtain direct evidence as to the fact without an amount of delay or expense which in the circumstances appears to the Magistrate to be unreasonable," and also to add after that an additional paragraph which was recommended by the Committee, namely, " This sub-section applies only where the holding of an inquiry has been approved in writing by the camp superintendent." Honourable Members will, I think, be rather fogged by all these numerous amendments, and I will therefore briefly explain them. The object of the section is to enable the Government to say to a dangerous criminal who proposes to enter the camp: " You are coming to a place which has peculiar facilities for you to carry on your nefarious trade, and you must therefore either refrain from coming to the camp, or you must

satisfy us as to your respectability by calling upon your friends to vouch for your respectability." That is a reasonable enough course to adopt. I do not agree with the doctrine which I was rather amazed to hear propounded at the second reading, namely, that it is morally wrong to exclude persons of this sort from the camp. It would be morally wrong if the Government did not exclude them from the camp. But how is Government to do that? There is already in the Criminal Procedure Code a provision which authorizes a Magistrate to hold an inquiry where a person is alleged to be a dangerous criminal, and if he decides that this person is a dangerous criminal, and that in the circumstances it is necessary to prevent him from committing further depredations, he may call upon him to give security or send him to prison if he does not give a reasonable security. We do not think that this is a case where that should be applied in all its bald directness. What we wish is to have the power, instead of sending such a person to prison, to expel him from the camp if he fails to give security. That is in sub-section (2). But the Government are faced with this great difficulty. Owing to a very wholesome rule of law, evidence, except in very exceptional cases, is required to be direct. This is dealt with in our Evidence Ordinance. It means that if the fact to be proved was seen by a person, the person who witnessed the incident must come forward and say "I saw this done"; or if a person heard a statement, he must come forward and say "I heard that statement made." And in order to prove that a person is a dangerous character, you must prove that he has been convicted of a dangerous crime or that he committed a dangerous offence. How can these things be proved except by those who saw the prisoner in the dock and heard the sentence pronounced? In these circumstances it is impossible, particularly in the case of somebody who has come from India, for us to be able to call somebody who was present at the trial, perhaps in Northern India, two or three thousand miles away. It would be quite unreasonable to expect the Indian Government to send an official all that distance, and at the expense of a considerable amount of time, in order to give evidence in a trivial matter. What this section proposes to do is to dispense with this rule of law and to enable a constable to get into the witness box and say that in the course of his duties he obtained the information that a person had been convicted of a crime of violence; and the Magistrate may, if he is satisfied that the statement is true, admit it in evidence. That is the keynote of the whole thing. The words in the Ordinance are "if it is based on information obtained by him in the course of his duty and appears to the magistrate to be true." I really cannot see what objection there can be to this.

Further, I would point out that the admission of hearsay evidence is by no means new. It is provided for in our Evidence Ordinance, a Magistrate being allowed to accept it when he is satisfied that the evidence is true, and that to require direct evidence would be unreasonable on the ground of expense and delay. What are the objections urged against this clause? All the objections urged at the second reading as to the section casting a slur upon Indians have been removed, even the words referring to hearsay evidence. The only objection now taken by the dissentients in the Committee are that it is harsh and unnecessary. I cannot understand to whom it is harsh. If it is meant that it is harsh to criminals, I do not think that that will sway this Council There was another argument

which was used, namely, that it might be used for the purpose of blackmail by the Indian policemen. The Indian policemen, who will number six or seven, are known, and they will, I believe, be specially selected men. Can anyone imagine a more unprofitable business for them to embark on than the nefarious practice of blackmail? But supposing that a policeman was so foolish as to arrest a respectable Bombay merchant and put him in the dock and say "you were in jail ten years ago for a dangerous crime." If the falsity of this charge is not found out in ten minutes, it will be in ten days, and I shall be sorry for the fate of that policeman. But there is an additional safeguard in the amendment, namely, that an inquiry can only be held where it has been approved in writing by the camp superintendent. The Executive Government do not propose to appoint a beginner as the camp superintendent. Honourable Members can be certain that the official will be one of experience and integrity.

It has also been said that the section is unnecessary. To some extent that is a matter of opinion; but I would remind Honourable Members that the Government are responsible for the proper administration of this camp. It is our duty to protect merchants proceeding there, and who will, we hope, acquire much property. Nobody can say for certain whether the section is necessary or not, but it is the considered opinion of Government that when we ask for powers that are perfectly innocuous, except to the criminal, we are entitled to expect the Council to grant them to us.

THE HON. MR. E. W. PERERA (Kalutara Revenue District):—Sir, I oppose the section. The Honourable the Attorney-General, who has been very reasonable throughout, has placed an unreasonable construction on certain words appearing in my rider. When we say that the law is harsh, we do not mean, and never intended to mean, that it is harsh towards criminals, but that it is harsh towards citizens generally, and that it is therefore a law in violation of public rights. It was as such that I originally opposed the section and I oppose it now. In regard to the word "unnecessary," I shall deal with it in a moment.

So far as the section itself is concerned, the speech of the Honourable the Attorney-General shows that there is harshness in it. He attempted to smooth it down. The sting has been removed, but the poison still remains. For instance, take the section as it stood. It reads:—

12. (1) In any 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 *primâ 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.

(2) When any person found in or attempting or proposing to enter a pearl fishery camp and ordered to give security under chapter VII. of the Criminal Procedure Code, 1898, does not give such security on or before the date on which the period for which such security is to be given commences, the court may, if it thinks fit, order that that person shall, instead of being committed to prison, refrain from entering or be removed from the camp, and pending and during removal be kept in the custody of the police.

(3) If any person with respect to whom such an order is made subsequently enters the pearl fishery camp, he shall, on conviction by a police magistrate, be liable to imprisonment of either description for any period not exceeding six months.

The Honourable the Attorney-General has altered the section by the deletion of the words "domiciled in India" and by substituting the words "police force of the country to which the person belongs" in place of the words "Indian police force." Really this is not in accord with the principle adumbrated by the Attorney-General, of not flaunting indecencies in the face. However much the wording is changed, it does apply to India, but the only thing is that it embraces the whole world in its wide sweep. According to a cable I read in the papers a few days ago, questions have been asked in the Indian Legislative Assembly with regard to the treatment by some of our Customs and Police officers of Indian passengers at Talaimannar. I also saw in the Indian papers strong comments with regard to this section which permits the acceptance of hearsay evidence and the *ipse dixit* of policemen against Indians who may have the good fortune, or misfortune, to visit the camp. The Honourable the Attorney-General said "why, if a Bombay merchant, a respectable man, is treated harshly by the police for the sake of blackmail, I should be sorry for that policeman." But Indian merchants in the heart of this city, men who are well known, men of standing, and who at least have been known to the police as men of wealth, have been harshly and severely treated according to the tradition of the Colombo police; and I can give instances where, instead of the policemen being punished, they have been given promotion.

Then again, with regard to the question of hearsay evidence, the Honourable the Attorney-General said that he did not wish to flaunt indecencies in the face. I rather think that he has delicately clothed them so that they may still be there, although they might not appear an offence and a stumbling block. But for my part I would rather have the vicious principles staring the public stark naked in all their hideousness rather than have them lightly clothed with gauze and muslin. Rather should we know that the vicious principles are there, as the public will then see that they are withdrawn. Vicious principles, delicately swathed, will be of no help to the people. They are a violation of the rights of the people.

The Honourable the Attorney-General, keen lawyer as he is, and quite saturated, if I may say so, in English principles of criminal law, has very apologetically spoken of the acceptance of hearsay evidence which had been introduced into our laws and very sparingly into the laws of England. The Nominated Members of Council in the past may have passed laws which were fundamentally contrary to constitutional principle; but so long as we are here it will be our duty to oppose them, whatever has been done by this Council with its Nominated Members in the past.

With regard to the section itself, I would say that it is perfectly unnecessary, because if you look at sections 81, 82, and 83 of the Criminal Procedure Code you will find that all the provisions now aimed at in section 12 of the present Bill are brought within the ambit of those sections. The sections read as follows:—

81. Whenever a Police Magistrate receives information that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace within the local limits of the jurisdiction of the Police Court of such Magistrate, or that there is within such

limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits, the Police Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period not exceeding six months as the Magistrate thinks fit to fix.

82. Whenever a Police Magistrate receives information—

(*a*) That any person is taking precautions to conceal his presence within the local limits of the jurisdiction of the Police Court of such Magistrate and that there is reason to believe that such person is taking such precautions with a view to committing an offence ; or

(*b*) That there is within such limits a person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself ;

such Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

83. Whenever a Police Magistrate receives information that any person within the local limits of the jurisdiction of the Police Court of any such Magistrate is an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing the same to have been stolen or that he habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury or that he is an habitual protector or harbourer of thieves or that he is an habitual aider in the concealment or disposal of stolen property or that he is a notorious bad liver or is a dangerous character, such Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

Those provisions are wide and sweeping enough to include any section of the criminal or would-be criminal part of the population. I say that the section is both harsh to the subject and is unnecessary and ought to be deleted.

The Hon. Mr. E. R. TAMBIMUTTU (Batticaloa Revenue District) :—I rise, Sir, to strongly support my honourable friend in his objection to this section, as regards which there is a little camouflage. The section takes it for granted that when there is evidence, however improperly brought, by a foreign policeman, that a person is "an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing the same to have been stolen," proceedings under chapter VII. of section 87 can be taken. We know as a matter of fact that there are in the city of Colombo many people who are habitual receivers of stolen property, habitual robbers, habitual house-breakers, and so on, but the fact that a person is an habitual receiver of stolen property, or is a robber, or a house-breaker does not entitle the Magistrate to proceed under chapter VII. Under that chapter security for keeping the peace arises only after proceedings have been taken. It is not intended by section 81 to say that merely because a man is an habitual he is likely to commit a breach of the peace. Section 82 states that it must be shown that the man is taking precautions to conceal himself, Sub-section (*b*) refers to persons having no ostensible means of subsistence. In the case of the learned editor of an Indian paper, to whom reference was recently made in this Council, it was found easier to keep him away from the Island than to send him out after he landed here. I suppose the Honourable the Attorney-General thinks that section 83 is applicable to cases of the sort which he expects in the camp. In Ceylon that section would cover all the dangerous classes of people, but it is seldom resorted to. Here it is proposed to arm the Executive with special authority for the first time. The pearl fishery came into existence centuries ago, and was carried on

during the time of the Portuguese, the Dutch, and under the British, and this is the first time that it is sought to provide the Government with special authority to deal with the people who will resort legitimately to the pearl fishery camp.

At the second reading of the Bill I remarked that there were two means of dealing with this class of people. Special legislation is objectionable. According to what is proposed, if we get a man from Ireland into the camp, we will have to get an Irish policeman. Well, what I suggested was that it was necessary that the police force should be strengthened. The Indian police may be taken on the strength of our force. I understood the Honourable the Attorney-General to say that a larger police force could only be had at the cost of the taxpayer. Whatever it may be, we are in for a big thing, and we should see that the people who come to the camp are protected, but that they are not protected by our arming the Government which special powers. These special powers are dangerous things, and they will be made, as the Honourable the Attorney-General said, by the petty jacks-in-office, and the pettier jacks in the police force, obnoxious to the people. If a larger police force is necessary, I feel that this House will not mind voting the money for the protection of the people who come to the camp. We have got the Criminal Investigation Department, and they should be able to get information about the criminals who come to the camp and watch them.

During the second reading of the Bill the Honourable the Controller of Revenue remarked that he did not think I had ever been to Marichchukkaddai and therefore did not understand the condition of things there. One does not need to go to hell to know that it is a hot place. It is not only with regard to the pearl fishery camp that we do not want any infringement of the criminal law. If an infringement takes place now, perhaps later on the Government might come to us and say "there is a little rowdyism in the country and we want the same powers extended to us." The Hon. Mr. Pereira, who knows the Indians, and who is specially interested in the Indian merchants, will, I am sure, agree with me that it will be a dangerous experiment to give jacks-in-office any of the powers which this section seeks to give them.

THE HON. MR. I. X. PEREIRA (First Indian Member) :—In opposing this section, Sir, I do not desire that the members of this honourable assembly should be a party to the actions of criminals. Let criminals by all means be hounded down to the furthest parts of the earth and be shut out from this fair Island. I am keenly alive to the fact that several Indian merchants, with their bags of gold, will soon be at Marichchukkaddai and be asking for police protection, more police protection, and better police protection. But that does not imply that the liberty of His Majesty's subjects should be left to the tender mercies of the police. It is true that the objections raised against certain parts of the section have been removed, but the fact remains that the people who will be affected by this section will be Indians, who, I think, can be kept under control without the aid of this section. A more efficient organization will in my opinion be sufficient to prevent a recurrence of the incident which has been complained of.

I am thankful to the Honourable Members for the Kalutara and Batticaloa Districts for their remarks, and I think I might add that

no case has been made out to justify the very drastic changes proposed to be introduced into our statute book. If this section is passed into law, it will imply that the Indians are a peculiarly criminal class. Whatever defects the Indians may have, I am sure that the charge of criminal habits cannot be brought against them.

I may further point out that the section as amended will not only go against Indians, but even Ceylonese can be hauled up and ill-treated. I trust, therefore, that Honourable Members of this House will see the reasonableness of our objections and help to throw out this clause.

THE HON. MR. G. A. H. WILLE (First Burgher Member) :— As one who signed the majority report of this Select Committee, Sir, I should like to say a word in explanation. If there were any substance in what has been urged by the previous speakers I should certainly have followed them. To me it seems that if any little poison has still been left in the section, as the Honourable Member for the Kalutara Revenue District remarked, the Honourable the Attorney-General has supplied a good many antidotes. To begin with, he has put in a proviso that before any inquiry is undertaken under the section, the camp superintendent, who will be no less a person than the Government Agent of the Northern Province, will have to authorize the inquiry. If this section were not brought into operation, action would have to be taken under chapter VII. of the Criminal Procedure Code, which to me seems to be a far more rigorous thing than anything which appears in this section. There are a good many offences mentioned, of a rather vague character, in the Criminal Procedure Code, which have all been eliminated from this section. The offences on the ground of which inquiry can be called for are in this section very clearly and specifically defined. Beyond that the Magistrate who has to make the inquiry is required to exact a stricter degree of evidence than is provided for under the Criminal Procedure Code. Here is this section in the Criminal Procedure Code to which on theoretical grounds the strongest objection might be taken :—

> 83. Whenever a Police Magistrate receives information that any person within the local limits of the jurisdiction of the Police Court of such Magistrate is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen or that he habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury or that he is an habitual protector or harbourer of thieves or that he is an habitual aider in the concealment or disposal of stolen property or that he is a notorious bad liver or is a dangerous character, such Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

And section 87 provides that the fact that a person comes under section 83 may be proved by evidence of general repute or otherwise.

Those are very wide powers, and hardly seem to safeguard the liberty of the subject. If we have to fall back upon this chapter (VII.) of the Criminal Procedure Code, I am afraid the liberty of the subject will not be so safe as under the section of the proposed Ordinance. Objection was taken, Sir, to the vague words appearing in the draft Ordinance, such as "persons of a dangerous character." That vagueness has been removed by the Honourable the Attorney-General by the insertion of the words "on the ground of

his having committed a crime of violence." I think this is a great improvement from the point of view of those who opposed this Bill. If the objection is that some wealthy Indian merchants will be victimized, it has to be remembered that this is not a section under which anybody is going to be convicted. It only provides for an inquiry being held in order that a man may be called upon to give security for good behaviour ; and we can hardly conceive that a wealthy Indian merchant will refuse to give security if the Magistrate is not satisfied with regard to his character, relying on his being able later on to obtain redress for any hardships and indignities he may have been subjected to by being called upon to give security.

I would ask Honourable Members to take a very practical view of this matter. I do not think I am behind anybody here in regard for legal principles, but we members of the Select Committee spent several hours in going into this whole Ordinance, and we thought it right, with due consideration for the liberty of the subject, to strengthen the hands of Government as much as possible in what will be a very difficult situation. If one is not going to take a practical view in a matter of this kind, it might be said that it is our duty forthwith to see that this chapter VII. of the Criminal Procedure Code is repealed. We know as a matter of fact that although our Magistrates in Ceylon act under this chapter, no instances have been brought to our notice of anything like injustice or even hardship. How comes it, Sir, I ask, that these obnoxious—obnoxious theoretically—provisions of the Criminal Procedure Code have not been brought to the notice of the leaders of the people so that they might not be used as engines of torture ? As I have said before, there are provisions in the Criminal Procedure Code which go far beyond anything contained in the Bill before us. In fact, in the light of this chapter of the Criminal Procedure Code, section 12 of this Bill has been greatly attenuated. The Honourable the Attorney-General has been at great pains to add a clause which does not appear in the report of the Select Committee, and which is taken from the Evidence Ordinance, an Ordinance which is intended to safeguard the liberty of the subject, and which provides that in special cases where direct evidence cannot be obtained without an unreasonable degree of expense and delay, the best evidence available under the circumstances shall be accepted. I do not fear, Sir, that any hardship or injustice will arise to any person under this section. Fortunately we shall have a Magistrate at the camp who has already inspired great confidence, but I do not wish to press that point.

THE HON. MR. D. B. JAYATILAKA (Colombo District) :—Who is going to be the Magistrate ?

THE HON. MR. G. A. H. WILLE (First Burgher Member):—I think it will be Mr. Wickremesinghe. I do not wish to press the point, Sir, as I think that there are sufficient safeguards in this section to inspire confidence in all persons excepting those who have sinister motives in going to the pearl fishery camp. As for the alleged outrage on the sentiment of India, if it comes to be known there that we are withdrawing the section only because there is the Criminal Procedure Code which can be resorted to, why, I think there will be greater indignation in India if it is realized that the Criminal Procedure Code contains more stringent provisions both in respect of the sort of evidence a Magistrate may accept and

in regard to the nature of the persons who may be brought within the net of chapter VII., where there are such vague expressions as " notorious bad livers " and " dangerous characters " without any reference to crimes of violence. Taking a very practical view of the situation, it is not fair on our part to object to this measure when Government will have a great responsibility in seeing that order is maintained in the pearl fishery camp. I do not think it will be fair to deprive the Government of the powers which have been asked for, powers which, I desire to reiterate, are less than the powers which a Magistrate now has under the Criminal Procedure Code.

THE HON. MR. E. W. PERERA (Kalutara Revenue District) :— I should like to make a few remarks, Sir, on the statements that have been made by the Honourable the First Burgher Member. The Honourable Member prefaced his very elaborate logic, or illogic, by saying that if there was any substance in the objections to this clause he would have followed the other members of the Committee. I am not going to ask any Member of this House to accept anything that I say, on trust. If my arguments and my logic appeal to them, I would ask them to vote for the deletion of this clause. I do not say : " Because I am opposing the clause, you must do the same." I have merely urged that there is a variety of circumstances to be taken into consideration. " When I was young I thought as a child," and so on. My honourable friend knows the saying very well; he is intimately connected with the Young Men's Christian Association. The Right Hon. Mr. Joseph Chamberlain was at one time a Republican and thought as a Republican ; but after a time he became a great Imperialist, and then he thought and spoke as an Imperialist and urged another set of opinions. The argument of " I thought " should not, therefore, be brought into this case.

I will now analyse the arguments brought forward by my honourable friend the First Burgher Member. Whilst conceding that vicious principles exist in the Criminal Procedure Code against the liberty of the subject, he said, in effect : " If you allow all these things to remain in our statute book, why do you object to this section " ? If there are vile and vicious laws in our statute book, is that an argument that we should accept responsibility for passing laws which are in violation of the liberty of the subject ?

THE HON. MR. G. A. H. WILLE (First Burgher Member) :—That was not quite the argument I used. I said that if the opponents of this section think that their objections are well founded, then they must take steps to amend the Criminal Procedure Code.

THE HON. MR. E. W. PERERA (Kalutara Revenue District) :— My honourable friend knows, for he has been with us, that we have been fighting all along to get a constitution which shall make us effective in legislation. About three years ago we got a constitution in which we were not quite predominant. Even now we cannot bring in motions for the amendment of laws already passed; but when we get executive authority we shall see to the matter. The people of the country have been very articulate in denouncing these measures. We cannot wipe them all off with one stroke of the pen. They are laws which have been in existence for the past fifty or sixty years. All we can now do is to safeguard our statute book from having further laws of that nature added to it.

The other argument of my honourable friend is, if the Criminal Procedure Code gives such powers why object to these? I argue the other way. If the provisions of the Criminal Procedure Code give the Government all the powers that are necessary, why adopt this policy of strengthening the hands of the Government? The hands of the Government have already been greatly strengthened by past legislation. The Honourable Member also often repeated the words "let us be practical," that is to say, "let us join with Government when they bring forward any law which is subversive of the rights and liberty of the people." Why? the Bastille was a practical institution! As a piece of special legislation this section is hard to beat; and I feel that my honourable friend would not have placed such a case as he has made out before any court of law. For the reasons which I and my other honourable friends have urged, I hope that this obnoxious section will be thrown out.

THE HON. MR. A. MAHADEVA (Western Province, Ceylon Tamil):—The clause under discussion appears to have been viewed with considerable misapprehension. The reasons given by the Honourable the Burgher Member seem destructive of what the Honourable the Attorney-General said.

THE HON. THE ATTORNEY-GENERAL:—I do not altogether agree with what the Honourable the First Burgher Member said.

THE HON. MR. A. MAHADEVA (Western Province, Ceylon Tamil):—I am very glad that the Honourable the Attorney-General has dissociated himself from the Honourable the First Burgher Member on that point, because I feel that this is an entirely new principle which is being introduced into our procedure. Hitherto Magistrates have been given power, when a person is likely to commit a breach of the peace, and when there is sufficient evidence to prove the fact that he is taking steps to do so, to bind him over. The power that is now proposed to be given to Magistrates is this—to enable them to bind over, without any proof at all, any man who is a habitual criminal or who has been guilty in the past of crimes of violence.

I should now like to review the Honourable the Attorney-General's statement in regard to how this will work in practice. Sections 81, 82, and 83 of the Criminal Procedure Code give power to Magistrates to bind over people. Now, with regard to section 81, I think that before a Magistrate acts under the powers given him in that section he will require, in addition to the fact that the man arraigned before him is a dangerous character or that he is a habitual criminal, evidence that he has the intention of doing a wrongful act. I therefore ask what possible proof a policeman from abroad can have against persons who are brought up before a Magistrate under section 12?

THE HON. THE ATTORNEY-GENERAL:—Look at section 83 of the Criminal Procedure Code.

THE HON. MR. A. MAHADEVA (Western Province, Ceylon Tamil):—There is apparently power under the Criminal Procedure Code, when a man happens to be a habitual criminal, for a Magistrate or the executive to hamper his movements in every respect. I am sorry that such a power should have crept into our Criminal

Procedure Code, and if that power exists, it seems to me that the Honourable the First Burgher Member was right in saying that there did not seem to be any additional power necessary for action under section 12 to demand security from undesirable characters; and so far as that view is correct, the rider attached to the report by the Hon. Mr. Perera and the Honourable the First Indian Member that the clause is unnecessary seems to me to be a sound argument. The real gravamen of the matter is this, that we are now asked to accept as evidence the statements made by any police officer. The substance of this section is that we must accept—

THE HON. THE ATTORNEY-GENERAL :—There is not a word in the section to that effect. The word used is "may."

THE HON. MR. A. MAHADEVA (Western Province, Ceylon Tamil) :—We are practical people, Sir, and know that Magistrates do not always observe the law.

THE HON. THE ATTORNEY-GENERAL :—Rising to a point of order, Sir, the Honourable Member has no right to put that construction on the action of Magistrates.

THE HON. MR. E. W. PERERA (Kalutara Revenue District) :—Rising also to a point of order, Sir, may I ask whether we cannot make a general statement that the Magistrates of this country do not always observe the law.

THE HON. THE VICE-PRESIDENT :—The point is whether the word is "may" or "must."

THE HON. MR. A. MAHADEVA (Western Province, Ceylon Tamil) :—We know in practice what this reduces itself to. I know from my own experience that when a police officer appears before a Magistrate and says that a man is a dangerous character, and there is nothing on the other side to contradict his statement, the Magistrate in practice invariably accepts the word of the police officer. It is well enough for us to say that the statement of the constable must be based on information obtained by him in the course of his duties, and that if it appears to the Magistrate to be true, that would be sufficient. But will a Magistrate ever say that the evidence given by police officers is false? A man from whom security is demanded appears before a Magistrate, and he appears, I am sorry to say, with a stigma upon him, and we know in practice that the Magistrate will ask that security be given. These powers that we complain of are creeping into our statute book, and they should be watched by us with the utmost caution. These powers now asked for will not be limited to the pearl fishery. To morrow there might be a big perahera at Kandy, and on the very same arguments that have been used to-day, the Attorney-General may ask for these powers for the police to keep away habitual criminals from the limits where a large concourse of people is expected. This is the wrong remedy to adopt. The right remedy is to have a sufficient number of police who will make terrorism by habituals impossible. If within the small confines of the pearl fishery camp, where a few hundreds or thousands will be assembled, the police are going to be ineffective, I say that the sooner we have men who can be relied upon to keep order and prevent terrorism the better it will be for this country. I repeat that we should not arm the Executive with powers which make everyone's life a terror.

THE HON. THE ATTORNEY-GENERAL :—I have endeavoured as far as possible to keep out feeling from this debate, but after the speech of the last speaker I feel that I must throw out a challenge. The Honourable the Member for the Western Province, Ceylon Tamils, made a definite and unequivocal statement, that all persons who like himself had practised in our courts knew that in all cases where security is asked the Magistrate has ordered it to be given. I ask the Honourable Member to give me one case where to his knowledge a Magistrate in this Colony used this section in the manner he has indicated.

THE HON. MR. A. MAHADEVA (Western Province, Ceylon Tamil):—I am very glad that the Honourable the Attorney-General has thrown out that challenge. I want what I have stated read, not as what has happened in the past, but as what will happen in the future. To-day if a man is produced before a Magistrate as a habitual criminal, the Magistrate can exercise his discretion ; but in a camp of such a nature as will exist at Marichchukkaddai, with all the authorities trying to preserve peace and order, what, I ask, will be the action of the Magistrate in such a case ? If the Honourable the Attorney-General thinks that Magistrates will act otherwise than in the way I have suggested, I say, and I believe that a large number of this Assembly will agree with me, that those hopes are not shared by a large number of Honourable Members. What will happen is this: a man will be produced as a habitual criminal, a policeman of whose antecedents we know nothing will swear that he is a habitual, and he must be a marvellous Magistrate who will refuse to ask him to give security.

THE HON. THE COLONIAL SECRETARY :—Sir, several lawyers have addressed themselves to the motion, but I propose to speak on the subject purely as a layman ; and I appeal to all my colleagues in this Council, whether they are lawyers or laymen, to look at the question entirely from the common sense point of view as a body of men animated by the feeling, which I am sure we all share, that this pearl fishery must be made a complete success. In order that the matter may be impartially and clearly understood, it is very desirable that every Member of this Assembly should have in his mind's eye a picture of what Marichchukkaddai is. At Marichchukkaddai there is a long stretch of seabeach, extending both northwards and southwards, along which men may walk freely and at which boats can land where they please. Behind the coast line there is a stretch of level land with no natural features of consequence, and no natural boundaries. Immediately to the south there is a small river which can be forded at all times. Beyond the river there is a game sanctuary, and extending inland to the north and east there is a wide plain with patches of scrub jungle through which men can easily make their way in any direction. On this area, close to the foreshore, it is proposed to construct a number of roads, and at the sides of the roads a series of cadjan houses. To inhabit these flimsy structures there will be invited a large number of persons from all parts of the world. The population will for a month or so run into several tens of thousands, and of these persons a great number will bring with them large sums of money, which they can deposit nowhere except in the cadjan houses. I very much doubt whether any visitors will bring with them iron safes or other receptacles, in which the money can be to some extent

protected from burglary ; and it must be borne in mind that Government expects to receive at least six lakhs of rupees from the sale of pearls to these visitors.

Now, the Government has to devise means for protecting this area, and it is suggested that we should introduce into it a considerable body of police. As a matter of fact we are sending 200 policemen to Marichchukkaddai—a very considerable body ; but there are no passes, fords, or other stratagic positions which can be held, and obviously the proper course is to prevent any known bad characters from entering the area at all. This is clearly a case in which prevention is better than cure. We have before us the experience of the last pearl fishery. On that occasion robbers made their way into the camp, burglary was committed, and something like Rs. 30,000 worth of property was stolen. So easy is it for criminals, who have entered the camp, to break and enter the cadjan huts and to get away with their booty. They can be hidden in the game sanctuary within half an hour of the robbery. Or they can make their way south to Puttalam or eastwards to the railway, or if they prefer it they can get into a dhoney at the seaside and make their way across to Mannar or to Paumban or some other point on the Indian coast and completely elude the police. Under circumstances such as these, it is plainly the bounden duty of the Government to afford every protection in its power to those pearl merchants who come at our invitation from India and from other parts of the world ; and the precaution we have adopted in this case is to invite the Government of India to send a certain number of Indian police, who will be picked men, to this camp at Marichchukkaddai. I am glad to say that the Government of India has agreed to send these police, and with them an official representative. Now, Sir, with the help of these men who are specially chosen for the purpose, we hope to be able to identify bad characters from India—robbers, "known depredators," and those who have committed crimes of violence in the past. If such criminals are identified by the Indian police, the matter will forthwith be reported to the Government Agent, who will be the camp superintendent, and who is an officer of wide experience. If the Government Agent is satisfied that the men are criminals, he will order them to be brought before the Magistrate, and the police will then have to satisfy the Magistrate that there is a *primâ facie* case against those whom they charge. If the Magistrate is satisfied that the charge is true, he can order the men charged to be turned out of the camp. And, Sir, is any hardship done thereby to any person in Ceylon or India ? Certainly not. The precautions taken are the minimum that ought to be inserted in the Bill.

As for the suggestion that Indian sentiment is against this measure, I do not believe it. A clause such as this will be welcomed by the Indian merchants who intend to come to Marichchukkaddai with considerable sums of money in their possession for the purchase of pearls. They would be the last men in the world to wish to see this section deleted. They will not resent police protection, but will be most anxious to have it. It is the same with our own pearl merchants. I note with great pleasure that the one Member of the Select Committee, who is also a pearl merchant, has signed the majority report. I feel that this section ought not to be opposed, and I trust that those Honourable Members who spoke against it will now be content to withdraw their objection. They must

remember that the camp will be in existence only for a period of one month, and that these special measures will be in force for a short period only and in a very limited area.

THE HON. MR. F. A. OBEYESEKERE (Southern Province, Central Division) :—I think we are grateful to the Honourable the Colonial Secretary for intervening in the debate and putting forward the layman's point of view before this Assembly. It is certainly necessary to look at the common sense view of the question also. We are as a matter of fact making a mountain out of a molehill ; but the molehill still remains. On the last occasion I argued that the *ipse dixit* of a constable should not be made sufficient to establish a *primâ facie* case. Section 12 has been amended, but I do not think that the Honourable the Attorney-General will be able to tell us that it has been so amended that the *ipse dixit* of a constable is not going to constitute *primâ facie* evidence. What is the use of coming to us and saying that the words " hearsay evidence " have been removed, when all the time it is hearsay evidence that is going to be accepted. The only thing that has been done is the removal of the tautology in the sentence. Are we going to be satisfied with the mere removal of the tautology? I will not be. Is it not possible to get at the object we have in view with a very small amendment ? I suggest adding after the words " by reason of his having committed a crime of violence " the words " shall, if that evidence be otherwise corroborated, be sufficient *primâ facie* evidence." Why do I make that suggestion ? On the last occasion that the Honourable the Solicitor-General spoke, he indicated that when an offender is taken before a Magistrate with *primâ facie* evidence, it will not be the *ipse dixit* of the police constable alone that will be placed before the Magistrate, but that the finger prints, and so on, will go along with it. I find that the Bill has come back from the Select Committee without that addition. It is a simple addition to make. There is nothing to prevent the Honourable the Attorney-General from adding that proviso to prevent the evidence from being placed in the category of hearsay evidence. If I am met on the point, I shall feel that that section has been adequately amended on all matters with which our minds are concerned. I mean that the statute book should not have anything in it savouring of Indian legislation.

THE HON. THE ATTORNEY-GENERAL :—I think that some credence might be given to a policeman's evidence. Ample safeguard is provided by the last words of the paragraph, namely, " and appears to the magistrate to be true." Magistrates know policemen probably better than most of us do. It is hardly conceivable to my mind that a Magistrate can be deceived. It is almost impossible to get corroborative evidence at that time and place. The Magistrate must be satisfied that the evidence is true.

THE HON. MR. M. T. AKBAR (Solicitor-General) :—I should like to say a few words, Sir, to explain away some of the Hon. Mr. Obeyesekere's difficulties. It is impossible to insert the words which he suggests for this reason, that it means getting evidence that is legally admissible, that is, the evidence of witnesses who were present in the courts in the great continent of India where persons may have been convicted. What I said at the second reading of the Bill was this, that when a constable got into the witness box and

said that the man produced had been previously convicted, any sane and reasonable Magistrate will call upon the constable to say from where he got his information. If the constable replies that it is only hearsay evidence, his statement will not be accepted; but if he says "I know that he was convicted; I have got these finger prints which are of a man who was convicted some years ago, and I have got this photograph," the Magistrate on seeing the similarity will know that the constable's statement is true. In such circumstances it will require very strong evidence on the part of the accused to prove his innocence. That is why I mentioned the subject of finger prints and the subject of photographs. The effect of the words suggested by my honourable friend is to do away entirely with the efficacy of the section.

THE HON. MR. F. A. OBEYESEKERE (Southern Province, Central Division):—If it is assumed that finger prints and photographs will be produced, what is the difficulty in the way of adding the words I have suggested? I move the addition of the words "shall, if the evidence be otherwise corroborated, be sufficient *primâ facie* evidence."

THE HON. MR. E. R. TAMBIMUTTU (Batticaloa Revenue District):—I beg to second the amendment. The Honourable the Solicitor-General has argued an ideal state of affairs. He knows that half the time of the staff of his department is spent in revising the work of Magistrates; and I think he will be the first to admit that Magistrates do commit blunders which take a good part of his time in setting right. A man may be a habitual thief, but under our law he cannot be called a habitual criminal unless you can prove his previous convictions. I do not think it will be so difficult to get evidence as the Honourable the Solicitor-General makes out.

THE HON. MR. G. A. H. WILLE (First Burgher Member):—It has been suggested that the *ipse dixit* of a constable should not be taken; but the *ipse dixit* of a constable will only be taken after it is sifted by examination and cross-examination. I do not think we should associate ourselves with the reflection cast upon our minor judiciary, among whom there are many Ceylonese, the class we represent. There is hardly a case where a Magistrate when leaving one station for another is not praised and extolled. Our Magistrates are doing very difficult work, and for the most part they are doing it excellently. It is true that the work of the Magistrates comes before the Attorney-General, but I should like to see the man who can administer the law and not have his work brought before a higher tribunal. If we take the view that our Magistrates are imbued with a sense of justice and will act with caution, there is nothing to fear from this section.

THE HON. MR. C. W. W. KANNANGARA (Southern Province, Western Division):—I beg to move, Sir, that after the words "any member of the police force of the country to which that person belongs" the following words be added: "not below the rank of sergeant."

THE HON. MR. D. S. SENANAYAKE (Negombo District):—Would "otherwise corroborated" mean "otherwise legally corroborated"? Does the Hon. Mr. Obeyesekere want legal corroboration or any sort of corroboration?

THE HON. MR. G. A. H. WILLE (First Burgher Member) :—Whatever words we might supply, we cannot supply the judicial temperament of the Magistrate.

THE HON. MR. V. S. DE S. WIKREMANAYEKE (Southern Province, Southern Division) :—I wish to make a suggestion, Sir. I agree with the Honourable the Solicitor-General with regard to the amendment proposed by the Hon. Mr. Obeyesekere, and I would like to propose an amendment which will meet the requirement of his case. I propose the addition of the words "if supported by any finger print impressions and photographs."

THE HON. MR. F. A. OBEYESEKERE (Southern Province, Central Division) :—I do not insist on a particular kind of corroborative evidence, so I do not agree to the suggestion of the Hon. Mr. Wikremanayeke.

THE HON. THE VICE-PRESIDENT :—Let us confine ourselves to the first amendment.

THE HON. THE ATTORNEY-GENERAL :—I am most anxious to meet the views of Council as much as I can, but we have got to be very careful. The difficulty is to get any evidence of corroboration. I was thinking whether it would be sufficient if we put in the words "if in the opinion of the magistrate in all the circumstances of the case it appears to him that his evidence is true." Why I suggest that is that it will draw the specific attention of the Magistrate, that as a matter of fact the Magistrate is not only to take the *ipse dixit* of the policeman into consideration, but all the circumstances of the case. Under the section as it now stands, if a police constable gets into the witness box and says "I know that man ; he was convicted at Madras last year of gang robbery," the Magistrate has got some evidence, but if the person charged goes into the box and on oath denies this, his evidence is entitled to as much credence as that of the policeman, and it is then for the Magistrate to decide whether further evidence is necessary and what his decision shall be. This matter has been thoroughly thrashed out in British courts of law. It is a very technical subject to explain, but what has been decided is this. Supposing a thief is found in the possession of stolen property. If he goes into the witness box and he says "I obtained this from A. B.," the Magistrate cannot convict that person if he regards that explanation as being *primâ facie* reasonable, unless the original evidence of theft is corroborated. I am sure that that absolutely applies to this. Supposing a person goes into the box when he is charged and he says on oath "I am not the person supposed to have been convicted of this crime. I was, in fact, out of the district at the time." If that appears to the Magistrate to be a reasonable explanation the burden is thrown on the prosecution to prove their case, and they would have to produce corroborative evidence. That has been the law in England as administered for some years. May I suggest the addition after the words "shall be sufficient *primâ facie* evidence of the fact, and shall be admissible in evidence," the words "if it appears to the magistrate in all the circumstances of the case, and after hearing all the evidence given by or on behalf of the person charged to be true." I certainly wish to call a spade a spade, and not to insert any unnecessary matter into an Ordinance.

THE HON. MR. F. A. OBEYESEKERE (Southern Province, Central Division) :—I am not satisfied with the amendment suggested by the Honourable the Attorney-General. My point is that a man is arrested and taken before a Magistrate.

THE HON. THE ATTORNEY-GENERAL :—In any case he has to be.

THE HON. THE COLONIAL SECRETARY :—I suggest, Sir, that we might now adjourn for tea.

Council adjourned for tea.

On resumption—

THE HON. MR. F. A. OBEYESEKERE (Southern Province, Central Division) :—I have been able, Sir, during the adjournment, to consult the mover of the other amendment, the Hon. Mr. Wikremanayeke, and he is willing to add to my amendment certain words which will now make it read : " shall, if that evidence be corroborated by other evidence which may include finger prints or photographs."

THE HON. THE VICE-PRESIDENT :—I think I will put that amendment to the House.

THE HON. THE ATTORNEY-GENERAL :—I am afraid I cannot accept that amendment, Sir. I know it will be useless, because I know that the Indian police are not going to bring with them finger prints and photographs. Will the Honourable Member be so good as to withdraw his amendment and accept the words " if it appears to the magistrate in all the circumstances of the case, and after hearing all the evidence given by or on behalf of the person charged to be true" ? There is also another minor amendment in this sub-section which I move, namely, the addition after the words " dangerous character " of the words " by reason of his having committed a crime of violence." I do not think any laboured discussion is necessary on it.

THE HON. MR. F. A. OBEYESEKERE (Southern Province, Central Division) :—I am prepared to withdraw my amendment.

THE HON. MR. C. W. W. KANNANGARA (Southern Province, Western Division) :—I wish, Sir, to suggest the words " not below the rank of sergeant " after the words " of the police force of the country to which he belongs."

THE HON. THE ATTORNEY-GENERAL :—The Indian Government are sending eight constables and one Inspector in charge of them. I am very sorry we can do nothing in the matter, but I can assure Honourable Members that the evidentiary part of the proceedings will be all right. Everything, as Honourable Members know, depends upon the Judge.

THE HON. THE VICE-PRESIDENT :—I will put the amendment of the Honourable the Attorney-General to the House, and then put the clause as amended with all the amendments.

The amendment was agreed to.

THE HON. THE VICE-PRESIDENT :—I put it to the House that the clause as amended do stand part of the Bill. I think the Ayes have it.

THE HON. MR. E. W. PERERA (Kalutara Revenue District) :—Divide.

The House divided as follows :—

Ayes—30.

The Hon. Mr. James Peiris, Vice-President (Colombo Town, South).
The Hon. the Officer Commanding the Troops.
The Hon. the Colonial Secretary.
The Hon. the Attorney-General.
The Hon. the Controller of Revenue.
The Hon. the Treasurer.
The Hon. Mr. N. H. M. Abdul Cader (Second Muslim Member).
The Hon. Mr. L. Macrae, Director of Education.
The Hon. Mr. A. C. G. Wijeyekoon (Nominated Unofficial Member).
The Hon. Mr. E. J. Hayward, C.B.E., V.D. (Commercial Member).
The Hon. Mr. W. L. Kindersley, Government Agent, Central Province.
The Hon. Mr. W. T. Southorn, Principal Collector of Customs.
The Hon. Mr. W. E. Wait, Controller of Indian Immigrant Labour.
The Hon. Mr. M. T. Akbar, Solicitor-General.
The Hon. Mr. K. Balasingham (Nominated Unofficial Member).
The Hon. Mr. A. Canagaratnam (Northern Province, Southern Division).
The Hon. Mr. C. H. Z. Fernando (North-Western Province, Western Division).
The Hon. Mr. H. R. Freeman (North-Central Province).
The Hon. Mr. T. B. Jayah (Third Muslim Member).
The Hon. Mr. D. B. Jayatilaka (Colombo District).
The Hon. Mr. H. M. Macan Markar (First Muslim Member).
The Hon. Mr. G. E. Madawala (North-Western Province, Eastern Division).
The Hon. Mr. F. A. Obeyesekere (Southern Province, Central Division).
The Hon. Mr. D. S. Senanayake (Negombo District).
The Hon. Mr. M. M. Subramaniam (Trincomalee Revenue District).
The Hon. Mr. V. S. de S. Wikremanayeke (Southern Province, Southern Division).
The Hon. Mr. G. A. H. Wille (First Burgher Member).
The Hon. Dr. G. Thornton, Acting Principal Civil Medical Officer.
The Hon. Mr. A. H. F. Clarke, Acting Director of Public Works.
The Hon. Sir J. Thomson Broom (European Urban Member).

Noes—6.

The Hon. Mr. E. W. Perera (Kalutara Revenue District).
The Hon. Mr. E. R. Tambimuttu (Batticaloa Revenue District).
The Hon. Mr. C. W. W. Kannangara (Southern Province, Western Division).

The Hon. Mr. I. X. Pereira (First Indian Member).
The Hon. Mr. S. R. Mohamed Sultan (Second Indian Member).
The Hon. Mr. A. Mahadeva (Western Province, Ceylon Tamil).

The clause as amended was agreed to.

THE HON. THE ATTORNEY-GENERAL :—By way of personal explanation, Sir, may I say that in the course of the debate I rather said I did not agree with the First Burgher Member, but on thinking the matter over I find that we really see eye to eye, and that his views do not go any further than my own with regard to the Criminal Procedure Code.

THE HON. MR. G. A. H. WILLE (First Burgher Member) :—I am thankful to the Honourable the Attorney-General for his explanation.

The Clerk read clause 13.

THE HON. THE ATTORNEY-GENERAL :—That was a section which caused the Committee some difficulty. It reads as follows : "No person shall, without the permission 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 ". . . At present it reads "any artificial pearl." We propose to put in the words "or cultured." Apparently, it does not follow that "artificial" does include "cultured." We are all agreed, I think, that it is absolutely necessary that so far as it is possible cultured pearls should not be allowed into this camp. It is impossible very often to distinguish them, and it would therefore be necessary to have a committee of experts.

On the other hand, the Committee understand that it is necessary for pearl merchants coming into the camp to bring with them real pearls, both as a standard of comparison and because a considerable sale in pearls takes place. The Committee consider that these words would exactly meet the case. A merchant will have to declare when he comes into the camp what pearls he has with him, and he will be given a permit by the camp superintendent.

In sub-section (2) we propose to put in the words "specially authorized in writing thereto by the camp superintendent" after the words "pearl fishery guard." This will be a very great safeguard against the powers of seizure.

In sub-section (3), which provides that pearls when seized shall be taken before a Police Magistrate, the Committee think that the words "if he considers that an offence was or was intended to be committed" should be omitted and the following words inserted : "if an offence has been committed." Further down, the words "by the police" are omitted, as we think it will be best to keep the pearls in the Kachcheri safe.

It was suggested to me that we should use the words "until the end of the pearl fishery or until the owner leaves the camp," this being intended to cover the case of a person who may come there for some temporary purpose. The Committee also propose that the last sentence in that sub-section should be deleted, the reason being that the general law is a sufficient safeguard.

The Committee also propose that the whole of sub-section (4) should be deleted.

The clause as amended was agreed to.
The Clerk read clause 14.

THE HON. MR. I. X. PEREIRA (First Indian Member) :—I understand, Sir, that on the occasion of the last fishery the fatalities were very heavy. I am sure the Honourable the Attorney-General will agree with me that the lives of the hundreds and perhaps thousands of divers and others who come to the camp should be sufficiently protected. I feel that it is the duty of Government to see that they are protected, and that ample measures are taken to this end in the way of the provision of medical facilities.

The clause was agreed to.
The Clerk read clause 15.

THE HON. THE ATTORNEY-GENERAL :—I ask that the consideration of this clause be postponed.

This was agreed to.
The Clerk read clause 16.

THE HON. THE ATTORNEY-GENERAL :—This is an amendment I did not deal with in introducing the Bill. It appears that in times past it was the practice for people to hawk round oysters in Colombo and other towns. Everybody now knows that no pearl worth having will be found in these, because they have been previously taken away. However, if oysters are brought into the various towns and allowed to rot, they will breed flies and give out offensive smells. It is therefore thought that the proper authorities should be given sufficient power to act in this matter.

THE HON. MR. G. A. H. WILLE (First Burgher Member) :—Sir, the word "rottening" appears on the margin: "Restriction on rottening pearl oysters in urban area." I think the word should be "rotting."

THE HON. THE ATTORNEY-GENERAL :—I thought so myself. The printer will be able to attend to it.

The clause was agreed to.
The Clerk read clause 15.

THE HON. THE ATTORNEY-GENERAL :—I move to add after the word "chapter" in line 2 the words "or to chapter IV."

THE HON. MR. E. R. TAMBIMUTTU (Batticaloa Revenue District) :—Why not take the clause after clause 20 ? It will be more in sequence then.

THE HON. THE ATTORNEY-GENERAL :—I am quite willing if the Honourable Member thinks so. But supposing we transpose it above chapter IV., no amendment will be necessary.

This was agreed to.
The clause was agreed to.

THE HON. THE ATTORNEY-GENERAL :—I beg to move that section 16 be re-numbered 17.

This was agreed to.

THE HON. THE ATTORNEY-GENERAL :—I also move to omit the old section 17.

This was agreed to.

The Clerk read clause 18, which was agreed to.
The Clerk read clause 19, which was agreed to.
The Clerk read clause 20, which was agreed to.
The Clerk read clause 21, which was agreed to.
The Clerk read the first schedule.

THE HON. THE ATTORNEY-GENERAL :—I beg to move, Sir, in the first place to omit "three mile line and in part marked '100 fathoms line,'" and to insert "100 fathoms line, in part marked '3 fathom line,' in part marked '5 fathom line,' in part marked 'A B,' and in part marked 'D C,'" and also to substitute a new plan, which I think has been given to Honourable Members. The Committee found it possible very greatly to restrict the area of the pearl banks. This will result in very great advantage to local fishermen.

I move to put in the words "Part I." after the words "First Schedule." I may explain that I was not aware of it myself in Select Committee, where it was discovered that there is a Proclamation in force declaring two areas of pearl banks in Trincomalee. One bank is of no value, and we do not propose to perpetuate it. With regard to the other, it is necessary to prevent poaching, and therefore the Proclamation of 1907 should be continued. It contains a small amendment. I will read it: "That portion of Tampalakamam Bay, in the District of Trincomalee, Eastern Province, to the north and west of a line drawn from the hill called Semmalai, on the north side of the Bay to the promontory called Periyattumunai, on the south side of the Bay described in the plan hereto annexed, and dated February 5, 1925, authenticated by A. J. Wickwar, Esq., Surveyor-General." There is one little alteration, as I said. Although the plan is dated 1925 it is a very old plan, and it has these words upon it "east by land claimed by natives." I think we might make it "east by land claimed by villagers." The word occurs in two or three places. That will come in as Part II. of the first schedule.

THE HON. MR. M. M. SUBRAMANIAM (Trincomalee Revenue District) :—We have had no notice of these amendments about the Trincomalee banks.

THE HON. THE ATTORNEY-GENERAL :—I apologize to the Honourable Member, but as I said this matter was discovered only recently. It does not make any alteration in the law. It is merely included for convenience.

THE HON. THE VICE-PRESIDENT :—I put it to the House that in chapter IV., parts I. and II. as amended do stand part of schedule 1.

This was agreed to.

The Clerk read schedule 2.

THE HON. THE ATTORNEY-GENERAL :—I beg to move that at the end of the conditions in the first form of license the following words: "but so that the maximum fee shall be one hundred and

twenty-five rupees" be inserted. The fee is Rs. 5 per ton or part of a ton. The Committee consider that the maximum should be limited to Rs. 125 whatever may be the tonnage.

This was agreed to.
The Clerk read schedule 3, which was agreed to.
The Clerk read clause 2.

THE HON. THE ATTORNEY-GENERAL :—I beg to move that instead of the words "the areas specified in the first schedule to this Ordinance" there should be the words "the areas from time to time specified in the first schedule to this Ordinance."

The clause as amended was agreed to.
The Clerk read the Preamble and Title, which were agreed to.

THE HON. THE ATTORNEY-GENERAL :—I beg to move that Council do now resume.

THE HON. THE CONTROLLER OF REVENUE seconded.

Council resumed.

THE HON. THE ATTORNEY-GENERAL :—I beg to move that the Bill be read a third time and do pass.

THE HON. THE CONTROLLER OF REVENUE seconded, and the motion was agreed to.

The Bill was read a third time and passed.

THE PEARL FISHERIES BILL.

The Select Committee appointed to report on the above-named Bill have the honour to report as follows :—

1. The Committee recommend that the Bill should be passed subject to the amendments specified below.

2. Section 6 (1) should be amended by the insertion of the words "for use on such bank" between the word "control" and the word "any" in line 2.

3. Section 7 should be amended by the deletion of the words "the proof whereof shall lie on him" in the last line.

4. Section 8 should be amended by the substitution of the words—

"If any pearls or pearl oysters are found in the possession, power, or control of any person on a pearl bank, or proceeding from a pearl bank to the shore, or disembarking, or immediately after having disembarked, on coming from a pearl bank, and there appears to the magistrate to be *primâ facie* evidence that the pearls or pearl oysters were obtained in contravention of the provisions of this Ordinance,"

for the words—

"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,"

in lines 1 to 4 thereof.

5. Section 9 should be amended so as to read as follows, viz. :—

9. (1) 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

that she is being or has been used for the unlawful collection of pearl oysters, any pearl fishery guard specially authorized by a Government Agent, Assistant Government Agent, or the inspector of pearl banks to act for the purposes of this section may enter, seize, and search such vessel, and convey the same to some convenient place in the Island for adjudication.

(2) As soon as may be after the arrival of a vessel seized under this section, proceedings shall be commenced before a police magistrate against the person appearing to be in charge of 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 used for the unlawful collection of pearl oysters, the magistrate may declare that the vessel and her gear shall be forfeited to the Crown unless a fine not exceeding one thousand rupees is paid within a time to be specified in the order, and shall also declare all appliances found in the vessel and appearing to be intended for the collection of pearl oysters and any pearl oysters or pearls found in the vessel to be forfeited to the Crown.

(3) If such proceedings are not commenced within one month from the arrival of the vessel, then, unless the delay is accounted for to the satisfaction of the magistrate, the magistrate shall, on the application of the owner of the vessel, order the vessel to be released.

6. Section 12 (1) should be amended as follows, viz. :—

(*a*) By the deletion of the words "domiciled in India" in line 4;

(*b*) By the substitution of the words "of the police force of the country to which that person belongs" for the words "of the Indian police force" in lines 5 and 6;

(*c*) By the addition of the words "by reason of his having committed a crime of violence" after the words "dangerous character" in line 10;

(*d*) By the deletion of the words "notwithstanding that it is hearsay evidence" in line 12;

(*e*) By the addition of the following paragraph at the end thereof, viz. :—

"This sub-section applies only where the holding of the inquiry has been approved in writing by the camp superintendent."

7. Section 13 should be amended as follows, viz. :—

(*a*) By the insertion of the words "or cultured" between the word "artificial" and the word "pearl" in line 5 of sub-section (1);

(*b*) By the addition of the words "specially authorized in writing thereto by the camp superintendent" after the words "pearl fishery guard" in line 2 of sub-section (2);

(*c*) By the substitution of the words "if an offence has been committed" for the words "if he considers that an offence was or was intended to be committed" in lines 5 and 6 of sub-section (3).

(*d*) By the deletion of the words "by the police" in lines 9 and 10 of sub-section (3);

(*e*) By the deletion of the concluding sentence of sub-section (3), viz. :—

"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."

(*f*) By the deletion of sub-section (4).

(8) The following section should be inserted in Chapter IV. as section 16, viz. :—

Restriction on rotting pearl oysters in urban area.

16. No person shall bring any pearl oyster to any place within the administrative limits of any municipality, urban district council, local board, or sanitary board, or transport, store, allow to rot, or otherwise treat any pearl oyster within such limits unless permitted so to do by, and in accordance with, such conditions (including the payment of fees) and directions as may be given by the Chairman of the municipality, council, or board concerned.

9. Section 16 should be re-numbered 17.

10. Section 17 should be deleted. The Governor in Executive Council has the power to add the Ordinance to the Schedule to Ordinance No. 1 of 1914, which gives power for informers to be paid.

11. The First Schedule should be amended by the deletion of the words "3 mile line and in part marked" and by the addition after the words "100 fathoms line," of the words "in part marked '3 fathom line,' in part marked '5 fathom line,' in part marked 'A B,' and in part marked 'D C.'"

The attached plan* should be substituted for the plan in the First Schedule:—

12. The following should be added at the end of paragraph 1 of the conditions to the form of license to use a boat for collecting pearl oysters in the Second Schedule, viz.:—

"but so that the maximum fee shall be one hundred and twenty-five rupees."

L. H. ELPHINSTONE
(Attorney-General), Chairman.
E. B. ALEXANDER
(Controller of Revenue).
†E. W. PERERA.
A. CANAGARATNAM.
H. M. MACAN MARKAR.
†I. X. PEREIRA.
G. A. WILLE.

† Subject to Rider.

RIDER.

Section 12 is harsh and unnecessary, and in our opinion ought to be deleted.

E. W. PERERA.
I. X. PEREIRA.

The Trade Marks Ordinance.

THE HON. THE ATTORNEY-GENERAL:—If Honourable Members do not mind we might dispose of in a minute the second reading of "An Ordinance to consolidate and amend the Law relating to Trade Marks." I beg to move the second reading of the Ordinance. I explained it fully at the first reading. If the second reading is passed, I propose to ask that the Bill be referred to a Select Committee. I beg to move that it be read a second time.

THE HON. MR. M. T. AKBAR (Solicitor-General) seconded, and the motion was agreed to.

THE HON. THE ATTORNEY-GENERAL:—I beg to move that the Bill be referred to a Select Committee.

THE HON. THE VICE-PRESIDENT:—The Bill is referred to a Select Committee consisting of the Attorney-General as Chairman, the Hon. Mr. E. J. Hayward, the Hon. Mr. C. W. W. Kannangara, the Hon. Mr. D. B. Jayatilaka, the Hon. Mr. F. A. Obeyesekere, the Hon. Mr. S. Rajaratnam, the Hon. Mr. G. A. H. Wille, and the Hon. Mr. V. S. de S. Wikremanayeke.

A Motion postponed.

THE HON. THE VICE-PRESIDENT:—I understand that the Honourable Member for the Kalutara District does not wish to proceed with his motion to-day, but that he will take it up at the next meeting of Council.

Adjournment.

THE HON. THE VICE-PRESIDENT:—Council will now adjourn *sine die*.

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* Not reproduced.