



# DEBATES

## SESSION OF 1942.

### CONTENTS:

	PAGES
Private Members' Motions	2192-2224
(Release of Detenus	2192-2195
Divorce Law	2198-2205)
Adjournment	2224
(Index of Cost of Living	2224
Lighting Regulations: Difficulties of Fishermen and Naval Protection	2224, 2225)

PRINTED BY ORDER OF THE GOVERNMENT OF CEYLON

AT THE

CEYLON GOVERNMENT PRESS. COLOMBO.

*"Copy" received : January 20, 1943.*

*Proof sent : January 23, 1943.*

*Proof returned : March 1, 1943.*

*Published : March 15, 1943.*



# STATE COUNCIL OF CEYLON.

Wednesday, September 23, 1942.

The Council met at 2 p.m., MR. SPEAKER [THE HON. SIR WAITIALINGAM DURAISWAMY] in the Chair.

## PAPERS TABLED.

(Acting Leader of the State Council): One Supplementary Estimate for 1940-41 and fifteen Supplementary Estimates for 1941-42.

## BUSINESS OF COUNCIL.

The Hon. Mr. D. S. Senanayake (Acting Leader of the State Council): I move, Sir, under Emergency Standing Order 6 that Government business be given precedence this day.

\*Mr. S. Samarakkody (Narammala): I object to that. To-day is the only day available to Private Members to attend to important motions that have been on the Agenda for years. For the last two months we have had no day on which we could have moved our motions. There is, for instance, a motion of mine on the Agenda Paper which, if it is not moved now, will be useless; if it cannot be moved now, the purpose for which it has been brought up will be lost.

\*The Hon. Mr. S. W. R. D. Bandaranaike (Minister of Local Administration): The House decided yesterday to take up the second reading of the Bus Bill to-day.

\*Mr. B. H. Aluwihare (Matale): You pointed out yesterday that the question of taking up Government business to-day would be put to the House. [Interruption]. I am only referring to the objection of the Hon. Minister of Local Administration.

\*The Hon. Mr. Bandaranaike: Then I do not know what the purpose of the motion that was moved yesterday was. [Interruption.] Anyway the House decided to take up the second reading of the Bus Bill to-day.

[Note.—An asterisk (\*) against the name of a Member indicates that his remarks have not been revised by him.]

\*Mr. Aluwihare: I remember, you gave us an assurance that this motion which has been brought up by the Hon. Acting Leader of the House would be placed before us to-day for a decision.

I would ask the House and the Ministers to remember that we shall shortly go into recess for one month; the Council will not meet during that period. In those circumstances, I would ask that the Ministers do not insist on taking up Government business to-day. After all there are two other days on which Government business can be dealt with, and there is no question of any of the business being left over for another session.

As the hon. Member for Narammala (Mr. Samarakkody) has pointed out, there is at least one Private Member's motion which if it is not taken up now—and to-day is the only day on which these motions can be taken up—will be utterly useless. I thought that the amendment of the Standing Orders was something that gave Private Members of this House some kind of interest in the administration, and if Hon. Ministers, after Private Members have for very nearly six weeks waived their right on this special day, insist on having their business taken up, I think it would be grossly unfair.

\*The Hon. Mr. Bandaranaike: I should like to make a few comments myself. Yesterday a motion was moved to the effect that the second reading of the Bus Bill be taken up to-day, and that motion went to the vote and was voted upon. I do not know whether the House was entitled to come to any such decision, or what the binding effect of that decision is. I think I am entitled to form the impression that when that motion was permitted to be brought up, when that motion was permitted to be voted upon, it meant a decision which the House had a right to come to.

Mr. Speaker: What is the point that the Hon. Minister is raising?

\*The Hon. Mr. Bandaranaike: I am asking you, Sir, whether that decision arrived at yesterday stands.

Mr. Speaker: That decision stands. But as regards precedence, the question has to be decided by a special motion moved by the Acting Leader of the Council. That item is fixed for to-day.

\*The Hon. Mr. Bandaranaike: As part of Government business.



**\*Mr. Speaker:** But as regards precedence as between Private Members' motions and Government business, a special motion has to be brought up under Emergency Standing Order 6. That special motion is now before the House.

**\*The Hon. Mr. Bandaranaike:** Very well, Sir, if that is your ruling. I thought the effect of the motion passed yesterday was that this item of Government business would be taken up to-day.

The hon. Member for Matale (Mr. Aluwihare) seems to imagine that all Government business can be concluded tomorrow and the day after. Does he really think that the Bus Bill can be finished with tomorrow and the day after? I do want earnestly to point out that, whatever steps are taken, it is very urgent that the Bill should go through all the stages this week. If hon. Members will be kind enough to realize the importance of all the stages of this Bill going through this week, I do not mind any other arrangements that Members wish to carry out to suit their own convenience.

**The Hon. Mr. Senanayake:** The hon. Member for Narammala (Mr. Samarakkody) has stated that we were going to appropriate Private Members' day for our purposes. Actually the House arrived at the decision yesterday that the Bus Bill should be taken up today. So, when that decision was reached the House agreed to give a part of today to Government business. Therefore the argument that we are encroaching on a Private Members' day does not stand. Now, having granted a part of a Private Members' day to our business, the question is whether Government business should not have precedence over Private Members' motions. As far as we are concerned, as soon as the second reading of the Bus Bill is concluded, we can go on with Private Members' motions.

There is another point that I wish to make. If hon. Members are certain that Government business as well as private business can be got through during this week, then giving precedence to Government business today will not affect them. As far as the Ministers are concerned, we are prepared to sit till Friday

and to give any part of the time left to the disposal of Private Members' motions.

**\*Mr. Samarakkody:** On a point of order, Sir. It has been stated that yesterday there was a decision of the House—

**Mr. Speaker:** There is no point of order arising.

Question put, "That Government business be given precedence this day."

The Council divided (under Standing Order 68): Ayes, 16; Noes, 16.

*There being an equality of votes, Mr. SPEAKER gave his casting vote against the motion.*

Motion accordingly declared lost.

#### RELEASE OF DETENUS.

**\*Mr. Samarakkody:** I gave notice of a motion some time ago, Sir, and I wish to move it now. May I have the permission of the House to take it up first?

**Mr. Speaker:** On what page of the Order of the Day does it appear?

**\*Mr. Samarakkody:** I do not at the moment know the exact page. It is a motion regarding the lifting of the ban on some political parties.

**Mr. Speaker:** Where does it appear?

**Clerk of the Council:** It is Item No. 4 in Part II. of the Orders of the Day issued on September 1, 1942.

**\*Mr. Samarakkody:** I move for permission to suspend Standing Orders to enable the motion to be moved and debated to a conclusion to-day.

This is the motion:

"That in view of the apparent change of attitude of the British Government towards Russia and her political doctrines and as the British Government has given tangible proof of this change of heart by lifting the Ban on the Communist Party in India by releasing those Communists who were detained, this Council calls upon His Excellency the Governor to take immediate steps to release unconditionally the Members of the local Communist Party (Sama Samaj Party) and also pardon those Members who have escaped from custody."

**The Hon. Mr. D. S. Senanayake (Acting Leader of the State Council):** I should like to be clear on a certain point



regarding this motion. The hon. Member wants the permission of the House to suspend Standing Orders; and I should like to know whether this motion would be referred to any Committee or Officer of State.

**\*Mr. Samarakkody:** Might I submit that there is no need to refer the motion to any Committee or Officer of State.

**The Hon. Mr. Senanayake:** That is what I wanted to find out. In the motion there are certain statements which are assumed to be correct.

**\*Mr. Samarakkody:** There are no assumptions made in the motion. The motion is quite clear—

**Mr. Speaker:** The Hon. Acting Leader is speaking at the moment.

**The Hon. Mr. Senanayake:** I listened to the motion while it was being read out by the hon. Member, and one of the assumptions made in that motion is that the attitude of England towards Russia had changed and that in view of that some society here in Ceylon should receive different treatment. What connexion this society in Ceylon has with Russia, I do not know.

**The Hon. Colonel J. L. Kotalawala (Minister of Communications and Works):** Or with the attitude of the British towards Russia, we do not know.

**The Hon. Mr. Senanayake:** Whether there has been a change of attitude on the part of the British towards Russia, we do not know. That assumption requires some explanation; and the only person who, I think, can speak on that question is—

**\*Mr. Samarakkody:** I rise to a point of order. The merits of the motion must be discussed in this House.

**Members:** Order!

**The Hon. Colonel Kotalawala:** I should like to know who is in possession of the Floor.

**Mr. Speaker:** Order, please!

**The Hon. Mr. Senanayake:** I believe it is the Chief Secretary who is entrusted with "Foreign Affairs". He is the person who will have communication with a foreign Power. I think any

motion dealing with a subject that is entrusted to an Officer of State or to an Executive Committee should be reported on by the Officer of State or the Committee concerned.

**\*Mr. Samarakkody:** We do not want anybody to report on this motion.

**The Hon. Mr. Senanayake:** I am submitting certain facts.

In those circumstances, I feel that it is necessary that this motion should be referred to the Officer of State or the Executive Committee concerned. I would further submit that, at least in one respect, this motion refers to a subject in the charge of the Home Minister. Therefore the usual procedure should be to refer it to either or to both of them.

**Mr. Speaker:** Is the hon. Member agreeable to that suggestion?

**\*Mr. Samarakkody:** No, Sir. There is no need to refer this motion either to the Chief Secretary or to the Home Minister. This motion consists merely of an expression of opinion by this House. The operative part of my motion is that the detenus be released. A similar resolution was passed by this House and the reasons I have given in the motion itself form only, as it were, a preamble to the motion.

**Mr. Speaker:** Anyway, I will put the question to the House.

**The Hon. Mr. Senanayake:** Before the question is put to the House, there is another point of order that I should like to raise. What I said so far is, more or less, a preamble to the other question I should like to raise. If the hon. Member wants to do away with the necessity for referring this motion to the Officer of State or to the Committee concerned, I feel that notice of such suspension should also have been given.

**\*Mr. Samarakkody:** It has already been given.

**The Hon. Mr. Senanayake:** When was the notice given?

**Mr. S. de Fonseka (Panadura):** On the day on which notice of the motion was given.

**The Hon. Mr. Senanayake:** The hon. Member said that he was going to move a certain motion.



**\*Mr. Samarakkody:** I mentioned it on the 29th of July.

**The Hon. Mr. Senanayake:** We are at a disadvantage. A motion has been thrust on us, a motion which is not on the Orders of the Day. [*Interruption.*] Well, it is on some Order Paper that is somewhere else. Notice of the intention to move to suspend Standing Orders has not been given. [*Interruption.*] My hon. Friend will recollect that when that motion was reached on a certain day, he was not here to move it.

**\*Mr. Samarakkody:** That is absolutely incorrect. If the Hon. Minister will give way, I can explain it.

**Mr. Speaker:** Does the Hon. Minister give way?

**The Hon. Mr. Senanayake:** No, Sir.

I admit that when notice of the motion was given, the hon. Member indicated his desire to move to suspend Standing Orders. When without any suspension of Standing Orders this motion was reached on a certain day, the hon. Member was not present to move it. Motions are deferred if Members who have given notice of motions are not present to move them, and this was one such deferred motion. If notice had been given that the suspension of Standing Orders would be moved on a certain day, and if that motion was reached without the suspension of Standing Orders becoming necessary, and the opportunity was not taken to move the motion, then I say that notice of the motion for the suspension of Standing Orders has lapsed. That is the point I wish to make.

**\*Mr. Samarakkody:** The statement made by the Hon. Acting Leader is, to say the least, incorrect. I am sorry I cannot use a much stronger term.

These are the facts. I gave notice of the motion on July 28, 1942. Whilst giving notice of it, I gave special notice that I intended to move for the suspension of all relevant Standing Orders to enable me to move the motion on Wednesday, July 29, 1942. Unfortunately, Government business was proceeded with on July 29. The Hon. Acting Leader mentioned to me that the motion could be moved at the next

meeting of Council when I insisted that my motion should be taken up that day. In fact, an assurance was given by the Chair—[*Interruption.*] The suggestion was made that I should discuss this matter with the Hon. Acting Leader and have a date fixed for the discussion of this motion. The Budget discussions intervened and it was not possible to have my motion taken up. In fact, I made more than one attempt to have the motion discussed.

The Hon. Acting Leader said that this motion must be referred to the Officer of State or the Executive Committee concerned, for report, because the word "Russia" is mentioned in it. The operative part of my motion merely requests that some advice be tendered to His Excellency the Governor to lift the ban imposed on a certain party. I do not know why these tactics are adopted to prevent this motion being discussed.

**Mr. Speaker:** I am not inclined to rule the motion out of order. I shall put the question.

**The Hon. Mr. Senanayake:** The suspension of the Standing Orders is only for the purpose of moving the motion, I take it?

**Mr. Speaker:** Yes; to move the motion.

**The Hon. Colonel Kotalawala:** What is the meaning of "move"? Is it moving the motion and debating it to a conclusion?

**Mr. Speaker:** No. It is not to move and dispose of the motion.

**The Hon. Colonel Kotalawala:** It does not mean that?

**Mr. Speaker:** Yes.

**The Hon. Colonel Kotalawala:** Then, it is all right.

**Mr. Speaker:** I will put the question again.

Question, "That the relevant Standing Orders be suspended to enable the hon. Member to move the motion", put, and agreed to.

**Mr. Speaker:** The hon. Member can now move his motion.



**\*Mr. Samarakkody:** I have not specified any Standing Order in the notice I have given.

**Mr. Speaker:** I have more than once reminded hon. Members that motions should normally be referred to the Executive Committee or Officer of State concerned.

**\*Mr Samarakkody:** But there is no Committee to which this motion need be referred.

**The Hon. Colonel Kotalawala:** What about the Chief Secretary and the Home Committee?

**Mr. Speaker:** The hon. Member can move his motion now.

**\*Mr. Samarakkody:** I am not going to move the motion.

**Mr. Speaker:** If the hon. Member does not move the motion, it will lapse—  
[Pause].

The motion lapsed under Standing Order 56 (2).

### BAN ON UNITED SOCIALIST PARTY

**Mr. de Fonseka:** I have given notice of a motion very much similar to the one which lapsed just now. It appears at the bottom of page (12) of the Order Paper. Fortunately it is not so contentious as was the motion of which notice was given by the hon. Member for Narammala (Mr. Samarakkody).

**Mr. Speaker:** The hon. Member has not given notice that he would move the suspension of Standing Orders to discuss the motion, I suppose?

**Mr. de Fonseka:** No, Sir. I think I shall await my turn.

### ARAMBEKADE-DEHIDENIYA AND GALAGEDERA-HARANKAWA V. C. ROADS.

The following item stood upon the Orders of the Day:

To continue the debate on the motion of Major E. A. Nugawela,—

That in the opinion of this House the Arambekade-Dehideniya and Galagedera-Harankawa V. C. roads should be taken over by the D. R. C.

### Report of the Executive Committee of Local Administration under Standing Order 57.

The Executive Committee of Local Administration considered the motion on November 13, 1940. Captain Nugawela who had been invited to attend was not present.

With regard to Arambekade-Dehideniya Village Committee path, the Chairman, District Road Committee, Kandy, reports that an estimate has been prepared for converting this path into a cart road. About Rs. 15,153 would be required to complete the 2½ miles.

In regard to the Galagedera-Harankawa Village Committee cart road, an estimate amounting to Rs. 6,000 has been prepared to complete the first mile which has been cut. Beyond that a further Rs. 20,000 would be required to open the next section of 2½ miles, without which the first section would be of little use.

The District Road Committee has no funds to take over and improve additional roads and paths at present. There are other roads and paths in the Kandy District which are more urgently in need of improvement than the two mentioned above.

Question put, and agreed to.

### REVENUE OFFICERS: SELECTION BOARD

The following item stood upon the Orders of the Day.

†To continue the debate on the motion of Mr. G. E. de Silva,—

That in the opinion of this Council the Selection Board for the appointment of Revenue Officers should be discontinued and that the selection should be made on the same lines as it is being done in the case of the Civil Service.

**The Hon. Mr. G. E. de Silva (Minister of Health):** The Hon. Minister of Home Affairs wanted this motion to be deferred, because he was considering the whole question and intended bringing forward a report embracing the subject-matter of this motion as well. In the circumstances, this motion may be deferred.

† Report of the Executive Committee of Home Affairs not reproduced.



**Mr. Speaker:** What does the Hon. Minister desire done?

**The Hon. Mr. G. E. de Silva:** We must await the report of the Home Minister.

**Mr. Speaker:** Then, we will defer this item.

Consideration of item deferred.

### COCONUT BOARD

The following item stood upon the Orders of the Day:

† To continue the debate on the motion of Mr. A. R. A. Razik,—

That in the opinion of this House the Coconut Board should be scrapped forthwith in the interest of the Coconut Industry.

**Mr. A. R. A. Razik (Nominated Member):** This motion too may be deferred, Sir.

**The Hon. Colonel Kotalawala:** What is the reason for deferring it?

**Mr. Razik:** The Coconut Board is not functioning just now. I think this motion may therefore be deferred.

**The Hon. Colonel Kotalawala:** The hon. Member can then withdraw his motion.

**Mr. Razik:** I am prepared to withdraw it.

**Mr. Speaker:** Has the House any objection to the hon. Member withdrawing that motion?

**Mr. H. F. Parfitt (Nominated Member):** I object to it.

**Mr. Speaker:** Then the motion cannot be withdrawn.

**Mr. Razik:** Then I would like to have the item deferred, Sir.

**Mr. Speaker:** Does the hon. Member wish to have the motion discussed?

**Mr. Razik:** I would like to have the debate postponed.

Consideration of item deferred.

† Report of the Executive Committee of Labour, Industry and Commerce not reproduced.

### EMPLOYMENT EXCHANGE.

The following item stood upon the Orders of the Day:

‡ To continue the debate on the motion of Dr. A. P. de Zoysa,—

That in the opinion of this Council the Employment Exchange should be closed down.

\***The Hon. Mr. G. C. S. Corea (Minister of Labour, Industry and Commerce):** I was speaking on this motion on the last occasion. I wanted to give the House certain new figures. I did not know that this motion would be taken up today. I have just sent for my papers, and I would like this matter to stand down for a time.

Consideration of item deferred.

### COTTON GINNING MILL FOR EAST GIRUWA PATTU, HAMBANTOTA.

The following item stood upon the Orders of the Day:

‡ To continue the debate on the motion of Mr. D. M. Rajapaksa,—

This Council is of opinion that a cotton ginning mill should be established in the cotton growing area of East Giruwa pattu of Hambantota District.

**Mr. Speaker:** Shall I put the question to the House?

\***Mr. D. M. Rajapaksa (Hambantota):** This question was discussed fully and I have hardly anything more to add. I would ask that a vote be taken on this motion.

Question put, and agreed to.

### COLOMBO RACECOURSE.

The debate on the following motion of Dr. A. P. de Zoysa was continued:

In the opinion of this Council the Colombo racecourse should be removed out of the Municipal limits of Colombo.

† Not reproduced.

‡ For the Report of the Executive Committee of Labour, Industry and Commerce, see HANSARD of July 29, 1942.



*Report of the Executive Committee  
of Local Administration under  
Standing Order 57.*

This motion was considered by the Executive Committee on June 6, 1938, Dr. A. P. de Zoysa being present.

Dr. de Zoysa pointed out that the intention was that the Central Government should take steps to give effect to the motion. The cost involved is likely to be very great and the financial implications are matters for the consideration of the Hon. the Financial Secretary and the Board of Ministers. The Executive Committee is informed by the Colombo Municipal Council that that Council is not in a position to give effect to the motion.

*Report of the Executive Committee  
of Agriculture and Lands under  
Standing Order 57.*

The Executive Committee of Agriculture and Lands, at a meeting held on July 9, 1941, considered the above motion moved by Dr. A. P. de Zoysa, M.S.C.—

2. The Colombo racecourse is on Crown land, almost all of which has been leased to the Ceylon Turf Club for a term of 99 years from August 1, 1892. The mover apparently proposes that the lease should be terminated at an early date.

3. In the first place the lease cannot be terminated earlier than 1991 unless—

(a) it is cancelled by decree of court in the event of the Club's refusing to pay the rent or committing a breach of the covenants, or

(b) the Club voluntarily surrenders it.

It may fairly be presumed that the Club will observe the covenants of the lease, and thus afford no ground for it to be cancelled by decree of court. If, then, it is desired to terminate the lease, the only method is to persuade the Club to surrender it voluntarily.

4. It would seem most improbable that the Club would agree to surrender the lease under any circumstances if no other site were available within Colombo Municipal limits. The Club has improved the present racecourse at great expense, and has constructed a number of valuable buildings thereon. It therefore follows that the Club would not

surrender its lease except on payment of a prohibitive sum by way of compensation.

5. In view of the above facts, it would seem that it is quite impracticable to give effect to the suggestion made in the motion.

**Mr. Speaker:** Does the hon. Member wish to withdraw this motion?

**Dr. A. P. de Zoysa (Colombo South):** I do not want to withdraw this motion. I do not mind it being postponed.

**\*Mr. U. Batuwantudawe (Kalutara):** I think the Racecourse has gone out for good!

**Mr. Aluwihare:** I do not see how we can go on postponing all these motions. We have Government business put off for the purpose of dealing with Private Members' motions.

**Dr. de Zoysa:** May I reply?

**Mr. Speaker:** I will put the question.

Question put, and agreed to.

### NEGOMBO SHOOTING INCIDENT.

The following item stood upon the Orders of the Day:

To continue the debate on the motion of the Hon. Mr. G. E. de Silva:

That in the opinion of this House, the Hon. the Minister of Home Affairs should place on the Table all papers relating to the shooting incident which took place recently in Negombo.

*Report of the Executive Committee  
of Home Affairs under  
Standing Order 57.*

This motion was considered at two meetings of the Executive Committee held on March 27 and May 28, 1941, at one of which the mover was present by invitation.

2. The following papers were tabled on October 28, 1941:—

(a) The finding at the Magisterial inquiry,

(b) The Inspector-General of Police's reports No. M. 315/40 dated August 26, 1940, August 30, 1940, September 11, 1940, and January 28, 1941.



- (c) The Superintendent of Police, Western Province's report of November 16/19, 1940, on the subject of the Negombo riot.
- (d) Application to the Magistrate by the Inspector, Negombo, dated August 23, 1940, and the Magistrate's endorsement thereon.
- (e) The Inspector-General of Police's letter to the Magistrate dated September 2, 1940, and
- (f) Two petitions at pages 93 and 100 of the Court Record.

A certified copy of the full proceedings of the Magisterial inquiry and other miscellaneous papers connected with this incident are in the custody of the Clerk of the Council for perusal by any Member of State Council.

**The Hon. Mr. G. E. de Silva:** All the papers connected with this subject have been made available to me. I would like to have the permission of the House to withdraw this motion.

Motion, by leave, withdrawn.

### DIVORCE LAW.

The debate on the following motion of the Hon. Mr. G. E. de Silva was continued:

In the opinion of this Council the general law of divorce in Ceylon be repealed in order to bring such legislation in line with present requirements.

#### *Report of the Legal Secretary under Standing Order 57.*

The Legal Secretary ascertained from the Hon. the mover of the motion that the latter considered that the grounds on which a divorce could be obtained in Ceylon should be extended to include

- (a) habitual intemperance;
- (b) sentence of imprisonment for a term exceeding seven years;
- (c) an adjudication in lunacy, followed by detention in a mental hospital for a term exceeding three years.

2. The Legal Secretary does not know whether public opinion would support an amendment on the lines suggested and would point out that the present

law in Ceylon permits divorce on grounds which are insufficient in some other parts of the Empire.

**\*Mr. Aluwihare:** One would be grateful to the Hon. Minister if he would tell us what his present arrangements are, specially in view of the fact that since 1937, I believe, his career has been rather meteoric—it has gone up and up—and whether he hopes to land in Mars, one does not know! But, apart from that, I wonder whether the Hon. Minister was thinking of allowing divorce by mutual consent, because what happens now is that, under the plea of malicious desertion, or something of the kind, divorces are actually granted for the mere asking, provided the parties are prepared to commit a slight degree of perjury. Is it not much better to follow the Kandyan law in this respect and—

**The Hon. Mr. G. E. de Silva:** It is the most progressive law.

**Mr. Aluwihare:** I know that there was a period when people thought that divorce by mutual consent was peculiarly Kandyan and peculiarly barbaric. But I think opinion has since changed.

One very often sees the misery that is caused by people who, having made a mistake, cannot get out of it. I know that some Members may be inclined to think that divorce would take place on the slightest pretext if the law was changed in this sense. Actually, I do not think that the figures of divorces under Kandyan law will prove that point. So far as I know divorces among Kandyans are very few indeed. Of course, that may be because Kandyans are very much accustomed to the law, and when they marry the very freedom with which they are invested makes them less anxious to get rid of each other. There may be a slight increase in divorces among people who are less educated because of the lesser degree of freedom that they have enjoyed. But I suggest that the experiment is well worth trying, and it would lead to a healthier state of society. I would very much recommend that mutual consent be made a good ground of divorce.

**The Hon. Mr. J. H. B. Nihill (Legal Secretary):** Mr. Speaker, Wednesday is always a day of surprises, and I must say



Sept. 23, 1942]

## Debates.

that it is a great surprise to me to find myself on my feet this afternoon to speak about the subject of divorce. Of course, I had no indication that this particular motion on the Private Members' Motions Agenda would be reached today. I would call the attention of hon. Members to the Observations of my learned predecessor. They are Observations with which I find myself in general agreement. The late Legal (Secretary has stressed that he is uncertain whether public opinion generally in Ceylon would go so far as to endorse the extended grounds for divorce mentioned in the motion which has been moved by the Hon. Minister of Health.

I think it may be said generally with regard to divorce legislation that it is a very thorny and very difficult subject and that any Legislature would be well-advised, before embarking upon any scheme for the extension of divorce facilities, to consider very carefully whether it is acting in advance of public opinion, because unless public opinion is with the Legislature on a matter like this, I think a very deal of harm can be done. Of course, on the other hand I know—and it may be particularly so in the case of the United Kingdom—that it is even urged that public opinion is in advance of what Parliament has been prepared to do with regard to the extension of divorce facilities. But it must be remembered that, when one is dealing with a question like divorce, one is getting down to a subject which is of very great and fundamental interest to every citizen in the State. Particularly in a country like Ceylon, where you find many communities, there are people who hold a diversity of views on a fundamental subject like religion, and so on, and it is therefore, I think, all the more reason why we should proceed very carefully on a subject such as this.

I was very grateful indeed for the contribution to the debate made by the hon. Member for Matale (Mr. Aluwihare), because it gave me a little time in which to marshal my own thoughts on the subject. I can well believe that Kandyan custom endorses the principle of divorce by mutual consent. If that is so, I can well believe that a custom of centuries has shown that to be a suitable principle so far as Kandyan marriages are con-

cerned. But we are not all Kandyans in Ceylon in the sense that the hon. Member and his community are Kandyans, and therefore I think it would be a very rash step for this House to go so far as to say that, because a very liberal principle such as divorce by consent had proved suitable for Kandyans, it should necessarily be adopted as the principle to maintain generally in the law of Ceylon with regard to divorce facilities.

Of course, I am perfectly aware that the Hon. Minister who has moved this motion does not go so far as that. He puts down three grounds—or rather my predecessor elicits them from him:

- " Habitual intemperance;
- Sentence of imprisonment for a term exceeding seven years;
- An adjudication in lunacy followed by detention in a mental hospital for a term exceeding three years."

I am quite ready to admit that if you take each of those particular grounds for divorce you may make out a very good case possibly in support of each one. But it all depends, of course, on how one regards the question of the marriage tie. If one regards it merely as something which, if circumstances turn out subsequently which make marriage onerous—if you regard it in that sense—then you can make out a perfectly good case for every one of these exemptions. For one spouse to be harnessed to another spouse who is habitually intemperate must be very trying; for one spouse to be deprived of the consortism of the other spouse who is sentenced to seven years imprisonment must be very trying; and, of course, it must indeed be a matter of tragedy where one of the spouses becomes hopelessly insane.

As I say, these facilities for divorce must depend upon the particular philosophical and religious views of each particular individual. As I say, if you regard the marriage tie purely as a civil contract, purely as something which should be broken if conditions alter—and what marriage is ever consummated where conditions do not alter from time to time after marriage has taken place—then, of course, you can make out a very good ground for extending facilities.

On the other hand there are quite a number of people—and I imagine even in this Island they may run into well over a million—who take quite a different



[The Hon. Mr. Nihill.]  
 view of marriage. They look upon marriage as something more than a civil contract, something which has a sacramental basis behind it, and they regard the marriage tie as something which should not be lightly broken, if broken at all. Well, I think this Council must take into account that there may be a minority—a considerable minority of opinion in this Island—which would take that view and, of course, to people who hold views of that sort, anything in the nature of the kind of extended facility suggested by the Hon. Minister of Health in this motion would be anathema.

I know it is difficult where the State is composed of people who hold such widely divergent views of the precise nature of the marriage tie, because the State, of course, has to take into account the views of all sections of the population which make up its number. In such circumstances it may be rather difficult at first sight to consider what principle should really guide the State in framing its marriage laws. You might have a very conservative view that no marriage can be broken at all, that marriages are made in Heaven, and so forth. You might have on the other hand what might be said to be an extremely liberal view—that marriage is a contract which can be terminated at 5 minutes' notice by either side. Those are the extreme points of view. But what is the State to do in framing its marriage laws? Well, I suggest that it has to keep a balance between the two, and the principle which it must follow must be generally the preservation of society and the safeguarding of family life, because after all the safeguarding of family life is a matter of vital interest to the State. Those are the kind of principles I suggest which must animate a modern State, which, I say, is made up, as in the case of Ceylon, of so many divergent opinions as to the exact nature of the married state.

Therefore, the way in which I should regard the Hon. Minister's motion is whether his proposals can be considered harmless in themselves from the point of view of the preservation of family life, the safeguarding of morals, and so on—all subjects which, quite apart from any question of religion, are of importance to the State as such. Looked at in that light, if it was the feeling of this House

that these particular extensions of the divorce law in Ceylon were not likely to cause any upheaval in society generally, well then I think the House would be justified in passing the motion. But I do say that I think the point made by my predecessor is a good one and that it would be far better not to pass a motion of this kind at this stage without, at any rate, a more detailed review of the general position. I feel that if the House really thinks that the divorce law of Ceylon needs amendment, then it would be much wiser to pass some sort of motion in the form of a request for a Commission being set up to inquire into and report on the whole subject. I do not like this rather piecemeal method of attacking a problem which is of such a fundamental nature as this one is.

Of course, there is still the further point that I do not think it can be said—I mean, judged from the liberal stand-point—that the divorce law in Ceylon places insuperable obstacles in the way of dissolution of marriage, because as a matter of fact, the reverse is the fact, as the hon. Member for Matale (Mr. Aluwihare) himself has pointed out. The Dutch Common Law with regard to desertion as a ground for divorce is much more elastic than the English law, and marriages between persons domiciled in Ceylon can be terminated with considerably greater ease than is possible in the case of those in the United Kingdom.

For these reasons, I for one would not be prepared to support this motion. I think, if the House really thinks that there is something seriously wrong with the present condition of divorce laws in this country, then the proper method would be to resolve that the matter should be referred to a Commission which should take evidence from persons affected, find out the state of opinion generally, find out the kind of further facilities that are desired, or hear the objections of those people who consider that the divorce law goes quite far enough at the present time, and then only—after all that is done I suggest—would it be quite time enough for a motion on these lines to be supported by this House.

**Dr. de Zoysa:** The Hon. the Legal Secretary pointed out that in this matter the law should not be in advance of public opinion but in very many cases it is the



law which should guide public opinion. If we wait for public opinion to revolt against the laws, perhaps there will be a number of victims of the law before it is made obsolete. This is perhaps a matter of conservatism, it is not a matter of religion that we have to consider. There are actual hardships caused to people who want to dissolve the marriage tie and yet they are unable to do so to-day owing to the strictness of the law.

Now the Hon. the Legal Secretary perhaps referred to us as being conservatives and said that public opinion might not agree with a liberal law like this, but he should remember that in England and many European countries they have realized that there should be liberal divorce laws, and they have been adopted, and I think society is not the worse for it though there may be religious people who think that once a marriage tie has been made it should not be dissolved on any account.

I think we have to consider the hardships that are caused. I think the Hon. Minister ought to have added one or two more points to the three points he has made, but I am not attempting to add them now. According to Ceylon law, I think I am correct in saying, that desertion itself is not a ground for divorce unless there is malice or cruelty. Therefore, I think the Legal Secretary must have in his own experience found hardships caused in certain individual cases which come before the Courts. If there is no provision, why should we make certain people victims? But if the laws are liberal, I do not think people who are against them will make use of them.

As the hon. Member for Matale (Mr. Aluwihare) pointed out, the Kandyan law is very liberal but very few Kandyans make use of it, although the law is there, and rush to the Courts to obtain divorces. In the same way, if the principle of liberal laws is adopted in Ceylon, and Christians, particularly Roman Catholics think that there should be no dissolution of marriage once a marriage is contracted, they will not be compelled to seek divorce. There is sufficient control by the Church to prevent it.

I think the intention of the Hon. Minister is not so much to make divorce a matter of freedom so that everyone might rush to the divorce courts, which we are told is common in America; his idea is

to give relief to certain hard cases where we should actually do everything possible to grant relief. For instance, take the case of a man who is demented. If he happens to be the bread-winner of the family and he is detained for three years, and the wife has children, then if divorce is permitted she can contract another marriage and bring up the family. Take the other case. The mother is demented and is an inmate of a mental hospital. There are children, and the father wants somebody to look after them. Should not that father be able to obtain a divorce? I am not thinking of frivolous cases where people rush to divorce courts for the sake of sensation. But this provision is necessary to avoid certain hardships, and I think the House should accept the motion.

**Mr. Wille:** I am not in sympathy with this motion. The last speaker said that there are very many hard cases. As we know in the Law Courts hard cases make bad law, and if we decide to legislate because of bad cases we shall make bad policy from the point of view of the general welfare. Already as we know there is a tendency towards looseness as regards the marriage tie, and the less we afford more facilities for divorce the better it will be for the community.

The Hon. the Legal Secretary has pointed out what a great deal is involved in the stability of the marriage tie both from the point of view of individual and family happiness and social stability. So that we should not lightly interfere with the present law. I take it that the mover of this motion has referred only to the general law and does not want the law amended with regard to Muslims and Kandyans.

As regards the general law, we know that at present it is based largely on the sanctity of the marriage tie. For instance, one of the causes on account of which a marriage may be dissolved is adultery, that is, adultery committed subsequent to marriage; or there may be malicious desertion that again practically nullifies the whole object of marriage and, therefore, the marriage tie may be dissolved on that ground; or, there is the last ground—that of incurable impotency at the time of the marriage; even impotency supervening does not justify the



[Mr. Wille.]  
dissolution of a marriage. This last ground is admitted in law simply because it goes to the very root of the marriage tie and makes the contract almost void.

I think that is as far as we can go considering the general interests of the public, and when we speak of the general interests of the public it involves the interests of individuals and families.

Reference was made to the Kandyan law. At present there are several grounds of divorce given in the Kandyan Ordinance, that some regard as an improvement on the old position when it was said that a Kandyan marriage could be contracted with a wink and dissolved with a kick. When you come to read the several grounds on which a Kandyan marriage can be dissolved, there does not seem to be very much improvement. For instance, the husband can commit adultery without restraint, but if he does it without gross cruelty or no incest is involved, then there is no relief for the wife.

Then again, two years' desertion is sufficient to justify the dissolution of a Kandyan marriage, and the inability to live happily together—

**\*Mr. Aluwihare:** Well, is that not good enough reason? Do you want to quarrel all your life like cats and dogs?

**Mr. Wille:** It merely becomes a question of temperament as it develops sometimes capriciously. Separation from bed and board for a year at least is a sufficient test of incompatibility of temper preventing matrimonial happiness. And lastly we find mutual consent which overrides all restrictive provisions such as they are.

I think we have gone as far as it is expedient for us to go in this matter as regards the general law, and we shall all do well to heed the very impressive words that were uttered by the Legal Secretary on this subject.

**Mr. H. R. Freeman (Anuradhapura):** With many years' experience of the Kandyan country I find that the Kandyan law of divorce works well and that the law seems to stabilize marriage.

**The Hon. Mr. G. E. de Silva:** I want hon. Members to realize that I have not given any indication as to how the exist-

ing law is to be amended. But if hon. Members will bear with me for a moment I may tell them that my purpose in bringing this motion up is to introduce legislation in order to meet progressive ideas so as to enable human existence to continue in a tolerable state.

The Hon. the Legal Secretary has perhaps read the Observations made by his predecessor. Even there, his predecessor consulted me, and gave him the reasons which actuated me in introducing this motion with the idea of getting the present law amended.

There are three classes of people who live in this country who are governed by various Ordinances, according to their nationality in the matter of securing a divorce. The first is the Muslim community. Everybody knows how sacred a marriage is to a Muslim and, I think, every hon. Member knows how successfully that community carries on. According to the provisions laid down for the dissolution of a marriage, they have only to go before a priest and say, "We do not want to live with each other," and the priest dissolves the marriage.

Then there is another class of people whom the hon. Member for Matule (Mr. Aluwihare) referred to. If anybody were to ask me my opinion with regard to the grounds on which a divorce could be obtained among the Kandyan people, I would tell him that the Kandyans, since these laws were enacted, have advanced to a very great extent. Hon. Members will know that most people to-day want to copy America. But the American Legislature has practically copied the Kandyan law, and it is no surprise to me to find that the hon. Burgher Nominated Member (Mr. Wille) has absolutely no experience; nor has he moved with the Kandyan people, nor with the Muslim people, nor with the people on whose behalf I appeal. He, like a parrot, repeated what the Hon. the Legal Secretary said. The Legal Secretary said that he did not know the conditions of this country, and therefore he was unable to express what the public would have to say with regard to this matter. He, therefore, left it to the Legislature to decide what it should do.

Then we come to the general law. Let us consider the people who are affected by this legislation, and the



grounds on which a dissolution of marriage could be obtained to-day. Now there are three grounds: one is adultery subsequent to marriage; the other, malicious desertion; and the third, incurable impotency at the time of marriage. Those are the three grounds on which a marriage can be dissolved.

Hon. Members of this House will realize that there are a number of cases which, according to the present law, require a decision in their favour, but the law says, "We cannot allow you to do that". Of course there are some sanctimonious people who still hug the idea that once a marriage is consummated, it should not be dissolved under any circumstances. I can understand the point of view of those people, because they cannot see any reason, nor will they allow any reasonable proposition to be put forward for obtaining a dissolution of marriage.

But what is marriage? Is it not a civil contract entered into between a man and a woman? The law says, "Once you enter into a marriage, you cannot contract another marriage without dissolving the previous one, and if you do so during the subsistence of that marriage, you are guilty of bigamy." When Lord Birkenhead introduced in the House of Commons a measure of the nature that I am seeking to introduce, there was a tremendous howl among the religious people. They said that it should not be done. But the House of Commons adopted it and reformed the law in order to help the good government of the country and to promote happiness among the people.

I should like to mention to the House how things are done to-day. One of the grounds for a dissolution of marriage is malicious desertion, and hon. Members will know how easily people who have money can secure a divorce. One has only to retain eminent Counsel, spend money and plead malicious desertion as one of the grounds; or either the husband or the wife may say, "I will file action; I will pay your expenses; you must not defend the case", or else the man will bring one or two false witnesses into Court to say that the woman is living an adulterous life, that he cannot

name the co-respondent, and thus secure a divorce. That can be done by moneyed people.

But I would ask hon. Members to consider the case of the poor people who on account of the strictness of the law are to-day cast out as undesirable members of the community. Let us take, for instance, the case of an unfortunate girl meeting a man. They fall in love at first sight, get married, and subsequently the girl finds out that the man whom she has married is a habitual drunkard and a gambler. What is her remedy under the existing law? She has absolutely no remedy. That woman will have to live, as long as she is alive, with that man in that intolerable position.

**The Hon. Mr. Nihill:** Separation?

**The Hon. Mr. G. E. de Silva:** She will never be able to free herself from the clutches of the man. The Hon. the Legal Secretary whispers "Separation". I will come to the question of separation later. If the Hon. the Legal Secretary's conception is separation, I might tell him what the consequences of separation might be. You separate a woman from the husband. The Court might order the husband to pay a certain amount to his wife, but he might disappear after the order of the Court has been made; then what is to be the position of that unfortunate woman? Is she going to become a prostitute, or are you going to allow that woman to bring up illegitimate children? I would ask the Hon. the Legal Secretary to answer me that question. It is very easy for him to say, "Legal separation", but does he know the implications of it? Can he realize the implications of it? [MEMBERS: No.] The answer is "No".

**The Hon. Mr. Nihill:** On a point of personal explanation. The only reason why I whispered the word "Separation" was because the Hon. Minister was saying that under conditions of perpetual intemperance there was no remedy except for the wife to continue to live with her husband. That was why I mentioned the word "Separation". Judicial separation is a possible means by which the woman can escape from the necessity of actual consortism with her spouse. I am not saying that it is a very happy alternative—for the woman it is



[The Hon. Mr. Nihill.]  
no doubt an unfortunate position—but I should hesitate to conclude that a woman who seeks a judicial separation and obtains one has necessarily to fall into prostitution thereafter.

**The Hon. Mr. G. E. de Silva:** We can make laws, but the laws must be humane.

The Hon. the Legal Secretary feels that a separation from a man like that would be sufficient. If a man is drunk from morning till evening and spends all his money on drinks, I would ask hon. Members from where this unfortunate woman is going to get any money? Or if a man leaves the country and goes to another, how is the woman going to obtain alimony? It is very easy to say that you can obtain a separation, but that is not the point. Why should that woman be given a separation when she is entitled to have the marriage declared null and void? Is that not a sufficient reason for granting a divorce? Is she to be blamed for the action of a brutish husband?

If a woman is placed in those circumstances, have we not got that human sympathy to give her relief? What is the relief that I am asking for? That she should be freed. Let her be in a position to contract another legal marriage. Then her position would be tolerable; she could live in this world. Is the law such that we cannot amend it? I am not laying down the grounds for divorce: I am only saying for the moment that the law must be amended in order to meet cases of that kind. Sir, we know and the general public know how easily rich people obtain divorces. That is one of the grounds I have urged.

Then take another case. A man is married and he has a number of children. After some years he is charged with murder and is convicted and sentenced to imprisonment for a period of ten years.

**\*Mr. Aluwihare:** Suppose he is hanged?

**The Hon. Mr. G. E. de Silva:** If he is hanged, Sir, the woman is free to marry again. The answer is obvious. Though the man has committed murder, the woman and children are innocent. Are you going to sacrifice them on account of the action of a husband like

that? Let us say that the man is sent to jail for ten years. How is that woman to maintain herself and her children? Kindly ask yourself that question. Is she to sell her body and live in adultery and make money in that manner? No, Sir; that is repugnant to all sense of morality; that is repugnant to society. But the law is silent in regard to such cases. It does not make provision to meet any cases like that. So am I not entitled, as one who is interested in the welfare of the people of this country to come here and say, "Consider the plight of unfortunate people like that. Cannot you sympathize with them and give them some relief?"

Sir, it is astounding what an amount of ignorance there is in this country, especially in quarters from which we expect some progressive ideas and fair play; and I am thoroughly disappointed, to say the least of it, that there should be any objection to a recommendation of this kind.

**Mr. Speaker:** Shall I put the question to the House now?

**The Hon. Mr. G. E. de Silva:** No, Sir. Unfortunately I have been called upon to address the House without any preparation; otherwise I would have been able to give chapter and verse for the various propositions I have put before the House. However, I shall not delay hon. Members much longer.

I would like to take one other case. Let us take the case of a man who has contracted a lawful marriage. He becomes insane after some time and is confined to a mental home. The man may be kept there for twenty-five or thirty years or right through his life. Can you conceive of any law which says, "You can remain in that mental home for ever, but we will not release your wife from her bondage?" Is that not cruelty of the highest degree? Can we as legislators, when we see these things, remain without altering the law?

It is no astounding proposition that I am propounding; I am only stating facts. Hon. Members will realize that there are very hard cases, and those cases must be considered with sympathy and justice. As the law stands today, will these unfortunate people get any relief? They cannot obtain any relief unless the law is amended. It is for the safety of



society, it is for the sake of these people who are afflicted that I am pleading with hon. Members of this House.

I am not stating now that all these cases should be taken into consideration and provided for in the Amending Ordinance; these are only reasons, reasons which go to prove that the law must be amended. And, Sir, is there any person who can say "No" to these things?

**The Hon. Mr. Nihill:** Yes.

**The Hon. Mr. G. E. de Silva:** Fortunately the Legal Secretary has not got a vote; therefore whatever he says will not influence hon. Members of this House. I would ask hon. Members who understand this question to realize that the law must be amended. If the present law creates hardship, it is our incumbent duty to amend it as soon as possible so as to give these unfortunate people a chance in life to live as decent citizens in the environments in which they are placed.

Question put; the Council divided—  
Ayes, 20; Noes, 6:

**AYES.**

De Silva, The Hon. Mr. G. E.	Jayasuriya, Mr. A. P.
Mahadeva, The Hon. Mr. A.	Jayasuriya, Mr. D. P.
Aluwihare, Mr. B. H.	Kularatne, Mr. P. de S.
Amarasuriya, Mr. Thomas	Kuruppu, Mr. J.
De Fonseka, Mr. Susanta	Natesa Iyer, Mr. K. R.
De Zoysa, Dr. A. P.	Newham, Mr. H. E.
Freeman, Mr. H. R.	C.M.G., V.D.
Gunasekera, Mr. D. D.	Rajapaksa, Mr. D. M.
Gunawardana, Mr. R. S. S.	Ratwatte, Mr. H. L.
Ilangankileke, Mr. J. H.	Siriwardana, Mr. H. de Z.
	Tambinuttu, Mr. E. R.

**NOES.**

Kannagara, The Hon. Mr. C. W. W.	Pereira, Diwan Bahadur I. X.
Griffith, Mr. F. H.	Vyttilingam, Mr. S.
Natesan, Mr. S.	Wille, Mr. G. A. H.

**CRIMINAL LAWS RELATING TO POSSESSION OF LAND.**

The debate on the following motion of the Hon. Mr. G. E. de Silva was continued:

That in the opinion of this Council immediate steps should be taken to amend the criminal laws of Ceylon with reference to the question of the possession of lands which lead to the commission of serious crimes in the Island by adopting similar legislation as in India.

*Report of the Legal Secretary under Standing Order 57.*

The Legal Secretary ascertained from the hon. the mover of the motion

the Indian legislation referred to is that contained in Chapter XII. of the Criminal Procedure Code and in particular section 145.

2. The section referred to gives to the Magistrate certain powers when he is satisfied that a dispute likely to cause a breach of the peace exists concerning any land within the local limits of his jurisdiction. The Magistrate, without reference to the merits of the claims of any persons to a right to possess the land, decides what person was in possession of the land when proceedings under the section were instituted and, having so decided, he is required to issue an order declaring that such person shall be entitled to possession of the land until evicted therefrom in due course of law and forbidding disturbance of such possession until such eviction.

The section is concerned solely with the fact of actual physical possession whether lawful or unlawful and whether, in contemplation of law, enjoyed by the possessor in his own right or on behalf of others: in proceedings under this section therefore any question as to whether possession is on behalf of others or in one's own right is quite irrelevant.

3. The Legal Secretary is unable to say whether attempts to obtain forcible possession of land are common in Ceylon and, if so, whether they frequently lead to breaches of the peace, but if the hon. the mover is right in the assumption which he makes in the motion, the legislation referred to is designed to meet the problem.

\***Mr. Aluwihare:** Sir, the Hon. the Legal Secretary, I find, wants some evidence for the necessity of this type of legislation. I think very nearly every Member of this House will be aware of the necessity for protecting the small farmer against the man who wants to enclose his holding in a large estate. I have heard of stories especially in the North-Western Province, where land owners, rich landowners have gone with a number of thugs and a few cwt. of barbed wire and fenced round the holdings of small farmers, driven the farmers out, and turned the holdings into coconut estates. Very often hon. Members who have grumbled about the Waste Lands Ordinance and cursed the Europeans for



[Mr. Aluwihare.]  
the advantages they have had, have thrown back in our teeth the procedure adopted by land-grabbers in the North-Western Province.

That is only one case. I am certain that similar incidents occur in the Southern Province, because I believe conditions in parts of the Southern Province are somewhat similar to those in the North-Western Province. If the Hon. the Legal Secretary wants the opinion of Members of this House as to the necessity for this legislation, I am certain that we shall express our opinion in no uncertain voice.

The only other matter, Sir, that one would wish accomplished is possibly even a quicker remedy than application to the Police Magistrate being provided. One would like to see something in the nature of proceedings for an injunction made available to people in these circumstances. So that an injunction is issued when a *prima facie* case has been made out, and the inquiry is held later, because if you wait for the full inquiry most of the damage would have been done. The step suggested would be an improvement and would meet the necessities of the case. I am certain that hon. Members will give the Legal Secretary the assurance he requires.

\***Mr. R. S. S. Gunawardana (Gampola)**: I am surprised that the Legal Secretary should express the view that he is unable to state that forcible attempts are made in this country to take possession of land. Anyone with the slightest acquaintance with the work of the Courts in this country would know that such attempts are often made. If one were to look at the records of the Supreme Court, in reference to the number of murder cases that centre round these attempts and the number of cases of attempts to murder committed during the course of these happenings, one would be amazed to find an expression of opinion like this made by the Legal Secretary of this country.

With my limited experience in the Courts, I can say that it is almost universally admitted that cases of this nature are becoming rather common, and during the last few years matters have gone from bad to worse in this direction.

Land grabbers have made conditions really terrible for the poor smallholders. In many instances, these smallholders found that they had only one means of retaliation and that is to use the club or the gun.

I remember one case in which I had the privilege of appearing. A poor man had been evicted from his land by a land-grabber. The poor man killed the land-grabber on the spot. The Judge and the Jury were so moved by the circumstances, by the unjust attempts which had been made year after year, month after month, to get at the sole remaining bit of land which the poor man possessed and on which he lived, that the verdict brought in was one of culpable homicide, and not murder, and the sentence passed was that the man be bound over in a sum of Rs. 100. The light sentence was due to the sufferings which the man had already undergone. In a number of other cases, the Supreme Court felt compelled, in the circumstances, to bind over the accused when a conviction had to be recorded. Very light punishment was meted out because of the attendant circumstances. I can mention any number of similar cases, in some of which I defended the accused. Anybody who is acquainted with the work of the Courts would have given the Legal Secretary the necessary information.

The Minister of Health is to be congratulated on bringing forward this motion, and it is not a day too soon that we have tried to stop this state of affairs. A good many of the cases that come before our Criminal Courts are the result of disputes about the possession of land. A number of private cases are also filed everyday in the Law Courts, including the Magistrates' Courts, cases which centre round possession of land, and then, immediately afterwards cases occur of rioting, unlawful assembly, hurt, murders, and so on. These can only be prevented by adopting such legislation as that suggested in this motion. I strongly support it.

**Dr. de Zoysa**: I too would like to bring a particular case to the notice of the House.

A lad of about twenty-two was being harassed by a man who wanted to get possession of a small land and the



hut which stood on it. In this hut lived the young man's father, a cripple, his mother and a little child. They were harassed by the land-grabber who tried to get them out of the land—the only land they possessed. The young man stabbed the land-grabber, and the result was that the poor fellow was committed to trial and was found guilty; and he is to be executed.

I have personally inquired into the circumstances and made representations to His Excellency the Governor, but the Governor is unable to intervene. The poor lad is to die, not because he murdered a man on account of some personal grudge, but because he killed a land-grabber who wished to oust his crippled father, his mother and little brother from their hut. They were being forced out of their land, owing to the cruel nature of the man who tried to grab it. There are so many cases like that coming up, and I think some preventive measures should be taken.

**The Hon. Mr. R. H. Drayton (Chief Secretary):** Mr. Speaker, seeing that I am the author of this report and not the present Legal Secretary, perhaps I should say something.

I am, of course, well aware that there are disputes in regard to possession of land, and that occasionally, perhaps even frequently, people do engage in violent assaults on each other in relation to such disputes. The actual proposal here is that there should be inserted in the law of Ceylon provisions similar to those contained in Chapter XII. of the Indian Criminal Procedure Code. That is a special provision, and I think I am right in saying that it certainly is rarely found, if at all, outside India. Perhaps it is not without significance that it finds no place in the corresponding Code in Ceylon, notwithstanding the paternity of that Code. Since it does not appear in the Ceylon Code, it is a very natural question to ask why it does not appear in our Code. On the face of it, the reason is that it is because it was not necessary to make so unusual a provision.

Now, what has to be established before the provisions of Chapter XII. of the Indian Criminal Procedure Code can be enforced is that there is a dispute as to the possession of land which is likely to lead to a breach of the peace; not merely that there is a dispute, as to the

possession of land, but that the whole circumstances surrounding that dispute are such that the dispute is of a nature that in itself, it is likely to lead to a breach of the peace. Unless one can establish both those facts, then the provisions of Chapter XII. of the Indian Criminal Procedure Code cannot be invoked.

What are those provisions? I am only speaking from recollection now, but shortly, they are these: that, when a Magistrate is satisfied that a dispute in regard to possession of land is likely to lead to a breach of the peace, he makes an order that the person in possession should be left in possession. That is all; he has no regard to title. He does not go into the question of who is entitled to possession; he merely examines the question, "Is he in fact in possession?", and, whoever is in fact in possession, lawfully or unlawfully, is confirmed temporarily in the possession of that piece of land, the whole object being to force the other man to a Court of law in order to obtain a declaration of title, and to ensure that, in the interval, he will, by reason of the order having been made as it were against him, be dissuaded from adopting forcible means in order to obtain possession.

It is a provision which is definitely limited in its scope. It can only be invoked if both the circumstances to which I have referred are present, and therefore, in itself it will not solve all the problems in regard to disputes as to title to land to which hon. Members have referred.

**The Hon. Mr. G. E. de Silva:** I shall be very brief in replying.

I am grateful for the support of hon. Members who are aware of what is happening in this country. When a man has money and influence, he often seeks to drive away an innocent man from his piece of land. The rich man has only to spend some money, and he succeeds in driving the poor man out. Hon. Members know that in these cases when an innocent man finds that someone has attacked his rights, has become guilty of aggression in fact, he does not care what happens to himself; at all costs he tries to defend his property, and in doing so sometimes he kills the aggressor.



[The Hon. Mr. G. E. de Silva.]

What is happening to-day in this war? It is exactly on a par with what happens in this country. A man wants to grab the whole world; he runs about like a madman and shoots everybody. Is that man going to be allowed to keep his spoils? Are you not going to stop him?

How can we stop a man of that nature behaving like that in this country? That is the question hon. Members will have to ask themselves. I have given the matter my careful consideration. I have been in the legal profession for 33 years, and I know what hardships poor people are undergoing; how many murders are committed; how much trouble is caused in this country, on account of disputes connected with land.

My proposal is that when a man is in possession of land, and he finds that somebody else is trying to oust him, that someone else is trying to get the help of influential people and ruffians and hired thugs to drive him away, he should have this remedy available to him: he should be able to come to Court and tell the Judge, "I am in possession of the land, but there are people who seek to oust me by force. Please protect me". The Judge can then visit the spot and, if he finds the man actually in possession he can tell the man, "Nobody can oust you without coming to Court and proving his title to the land".

Can you conceive of a more reasonable request than that, especially when it is made with the idea of preventing crime in this country? I am sorry to find that in these circumstances I am unable to get satisfaction from the Legal Secretary whose Department is supposed to contain officers with experience, men who are able to tackle problems of this nature. But an elementary question like this does not appear to be understood in the Attorney-General's Department and in the Legal Secretary's Department where there are—

**The Hon. Mr. Nihill:** I do not know what grounds the Hon. Minister has for saying that.

**The Hon. Mr. G. E. de Silva:** For the simple reason that this report by the Legal Secretary has failed to endorse my point of view. Instead, we have this

rigmarole in the report of the Legal Secretary, which states at one point:

"The Magistrate, without reference to the merits of the claims of any persons to a right to possess the land, decides what person was in possession of the land when proceedings under the section were instituted and, having so decided, he is required to issue an order declaring that such person shall be entitled to possession of the land until evicted therefrom in due course of law and forbidding disturbance of such possession until such eviction."

That is what is provided in the Indian Criminal Procedure Code, and that is what I am asking should be enacted in this country. I want hon. Members to bear in mind that we should do everything in our power to minimize crime in this country. If this provision is made in our laws, 50 per cent. of the crimes now committed will cease, and land-grabbers will not be encouraged, as they are now, by legislative and other bodies.

Question put, and agreed to.

#### FINANCIAL REGULATION No. 847: TRANSFER OF CLERKS, CLASS III., TO NEW SALARY SCALE.

The following item stood upon the Orders of the Day:

To continue the debate on the motion of Mr. A. E. Goonesinha,—

That in view of the anomalies which have resulted by the application of F. R. 847 for the transference of Clerks in Class III. of the General Clerical Service to the New Salary Scale, this House is of opinion that the "time scale" method of transference, as applied in 1923, for the transference of Clerks in Class III., from the Slater-Stevenson salary scale to the Wood-Renton-Fernando salary scale, be adopted in place of F. R. 847.

*Joint Report of the Chief Secretary and the Financial Secretary under Standing Order 57.*

If Mr. Goonesinha's motion were adopted the additional cost in respect of the General Clerical Service alone would approximately amount to:—

1st Year	...	Rs. 279,000
2nd Year	...	Rs. 276,000
3rd Year	...	Rs. 274,000
4th Year	...	Rs. 271,000
5th Year	...	Rs. 268,000, &c.

2. Any concession granted to the General Clerical Service would also



have to be extended to other Departmental Clerical Services and to other posts and grades for which improvements in existing salaries have been proposed by the Select Committee on the Retrenchment Commission Reports. The total net addition to the annual salary bill if Mr. Goonesinha's motion were adopted would therefore be enormous. The Wedderburn Committee did not specify in their Report the method of transfer to be adopted in transferring officers already in service to the new scales but the fact that this was not done may be taken to indicate that the normal method of transfer under Financial Regulation 847 was to be adopted. Had the Committee intended that some special method of transfer should be followed they would have mentioned it in their Report. The Retrenchment Commission on the other hand in paragraph 264 (iv) of Part II. of its Report—Sessional Paper XVIII. of 1939, and the present Select Committee in paragraph 38 of its Report—Sessional Paper XII. of 1940—have recommended as part and parcel of the scheme of improvement of the salary of Class III. that officers now in Class III. should be transferred to the new scales under Financial Regulation 847. For these reasons and also because Financial Regulation 847 (an adaptation of the relevant Colonial Regulation) is the Government Regulation now in force for determining salary on transfer from one scale to another, we regret that we are unable to support the motion.

3. It should also be explained in this connection that at the time the Wood-Renton-Fernando Commission examined the salary scales of Public Servants a temporary increase in salary was in force. The pre-Wood-Renton-Fernando salary plus the temporary increase yielded approximately what an officer would have got on a time scale basis under the Wood-Renton-Fernando scheme; that Commission had therefore no option but to recommend a time scale mode of conversion. Circumstances in the present case are different and the same treatment would be inappropriate.

\***The Hon. Mr. S. W. R. D. Bandaranaike (Minister of Local Administration)**: This motion should lapse, in the absence of the mover.

**Mr. Speaker**: The motion has been moved and seconded; and it is now in the possession of the House.

We will continue the debate.

\***Mr. Aluwihare**: I do not know what this time-scale basis was, but, I for one want to protest against any extension of the Wood-Renton-Fernando time-scale scheme. It is absurd to give people a rise in their salaries every year. People do not get children every nine months normally, and this time-scale method seems to be based on the expectation that people in the East do get children every year. Civil Servants, I believe, go up by anything from Rs. 300 to Rs. 600 a year; others go up by Rs. 300 a year, and it is only the smallest man who gets Re. 1 in two years or something of the kind.

Sir, this country spends very nearly Rs. 2,500,000 every year on account of this annual time-scale, and any extension of it would, I think, be a wrong step. When we discuss the new salaries, I hope we will introduce biennial or triennial rises, instead of these annual rises.

**The Hon. Mr. H. J. Huxham (Financial Secretary)**: The proposal in this motion is, in effect, that whenever an improved scale of salary is granted to a class of officers, the officers in service shall be placed at the point they would have reached in that scale if it had applied throughout their service. That, Sir, is entirely contrary to practice. I do not think it at all necessary and, as pointed out in the report on this motion, it would cost the Government annually lakhs, if not millions of rupees.

Question put, and negatived.

#### REGISTRAR OF MARRIAGES FOR KOLLUPITIYA AND SLAVE ISLAND.

The debate on the following motion of Dr. A. P. de Zoysa was continued:

That in the opinion of this Council a Registrar of Marriages should be appointed for the areas of Kollupitiya and Slave Island.



*Report of the Executive Committee of Labour, Industry and Commerce under Standing Order 57.*

The Executive Committee of Labour, Industry and Commerce considered this motion at a meeting held on July 29, 1941. Dr. A. P. de Zoysa was not present at the discussion, although he was invited.

2. There are at the moment 7 Registrars of Marriages in Colombo Municipal area, each of whom has jurisdiction over the whole of the Colombo Mudaliyar's division. One of these registrars actually holds office at School Lane, Kollupitiya. In addition, marriages may be registered either at the Registrar-General's Office in the Fort or at the office of the Provincial Registrar, Western Province, in the Colombo Kachcheri.

3. Representations were made in January, 1941, that an Additional Registrar of Marriages was required in Kollupitiya or Slave Island, and the claims of a particular candidate for this post were pressed. The matter was fully considered and it was decided in March, 1941 that there was no necessity for an Additional Registrar for this area. No facts have been adduced that afford ground for

believing that this decision was ill-advised or that conditions have greatly changed in the meantime.

4. In the circumstances, the Executive Committee of Labour, Industry and Commerce was of opinion that there were no adequate reasons for appointing an Additional Registrar of Marriages for the areas of Kollupitiya and Slave Island.

**Dr. de Zoysa:** Sir, the Kollupitiya and Slave Island areas are served by a Registrar of Marriages who lives in School Lane, Kollupitiya—at the other end—and there is some difficulty experienced, especially by the poor people living in these areas, in travelling the distance to register their marriages.

Paragraph 3 of the Report of the Executive Committee of Labour, Industry and Commerce shows that they have gone into this matter and have looked into the claims of a particular candidate for the post. If that is so, they are admitting the necessity for the appointment of a person. I am not pressing for any particular candidate to be appointed, but what I say is that someone should be appointed as Registrar of Marriages in these areas. Therefore, I hope this House will accept this motion.

Question put, and agreed to.

### OVERTIME: NEW RULES.

The following item stood upon the Orders of the Day:

To continue the debate on the motion of Mr. A. E. Goonesinha,—

That this Council, whilst condemning the new Overtime Rules introduced by the Treasury, in respect of clerks in Government Departments with effect from May 1, 1941, demands that the rules which existed before May 1, 1941, be forthwith restored.

#### *Report of the Financial Secretary under Standing Order 57.*

The new clerical overtime rules referred to in the motion were not really introduced with effect from May 1, 1941. At the outbreak of the war, an immense amount of clerical overtime had to be worked in the new emergency defence departments and, since it was considered that officers should be prepared, if necessary, to work harder in war time than in peace time as a part of the war effort, new overtime rules were introduced. Later, since no reason was seen why clerical officers in ordinary Government departments should continue to receive higher remuneration for their overtime than similar officers in emergency departments, the rules were introduced in the case of all departments which, having no overtime vote of their own, had to apply to the Treasury for funds in order to pay for any overtime worked. Finally, with effect from May 1, 1941, the new rules in a somewhat modified form were, with the sanction of His Excellency the Governor, extended to those departments who had overtime votes of their own. This modified form of the rules is now applied to clerks and others engaged on clerical duties in all departments except the Railway, where rules which are on the whole less favourable apply. They are not applied to stenographers, who have separate rules, or to minor employees.



A copy of the new rules is appended. The main new feature is that no payment is made for overtime between 8 A.M. and 6 P.M. on working days, except when the total amount of work done during the week exceeds 48 hours. Credit is, of course, given for public holidays which may fall within the week, and if the overtime worked becomes really excessive, the last sentence of rule (6a) serves to increase the amount of overtime for which payment can be made until all overtime is paid for.

The other restriction of any importance introduced is that contained in rule 1—viz., that not more than a day's pay can be drawn as overtime for active work except under rule 13. This operates only in respect of work on Sundays and public holidays and cannot be of any considerable effect.

I would point out that these new rules only operate as a basis for the calculation of the overtime payment to be made in cases in which it is decided to pay for overtime. It is still the rule of Government, as it always has been, that overtime is not payable in respect of clerical officers' normal duties. It is only in exceptional circumstances that overtime is paid for.

I am of the opinion that the new rules provide a reasonable basis for the calculation of overtime pay during the present emergency and I cannot, therefore, recommend that the rules referred to in the motion should be withdrawn.

#### *Rules referred to.*

#### OVERTIME RULES.

##### General.

(1) No officers should draw in respect of one day more than a day's pay as overtime for active work except under rule (13) when not more than  $1\frac{1}{2}$  day's pay can be drawn. No officer should draw in respect of one day more than half a day's pay as overtime for standby duty.

(2) A minimum of 4 hours may be allowed for work on Sundays and public holidays, whatever the period worked, provided that in the case of standby duty an officer is on duty for a minimum of 2 hours to entitle him to 4 hours overtime.

(3) When preparing claims for overtime payment no account should be taken of fractional periods of less than half an hour worked on any day. For instance work from 8.25 A.M. to 5.45 P.M. should count as 9 hours.

(4) No overtime is payable in respect of an officer's normal work. An exception may be made to this rule for work done on Sundays and public holidays, when in exceptional circumstances this is ordered by the Head of the Department.

(5) Apart from overtime allowed in respect of work between 8 A.M. and 6 P.M. in excess of 8 hours on Sundays and public holidays for which a day's lieu leave only is granted the amount of overtime payable under the joint operation of rules (6) (a) and (8) or 6 (a) and (10) is subject to an over-riding limit that in no circumstances can the total overtime payable under the joint operation of the rules exceed the difference between the number of hours worked in the week in respect of which the calculation under Rule (6) (a) is made and the total of the ordinary Government office hours in that week (9 A.M. to 4.30 P.M. on working days except Saturdays; 9 A.M. to 1 P.M. on Saturdays).

##### Days other than Sundays and Public Holidays.

(6) There shall be no payment for any overtime worked between the hours of 8 A.M. and 6 P.M. except where—

(a) More than 48 hours are worked in any calendar week (Sunday excluded) beginning with Monday. Credit will be allowed for every public holiday or day's leave taken during that week at the rate of 8 hours per day. Overtime will be paid only for time worked in excess of 48 hours. Periods of work in respect of which overtime is payable under rules (8) and (10) may also count for overtime under this rule subject to the over-riding limit in rule (3) above and also overtime worked in excess of 8 hours between 8 A.M. and 6 P.M. on the preceding Sunday and/or any public holiday falling within the week if only a day's lieu leave has been allowed in respect of work on such Sunday or holiday.



(b) Treasury authority for overtime is obtained. In applying for such authority, the special cause necessitating overtime must be stated and the total period for which overtime will be required. If such period is more than a month, the Head of the Department must state what steps he is taking to relieve the situation.

(7) Departments must, as far as possible, arrange for all clerical work to be done between the hours of 8 A.M. and 6 P.M. If this is not possible, the following rules will apply :

Rules governing payment of clerks working outside the hours 8 A.M. to 6 P.M.

(8) Clerks who have worked not less than 8 hours between 8 A.M. and 6 P.M.—

Standby duty—Half rates.

Active work—Full rates.

(9) Clerks who have not worked between the hours of 8 A.M. and 6 P.M.—

Standby duty—Half rates

Active work—Full rates

} For any period worked in excess of four hours.

(10) Clerks who have worked less than eight hours during the hours 8 A.M. to 6 P.M.

Standby duty—Half rates

Active work—Full rates

} For any period in excess of 4 hours excluding the period worked during the hours 8 A.M. to 6 P.M. or for any period in excess of an aggregate of 6 hours including the period worked between 8 A.M. and 6 P.M. The hours in respect of which payment is made under this section cannot under any circumstances exceed the number of hours worked between 6 P.M. and 8 A.M.

Sundays and Public Holidays.

(11) (a) Clerks required to work between the hours of 8 A.M. and 6 P.M.

(b) Clerks who have worked less than 8 hours between 8 A.M. and 6 P.M. and have also worked outside these hours

} Standby duty or Active work

} A day off in lieu should be allowed within the next fourteen working days. This should be the normal procedure but if it is impossible to grant a day off in lieu within the time prescribed, payment should be made at half rates for standby duty and full rates for active work

(12) Clerks who have not worked between the hours of 8 A.M. and 6 P.M. on duty outside these hours—

Standby duty—Half rates.

Active work—Full rates.

(13) Clerks who have worked not less than 8 hours between the hours of 8 A.M. and 6 P.M. on duty outside these hours—

Standby duty—Half rates.

Active work—Full rates.

Note.—By standby duty is meant duty where the amount of clerical work to be done is negligible, but during which the officer is required to be at a defined post of duty. It also includes cases in which officers are required to sleep in their offices so as to be readily available if needed.



**The Hon. Mr. Huxham:** Sir, the position regarding this overtime question is that in peace-time Departments are supposed to be staffed in such a way that overtime will be a rare matter and, in such circumstances, fairly generous remuneration is given for overtime. When the war broke out, the whole of the Government Service was faced with a very large increase of work, and had to work both harder and longer than they had ever done before.

The position was considered whether full overtime rates should be paid, and it was thought that Government Servants could be called upon to work somewhat longer hours than normal without additional remuneration. Modified rules were therefore introduced which were not so generous as those which applied in peace-time. The hon. Member put down this motion objecting to this change in the rule and asking that the more generous peace-time rule should prevail. I cannot recommend the acceptance of this motion.

**\*Mr. Aluwihare:** Sir, the Hon. the Financial Secretary will remember that so far as the Railway is concerned, the overtime rates were curtailed. Has the position been adjusted?

**The Hon. Mr. Huxham:** Sir, the Railway Overtime Rules, as far as I am aware, have not been altered since they were revised shortly before the war. The rules were revised shortly before the war, with the result that the overtime which could be earned by the Railway staff became very much less than formerly. Those rules are still in application. The rules we are considering under this motion are those affecting Clerks and similar officers in Departments outside the Railway.

Question put, and negatived.

### COURTS OF REQUESTS; RAISING OF LIMIT OF JURISDICTION TO Rs. 1,000.

The following item stood upon the Orders of the Day:

† To continue the debate on the motion of Mr. A. Ratnayake,—

This Council is of opinion that the jurisdiction limit of the Court of Re-

quests should be raised from Rs. 300 to Rs. 1,000.

**\*Mr. Aluwihare:** Sir, I do not know whether this motion need be postponed. This is a step that should be taken early. I find that the Legal Secretary has consented to raise the jurisdiction to Rs. 500. The hon. Member wants it raised to Rs. 1,000. I wonder whether the figure could be made Rs. 750?

**\*The Hon. Mr. Bandaranaike:** Sir, this item may be postponed because the other motions of the hon. Member have been postponed.

**The Hon. Mr. Nihill:** I think probably the hon. Member would agree with me that it must bear some relation to the jurisdiction given to Village Tribunals. If my memory is correct, when that Bill was going through the Committee, the feeling of the Committee was that the jurisdiction given in the case of Village Tribunals was too high.

Consideration of item deferred.

### ADDITIONAL POLICE COURT, COLOMBO: REMOVAL TO MOUNT LAVINIA.

The debate on the following motion of Dr. A. P. de Zoysa was continued:

In the opinion of this Council the Additional Police Court of Colombo should be removed to Mount Lavinia.

*Report of the Legal Secretary under Standing Order 57.*

The mover of the motion suggests that the "Additional Police Court of Colombo" (now "Additional Magistrate's Court of Colombo") should be moved to Mount Lavinia.

There is, in fact, no separate Additional Magistrate's Court in Colombo though the Magistrate's Court of Colombo is staffed at present by a Magistrate and two Additional Magistrates. The second of the two Additional Magistrates performs the functions which were previously performed by the Coroner and also finds time to do a little Magisterial work in Court. The motion may therefore be treated as a proposal that one of the Additional Magistrates should hold a separate Court to be established at Mount Lavinia.

† Report of the Legal Secretary not reproduced.



2. The Legal Secretary is willing to concede that there may be grounds on which the proposal can be supported but for present purposes he considers that it is unnecessary for him to examine fully all the merits and demerits of the proposal. It is sufficient to confine himself merely to the financial implications.

3. The establishment of a separate Magistrate's Court at Mount Lavinia will entail, *inter alia*, the following additional expenditure:—

- (a) cost of construction of a Court-house. The inquiries that have been made indicate that no building which is suitable for use as a Court-house is available at Mount Lavinia;
- (b) the provision of the necessary court staff. It is estimated that at least 6 officers of the General Clerical Service and three peons will have to be appointed to the Court. A certain number of Police and Fiscal's officers are daily in attendance in the Magistrate's Court of Colombo; the establishment of a Court at Mount Lavinia will make it essential to attach other Police and Fiscal's officers to that court;
- (c) owing to the distance of the proposed court from the Fiscal's Office, Colombo, it will be necessary, at least, to establish a Fiscal Marshal's Office at Mount Lavinia.

**\*Mr. Aluwihare:** Sir, is this very necessary now as an evacuation measure?

**The Hon. Mr. Nihill:** I oppose this proposal if it means implementing the motion at the present time, because it means the construction of a new Court-house in that suburb, and I do not think that that is possible under present conditions.

**Dr. de Zoysa:** Sir, it is not necessary to put up permanent buildings just now if the proposed Courthouse is to be established. I would first of all draw the attention of the Hon. the Legal Secretary to the overcrowded nature of the Colombo Magistrate's Court. Let the Hon. the Legal Secretary visit the Magi-

strate's Court and see how overcrowded the compound is. The whole place is full of people.

Sir, some of these people come from ten to fifteen miles away. Perhaps a man spends his whole day in the Courts and then his case is postponed and, with all his witnesses, he has to go back. Some of these poor people have to give up their day's earnings and come to Court and perhaps waste that day, because their case may be postponed.

I say that the officials must not think only of their convenience. The putting up of a Court at Mount Lavinia may perhaps cost a couple of thousand rupees; yet it will be such a great convenience to people of those areas, namely, Mount Lavinia, Dehiwala and Ratmalana. There is no idea in housing all the Courts together. There are three Magistrate's Courts in Colombo, at Hulftsdorp. For a matter of that, the Magistrate can use a part of the Police Station for the time being till a permanent building can be put up.

We want the Hon. the Legal Secretary to consider the convenience of the litigants rather than the convenience of one or a few officers and a few peons. Although the Hon. the Legal Secretary opposes this proposal on grounds of economy, I say that that is not an economy, and that it would cost more when you think of the inconvenience, not only to the people who come as parties to a case, but also to the Police. Sometimes Police from Kotte, Mount Lavinia and Ratmalana have to come to Court and they have to be there for some time. Instead of that, they can remain in their own areas and attend to other duties instead of wasting time, if this proposal is given effect to.

Therefore, as a measure which will enable the authorities to employ the Police more usefully, and considering the convenience of the litigants and the parties who have to come to Court, and also in view of the crowded nature of the present Additional Magistrate's Court, I think immediate steps should be taken to remove one of the Magistrate's Courts to Mount Lavinia.

**Mr. H. W. Amarasinghe (Galle):** I want to know what the cost of giving effect to this suggestion would be.



**The Hon. Mr. Nihill:** It is quite impossible to say what the cost would be because you must consider the nature of the building and what you would have to pay for the land. Land in that neighbourhood is very dear. You will first of all have to look for a suitable site; get your plans drawn; decide on the nature of the building, and so on. It will have to be a building which will merit the dignity of a Magistrate's Court. I should imagine that it would not be Rs. 2,000 as suggested by the hon. Member for Colomb South (Dr. de Zoysa), but something nearer Rs. 200,000.

Question put; the Council divided (under Standing Order 68): Ayes, 8; Noes, 12.

**Mr. Speaker:** The sitting is suspended till 4.30 P.M.

*Sitting accordingly suspended until 4.30 p.m., and then resumed.*

### PROCTORS: ANNUAL LICENCE FEE.

The debate on the following motion of [the late] Mr. C. F. P. de Silva was continued:

That this Council is of opinion that the rule now in force requiring Proctors to renew annually their licence to practice and to pay an annual fee of Rs. 30 for such licence should be done away with; that in lieu thereof a lump sum be levied for a licence to be taken out at the time of enrolment in accordance with the existing practice in the case of Advocates; and that in the case of Proctors already in practice the amounts each has so far paid as licence fee should be accounted to his credit when the next renewal of the licence becomes due.

#### *Report of the Legal Secretary under Standing Order 57.*

The practice prevailing in Ceylon whereby Proctors have, unlike Advocates, to make an annual payment conforms with the practice in England where a similar distinction exists between Solicitors and Barristers. Whereas in England, however, payments made by Solicitors for annual practising certificates (other than stamp duties payable thereon) are appropriated for the benefit of the profession; in Ceylon Annual fees

paid by Proctors in the form of stamp duty are appropriated by Local Authorities. A sum of approximately Rs. 30,000 is received by Local Authorities annually on this account. Very little of this money is utilized for the benefit of the profession, the only regular annual payments that are made being the following:—

- (a) The Kandy Municipal Council—Annual payment of Rs. 300 to the Kandy Law Library.
- (b) The Galle Municipal Council—Annual payment of Rs. 250 to the Galle Law Association.
- (c) The Kegalla Urban Council—Annual payment of Rs. 150 to the Kegalla Law Library.
- (d) The Kurunegala Urban Council—Annual payment of Rs. 150 to the Kurunegala Law Library.

2. From inquiries made by the Legal Secretary it would appear that, among Proctors, the view generally held in regard to this matter is that—

- (a) the present practice should continue, provided a scheme is devised whereby the profession as a whole can be assured of direct benefit from the fees which they pay—*e.g.*, by the provision of libraries, especially at outstations—or, if that is not possible,
- (b) the fees should be compounded by one payment.

3. The Legal Secretary, while not excluding payment to general revenue of a proportion of the existing fees, is in favour of the first of these alternatives.

**Mr. Speaker:** What does the Hon. the Legal Secretary say to this motion?

**The Hon. Mr. Nihill:** I am in favour of my report.

**\*Mr. Aluwhare:** Will the Hon. the Legal Secretary give us a summary of his report?

**The Hon. Mr. Nihill:** This is a very interesting report, Sir, and it is worthy of close study. It must be remembered that the practice in Ceylon, whereby Proctors have to make annual payments,



[The Hon. Mr. Nihill.]

conforms with the practice in England where a similar distinction exists between Solicitors and Barristers. Of course, the Council is well aware that in this country the legal profession is not divided into classes of Solicitors and Barristers but is divided into classes of Proctors and Advocates. They are the same things but with different names. Of course, "a rose by any other name would smell as sweet".

It is clear that in England these payments which are made by Solicitors are appropriated for the benefit of the profession, but in Ceylon because these fees are paid in the form of stamp duty, they are appropriated by the local authorities. [Interruption.] I see that a certain amount of this money is earmarked for the benefit of the profession, but not very much, and that is done only at the discretion of the local authorities. Certain small payments are made to certain of the provincial law libraries like the Kandy Law Library, the Galle Law Library, the Kurunegala Law Library, and so on.

My learned predecessor made inquiries amongst the lower branch of the profession, and he found that the view generally held in regard to the matter was that the present practice should continue provided a scheme could be devised whereby the profession as a whole could be assured of a more direct benefit from the fees which they pay; and I agree with the view expressed in this report that the first of the two recommendations which came from the Proctors is unobjectionable. In fact, I think it is a reasonable recommendation and one that should be met.

Unfortunately, this is a motion which stands in the name of an hon. Member who has passed away and is no longer a Member of this House, and therefore I cannot ask him what his wishes in the matter are. But the suggestion I make to the House is that the motion in the form in which it is now before the House should not be accepted, but that the House would leave it to me to implement by the necessary amending legislation the first of those two recommendations which have been made to my Department by the Proctors who were approached in the matter.

**\*The Hon. Mr. C. W. W. Kannan-gara (Minister of Education):** I wish to point out in this connexion that the first alternative is not by any means one that the profession favours.

I know that this agitation has been going on for a number of years. Proctors have not seen any reason why Advocates should pay a lump sum at the time they take their oaths, whilst they should renew their licences annually by paying a fee of Rs. 30. There is no apparent reason for it, and I do not know whether any reason has been adduced in the report for continuing the differential treatment, except the statement made that in England Barristers pay a lump sum on taking their oaths and the Solicitors pay an annual fee. I know what the profession thinks about this matter.

I do not know whom the Legal Secretary has consulted over this question, but I do know that the Proctors have been clamouring for doing away with this differential treatment for years. It is nothing but right that their request should be granted, because apart from the considerable sum of money paid by them throughout the country, there is the additional worry of having the licence to practise renewed annually. When the date for renewal of licences lapses, some Proctors have to appeal to the Supreme Court and adduce all kinds of reasons why they should be granted a renewal of licence. I can see no reason why this differentiation should be made as between Advocates and Proctors.

**Mr. H. de Z. Siriwardana (Negombo):**

I may mention that this motion was brought forward by the late Mr. C. E. P. de Silva at the request of the Lawyers' Association of Negombo. As pointed out by the Hon. Minister of Education, the lawyers have been agitating for a number of years to have their annual licensing fees compounded to a lump-sum payment.

**The Hon. Mr. Drayton:** I should like to refer to one remark made by the Hon. Minister of Education, and that is that the Proctors' profession, as a whole, prefers to pay one compounded fee instead of annual fees. I do not dispute for one moment that that is so, so long as they are not going to get any benefit from the fees they pay. Obviously if



they are not going to get any benefit from the fees they pay, it is much better to perform the rather unpleasant task of paying fees once and for all than have to pay them every year.

I am not at all sure that the Hon. Minister of Education is correct when he says that that is the view of the Proctors if the first part of the proposal is carried into effect, namely, that the fees they pay annually will enure to their benefit, and not only a very small proportion of their fees as is the position at present.

The present position is that Rs. 30 a year is collected from each Proctor, and out of that collection a very small portion enures to their benefit, namely, such amount as is voted back to them, as it were, by the local authorities, in aid of their libraries. If the arrangement were, as it is in England in regard to Solicitors, that a great proportion of the annual practising fees paid by them enures to the benefit of the profession, either being made available for law libraries or for legal education, then my own view, quite definitely, is that there would not be that strong objection taken by Proctors to the difference that now exists in regard to licence fees between the two branches of the profession. The Proctors will consent to pay annual fees if they feel that such annual fees are going to form a source of revenue to keep their libraries and so on, going, that such annual fees are going to benefit the profession generally. Once the libraries, and so on, are well established, it may be possible for the annual fees to be reduced.

I am sure that everyone will agree that, so far as Proctors practising in outstations are concerned, they are in a very difficult position in regard to law books. After all, law books are the tools of their trade. It seems to me quite unreasonable that they should be required to pay annual fees which enure to the benefit of local authorities. I am quite unable to understand why a member of the profession, who is entitled to practise all over the Island should pay a fee that goes into the coffers of one local authority simply because he resides within the jurisdiction of that particular local authority.

**\*The Hon. Mr. Bandaranaike:** It is the same with regard to the motor car licensing fees.

**The Hon. Mr. Drayton:** Why should he be at the mercy of the local authority with regard to any benefit he may get from the fee he pays?

It seems to me that it should be recognized that the fee that is paid should enure to the benefit of the profession. That is the first principle to be recognized. I feel confident that, once that principle has been recognized, it will, at the same time, be recognized that it is a good thing to pay the licensing fee annually because of the benefit that will be obtained by paying it annually, because the Proctors will have a definitely assured income with which to maintain certain organizations they require, particularly law libraries; I may go further and say that they will be able to organize a Law Society which the Proctors have not yet succeeded in establishing. If one has an annual fee, one will be able to establish such organizations. I hope the Proctors will recognize the benefit that can accrue to them by having their licence fee paid annually.

**Mr. Wille:** The ground on which I support the payment of an annual fee by Proctors is that it will create great hardship if on entry to the profession a man is made to pay a large sum.

**\*The Hon. Mr. Kannangara:** What about Advocates?

**Mr. Wille:** When I was in the Council of Legal Education I found that a large number of young men who were attending as students could not pay their fees regularly. I think it will cause great hardship if on entry to the profession a man is asked to pay a comparatively large sum as the fee for his licence to practise as a Proctor. The proposal advocated by the Legal Secretary is a good one and, as explained by him, the annual licence fee may be reduced and provision made for its appropriation for the benefit of Proctors.

**The Hon. Mr. G. E. de Silva:** I think, when this scheme was originally introduced there were two classes of Proctors in the legal profession—Proctors of the Supreme Court and Proctors of the District Court. This distinction was evidently introduced to get a lump sum



[The Hon. Mr. G. E. de Silva.]  
from Advocates. I think those who were responsible for making this distinction as between Proctors and Advocates did not know what they were doing.

I understand that in England a Solicitor cannot appear in a Court of law and conduct cases. His activities are confined to the drawing up of deeds and so on.

**The Hon. Mr. Nihill:** No.

**The Hon. Mr. G. E. de Silva:** In Ceylon a Proctor is entitled to practise as an Advocate; he can appear in any Court. If it is right for Advocates to appear in any Court, why is it not right to allow Proctors to do so? Evidently some person, without considering all these implications, decided on getting a lump sum from Advocates; probably he did that at an unguarded moment. We are therefore asked to continue the practice. Any kind of reform in this direction will never appeal to the Hon. the Legal Secretary or the authorities concerned.

A most astounding proposition is put before the House now—that the Proctors must contribute something to the local authorities, and incidentally contribute something to the Law Library.

**The Hon. Mr. Drayton:** No.

**The Hon. Mr. G. E. de Silva:** All right. Then why should you not have some concession given to Advocates also. Why should they not contribute something to institutions like the Municipality and local government bodies? When Advocates are in active practice, they can go round the Island and appear in any Court. According to that principle, they must contribute something to the Urban Council if they go to Jaffna. If they go to Kandy, they must contribute something to the Municipal Council. Certain distinctions have been created without any reason whatsoever. So let us now do something sensible.

**The Hon. Mr. Drayton:** I agree.

**The Hon. Mr. G. E. de Silva:** Let us not go along the same old path. I agree that it would be very difficult if Proctors were compelled to pay a lump sum.

But then I ask you, why should we call upon a Proctor who has been practising for the last 30 or 40 years to pay a sum of Rs. 30 every year?

**Mr. Wille:** Reduce it.

**The Hon. Mr. G. E. de Silva:** You give an option to the Proctor; you can tell him, "If you pay Rs. 300"—or whatever sum may be decided upon; I am not fixing the amount—"you will be exempted from paying your licence fee hereafter". Those who cannot pay might be given the option of paying the fee by annual instalments. You can exempt him from further payments when he has completed payment of the maximum fee fixed. It is a simple thing; it can be done without any trouble. Why should you penalize Proctors alone and call upon them to make these payments year after year?

I would appeal to the Hon.—well, there is no necessity to appeal to the Hon. the Legal Secretary. The Burgher Nominated Member (Mr. Wille) is a Proctor, and I think he has been in practice for the last 40 years.

**\*Mr. S. Abeywickrama (Udugama):** He is out of practice now.

**The Hon. Mr. G. E. de Silva:** If he felt that this was a difficult proposition, he should have said so. He now says that the Proctor may not be able to pay a lump sum. Does he not realize that this difficulty could be got over? If we spread the payment over a number of years, we could give the Proctors some relief. Even that modicum of common sense is lacking in certain Members. That is why I feel so disappointed with some of them.

I am now going to lay down a proposition. When we know that these incorrigible Members—

**Mr. Speaker:** Order!

**The Hon. Mr. G. E. de Silva:**—never listen to reason—very well; I withdraw the word "incorrigible", and I say "those people who do not listen to reason".

**The Hon. Mr. Corea:** The word "incorrigible" is not unparliamentary, is it?



**The Hon. Mr. G. E. de Silva:** It is a very good word. If you object to that, Mr. Speaker, I shall not use it. When such Members oppose a motion, you must support it. That is a very good axiom for us to follow.

Why should you penalize one branch of the profession and leave the other almost free? Why should they also not carry this burden? I would appeal to hon. Members to give this request a chance; it is a very reasonable one. You limit the number of years. If a proctor has been practising for 10 years, and if he has paid the sum of Rs. 300 you can exempt him. After all we are only asking that justice be done; we are not asking for favouritism.

Take the Council of Legal Education. They have millions of rupees to their credit; the Council is a very rich institution. They can provide libraries wherever libraries are needed. Members of the Bar give them a subsidy; they receive money from law students. They do not spend all the money; it is accumulating. Let us appeal to those people who are hoarding to give some kind of relief by contributing towards the maintenance of libraries in outstations.

**\*Mr. Aluwihare:** There are two suggestions I would like to make, and I think they arise particularly from the proposals that have been made. So far as one can gather from the discussion, the first objection is to the payment of a sum of Rs. 30 per year over a long period of years. For instance, a gentleman who happens to be in the profession for 30 years would pay Rs. 900.

The second objection is that these people do not receive any benefit for the money they pay. It is true, in rather an undesirable way, that whilst the Government and the local authority subsidize the Colombo Law Library heavily, a place like Matale or, for a matter of that, Gampola, gets no subsidy at all; there is no assistance at all given to these lawyers who have a library of their own. I think one agrees with the Hon. the Legal Secretary that it is very desirable to have law libraries in every town in which there is a Court.

So what I want to suggest to the Hon. the Legal Secretary is that, in the first place, the fees taken from Proctors, from lawyers, in each particular town

be devoted to the establishment of a library in that particular town. You will not then get the grouse that people do not receive any benefit for the money they pay. People will get a benefit exactly in proportion to the amount they pay, if my suggestion is adopted. It will also help every outstation Court and every outstation law library to have a full set of reports.

I do not think that in most outstations you have either a complete set of New Law Reports or any of the subsidiary reports which are very valuable indeed. Very often one has to depend on the library of a brother lawyer. With the money subscribed or levied from lawyers of each town, it ought to be possible to have a very complete library and still have a large surplus. The large surplus accruing ought to enable the Government to fix a period beyond which a Proctor need not pay fees. Ten or twelve or fifteen years should entitle a man to secure a life certificate.

I would ask hon. Members not to press for a lump-sum fee, because young Proctors would sometimes experience difficulty in finding a lump sum of say, Rs. 250. It is much better to split it into payments of Rs. 25 or Rs. 30, to be paid for 10 or 15 years. The Hon. Minister of Education says that it would be easy to find the money, since the man spends such a great deal on his education. I happen to have passed out as a lawyer, and I can tell him that at the end of my education I found it difficult to lay my hands on Rs. 250 when I wanted to be enrolled as an Advocate. So I can speak with at least some personal experience. It is much more advantageous to a person to have this sum split into payments of Rs. 25 or Rs. 30 over a period of years. So I would suggest a reform somewhat on those lines.

**\*The Hon. Mr. Corea:** I would strongly urge on the House to accept the motion as it stands. If the argument of the hon. Member for Matale (Mr. Aluwihare) is correct then, Mr. Speaker, it must be an equal hardship to the young Advocate who passes out to find the money as it is a hardship to the young Proctor.

**\*Mr. Aluwihare:** It is. I said that I found it difficult, as an Advocate.



**\*The Hon. Mr. Corea:** There is no doubt about that. It may be that in the case of some people they will find some difficulty. But I do not think that any Proctor who has passed his Final will be unable to find Rs. 250 to pay for his licence. I do not think that we need be deterred by the fear that a young man who passes out as a Proctor will find it difficult to take out his licence if he has to pay a lump-sum fee. He will also be able to find someone to accommodate him with the amount, even if he himself or his parents are unable to find the money. I do not think we need be afraid on that score.

But, Sir, I would ask the House to consider the acceptance of this motion from another important point. It is not so much on a question of the inconvenience caused by a man having to pay Rs. 30 every year he practices as a Proctor; the motion should be accepted on the ground that it is an invidious distinction which should not exist. It is true that we always hear of the higher branch of the profession and the lower branch of the profession, and of Barristers and Solicitors. I suppose, Proctors generally do not want to bring themselves into a position of equality with the higher branch of the profession, but both are members of an honourable profession, both have to pass prescribed examinations, and once they pass the examinations they should not be subjected to the imposition of an annual fee, which might in the circumstances be considered almost as an indignity to which they are subjected.

Let us take the case of the medical profession. Certain examinations are prescribed. A person passes out as a Doctor; then he gets a licence and he practises without the payment of any fee after an initial payment of Rs. 50. There is an initial payment to be made. He makes it, and after that he is free to practise the profession to which he has been licensed.

Now, the Hon. the Chief Secretary very rightly disapproved of the idea of payment to local authorities and then having to depend on the charity of the local authorities to start a library or something like that, and in the report on the motion it is shown that there are only

four cases where local authorities use this money for the benefit of the profession.

With regard to the proposal made in the report, I do not think it will be given effect to or that any scheme will be formulated for a very long time to come. Therefore, I would suggest that the best thing to do is to get rid of this distinction and put these people on the basis of having to pay a lump-sum fee. Let them have a scheme thereafter definitely drawn up, subjecting the Proctors to the payment of a certain amount for the setting up of a library and for maintaining it. You can put the burden on the Proctors. That is a very desirable reform, and I would support it. But until that matter is taken up separately, I do not see why the present practice should continue. If it is to be defended on the ground of the establishment of a library, why should not the Advocates too pay for the use of the library? [A MEMBER: They use it more.] They should be made to pay on an equal basis. There should be introduced, later on, a definite scheme whereby the Proctors and the Advocates should be made to pay on an equal basis.

**\*Mr. Aluwihare:** Might I say that sufficient Proctors do not pay for the use of the Law Library in Colombo?

**The Hon. Mr. Corea:** The Law Library in Colombo is practically run on Government subscriptions.

**\*Mr. Aluwihare:** No fear!

**\*The Hon. Mr. Corea:** There are other Proctors who pay very large sums for running libraries especially in outstations. They pay monthly subscriptions and have libraries of their own. Whatever it be, I say that if a library is to be run, let it be run out of a fund to which both Proctors and Advocates contribute, and let it not be that Proctors should contribute annually in order that a library may be maintained.

For these reasons I would ask the House to support this motion.

**\*Mr. Abeywickrama:** I did not know that there was such a thing in existence as a Proctor having to pay a tax of Rs. 30. I also understand that there is another



fee that has to be paid annually by Proctors—the fee for their notarial licence. I do not know whether it is true. [A MEMBER: It is true.] So that this particular individual called a Proctor, who leads a very precarious existence in some cases, is penalised in two directions—by having to pay Rs. 30, I suppose as a “ Pass ” to live in a town, and Rs. 30 for practising as a Notary.

It also surpasses my understanding that the hon. Nominated Member (Mr. Wille), being a member of the same profession, should refuse to give relief to the members of the profession. [*Interruption*]. I am only replying to criticism made in the House. A Proctor does not want relief to be granted to members of his profession! Sir, this reminds me of the fact that when slavery was to be abolished in America the slaves themselves said that they did not want to be emancipated. When they wanted to put a stop to slavery, the slaves said, “ No, we want to be slaves. Do not bring in legislation preventing our being slaves ”. This is an instance similar to that.

There was the grave fear expressed by the hon. Nominated Member that a large sum could not be paid by the members of the profession. I say that the sum must be less than the amount paid by the Advocate. The bigger fry—the Advocate—pays Rs. 250; the smaller fry—the Proctor—must necessarily pay less. So that the amount cannot exceed Rs. 250, because the Advocate is supposed to be an individual of very high standing while the Proctor is not.

I am sure the House will unanimously pass this motion and I would request the Legal Secretary, in fixing the fee, not to fix it above Rs. 250, so as to obviate the necessity for another motion having to be brought up in this House. Otherwise, another motion will have to be brought forward and another debate take place for the reduction of the fee.

Further, Sir, in the old days Rs. 30 was charged because there were only a few Proctors and they were able to build up a fairly decent practice. But now the profession is overcrowded, and they are unable to earn the income which they used to earn. Therefore, we must give relief where relief is necessary. I would heartily support the motion, and I hope

there will not be any opposition to it. I would also ask the Legal Secretary to implement the decision of this House in this matter as quickly as possible, so that there will be no ground for complaint.

Question put, and agreed to.

### FLOODS: COMMISSION OF INQUIRY INTO CAUSES.

The debate on the following motion of the Hon. Mr. G. E. de Silva was continued:

That in the opinion of this Council immediate steps should be taken to appoint a Commission to investigate into the incidence of periodical floods and to devise ways and means of minimising the effect of floods if they cannot be averted altogether.

#### *Report of the Executive Committee of Agriculture and Lands under Standing Order 57.*

The Executive Committee of Agriculture and Lands, at a meeting held on July 9, 1941 considered the above motion moved by Mr. G. E. de Silva, M.S.C.

2. Before a Commission can sit and deliberate on the causes of floods there must be set up the necessary organization to collect data for the deliberations. Reference may be made in this connection to the Memorandum dated September 10, 1940, prepared by the Director of Irrigation, and tabled at a meeting of the Board of Ministers held on February 25, 1941.

3. Owing to pressure of other works it has not been possible to allot staff for the creation of the River Gauging Sub-division contemplated on page 4 of that memorandum, which is a pre-requisite to any study of flood problems.

4. When all the necessary data have been collected, analysed and subjected to a scientific “ post mortem ” a committee could be appointed “ to consider and report on measures for the better conservation and organization of water resources and supplies of the country and where necessary control them to the better advantage of the community ”.

5. What the Director of Irrigation is doing and has been doing in this connection for the past few months is to collect data and put them into usable



form. A start has been made on the examination of the water resources of the Island. Catchments are being considered individually as time permits. Work in this connection has been given first place on all the major works priority lists.

6. The appointment of a Commission as contemplated in the motion would be premature in the circumstances.

**\*Mr. R. S. S. Gunawardana:** I would very strongly support this motion. I think the Board of Ministers has not taken sufficient trouble to solve this very important problem. I say that this is not a matter in which we should blame only the Minister of Agriculture and Lands; it is a matter in which we should blame the whole Board of Ministers for not taking adequate action to prevent floods occurring in this country.

Year after year compensation is paid to people in various districts, who are rendered homeless as a result of floods, and the sum, paid increases each year. Sometimes great hardship is caused, but still the Board of Ministers go on without taking any adequate action. Very often floods occur every year in the Gampola District—at least twice a year—and yet Government think it much more convenient to pay compensation than to meet the actual problem. Surely there must be some expert who can help us in this matter. We are getting down experts for less important matters—experts for transport purposes, for instance, even when things are going on smoothly—but the flood problem requires no expert.

The Irrigation Department is inactive. They do not have adequate staff to deal with the problem; they do not have sufficient money for the purpose, and even if the money is available the staff is not there. The Irrigation Department undertake a certain number of schemes each year, and cannot go any further.

The whole flood problem should be considered independently of mere irrigation works and irrigation channels. There is work sufficient for a special department, and it is therefore absolutely necessary that an expert should be got down, if the Irrigation Department can-

not manage this work. Surely there are countries like Holland where similar problems are dealt with. And for Ceylon to say that we cannot deal with the problem is absolute nonsense. People are suffering untold hardships in all parts of the Island, and this problem calls for early attention.

Ever since I entered Council, I have been pressing for flood-protection schemes but without any measure of success, and all the comforting reply I get is, "Gaugings are being taken. It cannot be done in a day". Nobody says that it can be done in a day. But has the Minister concerned taken any action in the matter at all? Gaugings are being taken and have been taken for umpteen years. Sir, it is useless giving any explanation; explanations can always be found. There must be some reason why floods occur once a year and not twice a year; there must be some reason for it. It is for the Irrigation Department to find that out and, therefore, it is time that we obtained expert advice on this matter.

**Mr. H. W. Amarasingha:** I would like to support this motion. As has been pointed out by the hon. Member, it is a very pressing and urgent need. The flood problem has been with us for many years; as a matter of fact the position seems to be deteriorating year after year. Floods seem to be occurring every year with greater intensity, damaging the houses of people, cattle and cultivation.

In the case of the Western coast of Ceylon particularly, there are several large rivers, and these rivers when in flood not only destroy crops but also put the people living in those areas to a great deal of inconvenience. It is a well known fact that flood havoc occurs every year along the basin of the Kelani River, the Kalu-ganga, the Bentota-ganga, the Gin-ganga, the Nilwala-ganga, and all along the coast. The Hon. Minister of Agriculture and Lands has attempted to solve this problem, but unfortunately so far he has not met with any measure of success.

A few years ago we passed a certain sum of money in this Council for the importation of an expert to go into this problem. I believe at the expense of nearly



Rs. 100,000 even a laboratory was set up for the purpose of carrying on the necessary experiments, and the expert, Dr. Burns, who has been at these experiments for a number of years, has so far been unable to find any proper solution. In the absence of such a solution, and if the present expert is unable to solve this problem, I think it is only proper that a Commission, not necessarily one single expert but a board of experts, should be appointed to go into this most important question.

At the present moment the problem has become a very serious one, because every year we lose a large quantity of paddy, particularly on the Western coast of this Island and in the wet zones. If this problem in the wet zones of the Island can only be solved our production of paddy could be increased at least three-fold in those parts. It would, therefore, not be a case of merely saving property; the paddy production of this Island would also be greatly increased.

The Hon. Minister of Agriculture and Lands must admit that the experiments that have been carried out have been a failure, and that he has no solution to offer. That being so, this matter should not be shelved but be attended to immediately. I would therefore like to support this motion. It is a pity that the Hon. Minister is not here, but I do hope that he will implement this motion and see that a solution is found to eliminate the havoc that is caused to people living in the affected areas. He will thereby bring greater happiness to the people living in those areas.

**\*Mr. Aluwihare:** I do not want hon. Members to think that the Ministry is wholly callous to the misery caused by floods, especially in the area of the hon. Member for Gampola (Mr. R. S. S. Gunawardane).

But as hon. Members themselves know, the floods in Ceylon can be dealt with in two ways. There is the easy remedy of drainage. Where the easy remedy of drainage can be applied, I do claim that the Ministry has taken and is taking very vigorous action. The remedy of drainage can be applied mostly in the

Low-country; and in the Low-country I would point to the Nilwala-ganga Flood Protection Scheme. I would ask hon. Members to go to Kalutara and look at the flood-protection scheme there, unostentatious but effective. I would ask hon. Members to consider the Mutturajawela Flood Protection and Irrigation Schemes.

**Mr. H. W. Amarasuriya:** Where?

**\*Mr. Aluwihare:** It is going on. [Interruption]: I hear hon. Members saying that there are no floods there. Well, whether it is sea water or rain water, floods are floods.

I do claim that the particular problem of tackling floods by means of drainage is receiving attention and a great deal is being done.

The other cause of flooding is much more difficult to remedy. The cause is that there is not sufficient absorption and distribution of the rain-water falling in any one year in certain areas. Such lack of absorption and distribution is largely due to the clearing of the forests in the hill country. The floods that occur in the Gampola area are mainly due to that factor.

Hon. Members must in the first instance realize that the solving of the problem of floods by means of drainage is almost impossible.

**\*Mr. R. S. S. Gunawardana:** You say a solution is impossible?

**\*Mr. Aluwihare:** By drainage. Mere drainage is not going to solve the problem. It can only be solved by taking such measures as will conserve the rain-water that collects and distribute it over a period of time in a reasonable way. Now Nature did it for us with her forests and their undergrowth. Man in his greed has not only thrown out the permanent population but has also cleared these lands, and the golden soil gets washed down and people are flooded out. We have to solve the problem in one way and one way only, and that is by the reforestation of areas above a certain level.



**\*Mr. Abeywickrama:** Then what about the tea and rubber estates Up-country?

**\*Mr. Aluwihare:** Sir, the problem has been met. The first reaction of one hon. Member is, "What about tea and rubber estates?"

**\*Mr. Abeywickrama:** Sir, I do not own any estates Up-country; it is their own land that I am speaking about.

**\*Mr. Aluwihare:** I know, Sir, that that will be one of the big problems that the Minister of Agriculture will be called upon to solve. But before that is done, he has to have his data collected in the most exact way. It was only this morning, as a matter of fact, that the Executive Committee of Agriculture decided to appoint an Assistant Hydraulic Research Engineer for the purpose of this and other investigations.

**Mr. Speaker:** Does the hon. Member want to continue his speech?

**\*Mr. Aluwihare:** I shall not take two seconds more, Sir.

We have had Dr. Burns who has been working on it, but unfortunately his Assistant has had to go away. Now we are getting another man, and I do assure the House that the Hon. Minister is very much concerned about and alive to that particular situation in the case of the hills.

**Mr. Speaker:** Shall I put the question to the House?

**\*The Hon. Mr. Corea:** It might be put off for the next meeting.

**Mr. Speaker:** The debate cannot continue after 5.30 P. M.

**\*The Hon. Mr. Corea:** I move that the debate be adjourned.

The debate was adjourned.

*It being 5.30 p.m., proceedings on business under consideration were interrupted under Emergency Standing Order 2 (4).*

### ADJOURNMENT.

**\*The Hon. Mr. S. W. R. D. Bandaranaike (Minister of Local Administration):** I move that the Council do now adjourn.

Question proposed from the Chair, and debated.

**Dr. A. P. de Zoysa (Colombo South):** Sir, may I know from the Hon. the Financial Secretary what the index of the cost of living is, what the figure just now is, and according to that index, what is the average amount that a labourer should receive?

**The Hon. Mr. H. J. Huxham (Financial Secretary):** Sir, the cost of living index is a matter dealt with by the Hon. Minister of Labour, Industry and Commerce.

**\*The Hon. Mr. G. C. S. Corea (Minister of Labour, Industry and Commerce):** I am sorry, I did not quite follow the question.

**Dr. de Zoysa:** I wish to know what the figures of the cost of living index are and what amount a labourer has to spend in order to live.

**\*The Hon. Mr. Corea:** I do not quite remember. The index figure is published regularly as soon as it has been worked out for a particular month. I think it was something like 178, but I am not quite sure; I am speaking from memory. It is published every month.

**Mr. H. W. Amarasuriya (Galle):** During the Budget debate I brought the fact to the notice of the Hon. Minister of Local Administration that fishermen are in a very sad plight owing to the imposition of the lighting regulations, and the Hon. Minister promised to look into the matter and give them some relief.



The fishing season is approaching, and unless the lighting regulations are relaxed, the fishermen will have to be given a dole. But I do not think they would care to receive a dole; they would rather be engaged in their ordinary vocation of fishing, which incidentally provides a very necessary article of the diet of the people of this country. I would like to know what steps the Hon. Minister has taken in this matter.

**\*The Hon. Mr. Bandaranaike:** Well, Sir, on the question of relaxation of lighting regulations, I may say that they have been relaxed up to a point beyond which it does not appear, from the needs of Defence, that they can be relaxed. Beyond a certain limit, boats are allowed to have lights and to fish. They are allowed to go out at any time and they can come back at any time provided that within the limit they do not fish with lights or sail with lights.

**Mr. H. W. Amarasuriya:** But they cannot fish without lights.

**\*The Hon Mr. Bandaranaike:** Unfortunately, to permit all fishermen all round the coast of Ceylon at any point to go out with lights and to come back with lights and to fish in the fishing banks with lights, is apparently a position which simply cannot be adopted, because the one way of disclosing very valuable information to the enemy is the presence of lights within a certain distance from Colombo, probably all along the coast of Colombo.

If my hon. Friend will go into any particular hardship caused by the lighting regulations that exist at the moment, in areas that he knows of, we can see whether any particular relaxation can be made. But a general relaxation beyond that which exists at the moment is unfortunately a matter which the authorities concerned—the Fighting Forces—simply cannot contemplate from the point of view of the essential defence of the country. That is the unfortunate position. So much for the lighting regulations.

There was another question that was raised with regard to compensation, and I would like to say that I accept the

principle—and the Board of Ministers on my representations have agreed to it—that compensation should be paid, in the case of fishermen, whenever it is found that they are suffering as a result of war conditions. Of course, we deal with each case *ad hoc* whenever an application comes in. We have recently been dealing with the fishermen of Koggala, and the payment of compensation at certain rates, which are still under inquiry, has been approved by the Board of Ministers. Whenever such cases are brought up, they will be dealt with promptly and I hope adequately.

**\*Mr. D. Wanigasekera (Weligama):** I suggested a system of patrolling by the Naval authorities. The Naval authorities should devise some means of protecting the fishermen. These lights can be seen only for a few miles from where the men are engaged in fishing. If they are protected by a system of patrolling by the Naval authorities, I think the regulations can be removed.

After all, the lights will appear right round Ceylon, and once the enemy sees the coast of Ceylon, he will know where Ceylon is. But where there is a system of protecting fishermen by the Naval authorities, I think the interests of the fishermen will be safeguarded while at the same time the country will be supplied with an article of food that the people are very badly in need of.

I think this is an emergency measure and the Naval authorities should take it to heart and see that the people get the quantity of fish which they were accustomed to obtain. After all, before the war we were importing about Rs. 10,000,000 worth of fish, with no restrictions whatsoever. Today, with the scarcity of food, I think it is up to the Naval authorities to devise ways and means of protecting the fishermen and seeing that the industry is carried on.

**\*Mr. T. Amarasuriya (Moratuwa):** I would like to have some information from the Hon. Minister. This morning I mentioned the fact to the Hon. Minister that although certain restrictions have been made with regard to fisher-



[Mr. T. Amarasuriya.]  
men, I am told that lights from other  
quarters can be noticed at a respectable  
distance from the coast. I mentioned  
this fact to the Hon. Minister and I  
requested him to take some steps about  
it.

Question, "That the Council do now  
adjourn", put, and agreed to.

Adjourned accordingly at 5.40 P.M.  
until 2 P.M. on Thursday, September 24,  
1942.