THE "CEYLON HANSARD."

THE PROCEEDINGS

OF THE

Ceylon Legislative Council,

DURING THE EXTRAORDINARY SESSION OF 1883,

WHICH BEGAN ON THE 18TH JULY, 1883, AND CLOSED ON THE 24TH OCTOBER 1883.

REVISED AND CORRECTED BY THE SPEAKERS.

[FOURTEENTH YEAR OF PUBLICATION.]

Colombo:

A. M. & J. FERGUSON.

1883.

Members of the Ceylon Legislative Council,

DURING THE EXTRAORDINARY SESSION OF 1883.

PRESIDENT:

His Excellency SIR JOHN DOUGLAS, K.C.M.G., LIEUT.-GOVERNOR OF CEYLON.

OFFICIAL MEMBERS:

The Hon. W. H. RAVENSCROFT, Acting Colonial Secretary.
" " SIR J. C. MACLEOD, V.C., K.C.B., Major-General Commanding the Forces.
(COLONEL DUNCAN, R. D. F., acted during greater part of session.)
" " F. FLEMING, Queen's Advocate.
" " R. W. D. MOIR, Acting Auditor-General.
" " W. D. WRIGHT, Treasurer.
" " F. R. SAUNDERS, Government Agent of the Western Province.
" " W. E. T. SHARPE, Acting Government Agent of the Central Province.
" " JOHN STODDART, Acting Surveyor-General.
(Vacant.) Principal Collector of Customs.

UNOFFICIAL MEMBERS:

The Hon. JAMES VAN LANGENBERG (Burgher Representative), Colombo.
" " P. RAMA NATHAN (Tamil Representative), Colombo.
" " ALBERT L. DE ALWIS (Sinhalese Representative), Kalutara.
" " W. W. MITCHELL (Representative of Commercial Interests), Colombo.
" " J. L. SHAND, (Planting Representative), Dikoya.
(Vacant.) (Representative of General European Interests), Colombo.

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ERRATA.

P. 4.—Line 9 for "the Hon. the Colonial Secretary" read "the Hon. the Queen's Advocate."

P. 4.—After line 29, insert "the Hon. the Queen's Advocate seconded."

P. 5.—After the line 24 read [the Hon. P. Rama Nathan had not arrived at Council when the discussion took place.]

P. 6.—Insert after the 7th line from the end "the Hon. the Queen's Advocate seconded."

P. 11.—Insert after the 7th line from the end "the Hon. W. W. Mitchell seconded."

P. 63.—Insert in line 21, the letters "W. P." after "Government Agent."

CEYLON LEGISLATIVE COUNCIL.

EXTRAORDINARY SESSION, 1883.

WEDNESDAY, JULY 18.

According to announcement an Extraordinary Session of the Ceylon Legislative Council was opened at 3 p. m., to-day by His Excellency Sir John Douglas, K.C M.G. At the hour named His Excellency arrived accompanied by his Private Secretary Mr. F. H. Price.

After His Excellency Sir John Douglas, K.C.M.G., took the Chair, the Hon. Lt. Colonel Duncan took the oaths and his seat as Acting Commanding Officer; the Hon. F. Fleming as Queen's Advocate; the Hon. R. W. D. Moir as Acting Auditor General; and the Hon. W. E. T. Sharpe as Acting Government Agent for the Central Province. There were present besides when the Council was constituted :—*Officials* :—the Hon. W. H. Ravenscroft, Acting Colonial Secretary; the Hon. W. D. Wright, Treasurer; Hon. F. R. Saunders, Government Agent for the Western Province; Hon. John Stoddart, Acting Surveyor General. *Unofficials* :—Hons. James Van Langenberg, P. Rama Nathan, W. W. Mitchell, A. L. de Alwis and J. L. Shand.

After the swearing-in of the various members, the Hon. the Lieut.-Governor made an opening speech as follows :—

HONOURABLE GENTLEMEN OF THE LEGISLATIVE COUNCIL.

I have called you together for the purpose of considering at an extraordinary session of this Council the important measures of reform in the Criminal Administration of Justice in Ceylon, the introduction of which was promised when we separated early in the current year.

These measures consist of a Penal Code and of a Criminal Procedure Code which have been drafted with great care and ability by the Chief Justice in consultation with the Colonial Office. The thanks of this Council are justly due to Mr. Burnside for the labor which he has bestowed upon the important and difficult task of placing the Administration of Justice in this colony upon a clear and intelligible basis. The uncertainty of our criminal law has for years past been recognised as a crying evil, and it is now nearly seven years since the first serious attempt was made by the then Queen's Advocate Sir R. Cayley, to provide an adequate remedial measure.

That attempt and other subsequent attempts have fallen through owing in the main to changes in the *personnel* of our judicial establishment. One good result may, however be deemed as having to some extent counterbalanced the delay, viz. That the subject has in the interval received that exhaustive consideration which it deserves in view of the magnitude of the interests involved in it.

While there is much in the Codes which is mere matter of detail, there are on the other hand many points which deserve and will, I am confident, receive full discussion and consideration in the Council. It is a matter of personal regret to myself that it should not have been in the power of Sir James Longden to have introduced to you before his departure from the island these measures, in which His Excellency had taken a special interest, and to which he had given a large share of his attention.

It is not my intention to introduce any other measures on the part of Government during this extraordinary Session.

The Hon. the Colonial Secretary laid on the table Mr. Kyle's Report on Colombo harbour works Capt. Donnan's Pearl Fishery Report, the Kotahena Commission Report and Correspondence relating to the revision of the Draft Penal and Criminal Code.

THE QUEEN'S ADVOCATE'S DEPARTMENTAL BILL.

The Hon. the QUEEN'S ADVOCATE :—Your Excellency, —I rise to move the first reading of a bill entitled "An Ordinance relating to the Law Officers of the Crown and to Deputies to the Queen's Advocate." It is perhaps somewhat strange that the first duty I am called upon to perform in this colony is to introduce a measure which proposes to change the title which I have had the honor of bearing but for a few days, but which my predecessors in office have borne for so long that it has become almost an household word. But though we may revere the past and have every respect for the title, there are sufficient reasons why we should look upon this measure favourably. In England for many a long year past the names of the principal law officers have been the "Attorney-General" and "Solicitor General," and in almost all English colonies, I believe, the titles borne by the principal law officers are the same as they are in England. I think that the only two colonies in which the principal law officers of the crown bear other names than those of "Attorney-General" and "Solicitor-General" are the colonies of the Gold Coast and Mauritius. I am not in a position to say why in the Gold Coast the principal law officer has been, and I believe still is called the "Queen's Advocate" So far as Mauritius is concerned, where French law and French procedure still exist it is not surprising that the principal law officer should be called the *Procureur-Général*. With the exception of these two colonies, I believe it will be found upon examination that in every other English colony the principal law officers go by the titles of Attorney-General, and Solicitor-General. The Ordinance does not merely profess to change the titles, but to confer all "the rights, precedence, powers, privileges and authority" which are possessed by the Attorney-General and Solicitor-General. I believe it has been a matter of doubt what powers the Queen's Advocate has really possessed in this Colony, or what power he really does possess at the present day. I believe not long since, the Supreme Court held that the Queen's Advocate was not entitled in virtue of his office to file a criminal information in certain cases before the Supreme Court. This is one of the most important privileges that the Attorney-General possesses and therefore I think it expedient that the same power should be

possessed by the principal Crown Law Officer here. Then this bill also proposes that the Attorney-General and Solicitor-General. besides having the powers exercised in England, should have the same rights and privileges which the law officers of the Crown have hitherto possessed in this colony. Clause 4 of this Ordinance provides that the Deputies to the Queen's Advocate, as distinguished from the Deputy Queen's Advocate for the Island should hereafter be styled "Crown Counsel." and though of course I have not been here sufficiently long enough to learn why this special definition has been settled upon, the question has no doubt been duly weighed by those who considered the matter. I think Sir, these are the only observations I need make in connection with this bill, and it seems expedient that if such a bill is to be passed at all it should be dealt with before we enter upon the consideration of those still more important measures which will presently be brought before us In passing this bill we shall assimilate the names of our chief law officers to those in use in the mother-country and do away with any doubts that may exist or arise as to the rights or powers which Crown law officers possess here, and I venture to think that by so doing we shall clothe my colleagues and myself with titles which are better known to, and better understood by, the world at large, than the titles we have the honor of bearing to day. I beg, Sir, to move the first reading of "An Ordinance relating to the Law Officers of the Crown and to the Deputies to the Queen's Advocate."

The motion was seconded by the Hon the Acting COLONIAL SECRETARY, after which the QUEEN'S ADVOCATE said: I move, sir, to fix the second reading for Wednesday next.

THE GENERAL PENAL CODE.

The Hon. the QUEEN'S ADVOCATE:—Your Excellency, I rise to move the first reading of the bill to provide a General Penal Code for the Colony. At the outset of the few remarks that I may have to make in connection with this very important subject, I cannot help expressing my regret that my opportunities have been so few to give that attention and study to the matter that I should have liked. I further regret—I think we must all join in that regret—that he who has spent so many laborious hours in drafting the Code should not now be in my place to guide it step by step along the course through which it will have to go before it can be found in the statute book of this Colony. Three points start up at the outset in connection with this bill:—(1) Do the criminal laws of this colony require any change or any reform? (2) If such is admitted, is the manner in which it is now proposed, an expedient manner of carrying out that reform? (3). Is the present an opportune time for the change to be effected? Of course Sir whatever I may say in connection with this bill I must necessarily say with a certain amount of hesitation, because my stay in the island has yet been but short and my experience has been but little. But from the little I have learned already and from what fell from Your Excellency today I think it is clear and that it is admitted on all sides that the present criminal laws are not in a satisfactory state. The chief cause of this is owing to their uncertainty. I think it will be admitted that there is nothing which is less conducive to the welfare of a community than to feel and to be told by high judicial authority that their laws are uncertain and unsatisfactory; and yet I believe it has been stated, and stated very clearly, that scarcely any man in this Island could boast that he knew what the Criminal laws of this colony were and where they were to be found. Therefore I think we must all be agreed that it is necessary to introduce a measure to amend our criminal laws. We must next consider whether this measure is the most beneficial one to have introduced. Probably all of us know the history of Codes, and that while there have been many who supported Codes others considered them to be detrimental. No doubt this question has been duly considered with reference to the Code now before us, and it has been thought in reference to them that it was better to sweep away the many laws that now exist than to tinker up and amend these laws by passing any remedial measures. In India many years ago a similar code was passed and many people predicted that it would not be a success, alleging that it was based on theoretical and not practical principles. But I believe on the whole that code has proved a success, and therefore there is no reason why it should not prove a success in this important colony too. One point further remains, and that is whether the present is an opportune time for bringing forward this measure. No doubt those who have decided that this measure should come forward have given due attention to this point. It may be said that, at the present time, when the criminal laws of our mother-country are under discussion, and when it is proposed to introduce a Penal Code there, it would be better for us to wait till that Code was introduced. But I fear if we are to wait till the English Penal Code is—I will not say introduced—but till it has become law we shall have to wait a very long time indeed. The Indictable Offences Bill is now before the House of Commons. It was submitted to a Committee and that Committee has given that measure no doubt every care and every attention. Yet it is progressing along very slowly, and that will give us some idea how slowly a Penal Code, even when introduced, would drag its weary length along. If therefore it be admitted that our criminal laws require amendment and also that the best way to amend them would be by the introduction of a Code such as this, instead of by introducing several remedial measures then also I think it would be better to introduce it now than to wait for an indefinite period till such a measure may possibly be introduced and passed in England. Again it must not be thought that by the new Code we are going to introduce new offences, or that it will entirely sweep away the system which has hitherto existed. No doubt it will to a certain extent, but crime is crime everywhere, and I may say there are not many crimes mentioned here which are not already mentioned in the different statutes which already exist in this Colony. It is not necessary for me—in fact I could not attempt to do so now—to enter into any details with regard to the bill which contains no less than 497 clauses. No doubt it is one to which we shall have to give our earnest attention, and if we do so and it eventually becomes law it will be a consolation for us to know it has been considered by many, and its details have been very carefully sifted, and that it is one which we most heartily trust will prove beneficial and for the interests of this colony. We cannot dive into the future. We can only hope for the best. We can only trust that the many provisions which the Penal Code contains may eventually prove conducive to the welfare and happiness to the peace and the prosperity of the many thousands, I may say millions of those whom it may affect. I move the first reading of a ordinance to provide a General Penal Code for this Colony.

The Hon. the Acting COLONIAL SECRETARY seconded the motion.

The QUEEN'S ADVOCATE then said:—I move that the 2nd reading be fixed for Wednesday next.

CRIMINAL PROCEDURE CODE.

The QUEEN'S ADVOCATE: I rise, sir, to move the first reading of a bill entitled "An Ordinance for regulating the Procedure of the Courts of Criminal Judicature." I may state that this measure is as it were a twin brother of the one read just now for the first time, because if we were to amend the Penal Code without at the same time providing for it a system of Criminal Procedure, we shall, as it were, be launching a ship without giving her the motive power wherewith to go ahead. Sir, if the provisions of the Penal Code require our best attention, still more so do the provisions of this Penal Procedure Code. In itself it is a longer bill than the Penal Code and it does purport to effect, I may say, even greater

changes in our procedure than the Penal Code does as regards the crimes which appear on our statute books. It will affect the law as regards Justices of the Peace, because it does away with distinctions between Police Magistrates and Justices of the Peace. It will affect our law as regards Coroners and it will introduce several other very important measures with regard to the procedure which now exists. It also Sir, changes the jury system, for the number of jurors is proposed to be reduced to nine. and it also proposes that in capital cases unanimity should be required. Sir, with these few observations, for I will not attempt to-day to enter further into the details of this measure, I beg to move that it be read a first time. I feel perfectly sure that this is a measure which will receive from the members of this Council that thorough and earnest consideration which indeed it will be necessary to give it before it is passed. With these few observations, I beg to move the first reading of "An Ordinance for regulating the Procedure of the Courts of Criminal Judicature."

The Hon. the Acting COLONIAL SECRETARY seconded the motion and said: I think it will be convenient to take the sense of the whole house as to whether it would not be better to take the bills once for all in a Committee of the whole house, and not refer them to a sub-Committee, and so avoid the necessity of reading the bills twice clause by clause in Council.

The Hon. JAMES VAN LANGENBERG: I feel that there will be some practical difficulty in obtaining the sense of the Council, at this stage of the bills, upon the question whether they should be referred to a sub-committee or dealt with by a committee of the whole house. Anxious as I am not to obstruct the course of these important measures I must point out that, according to the forms of the Council, the proper time to consider the question before us, will be at the second reading when the principle of the bills would be discussed. if need be, or assented to. Hon'ble members would then have an opportunity of making known their views, and if the second reading be agreed to, to determine upon the mode to be followed regarding their further progress. To assent to the bills bring referred to either a sub-committee or a committee of the house would be to acknowledge to the principle of them, and that I am not to-day prepared to do. I may however state, in anticipation that it appears to me there are certain advantages in referring the bills to a sub-committee when they will receive thorough and very careful consideration and the members will have the valuable assistance if necessary if the learned framer of the code upon matters which require elucidation. While on the other hand owing to the constitutional difficulty which prevents your Excellency from taking a part in the deliberations of the sub-committee, we shall have the benefit of Your Excellency's careful study and consideration in a committee of the whole house. At the present moment I confess that I have no decided opinion one way or the other and should prefer to have the further time which the rules of council allow to consider this matter.

His Excellency the LIEUT.-GOVERNOR: There is no law or decision upon this point. The only object the hon. the Acting Colonial Secretary had in bringing the question up was to prevent it being, as it were, sprung on the Council on Wednesday next without previous notice. The object in bringing the motion up to-day was in order that between to-day and Wednesday next we may be in a position to decide upon what shall be done. As regards the attendance of the Chief Justice, who I have no doubt is the judicial authority whom the hon. member referred to, I may say that I have been in consultation with the Chief Justice, and Mr. Burnside has assured me that the Council shall receive whether in Committee or sub-Commttee, his own personal assistance. It will make no difference to him whether the bill is referred to a sub-Committee or whether it is dealt with in Committee of the whole house. I myself could not attend the sub-Committee, as I have been informed it is not a constitutional thing for me to do, and I do not feel myself at liberty while merely occupying this seat as a temporary measure, to introduce anything unconstitutional. The question is one upon which the Government does not wish to have any policy. We wish to consult the convenience of the members of Council. But undoubtedly it will be a waste of time if we have to read over something like 1500 clauses first in sub-Committee and then again in Committee of the whole Council; while I am afraid the attendance will be, rather meagre on the part of members who have sat on the sub-Committee. As regards the details of the bills, which, as I say, is a matter on which we shall be glad to take the sense of the Council next Wednesday, I may say, if it is intended to sit in Committee of the whole Council, I will propose that we shall meet next week on Wednesday and Thursday in Committee. But whether we take the bills in sub-Committee or in Committee of the whole Council, we shall undoubtedly have to meet more than once a week in order to pass the Bills through during the Extraordinary Session. I am afraid these bills must be passed during the Exoraordinary Session before the Commission ceases to run in the Colony, in order that our labours may not be lost. I shall therefore leave the question whether the bill should be taken in Committee of the whole Council, or be referred to a sub-Committee, for decision on Wednesday next, after the second reading.

The Council then adjourned to Wednesday next at 2 p. m.

WEDNESDAY, JULY 25.

Present :—His Excellency the Lieut.-Governor (President), the Hons. the Lieut.-Colonel Duncan, the Acting Colonial Secretary, the Queen's Advocate, the Acting Auditor-General, the Treasurer, the Government Agent W. P., the Acting Government Agent C. P., the Acting Surveyor General, and the Hons. J. Van Langenberg, P. Rama Nathan, W. W. Mitchell, J. L. Shand and A. L. de Alwis.

PAPERS:

THE CASES OF "STARVATION" EXPLAINED.

The Hon. the Acting COLONIAL SECRETARY laid on the table the following papers:—1 Sessional Paper V. of 1883 on Fish-curing in Ceylon; 2 Return to an order of the Legislative Council dated 4th October, 1882, "That a statement be furnished showing the cost of the Great and Litttle Basses Lights, and the annual revenue derived therefrom;" 3 Letter from the Registrar-General in explanation of certain vital statistics published for the 1st quarter of 1883. He said that public attention in Ceylon had been recently directed to certain deaths that have occurred, and it has been considered that these deaths have been caused by starvation. The deaths in question, however, were deaths of infants caused by insufficient nourishment, and therefore the Registrar-General proposes to put such deaths under the heading of "deaths caused by want of breast milk," as is done in like cases by the Registrar General in England. The letter was as follows :—

Registrar-General's Office, Colombo, 20th July 1883.

The Hon'ble the Colonial Secretary.

Sir,—I have the honor to state in reply to your letter No. 207, of this day's date, that the persons reported to have died from starvation in my returns for the first quarter of 1883, were infants under a year old. In all previous returns made since I assumed charge of this office an explanatory note to the above effect has been inserted. It was omitted from my last return, and a correspondent of one of the local papers has apparently taken up the question.

2. I purpose in my future returns to follow the form employed by the Registrar-General of England, and to enter

all such cases under the proper heading of "want of breast milk" which corresponds to the usual headings in the original returns furnished by the local registrars, "කිරිනොමැවී" (want of breast milk) and "කිරිනොමැති" (without taking suck) but which hitherto has always been included under the head of "starvation."—I am, sir, your obedient servant,.

(Signed), C. LIESCHING, Registrar-General.

LAW OFFICERS' TITLES BILL.

The Hon. the COLONIAL SECRETARY :—I rise to move the second reading of an Ordinance relating to the Law Officers of the Crown and to Deputies to the Queen's Advocate.

The Hon. the Acting COLONIAL SECRETARY seconded.

The Hon. the Acting COLONIAL SECRETARY said :—Sir,—I move that the Council go into Committee of the whole house on this bill. The question now is whether this bill and the other two which are to follow are to be discussed in a Committee of the whole House, or first in Sub-Committee. For my own part I am inclined to think, that going through them in a Committee of the whole House is the better plan of the two. There will be a difference of opinion no doubt on this subject. But under any circumstances I hope we shall adopt that which is in reality the better plan of the two. But hon'ble members must not forget how short the time is which the Council has at its disposal. On this account it appears to me that going into a Committee of the whole House is the best thing to be done.

The Hon. J. VAN LANGENBERG :—So far as this particular bill is concerned, I have no objection to its going before a Committee of the whole House. But as regards the two other bills, to which I have given my most anxious consideration, though I have no strong feeling one way or the other, I am certainly of opinion that taking them first in Sub-Committee would be the better plan of the two. By hurrying these bills through the Council, we shall have departed from the usual mode in which business is conducted in this House. He should not wish it to be said, the hon. Gentleman continued, that the work was done unsatisfactorily and he felt that they would be able to attend to it better in Sub-Committee than in a Committee of the whole House. He was, however, willing to leave this matter to the discretion of the whole House and would act according to the views of the majority of the members.

His Excellency the LIEUT.-GOVERNOR :—I may say at once that we have 3 months before us at least, at any rate 2½ months, in which to go on with our work, and that, I think, is ample time. It is not so much a question of time that is involved. It is merely a question of expediency. I have given great attention to the subject of these Codes myself. If they were first referred to a Sub-Committee (of which I would not be a member) and they were to call for changes as they are very likely to do, I should not have the advantage of knowing their reasons for them. There are several very important points raised in the Procedure Code which the Government wishes to have fully discussed. If these points are discussed in SubCommittee, I shall myself be unable to attend. Both the public and the Secretary of State should see that these bills are receiving full and proper consideration. Then there is the mere physical labour of reading through the 1,500 clauses which are contained in the two bills. If they are gone through first in Sub-Committee, they must be read again in Council and it is somewhat of a waste of time that they should be gone through twice over. These are the reasons for which I myself think it to be more expedient that the Bills should be gone through in a Committee of the whole House. At the same time I am anxious to meet the wishes of the Council, and whatever honourable members think on this subject I am waiting to hear. I waited to hear an expression of opinion from hon. members, but as nobody rose to speak on the subject, I thought it better to say what my own views were. I may again mention that the Chief Justice proposes to give us his valuable aid in whatever shape we may consider it necessary to deal with these bills.

The Hon. the GOVERNMENT AGENT W.P. :—It does not appear to me that anything will be gained by referring these bills to a Sub-Committee. It has been suggested that we shall avoid the labour of reading the bills over a second time by suspending the standing orders and merely reading the marginal notes in Committee. It will appear that in full Council we are not prepared to deal with these Codes if we are merely to read the marginal notes in a Committee of the whole House. If the proposal of a Sub-Committee be adopted, a great many members of the Council will not be allowed to speak. It appears to me that nothing is to be gained by referring these bills twice, once to a Sub-Committee and then to a Committee. In small bills this might do, but not in bills of such magnitude as these. I think that if we do this we virtually abdicate our power and functions and leave the question entirely to a Sub-Committee. I think we shew a better sense of what the bills deserve by referring them to a Committee of the whole Council.

The Hon. the QUEEN'S ADVOCATE said that so far as he was concerned he had no feeling on one side or the other. He felt that the bills would require very considerable attention whether taken in Committee or Sub-Committee. His wish was that whatever Committee could give the fullest attention and the fullest consideration to the subject that should be the Committee to be entrusted with these bills. If taken in sub-Committee they must necessarily be deprived of His Excellency's presence and aid, and he felt sure that that circumstance would carry its due weight with them, as they all knew the interest which His Excellency took in the subject. On the other hand it has been stated that in Sub Committee the bills would be more likely to be thoroughly discussed. If this be so then by all means let them go before a Sub-Committee. He had no wish or special inclination in regard to the manner in which these bills should be gone into. He would only warn the Council that the consideration given would need to be a very full one indeed, and that they would have to go with very great care and particularity into the different clauses. He had not been in the island long enough to know what the procedure was in a Committee of the full House. He felt, however, that the bills should go before that Committee which was most likely to give the subject the attention which it so fully deserved.

The Hon. A. L. DE ALWIS said that with reference to this matter he agreed with his learned friend the Hon. Mr. Van Langenberg that the bills should be first referred to a Sub Committee. No doubt there were certain advantages and disadvantages which ever way they looked at it. In a Sub-Committee, however, there could be no doubt that the discussion would be fuller. It had been stated that there would be the physical labour of reading through these bills twice over if his view were adopted, but then there would be a corresponding gain, because whatever happened to be overlooked in Sub Committee would secure attention in Committee. He saw the great importance of these bills, and the great benefit which these bills would gain by referring them to a Sub-Committee.

The Hon. W. W. MITCHELL said he thought that His Excellency had taken the proper view of the subject as in Committee of the whole House there would be greater freedom of speech and greater freedom of discussion. Even if there was any advantage in going into Sub-Committee in the first instance, still he felt that a great deal more of time would be taken up than was at all necessary.

The LIEUTENANT-GOVERNOR said under any circumstances the point under consideration must be decided at that meeting. At present the motion before the House was that the bill should be gone into in a Committee of the whole House. If any hon. member would move that the bill be referred to a Sub-Committee,

then a division could be taken at once. He said that he would again repeat that the Government had no policy in this subject. The great question was: What is most conducive to the real interests of the bills?

The Hon. Mr. VAN LANGENBERG then moved and the Hon. A. L. DE ALWIS seconded:—"That this bill be considered in Sub-Committee."

The HON. J. VAN LANGENBERG then moved, *pro forma*, that the bill be referred to a Sub-Committee to be reported upon.

HIS EXCELLENCY:—Those in favour of Sub-Committee say Aye; those in favour of Committee say No.

The voting was as follows:—

Ayes.	*Noes.*
The Hon. the Queen's Advocate,	Hon. J. L. Shand,
Hon. J. Van Langenberg,	,, W. W. Mitchell,
,, A. L. de Alwis.	,, Actg. Govt. Agent C.P.,
	,, Actg. Surveyor-Genl.,
	,, Govt. Agent W. P.,
	,, Treasurer,
	,, Actg. Auditor-General,
	,, Lieut.-Col. Commanding.
	,, Colonial Secretary.

Ayes 3, Noes 9.—Amendment lost. The original motion was carried.*

HIS EXCELLENCY:—Under these circumstances, we will go into Committee in regard to the appellation of the Queen's Advocate and the other Law Officers of the Crown.

LAW OFFICERS' TITLES BILL.

The Bill was then read over clause by clause.

The Hon. the QUEEN'S ADVOCATE: I move that in lieu of the word "shall" in clause 3, line 3, *ad fin.*, the word "may" be substituted.

HIS EXCELLENCY: The word was originally "may," but it was altered by Mr. Burnside, advisedly, into "shall."

The bill was then passed through committee.

THE PENAL CODE.

The Hon. the QUEEN'S ADVOCATE: I move the second reading of the Bill intituled "An Ordinance to provide a General Penal Code for this Colony."

The Hon. the ACTING COLONIAL SECRETARY seconded.

The Hon. J. VAN LANGENBERG:—Before we enter upon a bill of confessedly such vast importance, I think it is necessary that the Council should be in possession of the views of the unofficial side on this measure. I agree with Your Excellency that the thanks of this Council are justly due to Mr. Burnside for the great pains, labour, and attention he has displayed in framing the bill, and with my hon. friend who introduced the measure, in his regret that we have not the assistance of Mr. Burnside's presence here to guide it step by step along the course through which it must go before it is found in the statute books of this colony. But no one who listened to the able statement which the learned Queen's Advocate made in introducing this measure—will think that the bill is likely in the least degree to suffer at his hands, but we still feel that, where so much attention and ability has been brought to bear on the work, we must lament the absence of the author. This is the first opportunity that we have of expressing our views on this great measure, and in doing so I shall follow the plan adopted by my hon. friend the Queen's Advocate, and ask: (1) Does the Criminal Law of this island require a change? It must be admitted that though that law has been in operation for the last 90 years, yet it has been a source of considerable confusion, and uncertainty. Though it had been understood for a long series of years that the Roman-Dutch Law was the law of this island, yet the question was lately raised and awaits decision whether the English law was not introduced into Ceylon early in this present century. The question is now before the Judges of the Supreme Court, and thus doubts as to whether the Roman-Dutch law is the criminal law of the land have been felt not only by the profession but by the Judges also pointing out the great necessity there is for judicial reform in this direction. (2) The next question is: have we adopted the best means of effecting these changes? In considering this question, I know that opinions greatly differ on this point. Some are inclined to think that perhaps it would have been better if instead of formulating a code we had introduced into the island the English criminal law. It is a matter of fact that the forms of procedure which have been adopted year after year have been the forms which are in accordance with the English code. Our endeavour must be to assimilate our law to English law. It may be said that this is a Code which has received great care and attention in the preparation. Your Excellency referred to the uncertainty of the criminal law as a crying evil, and that the first serious attempt to provide an adequate remedial measure was made by Sir Richard Cayley now nearly seven years ago. I submit, however, that that was an attempt to alter the procedure rather than the substantive law of the land. This is the first serious attempt at altering the substantive law of this country. During the brief but distinguished tenure of office of Sir John Phear as Chief Justice, a bill which had been prepared by Mr. Cayley was submitted to him; but this was not a code but an ordinance for the due administration of justice and civil procedure. That was objected to by Sir John Phear, and it was then suggested, having regard to the great uncertainty in criminal justice, that a Code should be framed on the basis of the Indian Penal Code. Sir R. Cayley was entrusted with the preparation of this Penal Code, and the one which we now hold in our hands was the one which was prepared by Sir R. Cayley and completed by Mr. Burnside. Whatever difference of opinion there may be as to whether our law should be based on English law or Indian law, this fact must not be forgotten that our Code comes impressed with the authority of three eminent Judges. In the face of an opinion so high, and of an authority so weighty we can hardly consider that this measure is not one which can have the effect intended. Criminal English law requires yet to be codified, and there is no reasonable prospect of that coming into effect for a long time to come. We have this great difficulty then, that we shall have to wait a long time before we have any lines on which to proceed if we wait for the codification of English criminal law, while we have a measure ready to hand in the Indian Penal Code. For these reasons, I have come to the conclusion that the best and most effective mode of dealing with the question, having acknowledged the uncertainty of the law, is to introduce this measure. I may ask, however, whether there has been any correspondence between the Government and the framer of the Code on the subject of the introduction of the English Law, and if so would there be any objection to place it before the Council? It will not affect this question at all. Only I think it would be better if this were done. (3) The third and last question is whether this is an opportune time for the change to be effected? On this point it has been said outside, that there has been undue haste. But I do not think there has been any precipitancy. If we acknowledge that the bill should be introduced, and that it should be introduced by this Code, the present opportunity should be availed of for urging the bill through. In the course of a few months, a new Governor will be amongst us, and it is very unlikely that he will pass a measure of such vital importance without first honestly studying the details of the bill, and the simple effect of that will be the shelving of this measure for a considerable length of time. We should take advantage of the present opportunity, then, of carrying through this bill after giving it our most careful consideration. I shall give the subject all the attention I can, and so I trust will all of us, and I earnestly hope that the outcome of our deliberations may result in the safety, protection and peace of the people of this country.

* The Hon'ble P. Ramanathan had withdrawn from Council when the discussion took place.

The Hon. the ACTING COLONIAL SECRETARY said, in response to the request for the publication of any correspondence between the Government and the Queen's Advocate on the subject of the introduction of the English Law, that there has been no such correspondence. The Queen's Advocate merely referred to the subject incidentally in the course of other communications.

The Hon. Mr. VAN LANGENBERG wished to ascertain whether these were open measures and the officials could vote as they liked.

His Excellency the LIEUT.-GOVERNOR said that he found it somewhat difficult to answer that question categorically. The one desire of the Government was that there should be full and free discussion. There were certain lines of policy adopted by Her Majesty's Government, upon which of course the officials would have to be of one mind, but these points were few and far between. The decision was mainly to be governed by the unfettered votes of the majority. For instance in such questions as those of jurors, sentences, fines, the Government had absolutely no policy, so that without overlooking the issues that had already been sanctioned as part of the policy of the bill he might say that the Government left the bills almost entirely to the free discussion of the House.

His Excellency continued that he was very thankful for the temperate tone in which the Hon'ble gentleman [MR. VAN LANGENBERG] had given utterance to his views. He thought that if they were to adopt English criminal law as it now stands they would be adopting a law which is exceedingly faulty, and one which the English Government have for some years been attempting to amend: that in these bills they had taken advantage of the proposals brought forward for the improvement of English criminal jurisprudence, and that if they waited till the English Criminal Code became law they would be waiting for an uncertainty. That nothing was known as to the shape in which that law would come, if it ever does come, and they knew that after sitting in Grand Committee for three months upon the first of the bills for the amendment of the criminal Law of England, the Grand Committee had only got as far as the twelfth clause, when the Attorney General abandoned the bill, and there are one hundred and fifty six clauses more. It was for that reason that the Government thought it better to adopt bills which had received such considerable attention from three Chief Justices in succession. As regards the bills being brought forward now, it was felt that the bills could not be taken up satisfactorily in an ordinary session of Council, but they could now face the details of this bill without having their attention hampered by other subjects. This was also the most opportune time for bringing forward the measure, as there were some elements of permanency in the judiciary of the colony with a new Chief Justice, and a new Queen's Advocate whose assistance they hoped to have for a long time in settling the law of this island. He concluded by saying that he hoped these bills would receive full and earnest consideration at the hands of the members of the Council.

The Hon. the ACTING COLONIAL SECRETARY: I move that the House now go into Committee on this bill.

The Hon. the Queen's Advocate seconded.

The Hon. the QUEEN'S ADVOCATE: I move the second reading of "An Ordinance for regulating the Procedure of the Courts of Criminal Judicature."

The Hon. the ACTING COLONIAL SECRETARY seconded.

The Hon. the ACTING COLONIAL SECRETARY then moved that the House go into Committee on this bill.

The Hon. P. RAMA-NATHAN said that he rose to make a statement regarding the first ordinance. He was under the impression that the Council would meet at 3 o'clock, and that was how he was not in time to make a few remarks that he had in contemplation to say. He knew that he would be quite out of order if he attempted to say anything now touching a bill which had already gone through its second reading, but that he wished His Excellency and the Council would give him permission to submit a memorandum.

His Excellency the LIEUT.-GOVERNOR said that the House would be glad to give the hon. member a hearing when it was moved that the bill be referred to the law officers of the Crown. The bill was still in Committee.

The Hon. P. RAMA-NATHAN: I am much obliged to you, Sir.

THE GENERAL PENAL CODE IN COMMITTEE.

The bill was then begun to be read clause by clause.

ARE THE MEMBERS OF VILLAGE TRIBUNALS JUDGES?

A discussion arising, His Excellency the LIEUT.-GOVERNOR said: 'Village tribunal' is necessarily a conjunctive term, and the reason why the title of 'judge' was given to a village councillor was to invest him with authority, because in settling disputes between parties there would necessarily be some rancour and ill-feeling left behind and this might tend to protect him as a judicial officer. It is simply put in to give him protection against the losing party in an ordinary village dispute.

The Hon. the Actg. GOVERNMENT AGENT, C.P., remarked that each "Councillor" was a Judge within the meaning of the Code, inasmuch as he had power to give a Judgment which, if confirmed by the president, would be definitive.

The Hon. the GOVERNMENT AGENT, W. P.,—suggested that the words "president and each assessor" should be inserted instead.

The Hon. P. RAMA NATHAN:—If an individual juror be a judge, I take it that each Councillor is a judge.

The Hon. J. VAN LANGENBERG hoped that it would be understood by this that the president is a Judge and so is each member. There might be some question hereafter whether the president without the aid of a member is a Judge.

The Hon. the Acting SURVEYOR-GENERAL would read the illustration thus:—"The President *or* each Councillor," &c. By Land Acquisition Ordinance of 1871 it would appear that they were already judges.

The Hon. the TREASURER referred back to clause 4 of the Penal Code wherein it is stated that "nothing in this Code is intended to repeal, &c., any of the provisions of any special or local law."

The Hon. J. VAN LANGENBERG:—Is it to be thought that these illustrations exhaust the circle of persons coming under the denomination of 'judge'?

Ultimately the following amendment by H. E. the LIEUT.-GOVERNOR was adopted "The president of each village tribunal and each councillor of such tribunal."

The Hon. the GOVERNMENT AGENT, W. P.—I move that in § XIX cl. 6. the word 'member' be altered to 'councillor.'

ARE MEMBERS OF THE SCIENTIFIC BRANCH OF THE CEYLON CIVIL SERVICE PUBLIC OFFICERS?

The Hon. the TREASURER:—in § XIX cl. 2. does 'every member of the Ceylon Civil Service,' include the Scientific Branch too, or does it refer only to the Civil Service proper?

His Excellency the LIEUT.-GOVERNOR said that it would include the Scientific Branch too.

The Hon. the ACTING SURVEYOR GENERAL:—If the Scientific Branch be not included in cl. 2, it can hardly be included in cl. 9.

ARE THE P. W. D. OFFICERS "PUBLIC SERVANTS?"

The Hon. the Acting SURVEYOR-GENERAL made the same inquiry as regards the officers of the Public Works Department.

The Hon. J. VAN LANGENBERG said that the words "every officer in the service or pay of Government" would include them.

Chapter III.

The Hon. the Actg. GOVERNMENT AGENT C. P.:—In § 54 add the words 'the whole or' after 'remit.'

HIS EXCELLENCY THE LIEUT.-GOVERNOR:—The permanent Commission which constitutes this Council has

given the Governor power to remit in any particular case the whole sentence if he thought it necessary or desirable. That is why the words have not been put in. The main object of the clause is to enable the Governor to remit 3 months, say, out of a sentence of 6 months' imprisonment, or substitute a fine instead.

The Hon. J. VAN LANGENBERG :—We do not find the words in the corresponding section of the Indian Penal Code.

His Excellency the GOVERNOR :—We will leave the consideration of this for another sitting.

CAN THE GOVERNOR PARDON WITHOUT BEING ASKED TO DO SO?

The Hon. J. VAN LANGENBERG wished to draw the attention of the Council to § 53 in the Indian Penal Code by which the Government of India have the power of commuting a sentence "without the consent of the offender." Why was this clause omitted from the present bill?

The Hon. the QUEEN'S ADVOCATE mentioned the case of a man in England, whose sentence was commuted without his consent, but he would not have it. A statute was accordingly introduced to meet the case.

The Hon. J. VAN LANGENBERG read the clause in the Indian Code, which was like § 53 in the Ceylon Penal Code only with the addition of the words 'without the consent of the offender.'

The Hon. the ACTING COLONIAL SECRETARY suggested that the reason why the Indian Government had introduced the clause might be because they had a transportation station in India.

The Hon. P. RAMA NATHAN said the words were probably added in the Indian Penal Code because the Hindu taking a pessimistic view of life did not believe in living! (laughter)

§ 59. The Hon. the GOVERNMENT AGENT, W. P., wanted to know why persons subject to imprisonment for more than 5 years could not be punished with whipping.

HIS EXCELLENCY said because it ought to be sufficient punishment of itself.

§ 62. The Hon. J. VAN LANGENBERG : This is the old clause, amended last year in India (Act 8 of 1882).

Proposed by the Hon. the QUEEN'S ADVOCATE, seconded by the Hon. J. VAN LANGENBERG :—"That the new clause in the Indian Act be inserted in the Code." Reserved to be submitted to the Chief Justice. § 65 is also amended in the new Indian Act. This is also reserved similarly. § 69 has also been amended by clause 4 of the new Act. In regard to § 70 the hon. member wished to know if a man were brought up for certain specific offences, could the judge decree punishment without exactly specifying which of the charges was proved against the offender.

The Hon. the QUEEN'S ADVOCATE:—For instance a man swears to two affidavits, one of which must be false: can the judge find him guilty in one without specifying which one?.

The Hon. J. VAN LANGENBERG:—If a man were brought up for theft could he be convicted of perjury.?

The Hon. the QUEEN'S ADVOCATE:—Let it stand over then.

The Hon. P. RAMA-NATHAN :—To revert to § 62, is 'hard labour' anywhere defined?

His Excellency the LIEUT.-GOVERNOR :—Perhaps in the Prisons' Ordinance.

The hon. member said he had turned to it, but found no definition there. That if the term was not defined in time the Council would have to frame repealing clauses, &c.

His Excellency said that he thought it inexpedient to define 'hard labour' because the term sometimes means working at the breakwater, sometimes at the quarry, and so forth. When these works were completed it might be found impossible to find prisoners, labour, coming within the interpretation clauses which the hon. member desired.

The Hon. the Government Agent, W.P., said that the word 'labour' was just as difficult to define as 'hard labour.'

Paymentof Fines § 66. In reply to a question by the GOVERNMENT AGENT, W. P., asking how this clause is to be construed, His EXCELLENCY said that common sense must be our guide. The Hon. the QUEEN'S ADVOCATE moved that it might lie over.

Chapter IV.

§ 77. Illustration (*a*). The Hon. the QUEEN'S ADVOCATE: By the Merchant Shipping Act it was decided that A was *not* justified.

His Excellency said that this illustration had also better lie over.

§ 78. The Hon. the QUEEN'S ADVOCATE :—I suppose this section assumes that the act was committed before the child has completed its 7th year.

This clause also to lie over.

WHAT IS THE CONSENT OF THE CHILD? § 86.

The Hon. the GOVERNMENT AGENT, C. P., started a conversation as to the meaning of the words "unless the contrary appear from the context."

The Hon. P. RAMA NATHAN inquired if it meant the consent of a person of 12 years of age who exhibited in the course of the proceedings remarkable qualities of intelligence.

His EXCELLENCY: What I take it to mean is this. If I perform an operation on a child under 12 years of age, I am guilty of a crime. But if the context is sufficient to make me believe that the child is over 15 years of age, then I shall not be guilty. This clause was reserved.

The Hon. the GOVERNMENT AGENT, W.P., said that he would propose that a few minutes interval be given after the reading of each clause, so that the members might gain a little breathing time.

His Excellency said that after each clause was read and approved of, he would say 'This clause forms part of the bill.'

§ 95. cl. 3. The Hon. J. VAN LANGENBERG :—Is there any definition of 'public authorities,' because it is important to define what 'public authorities' mean.? To whom is the man to go? Is it sufficient to go to the Vidane Arachchi, Police Magistrate?

His Excellency the LIEUT.-GOVERNOR :—If a police station is near he would go there. If not he would go to the Vidane. I should be afraid of excluding, by specifying in detail who are included under the term.

The Hon. J. VAN LANGENBERG :—We might take the interpretation clause of the Fiscals Ordinance. However perhaps it would be better to let this stand over.

Some discussion took place on this section, as to the right of private defence of property.

§ 101. cl. 5. His EXCELLENCY explained this clause to mean, that a man had no right to shoot a thief who had effected a safe retreat from the house into which he had trespassed, but must proceed against him for robbery.

§§ 103-116 constituting ch. V, were passed through Committee with scarcely any comment.

The Council was then adjourned to Thursday, 3 p.m.

THURSDAY, JULY 26.

Present :—His Excellency the Lieutenant-Governor (President), the Hons. the Lieut.-Colonel Commanding, the Acting Colonial Secretary, Queen's Advocate, the Acting Auditor-General, the Treasurer, the Govt. Agent W. P., the Acting Government Agent, C.P., the Acting Surveyor General and the Hons. J. Van Langenberg, P. Rama Nathan, A. L. de Alwis, and J. L. Shand.

Proceedings began punctually at 3 p. m. with the reading of chapter vi. of the Penal Code.

WAGING WAR, § 117.

Hon. P. RAMA NATHAN :—I beg, sir, to ask what "waging war against the Queen" means. "Waging war" is a very comprehensive expression. Fitzjames Stephen in his Digest of the Criminal Law, p. 57, gives three meanings to this term or rather to the expression "levying war." It is a term therefore involving many ideas, and requires definition and unless it is made clear it may be difficult to explain after-

The Hon. the QUEEN'S ADVOCATE said that the clause was taken word for word from the Indian Penal Code, and that it would be for the Judges to decide hereafter in each particular case what the expression meant.

The Hon. Mr. RAMA NATHAN begged to say that they must not be authority-ridden nor guided only by whatever words or expressions the English or Indian Governments have permitted. The meaning of the expression may, as the section now stands, vary with each Judge and each Queen's Advocate. It is within the discretion of the Council to remove all ambiguity of expression, and therefore he thought the term ought to be clearly defined.

The Hon. the GOVERNMENT AGENT, C. P., thought that if they were to have a definition of every single word it would be almost impossible to complete their work.

His Excellency the LIEUT.-GOVERNOR said he did not see any difficulty himself, and that the chances of anyone waging war in Ceylon were very remote.

The Hon. Mr. RAMA NATHAN said he would not press the point. The clause therefore was accordingly passed.

§ 126.—Correct printer's error in the text and substitute "124" and "125" for "122" and "123."

SUBSTITUTION OF THE TERM ATTORNEY-GENERAL FOR QUEEN'S ADVOCATE, § 130.

The Hon. the QUEEN'S ADVOCATE moved that in § 130 the term "Queen's Advocate" be deleted, and "Attorney-General" be inserted instead.

The Hon. P. RAMA NATHAN said he objected to that, because the Law Officers' Titles Bill had not yet become law. By an unfortunate accident he was not in time to oppose the passing of the bill at the second reading on Wednesday.

His Excellency the GOVERNOR said that the principle of the bill was settled at the second reading, and that the hon. member's objection could not now be entertained.

The Hon. Mr. RAMA NATHAN wanted to know if the Council was quite within order in proceeding on the basis of the second reading. That was an important point and he wished to be certain about it.

His Excellency the LIEUT.-GOVERNOR said he thought the Council was quite within order in thus proceeding.

The Hon. the GOVT. AGENT, W. P., said that technically the hon. member (Mr. Rama Nathan) was right.

The Hon. the TREASURER read the Council rules in regard to the carrying on of business and contended that as the bill had been carried at the second reading it was not competent for the hon. member to raise any objection now, and moreover the rules he had just read required two days' notice of motion, which the hon. member had not given.

His Excellency the LIEUT.-GOVERNOR said that it would not be in order at the present stage to attack the principle of the bill which was already passed, and that if the hon. member did it he should rule him out of order, and that no "notice" was necessary, because this was a mere matter of procedure.

The Hon. the QUEEN'S ADVOCATE said that they had all approved of the principle of the bill yesterday.

The Hon. Mr. VAN LANGENBERG agreed with the Queen's Advocate and thought that the substitution should be made.

The Hon. Mr. RAMA NATHAN:—I should like to know whether a member of the Committee has the right or not to speak about themerits of a bill after the second reading. It was only the other day in England that the Deceased Wife's Sister's Bill passed at the second reading, and was thrown out at the third reading on the merits. When I mentioned to Your Excellency yesterday my regret that I was not in time to oppose the bill, Your Excellency said it was quite within my power to make my remarks at the third reading. Till the bill has passed at the third reading I submit that a Committee, such as we are, has no right to take for granted that the term "Queen's Advocate" could be altered into "Attorney-General."

The Hon. the TREASURER thought that the hon. member was scarcely in order. There could be no objection to the hon. member moving an amendment to the motion of the Hon. the Queen's Advocate. The present question was simply as to the substitution.

His Excellency the LIEUT.-GOVERNOR said the bill to amend the title of the Queen's Advocate was still in committee, and if the hon. member desired to propose any amendment to it his proper time would be on the motion to report progress, but if he desired to attack the principle of the bill he could only do so by moving its rejection on the 3rd reading.

The Hon. the TREASURER:—If the hon. gentleman wishes to attack the principle of the bill he must give two days', notice.

The Hon. the QUEEN'S ADVOCATE:—I submit that independently of that measure. I am in order in moving that the words 'Attorney-General' be substituted for 'Queen's Advocate.'

HIS EXCELLENCY:—Would the hon. and learned member press for a division now?

The Hon. Mr. P. RAMA NATHAN said he would not, but would reserve his remarks for the 3rd reading of the bill.

DESERTERS CONCEALED ON BOARD MERCHANT VESSELS.

§ 137. The Hon. P. RAMA NATHAN said he thought this an exceedingly hard clause. They all knew what press of business there was when a ship was setting sail, and it was very hard on the master to require him to find out whether there were any persons on board his vessel who had deserted from the army or navy. He did not think that such a provision would be found in any English Code. He therefore moved the rejection of that clause.

The Hon. the QUEEN'S ADVOCATE said that the words were taken from the Indian Penal Code. It must be observed that the master of the vessel is only liable to the penalty of the clause if his ignorance of there being deserters on board were caused by '*some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.*'

The Hon. the AUDITOR-GENERAL said he thought the captain was sufficiently protected, and that the clause should remain as it was.

The Hon. Mr. RAMA NATHAN, said that as the case contemplated could hardly ever occur it ought to be left out. He did not think it was the duty of a captain to inquire into the history and parentage of each individual he had on board. He begged to reiterate that they ought not to be authority-ridden.

The Hon. the GOVERNMENT AGENT, C. P.—Nor should the law be ridiculously lax.

The Hon. the GOVERNMENT AGENT, W. P., said that if a deserter, through want of discipline on board the ship, remained on board, that want of discipline must surely be visited on the captain, and the punishment was not exccessive.

His Excellency the LIEUT.-GOVERNOR said that he thought he knew how the clause would operate. Five or six soldiers, say, get into an emigrant ship. The captain, when there is some reason to suppose that there are deserters in his ship, should step in and give as much aid as he can in surrendering them to their respective owners when they call for them. Recent experience had shown how very necessary the bill is.

The Hon. the LIEUT.-COLONEL:—I consider the measure a very necessary one. Four men in uniform in my regiment about the end of June went on board an emigrant ship. A few days afterwards four more men deserted on board, and we could not find where the men were for a long time. The want of assistance from the captain and his men on board this ship to which we went to get them back, makes me think that there is a great necessity for this clause. I certainly see nothing harsh in it.

The Hon. J. VAN LANGENBERG said that of course if the captain took every care and yet could not get at these men, he could not then be held responsible for them.

The Hon. Mr. RAMA NATHAN said that as the sense of the Council was opposed to his view he should withdraw his objection.

The few remaining clauses of that chapter (§§ 138-140) were then read and duly passed. At this stage of the proceedings.

The Hon. the QUEEN'S ADVOCATE said that he thought it would be better for him now with the leave of Council to make a few remarks on the clauses that were left unpassed on the previous day, and about which he had had the advantage of since consulting with the Chief Justice.

REMISSION BY GOVERNOR OF ANY PORTION OF A SENTENCE.

This clause was reserved yesterday, the discussion turning upon whether it was not fit and proper that the Governor's power of remission should extend not merely over a "portion" of a sentence, but over the whole of it.

The Hon. the QUEEN'S ADVOCATE said that probably the reason why it was so worded was because under the Governor's instructions under date 16th June 1877 he is empowered to grant a pardon. The Governor may remit any portion of the sentence. That does away with the difficulty. Vide Procedure Code, § 396 :—"when any person has been sentenced to punishment for an offence, the Governor may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence, or remit the whole or any part of the punishment to which he has been sentenced."

The Hon. J. VAN LANGENBERG :—The omission of these words might lead to discussion. What is the object of omitting?

His Excellency the LIEUT.-GOVERNOR said the prerogative as to pardon in India was different from Ceylon. It is a question there how far the powers of the High Court conflict with the powers of the Governor.

The Hon. the GOVERNMENT AGENT, W. P. :—If we may touch these instructions at all, and we certainly do so in the Procedure Code we may certainly do so in the Penal Code.

His Excellency the LIEUT.-GOVERNOR :—The power given by the Governor's commission is the power given by the Royal Prerogative. The Penal Code is substantive law. The Procedure Code merely states what the procedure is to be.

His Excellency the LIEUT.-GOVERNOR added that the Chief Justice was making arrangements with his brother judges so that he might be able to get away to the Council whenever he was required, and that this clause had therefore better be reserved.

The Hon. the QUEEN'S ADVOCATE next referred to §§ 62 and 65, which had also remained unpassed. He said that as the Hon. Mr. Van Langenberg had referred to them on the previous day and stated that the corresponding clauses in the Indian Code had been *amended* the Chief Justice had expressed a wish to see the amending ordinance.

The Hon. Mr. VAN LANGENBERG said that he would be very happy to lend the Act to the Chief Justice.

TERMINATION OF THE TERM OF IMPRISONMENT DECREED IN DEFAULT OF PAYMENT OF FINE : § 66.

The Hon. the ACTING COLONIAL SECRETARY suggested that the words 'the fine shall terminate' should be altered into 'the fine shall be terminated.' After some discussion the matter was ordered to stand over for consideration.

§ 70. DOUBTFUL JUDGMENTS.

In regard to this clause the Hon. the QUEEN'S ADVOCATE said that he quite admitted that this section was somewhat contrary to their ideas of English law. The Chief Justice however thought that it was a good section and ought to remain. Upon further examination of the section he found that it did not so seriously offend against any of our ideas of English law as may at first sight appear. For example, a person may be charged in a court with theft and also with criminal breach of trust. It may be very difficult to decide whether his offence comes under the definition of 'theft' or 'criminal breach of trust,' although there may be no question as to his guilt of having made away with the property. In any such case however the section requires that the offender "shall only be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all." Though at first sight this section might seem contradictory to our English ideas, if we bear in mind what it provides for, we shall find the utility of retaining it.

The Hon. the GOVERNMENT AGENT C. P. proposed that the section should be made to read thus :—"In all cases judgment may be given that a person is guilty of an act which may be one," &c.

The Hon P. RAMA NATHAN :—I cannot acquiesce in the justice of this clause. The clause affords a premium to muddleheadedness in civil servants. I should wish the judges in Ceylon to aim at that high standard which English Judges in England are expected to attain and according to which a clause of this description will be received with just condemnation. It is fair to the accused that before he is convicted he should know for what offence he is really convicted. According to this section it may chance that he will not know this and I submit that even the possibility of a position of affairs like that ought to be deprecated. I cannot give my assent to the passing of this clause.

The Hon. the TREASURER suggested that there might be a difficulty in framing a committal in terms of this section.

After some further discussion, His Excellency the LIEUT.-GOVERNOR said :—I should like to take the sense of the Council on this clause. The motion is :—"That clause 70 form part of the Ordinance."

Ayes.	*Noes.*
The Hon. the Govt. Agent W. P.,	Hon. J. L. Shand,
,, the Queen's Advocate.	,, A. L. de Alwis,
	,, P. Rama Nathan,
	,, J. Van Langenberg,
	,, Actg. Surveyor-General,
	,, Actg. Govt. Agent C. P.,
	,, Treasurer,
	,, Actg. Auditor-General,
	,, Colonel Commanding,
	,, Actg. Colonial Secretary,
	,, H. E. Lieut.-Governor.

Ayes 2, Noes 11.—Motion lost.

CH. IV. § 77, ILLUSTRATION (*a*).

This was an illustration under the heading, "An act likely to cause harm, but done without a criminal intent and to prevent other harm."

The Hon. the QUEEN'S ADVOCATE said that he had been very busy and had not found the time to read the Privy Council case to which reference was made on the previous day, and therefore asked that this portion of clause 77 should be allowed to stand over for another day.

§ 86 : WHAT IS MEANT BY "CONSENT."

The Hon. the QUEEN'S ADVOCATE said that if it appears that any person though under the age of 12 years understood and fully comprehended the nature of the act to which his consent was required he presumed that would be "consent" within the meaning of the section. The word "context" meant in fact the "surrounding circumstances of the case."

The clause was duly passed.

§ 95 : MEANING OF THE TERM "PUBLIC AUTHORITIES.'

The Hon. the QUEEN'S ADVOCATE said that it was quite impossible to define in exact terms what "public authorities" meant. It must depend on the circumstances of each particular case as to who is and who is not a "public authority."

The Hon J. VAN LANGENBERG:—If "public servant' is defined, surely "public authorities" ought to be, particularly as the offence lies in not having had "recourse to the protection of the public authorities." If we do not let parties know who the "public authorities" are, we should be placing them in a perilous position, and import uncertainty into the law—the very fault which we are anxious to avoid. The hon. member hoped that the section would be allowed to stand over.

RIGHT OF PRIVATE DEFENCE OF PROPERTY: § 101, SUB-SECTION 2.

This was allowed to stand over.

The Hon. the QUEEN'S ADVOCATE having thus referred to all the sections that were made to stand over for

consideration on the previous day, the reading of the Code was again resumed.

CHAPTER VIII.: WHAT IS MEANT BY "CRIMINAL FORCE."

The Hon. P. RAMA NATHAN;—I do not know what "criminal force" means. I have seen nothing so hazy as this section. "Criminal force" as well as "force" are defined in §§ 343-344 of the Penal Code, but in such downright metaphysical terms that he said he could not grasp at any tangible idea at all. It was all as shadowy as a passing cloud.

The Hon. the QUEEN'N ADVOCATE:—It does seem rather full of words.

His Excellency the LIEUT.-GOVRENOR said he failed to see any difficulty in the expressions used. It was within his own experience that the members of the Legislative Council were mobbed, and the hon. members were obliged to protect themselves by the aid of their rulers. So again when Mr. Bradlaugh attempted to enter the House of Commons, there was a mob collected to overawe the Legislature. Such were the cases contemplated.

The Hon. the QUEEN'S ADVOCATE wished to know if the hon. member (Mr. Rama Nathan) would supply a section consisting of fewer words.

The hon. member referred to said that that would require time. All he wanted was that the clause should not be passed today.

The Hon. the GOVERNMENT AGENT, C. P.:—I think it is perfectly intelligible if read without reference to §§ 343-344. No amendment being forthcoming the clause was passed.

§ 153: MEANING OF THE TERM "MALIGNANTLY."

The discussion turned on the meaning of the term. It was stated that 'maliciously' stood on all-fours with the word 'malignantly.'

The Hon. Mr. VAN LANGENBERG said he preferred the old word.

The Hon. Mr. SHAND said that the terms 'malicious' and 'malignant' were hardly synonymous a cobra de capella was said to be a malignant animal and yet not a malicious one?

The section was passed, the only alteration being that the word 'maliciously' was substituted for 'malignantly.' The remaining clauses of the chapter to clause 160 were read and passed.

CHAPTER IX.: MEANING OF THE TERM GRATIFICATION.

The Hon. P. RAMA NATHAN said this was a term which he did not understand. The terms 'bribery' and "corruption" were easily understood expressions, but why this term should be used, except that it was to be found in the Indian Penal Code he did not know.

The Hon. the ACTING COLONIAL SECRETARY said he thought he could supply an illustration of the term. In a certain borough in England a lady went about canvassing votes for her husband and permitted everyone who promised to vote for him to kiss her. This was distinctly a gratification, but one not estimable in money. Such an act would by this section be made illegal.

His Excellency the LIEUT.-GOVERNOR remarked that there are special vices peculiar to certain countries. This, viz. of accepting "gratifications," other than "legal remuneration," was the peculiar vice of oriental countries, and hence required to be specially provided against.

The Hon. the GOVERNMENT AGENT W. P. said, that having taken the Indian Penal Code to model our own Code by, we ought to stick to it as closely as possible, because we should then have the advantage of consulting the judicial decisions pronounced in India as to the meanings of the terms &c. After considerable discussion the Committee divided as to whether this section should be retained or not with the following result:

Ayes.	*Noes.*
The Hon J. L. Shand,	The Hon. P. Rama Nathan.
The Hon J. Van Langenberg,	
The Surveyor-General,	
The Actg. Govt. Agent, C. P.	
The Government Agent, W. P.	
The Treasurer,	
The Auditor-General,	
The Queen's Advocate,	
The Actg. Colonial Secretary,	
The Colonel Commanding,	
H. E. The Lieut.-Governor.	

Ayes 11; No, 1; Majority, 10.—Clause Carried.

NOTICE OF MOTION.

His Excellency the LIEUT.-GOVERNOR remarked that on Wednesday next the Council before going into Committee on the bill would sit as a Council to receive any motions Hon. members might make.

The Hon. J. L. SHAND hereupon gave notice that he would make a motion on Wednesday.

On the motion of the Actg. Colonial Secretary, the Council at its rising adjourned till Wednesday, the 1st August, at 2 o'clock p.m.

WEDNESDAY, AUGUST 1.

Present:—His Excellency the Lieut.-Governor (President), the Officer Commanding the Troops, the Acting Colonial Secretary, the Queen's Advocate, the Acting Auditor-General, the Treasurer, the Government Agent W. P., the Surveyor-General, Hon. J. Van Langenberg, Hon. W. W. Mitchell, Hon. P. Rama Nathan, Hon. A. L. de Alwis, and Hon. J. L. Shand. Absent:—The Acting Government Agent C. P.

Proceedings began at 2 p. m.

The Hon. the COLONIAL SECRETARY laid on the table Sessional Paper VI. 1883 on Grain Tax Commutation: Reports on the Commutation Settlements of the Kalutara District, the Four Korales, the Three Korales, and Lower Bulatgama, under the Provisions of "The Grain Tax Ordinance, 1878;" and Sessional Paper VII. 1883—Colombo Harbour; Correspondence relating to a proposal to remove a portion of the "Tartar Rock."

The Hon. W. W. MITCHELL asked if Government intended to construct a new bridge over the lagoon in place of the one removed on the road between Moratuwa and Kesbewa; and (2) if Government intended to include in the Estimates for 1884 a vote for the extension of the Bulatkohopitiya road, to afford an outlet for the new tea district between Western Dolosbage and Ruwanwella.

The Acting COLONIAL SECRETARY said the estimates for 1884 had not yet been prepared and they would not be submitted to Council until after the arrival of Sir A. Gordon, and therefore it was impossible at present to state whether any provision for this work will or will not be included in those estimates.

The Hon. W. W. MITCHELL asked when Government contemplate being able to carry out a comprehensive scheme of wharf improvement and extension; also, if Government will, in the mean time lease the Queen's warehouses at the wharf to private individuals, or to a public company, if formed

The Hon. the Acting COLONIAL SECRETARY said the original designs of wharf improvements and extensions were prepared in connection with the scheme for an enclosed harbour, and at present Government was not prepared to take action in the matter, although fully recognizing the importance of the subject. Government has not yet considered nor is it at present prepared to consider the question of leasing the Queen's warehouses to private individuals or to a public Company: it would be premature to do so until some definite scheme is before Government and until it has been conclusively shown, that it is the general desire of the mercantile community, that the warehouses in question should be so leased. He would ask the hon. member whether in asking the question he was acting at the instance of the mercantile community.

The Hon. Mr. MITCHELL said he asked as a representative of the Chamber of Commerce and the general mercantile community. It was entirely in the interests of the general mercantile Community, that he asked the question, to find out whether Government would do anything or not. From time to time members of the Chamber of Commerce said Government should make all the extensions and improvements instead of the Wharf and Warehouse Company doing them.

His Excellency the LIEUT.-GOVERNOR said he thought that the question of wharf improvement and extension was just now with the Chamber of Com-

merce, and that the Government had not been moved in the other matter. His Excellency continued that at present the premises in the hands of Government are not sufficient for the purposes of the work of the Port and that in the first instance it was more a matter for the Chamber of Commerce than for the Council.

The Hon. Mr. MITCHELL said that the mercantile Community wished to know what Government would do under certain conditions, say if another Company were formed.

His Excellency the LIEUT.-GOVERNOR said that that was a matter in which the Government would like to hear the views of the Chamber of Commerce.

The Hon. Mr. MITCHELL then asked whether he was to understand that the Government did not intend to lease out the remaining premises.

His Excellency the LIEUT.-GOVERNOR said that was altogether another question, but that the Government had no such scheme at present.

The Hon. J. L. SHAND asked if any reply had been received to the report of the Select Committee on retrenchment from the Secretary of State and called for papers. He said he had put this subject in the form of a motion that Hon. members might not lose the opportunity of expressing their opinion on a subject of which he felt sure all well-wishers of Ceylon who had studied the Retrenchment Committee's Report realized the importance. His object in bringing the subject to the notice of Council was to show that the appointment of a Select Committee was no idle one and that Hon. members might show that their labour did not cease when they had affixed their names to the Report but rather only commenced. There were various suggestions made in this Report for effecting economies, but the question in most cases arose whether they could be effected without impairing the efficiency of the provinces and departments they touched, and this was shown by the expressions of protest and dissent attached to the report. But there was one economy suggested to which there was no dissentient voice, and upon which there was official and unofficial unanimity and which was of so real importance that it outweighed the aggregate of all the rest. This was in reference to Military Expenditure. He felt that no time must be lost in inquiring into the validity of the arguments advanced by the m mbers who framed the report. The Queen's Advocate in moving the bills in regard to the Penal Code and the Code of Criminal Procedure had said that one reason why those bills should be gone into at the present time was because this was an opportune moment for their consideration. The Hon member said he felt that no time was more opportune for considering the subject he had mooted than during the tenure of office of His Excellency the Lieut.-Governor seeing the interest he had taken in the subject and the attention he had paid to it. This was an extraordinary session of Council, called for a special purpose, and he had no wish to encroach upon the time that was wanted for the consideration of the Codes, but he felt that the subject he had mooted was one of extraordinary importance and one upon which the prosperity of the whole Island depended. He therefore asked if any answer had been received from the Secretary of State, and if such had been received that it be placed on the table, and he would further ask for an assurance that if a reply had not yet been received but should be received before the close of the present session no time should be lost in placing it in the hands of hon. members.*

The Hon. the Acting COLONIAL SECRETARY said that no reply had as yet been received from the Secretary of State. The only paper the Government had in reference to the subject was the dispatch by Sir J. Longden forwarding Report of the Retrenchment Commission which the Government did not feel justified in laying before the Council at present. but if any reply were received from the Secretary of State before the close of the session it would be laid before the Council.

ECCLESIASTICAL.

The Hon. W. W. MITCHELL in making his motion asking for (1) a list of churches towards the erection of which Government has contributed, (2) a list of churches where Government has exercised patronage, stating from what fund or funds the clergyman's stipend was paid and (3) a statement showing for each church in the Island in detail on whom patronage vests, when Government patronage ceases, said that a small error had crept in the 3rd section of his motion by the insertion of the word "and" after "vests" which was not in the original motion he had sent in to the Clerk of the Council. The hon. member said he asked for this information with a view to assist the Church Organization Committee.

The Hon. J. L SHAND seconded.

The Hon. the Acting COLONIAL SECRETARY said that in regard to the *first* point a list will be duly prepared and laid on the table. In regard to the *second* point that as a rule Government has not exercised patronage so far as the churches are concerned. Clergymen have been usually appointed as Colonial Chaplains and have sometimes been stationed in places where no churches existed. It will therefore not be easy to prepare a statement such as that asked for, but if the hon. member would confer personally with him on the point he would endeavour to give him as much information on the subject as possible. Statement of funds whence stipends of clergy have been paid will be prepared so far as the clergymen who have been paid by Government are concerned. In the Blue Book will be found a return which gives other information relative to stipends and allowances of the clergy. This will perhaps supply the rest of the information required by the hon. member, but Government cannot guarantee the absolute correctness of all the entries in that return. In regard to the 3rd point that the list required shall be prepared so far as patronage vesting in the Crown is concerned.

The Hon. Mr. MITCHELL having thanked the Colonial Secretary for the answers he had furnished him with,

The Hon. the QUEEN'S ADVOCATE said: I move that the Council go into Committee and resume consideration of the Codes.

The Hon. the Acting COLONIAL SECRETARY seconded.

THE GENERAL PENAL CODE.

The Hon. W. W. MITCHELL said that betore proceeding to the next clause in order, he would ask if he might be permitted to go back to section 137, that concerning "deserters concealed on board merchant vessels though negligence of master." The hon. member said he was sorry that owing to press of business he was not present when that clause was discussed, and that he was greatly interested in it and so were all who had any connection with ships. No doubt great annoyance would be caused to the military authorities when they found their men deserting on board merchant vessels. But how could the masters of the ships be made responsible? When a merchant vessel reached a port the captain has generally to come ashore to transact business. The officers are busily engaged in their various duties and there would be in an emigrant vessel some four or five hundred emigrants swarming on board. It would therefore be most difficult to prevent soldiers in plain clothes going on board such ships as was done in the emigrant vessel last year.

His EXCELLENCY :—As was *not* done.

The Hon. W. W. MITCHELL in explanation said that when that vessel was at Colombo a soldier came up to her in a boat and said he had come to see if there were any soldiers on board. He was asked for his

* The Hon'ble W. W. Mitchell records

authority to come and search. He said he had none, but would go and get it. He accordingly went back, but never made his appearance again.

His EXCELLENCY said that the hon. member must put himself in order and obtain the permission of the Council seeing that he was now raising a question concerning a clause that had already been discussed and now stood as part of the bill. Not that there was any wish on his part to stifle discussion, but if he were to allow every hon. member who happened to absent himself on any occasion to raise questions when he next appeared concerning clauses on which there had been actual discussion before the House, the work would be simply interminable, and he did not see how without gross irregularity he could permit this, except in matters of great state importance.

The Hon. W. W. MITCHELL said he had no wish to re-open the clause. All he wanted was an explanation, and that the nature of the duties of the master may be defined. If it was intended that the captain must himself get his vessel searched, he thought that that would not be too much to require from him, but what was the nature of the "neglect of duty" and "want of discipline"! He had asked that a military search party might be sent, and had also asked that police might be supplied on payment, but this had been declined.

His EXCELLENCY said he had heard it complained that the captains on board emigrant vessels gave no help whatever in finding out the deserters. This much must be required from the captain: that he must go and himself make diligent search in cases where it is expected that deserters had got on board. It is for the Court to decide whether proper diligence was used or not.

The reading of the Code was then resumed from § 162.

On coming to § 164 the Hon. Mr. VAN LANGENBERG wished to know why clause 165 of the Indian Code bearing on the subject of "illegal gratification" was omitted from the Ceylon Code. The rubric to this clause in the Indian Code read thus :—"Public servant obtaining any valuable thing, without consideration, from persons concerned in any proceeding or business transacted by such public servant." He believed that there were numerous cases of public authorities occupying houses, &c., of subordinates for a nominal consideration, which do not come within the purview of the sections of this Code. He would wish to know why the omission was made.

His EXCELLENCY said he should like to ask the Chief Justice.

IS A PUBLIC SERVANT JUSTIFIED IN EVER DISOBEYING A DIRECTION OF THE LAW § 165

The Hon. Mr. VAN LANGENBERG said that in the event of a writ being directed for execution to a fiscal in which there were grave defects, such as the not disclosing the jurisdiction of the court, &c, will such fiscal by not executing this writ bring himself under this section. It may chance that some property may be injured or some wrong done by his refusal to execute such writ.

The QUEEN'S ADVOCATE said that it would be difficult for him to answer that question.

The Hon. Mr. VAN LANGENBERG said that no doubt much would depend on the question whether it is a *direction of the law.*

His Excellency the LIEUT.-GOVERNOR :—If the writ be a bad one, then it is not the law that directed it. He of course, could not speak as a lawyer, but commonsense would say that a man cannot be directed by the law to do what is unlawful.

The Hon. the GOVERNMENT AGENT W. P. said that there are very many public servants who are by law required to do certain things. Supposing they omitted to do some trifling act which the law required and some public injury resulted. They would then become liable to simple imprisonment !

His EXCELLENCY directed attention to the rubric, which read thus :—"Public servant disobeying a direction of the law, *with intent to cause injury to any person or the Government.*"

The Hon. the GOVERNMENT AGENT, W.P., remarked that a person who suffered any injury had always his civil remedy, and why then should public servants be made liable criminally.

The Hon. the Acting SURVEYOR-GENERAL said they often heard of property being pointed out to fiscals, and execution of writ being delayed till someone should step in to share the proceeds of sale to the injury of the one in whose favor the writ was issued. Such an act would he supposed come under this section.

The Hon. the QUEEN'S ADVOCATE remarked that if a public servant knowingly omitted the performance of his duties he did not see why he should not be liable to punishment. A public servant should be excessively careful how he performed his duties.

His Excellency the LIEUT.-GOVERNOR :—The clause is certainly very much required in the Fiscals Department.

The Hon. J. VAN LANGENBERG said that he did not object to the clause. He thought that the provision was a wholesome one, if taken under the limitation suggested.

The Hon. the GOVERNMENT AGENT W. P. said that he had no objection if Government was prepared to agree that prosecutions under this clause should take place only at the instance of the Queen's Advocate.

The QUEEN'S ADVOCATE remarked that it was after much consideration this was left out. He thought that the Queen's Advocate had enough work already, though he was perfectly ready to do what was required of him.

His Excellency the LIEUT.-GOVERNOR said that it was thought the public should have its remedy outside the Queen's Advocate's Department. This was the conclusion arrived at after conference with the Chief Justice.

The Hon. the GOVERNMENT AGENT W. P. said he would not press the question.

The clause was passed.

DO TRANSLATORS OF DOCUMENTS COME UNDER THE HEAD OF 'PUBLIC SERVANTS' AND BECOME CRIMINALLY LIABLE FOR INTENTIONAL MISTRANSLATION UNDER § 166 ?

The Hon. J. VAN LANGENBERG wished to know whether this clause extended to all sworn translators of documents for suitors in court or only to those who derive pay from Government.

His Excellency the LIEUT.-GOVERNOR said if the translator was translating in his private capacity he was of course not a public servant. If the District Judge asked him to translate a document for him for judicial purposes he became a public servant.

The Hon. the Acting COLONIAL SECRETARY said that an 'interpreter' came under the definition of 'Public Servant' in § xix sub-section 5.

His Excellency the LIEUT.-GOVERNOR said if the translation was done as a matter of duty then he was a public servant, and not otherwise.

Hon. A. L. DE ALWIS :—Are all translators in Courts of Requests 'Public Servants? There is always a scale of charges according to which they are remunerated. This is a very important matter. These are the men who can work any amount of mischief.

His Excellency the LIEUT.-GOVERNOR.—They certainly come under this clause.

§§ 167-170 : FRAUDULENT INFRACTION OF DUTY BY PUBLIC SERVANT IN TELEGRAPH DEPARTMENT.

The Hon. J. VAN LANGENBERG wished to know, seeing that these sections were taken from the Postal and Telegraph Ordinances, why certain other sections were omitted. §§ 167-8 of this Code answered to § § 54 and 55 of Indian Telegraph Ordinance. Why was § 56 of that ordinance omitted ?

The Hon. P. RAMA NATHAN:—Because that ordinance is a special Ordinance.

The Hon. J. VAN LANGENBERG:—It could not be on that account.

His Excellency the LIEUT.-GOVERNOR:—I know the Chief Justice wished to include all the penal provisions of the Electric Telegraph Ordinance in these sections, and he must therefore have advisedly omitted the clause referred to. I therefore recommend that the Council should pass these clauses subject to any alterations which the Hon. the Queen's Advocate may make.

The Hon. the QUEEN'S ADVOCATE said he would be glad if the hon. members would bring to his notice any points which they might consider expedient to be inserted.

The Hon. J. VAN LANGENBERG drew the Queen's Advocate's attention to a clause in the Ordinance of 1875 "For regulating the Establishment and Management of Electric Telegraphs in Ceylon." which was not inserted in the Penal Code.

FALSE PERSONATION.—§ 171.

The Hon. P. RAMA NATHAN thought that this section required amendment, because under this the offence consisted in 'pretending to hold any office and doing any act under colour of such office.' He thought that an offence would be committed only if it were done with fraudulent intent and became injurious to somebody. For instance supposing he went into his hon. friend the Colonial Secretary's office and sat on his hon. friend's chair and signed a paper. By this section he would certainly be in for it, although his act may have done harm to nobody. He thought that this section gave an exaggerated importance to the sanctity of public officers. When he was attending College he remembered having taken by way of joke the seat of his professor who discovering him in that position sternly asked him what he meant by such conduct! He said he could understand giving discretion to courts when the Council felt unable to legislate guardedly or explicitly. If the language did not admit of such limitations they should confer upon judges the duty of suggesting special legislation. But the Council must on no account will away its power to other persons, but must be able to tell the judges what it actually means.

The Hon. the QUEEN'S ADVOCATE said that it seemed to him rather dangerous to insert an express intention to defraud in this section. To constitute the offence under this section it is required not only that a man should personate a public servant "but do or pretend to do any act under colour of such office." There is an example in the Indian Penal Code of a man who pretending to be a police officer proceeded to reprimand some villagers in reference to the state of the roads in a certain village and obtained money from them. He was convicted under this section. He considered it dangerous to put in the words "with the intention to defraud" because it might be hard to prove the fraudulent intention.

The Hon. J. VAN LANGENBERG. But suppose the man had not taken the money, would he be held responsible (Hear, hear, from the Hon. Mr. Rama Nathan).

The Hon. A. DE ALWIS said he considered this a very harsh law. If the intention had been to commit a fraudulent act well and good, but suppose it was done in a spirit of fun. The penalty was a year's hard labour!

The Hon. Mr RAMA NATHAN:—Two years!

His Excellency the LIEUT GOVERNOR said that his hon. friend (Mr. RamaNathan) might sit in the Colonial Secretary's chair and sign a paper which might involve the state in very great responsibilities, but that if it was merely a question of foolish frolic he would probably be let off with a small fine.

The Hon. Mr. RAMA NATHAN said that it was very clear that such an act was not an offence under the existing law. The Council were now creating a new offence, as he could not help thinking they had been doing for some time now, and this without any occasion for it. Before a new offence was created the Council should clearly make it appear that a pretence like that of pretending to hold any particular office etc., existed and the doing of an act upon such a pretence must be calculated upon the basis that such act is intended to be fraudulent and injurious to somebody. False personation is an offence both under English law and Roman-Dutch Law, as in the case of heirs-at-law executors, administrators who with intent *fraudulently* to obtain estates, chattels, etc., pretended to be such. Suppose an indictment were laid against him, for merely sitting on the Colonial Secretary's chair and writing a paper! Yet it could be done if this section were made to stand as part of the Ordinance. What was the object of legislation? Was it for an ideal purpose or to prevent crime! He should like hon. members to remember that they should not go on multiplying offences without rhyme or reason. The objections he had urged applied equally to the following clause sec. 172.

The Hon. the QUEEN'S ADVOCATE said that it seemed to him very dangerous to allow men with impunity to pass off as "public servants." For instance supposing he was engaged in mending a private road in his grounds, and some person came forth and passing himself off as a "public servant" prevented him from going on with his work. Surely such an offence ought to be punished, even though it were done without any fraudulent intent and merely by way of fun. Perhaps it might be worthy of consideration whether any prosecution should be instituted under this clause without the authority of the Queen's Advocate.

The Hon. the ACTING COLONIAL SECRETARY pointed out that it was possible that false personation might begin simply by way of joke, but that the impersonator seeing his way to making money might go on to something worse, as pointed out by the Queen's Advocate in the Indian example that he quoted.

The Hon. Mr. RAMA NATHAN said that if anyone personated a police officer and by this means succeeded in making money, such a crime did not require a clause of this description to secure its due punishment. His motion was simply that the words "fraudulently or injuriously" should be added to the section. But if His Excellency thought that it was a sufficient safeguard if the prosecutions were to be instituted only under the authority of the Queen's Advocate he should have nothing further to say.

His Excellency the LIEUT-GOVERNOR said he thought it was.

The Hon. the GOVERNMENT AGENT W. P. said that if public servants were not to be provided with legal intervention when trifling actions are brought against them he did not see why those who were not public servants, but merely pretended to be such, should have that advantage. He thought this to be the least offence of the two, yet it was the one in which the Queen's Advocate's authority was to be invoked.

The Hon. the QUEEN'S ADVOCATE said that he did not himself think that people would be going about the country falsely personating public officers. But such things might occur and it was best to guard against such eventualities.

The Hon. A. L. DE ALWIS said that no doubt in the cases brought forward by the Queen's Advocate an act was done to injure another person. Still he considered that impersonating by itself ought not to be made an offence.

The Hon. the GOVERNMENT AGENT W. P. said that it was impossible to meet every case. He knew a case where a private gentleman (a planter) wrote a letter to a korala for some timber, using the following words; —"By virtue of the powers on me conferred" &c. Whereupon the korale immediately allowed the kangani who was the bearer of the letter to cut the timber required. Now that gentleman, though he signed his own name, was guilty of an offence, but he would not be touched by this clause. He, the Government Agent, thought it best to leave the clause untouched than to hand over the authority to prosecute under it to the Queen's Advocate.

The Hon. the ACTG. COLONIAL SECRETARY said that it appeared to him that §§. 171-172 belonged more properly to the next chapter (of contempts of the lawful authority of Public Servants). He thought it reason-

able that the clauses 171, and 172 should come there and he would therefore move that the alteration be made

His Excellency the LIEUT.-GOVERNOR said that these clauses were certainly more in the nature of the next chapter.

The Hon. the GOVERNMENT-AGENT W. P. agreed that §§ 161-170 should form one chapter. Then when the Council had come to the consideration of § 149 of the Criminal Procedure Code it would be proper to make the alterations necessary.

His Excellency the LIEUT.-GOVERNOR said that there had been a proposal that §§ 171-172 should also be included with sections 173 to 188 and come under the conditions of section 149 of the Procedure Code.

The Hon. the TREASURER said he would be opposed to bring in the authority of the Queen's Advocate as the clause now stands, but if it were shifted and made to form part of chapter X. he did not see any objection to such authority being given.

The Hon. the QUEEN'S ADVOCATE said he would leave the Penal Code as it now stands. It would be a pity if they now began to change its order after having so long followed that of the Indian Penal Code.

The Hon. J. VAN LANGENBERG said he agreed with his hon. friend the Queen's Advocate that these clauses should not be shifted.

His Excellency the LIEUT.-GOVERNOR said he quite agreed with the two hon. members who had just spoken that the clause should remain where it was. Certain hon members thought that by passing such a clause we should be creating a new offence unless we protected it with the safeguard that all prosecutions under it should be made under the authority of the Queen's Advocate. He thought therefore that the Council should pass the clause subject to that safeguard.

The Hon. the QUEEN'S ADVOCATE thought that it would be better not to pass it until the Council had come to section 149 of the Procedure Code.

The Hon A. L de ALWIS said if the Queen's Advocate had to authorize every prosecution under this clause, he would first have to read through every portion of the evidence, for it would be only then that the criminal intention would appear.

The Hon. Mr RAMA NATHAN said he did not think the Queen's Advocate would have to read through every portion of the evidence, because the public servant who had been personated would submit a statement to the Queen's Advocate.

His Excellency the LIEUT.-GOVERNOR said that if after due inquiry made, it turned out that the false impersonation was done in mere jest the Queen's Advocate would use his discretion and dismiss the case.

The matter then dropped.

The Hon. J. VAN LANGENBERG said that there were two clauses in the Indian Penal Code (168 and 169), the one about "public servants unlawfully engaging in trade," and the other about "public servants unlawfully buying or bidding for property" which were not inserted in the Ceylon Code, and he wanted to know why they were omitted.

His Excellency the LIEUT.-GOVERNOR said that offences of this kind came under the Colonial Regulations. Any infraction of the order against Civil Servants engaging in trade was visited with instant dismissal from office.

CHAPTER X. : OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—§ 174.

The rubric to this clause read thus :—"Preventing service of summons or other proceeding or preventing publication thereof."

The Hon. Mr. VAN LANGENBERG said .—Supposing a man resides in Colombo, but has a house in Kandy. A notice or summons is affixed to his house in Kandy and someone tears out the notice and sends it to him at Colombo. Would such act be considered a criminal offence?

His Excellency the LIEUT.-GOVERNOR said that the man had no business to remove the notice. Sending the contents of it would have been sufficient if he merely wanted to apprise the man in Colombo of such affixing.

The Hon. Mr. VAN LANGENBERG said that if the man took it down for the purpose of preventing due service of summons he was of course liable.

The QUEEN'S ADVOCATE remarked that it was possible that the notice might never reach the person to whom it was sent, and therefore that for public reasons it would be dangerous to allow such a thing to take place.

The Hon Mr. VAN LANGENBERG :—Certainly, the object of the affixing will be evaded.

H. E. the LIEUT.-GOVERNOR said that any exceptional case could be dealt with by the Queen's Advocate without whose authority no prosecution under this section could be made.

Agreed to.

IS NON-ATTENDANCE IN OBEDIENCE TO AN ORDER FROM A PUBLIC SERVANT IN EVERY CASE PUNISHABLE?

Clause 175 reads thus :—"Whoever being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, &c , from any public servant legally competent to issue the same, *intentionally omits to attend* at that place or time, or *departs from the place* where he is bound to attend before the time at which it is lawful for him to depart," &c.

The Hon. Mr. RAMA NATHAN remarked that the intention of this clause was clearly "whoever departs *without just cause* from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished," &c. If a man fell sick and on that account went away he surely could not be punished!

His Excellency the LIEUT.-GOVERNOR said that he would have to satisfy the Queen's Advocate, as to his illness as all these clauses (173-182) required the Queen's Advocate's authority before a charge could be founded upon them.

The Hon. Mr. RAMA NATHAN said that no discretion was allowed him. Suppose a man was required to attend at a certain place from 10 a.m. to 5 p.m. and went away without leave before the expiration of that time by a mistake would he not be liable?

The QUEEN'S ADVOCATE said that the word "intentionally" should be carried on to that sentence as well, which should then read thus : "or intentionally departs," &c.

The Hon. the GOVERNMENT AGENT W. P. put a few cases in which this clause would press hard upon persons. For instance suppose he received a summons to attend at a certain court, and he wrote to the judge : "Having public duties to attend to at the hour named, I am sorry that I cannot attend." Here he *intentionally* omitted to be present. Was he liable under this clause?

His Excellency the LIEUT.-GOVERNOR :—You will be at the mercy of the Queen's Advocate.

The Hon. the QUEEN'S ADVOCATE :—The clause is very imperative I know. I should have thought the word 'may' might have been substituted for 'shall' and the clause made to read thus : "Whoever, &c , *may* be punished," &c., but as imprisonment or fine may be inflicted it is perhaps better to leave the clause as it stands.

§ 176.—OMISSION TO PRODUCE A DOCUMENT WHEN LEGALLY BOUND TO DO SO.

The Hon. P. RAMA NATHAN wished to know if a man were asked to produce his Title Deeds before a Court and did not do so, would the penalty of six months' imprisonment be imposed upon him? He might not care that his papers should be exposed and come before the public. The banks, again, would not find it convenient to have to produce their huge account books. What then?

His Excellency the LT.-GOVERNOR :—Such books and papers are privileged, and a man only becomes amenable to the penalty under this clause if he does not produce that which he is legally bound to produce.

The Hon. P. RAMA NATHAN said that if the clause is taken subject to the law of evidence he had no further remarks to offer.

The Hon. J. VAN LANGENBERG in this connection referred the Council to Ordinance 4 of 1866 which was "An Ordinance to enlarge the power of the Surveyor General to demand the production of deeds and make surveys of lands, and to facilitate the proof of surveys."

IS AN "ARBITRATOR" A "PUBLIC SERVANT" § 192.

This clause runs thus:—"Whoever causes any circumstance to exist, or makes any false entry in any book &c., intending that such circumstance &c. may appear in evidence in a judical proceeding or in a proceeding taken by law before a public servant as such, or before an arbitrator &c.

The Hon. P. RAMA NATHAN said that under § xix. subsection 7 an "arbitrator" was said to be a "public servant:" how was it then that in this section he was discriminated from a "public servant"?

His Excellency the LIEUT.-GOVERNOR said that all arbitrators are not "public servants" but only those who have been appointed such by proper judicial authority.

§ 193.—PUNISHMENT FOR FALSE EVIDENCE.

The Hon. P. RAMA NATHAN wished to know whether in this clause the words "in any other case" in the passage "whoever intentionally gives or fabricates false evidence in any other case" meant any other case than those contemplated in §§ 191-192.

His Excellency the LIEUT. GOVERNOR said that that was the meaning of the words.

SECTION 195.—ARE PEOPLE IN CEYLON TO BE PRESUMED TO KNOW THE LAW OF ENGLAND AS WELL AS THAT OF CEYLON?

The Hon. Mr. RAMA NATHAN said that sections 194 and 195 presumed that the people of this country were acquainted with the law of England! They were undoubtedly credited with a knowledge of the law of their own country, but he failed to see how the Ceylon Government could require from the people of this island that they should know the law of England as well.

The Hon. the QUEEN'S ADVOCATE said that this clause was entirely taken from the Indian Penal Code, and if the people of India were supposed to be acquainted with the law of England he did not see why the people of Ceylon should not be.

The Hon. Mr. RAMA NATHAN said the question was: what right had the Council to require it of them? He did not think the Council justified in throwing upon them that obligation, and he submitted that it was clearly a case of *ultra vires*.

The Hon. the QUEEN'S ADVOCATE remarked that some of the English army laws applied to Ceylon and that it was necessary that the people of Ceylon should know them.

The Hon. Mr RAMA NATHAN said that if the words "or the law of England" meant "or so much of the law of England as prevails in Ceylon" he was quite willing to let the clause pass.

The Hon. the QUEEN'S ADVOCATE said that these words "or the law of England" were not in the Indian Penal Code when it was first passed, and that they were afterwards inserted, doubtless to meet a difficulty that had arisen subsequently.

Thh Hon. J. VAN LANGENBERG said they were evidently put in in reference to the Army Acts.

The Hon. Mr. RAMA NATHAN said that if the feeling of the Council was that the words should be retained he would raise no further objection.

The clause was accordingly passed.

SECTION 199.—FALSE STATEMENT MADE IN ANY DECLARATION WHICH IS BY LAW RECEIVABLE AS EVIDENCE.

The Hon. the QUEEN'S ADVOCATE said that certain words which might have considerable effect were absent in this clause although they are in the corresponding clause of the Indian Penal Code. The Indian clause read thus:—"Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice or any public servant or other person is bound or authorized by law to receive *as evidence of any fact*, makes any statement which is false, and which he knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence." Now the words "as evidence of any fact" are left out in the Ceylon clause. He wished to know if the omission was intentional.

The Hon J. VAN LANGENBERG:—I do not think that these words are omitted intentionally, as they appear in the margin of our Code. The amended clause was passed.

SECTION 207.

The Hon. P. RAMA NATHAN said that he wished to revert back to sections 194 and 195, and asked His Excellency's permission to enable him to do so.

His Excellency the LIEUT-GOVERNOR said that when once a clause had been discussed, and duly passed, it seemed to him a violation of the Legislative Council rules to go back to it and discuss it over again.

The Hon. the GOVERNMENT AGENT W. P. said that when the Code of Criminal Procedure came to be discussed he hoped it would not be considered out of order to revert to these clauses again.

His Excellency the LT.-GOVERNOR said that if a question arose from the Criminal Procedure Code they could certainly turn back, but not if it arose on its own merits *mero motu*. The Criminal Procedure Code could not be made an occasion for revising things not arising from it. If the Penal Code conflicted with the Procedure Code anywhere, then no doubt it would be proper to revert back to the Penal Code to remove the contradiction.

The Hon. Mr. RAMA NATHAN said that of course when the report of the Committee on the Penal Code was made there would be an opportunity of going back to it.

His Excellency the LIEUT.-GOVERNOR said that the hon. member was in error when he referred to the "report" by the Committee. There would be no report, as the Committee, consisting as it did of all the members could not very well report to themselves.

The Hon. Mr. RAMA NATHAN then asked if he would be allowed to turn to the clauses 194 and 195 on the 3rd reading of the bills.

His Excellency the LIEUT. GOVERNOR said that by the rules he could not be allowed to do this, because these were mere points of procedure.

The Hon. Mr. RAMA NATHAN:—I now ask for leave to move an amendment on sections 194 and 195.

The Hon. the QUEEN'S ADVOCATE said that he thought it would be better if the hon. member would postpone his motion for some little time to afford both himself (the Queen's Advocate) and the other members of Council time to consider over it. If the motion was put then and there, hon. members would be obliged to record their votes for or against it, and perhaps without much consideration.

His Excellency the LIEUT.-GOVERNOR then asked the hon. member to send his amendment to the Queen's Advocate, and the hon. member said he would do so.

§ 209.—MAKING A FALSE CLAIM IN A COURT OF JUSTICE.

The Hon. the GOVERNMENT AGENT W. P. said that in looking at the Procedure Code he found that an offence under this clause was triable only by a District Court. But a false claim might be made in a Court of Requests, wherein the defendant might be subjected to a penalty if such false claim were substantiated. He thought this offence should be made triable as well by a lower court. In the Procedure Code there were only 56 cases which were triable by "District Courts or Police Courts," whereas there were 228 triable by "District Courts" alone.

His Excellency the LIEUT.-GOVERNOR said that they must then alter the Schedule of the Procedure Code as well.

The Hon. the GOVERNMENT AGENT W. P. said that they were now merely passing the clauses of the Penal Code, and that when they came to the Procedure Code they would find that they were bringing out a great many changes indeed. Should they alter the schedule, then, when they came to the Procedure Code?

His Excellency the LIEUT.-GOVERNOR :—If so then we should have to come back to the Penal Code.

The Hon. J. VAN LANGENBERG said he did not think that it would meet the case. There ought to be some provision not only for 'false claims' but also for 'false defences.' The Code should provide against these as well. There was a provision in the "Rules and Orders" against 'false defences.' He did not know whether there was not something to that effect in the Procedure Code.

His Excellency the LIEUT.-GOVERNOR :—We might leave this clause for the consideration of the Queen's Advocate

§ 214.—EXCEPTION.

The Hon. the QUEEN'S ADVOCATE :—I beg to move an amendment on this section. The "exception" to this section runs thus :—"The provisions of sections 213 and 214 do not extend to any case in which the offence consists only of an act irrespective of the intention of the offender, and for which act the person injured may bring a civil action." I move that the words commencing from 'irrespective' to the end, be deleted and the following inserted : 'which may lawfully be compounded.'

The amendment was adopted.

§ 215.—TAKING GIFTS TO HELP TO RECOVER STOLEN PROPERTY.

The clause reads thus :—"Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The Hon. P. RAMA NATHAN said the section clearly refers to the breach of a civil compact. One man says; "I will try and catch the thief who stole your goods. You give me £10." It does not refer to public officers at all, because if a public officer does not do his duty he can be proceeded against in other ways. Well, if the man does not put forth great exertions, *i.e.*, "all the means in his power," to secure the thief, an action lies against him civilly. This section, however, treats the breach of a money contract as an offence. He submitted that this was clearly a breach of a civil contract. The first thing a man does before he enters upon such a contract is to agree to terms. Upon breach of such terms recourse must be had to the courts. He might as well enter into a contract with his *goiya* cultivators and upon breach of the terms lay a charge against them under this section of the Penal Code!

The Hon. the QUEEN'S ADVOCATE said that this section clearly referred to a man who endeavoured to find the goods stolen from another man without making any endeavour to find the thief himself.

The Hon. Mr. RAMA NATHAN :—Is it a case then of compounding felony?

The Hon. the GOVERNMENT AGENT W. P. : This refers to the case where a man says he will take a reward (a "gratification") to restore, say, an animal that was stolen, though he may be really himself the thief.

His Excellency the LT.-GOVERNOR said he thought it referred to a case where a man had lost some property and told another "If you restore my property I 'll say no more about it." There was a celebrated case in England where certain property was stolen and the very thieves themselves promised to restore it to the owner for a reward.

The Hon. P. RAMA NATHAN :—Whatever the intention may be I understand the clause to mean this : my hon. friend loses £10; I get £5 now, and £5 afterwards.

His Excellency the LT.-GOVERNOR :—Where you undertake to find out stolen property, you will be penally judged unless you make an effort to bring the offender to justice. It is a common trade in London for people thus to secure a reward by getting the stolen goods from the thieves themselves.

The Hon. J. VAN LANGENBERG said that the clause proceeds upon the assumption that the money gained for recovering the stolen property is taken to be shared with the thieves.

The Hon. P. RAMA NATHAN said undoubtedly such a man ought to be punished. But what about innocent parties who do not know where the thieves are? Are they to be made liable to be punished with imprisonment for two years or with fine or with both?

His Excellency the Lt.-GOVERNOR said he thought the hon. member misunderstood the clause.

The Hon J. VAN LANGENBERG :—No honest man ought to join with another in any matter in which stolen goods are concerned

The Hon. P. RAMA NATHAN said that if this was the meaning it would tend to the closing up all the police stations in the island.

His Excellency the Lt.-GOVERNOR asked if the hon. member who represented the law (Mr. Van Langenberg) found any difficulty in understanding the clause.

The Hon. J VAN LANGENBERG said he found none.

The clause was then passed.

§ 216. The Hon. P. RAMA NATHAN wished to know why the "exception" attached to this clause was in small type whereas substantially the same exception in clauses 136 and 212 were in large type. There ought to be some uniformity, he thought. He merely made the suggestion, he said.

§ 218. The Hon. J. VAN LANGENBERG said he wished to draw the attention of Council to two sections of the Indian Penal Code (§§ 219-220) which he thought might be aptly inserted in the Code. The two clauses ran thus:—

Whoever, being a public servant, corruptly or maliciously makes or pronounces on any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.—(Section 219—Indian Penal Code.)

Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. —(Section 220.—Indian Penal Code.)

The hon. member said he knew of instances in which magistrates have simply defied the authority of the Supreme Court, and acted in well-known violation of the law. If cases of that kind unfortunately occurred again these omitted clauses if inserted would provide the means of bringing such men to their senses.

HIS EXCELLENCY said that the insertion of these clauses was a matter in which he would like to take the sense of the Council.

This brought the sitting to a close, and the Council was adjourned to the next day (Thursday) at 2 p.m.

THURSDAY, AUGUST 2.

Present :—His Excellency the Lieut.-Governor (President), the Hon. the Acting Colonial Secretary, the Lieut.-Colonel Commanding, the Queen's Advocate, the acting Auditor-General, the Treasurer and Principal Collector of Customs, the acting Surveyor-General, and the Hons. J. VanLangenberg, P. Rama Nathan, and Foenander.

Absentees :—The Hon. the Government Agent, W. P., the acting Government Agent, C.P., and Messrs. W.W. Mitchell and A. L. de Alwis,

The Council resumed consideration of the Penal Code.

The Hon. the QUEEN'S ADVOCATE said he wished to revert back to certain clauses which had been reserved for consideration at previous sittings.

SECTION 62.

He moved that for the first 12 words in this section the following be substituted :—"In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with fine only, in which the offender is sentenced to a fine, it shall be competent," etc.

The Chief Justice had agreed to the necessity of adopting this alteration which had been made to the clause by the Indian Government. Agreed to.

SECTION 65.

After the word "fine only" in line 1, add "the imprisonment which the Court imposes in default of payment of the fine shall be simple," etc. Agreed to.

SECTION 69.

The Hon. the QUEEN'S ADVOCATE moved the addition of the following clause :—"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries could award for any one of such offences." Agreed to.

SECTION 77. ILLUSTRATION (*a*).

The Hon. the QUEEN'S ADVOCATE said that the case of which he was thinking when he last referred to this illustration he had since examined with the Chief Justice. The case went very far to show that the captain could not justify himself *civilly*, by going out of his course, but the case in question did not touch on the criminal liability of the captain. He thought the illustration might be allowed to stand. Agreed to.

These were all the alterations he had to submit. In regard to section 53 he would wish to have some more time for conference with the Chief Justice.

The reading of the clauses of the Bill was then proceeded with.

On coming to section 266 the word "malignantly" on the suggestion of the Hon. J. VanLangenberg was altered to "maliciously."

SECTION 279.—THE MEANING OF THE PHRASE "TO TAKE ORDER."

The Hon. P. RAMA NATHAN inquired what the meaning of the phrase "to take order" was.

His Excellency the LIEUT.-GOVERNOR said he would endeavour to explain his view of it by an illustration. Suppose there were two explosive substances which when brought together might become combustible. You "take order" when you keep them separate.

The Hon. the QUEEN'S ADVOCATE:—It is a novel expression.

Hon. P. RAMA NATHAN:—If it is not generally known why should we use it? I know the meaning of the phrase "to take orders," but not this.

His Excellency the LIEUT.-GOVERNOR said that the Indian Code, in which the expression occurs several times, had been some 30 years in operation, and no difficulty seems to have been felt in understanding it, so that the presumption is in favour of the expression. It was a new expression, but it was to a certain extent explained by being used in so many clauses.

The Hon. P. RAMA NATHAN said that whenever the late Principal of the Colombo Academy (Dr. Boake) caught a student using any strange or barbarous expression he used to call it "Chingalee-English." Perhaps the people in India spoke "Chinee-English." (Laughter.)

His Excellency the LIEUT.-GOVERNOR said that at any rate the English of the Indian Code was he believed Macaulay's English! (Great laughter.)

The Hon. P. RAMA NATHAN was not quite sure of that.

His Excellency the LIEUT.-GOVERNOR said he quite sympathised with the hon. member, but it was very difficult to define the term.

The Hon. J. VAN LANGENBERG said that the words had a legal meaning.

The subject then dropped.

On a suggestion of the Hon. J. VAN LANGENBERG the word "exception" prefixed to the last paragraph of section 291 was struck out.

CHAPTER XV.

Before entering upon this chapter the Hon. Mr. VAN LANGENBERG wished to ask if it was intended by the 4 sections which constituted chapter xiii. to repeal the Ordinance of Weights and Measures (8 of 1876). The hon. member said he thought the ordinance was far more comprehensive and dealt with several matters not touched by the sections of the Code.

The Hon. the QUEEN'S ADVOCATE said he presumed that there was no intention of repealing that ordinance except in so far as it was inconsistent with the clauses of the Penal Code.

The Hon. Mr. VAN LANGENBERG asked if it would not be better to retain those parts of the ordinance which deal with substantive laws,—those that is which create offences.

H. E. the LIEUT-GOVERNOR said that the ordinance was far too ambitious a measure to work well in a country like Ceylon. By section 11 of that ordinance a penalty was attached on the *mere possession* in any boutique of a weight or measure not in conformity with the standards established under this ordinance or not duly stamped, whereas by this Code being in possession of false weights or measures alone was not found punishable unless it can be proved that the person charged with the offence *knew* them *to be false* and *intended* to use the same fraudulently.

He continued that when they came to the consideration of the schedule of repealing clauses in the Procedure Code then was the time to see how many sections of the Ordinance should be retained.

§ 300.—A PUNISHMENT FOR CULPABLE HOMICIDE.

HIS EXCELLENCY the LIEUT.-GOVERNOR remarked that the penalty attached to this clause was practically an *imprisonment* for life (20 years, and fine) in cases where death was intended to be produced by the accused.

§. 305.

The Hon. the QUEEN'S ADVOCATE suggested that for the words "and also shall be liable to a fine" should be substituted the amendment adopted in the Indian Code "or with fine or with both."

§ 314 agreed to.

There was considerable discussion on this clause.

H. E. the LIEUT.-GOVERNOR said, it was very difficult to define 'grievous hurt.' The subject had been discussed at great length in the Executive Council without coming to any definite conclusion.

The Hon. the TREASURER said he thought 20 *days* far too long a period during which plaintiff was to be in acute bodily pain before founding a charge for grievous hurt under the 8th sub section of § 314.

H. E. the LIEUT.-GOVERNOR said he thought it to be a most useful measure.

The Hon. P. RAMA NATHAN :—I see, sir, the loss of a tooth is considered a grievous hurt. A person aims a blow at another man's mouth, which knocks out one of his teeth. That is considered to be a grievous hurt. It may be a rotten tooth and then?

H. E. the LIEUT.-GOVERNOR said that in the Executive Council he mentioned a case which came under his own observation where a man had a false tooth knocked out of his mouth, but that the Chief Justice considered such a tooth not a part of a man's body. (Laughter.) There was some further discussion, at the end of which His Excellency remarked that it was indeed a difficult clause.

The clause was however passed.

§ 329.

The Hon. the QUEEN'S ADVOCATE moved that the word 'voluntarily' be inserted after 'whoever' in this clause. Amendment agreed to.

§ 336

The Hon. the QUEEN'S ADVOCATE drew attention to the largeness of the fine (one thousand rupees) which could be inflicted by this section for wrongful confinement.

§ 343.—WHAT IS "FORCE."

The Hon. P. RAMA NATHAN:—I submit, sir, that this clause may be omitted from the Bill. I do not think it is necessary to define what 'force' is. We have not defined 'waging war (§ 117)'; keeping a lottery office (§ 291); taking order (§ 279); fraud (§ 240); hurt (§ 313). But we are going to define 'force.' It is just one of those words which like the word 'atmosphere,' we take a good deal of time to define but which is easily understood. I do not object to a definition if the word could be defined, but what appears in § 343 is not easily intelligible. I am afraid, however, to speak, and am touched with a paralytic fear, because I have hitherto received no support or encouragement for the remarks I have made. It may be said that this definition is taken from the Indian Code, which has been tested by an experience of 30 years. That surely is not an argument for retaining the definition. Notwithstanding all the talent in this Council that was used in the preparation and passing of the Weights and Measures Ordinance, we have heard today how unworkable it is. So that merely because the Indian Code has been working for 30 or 40 years, that by itself is no argument for its workability or soundness. My desire is, that we should be plain in legislation. I do not think a metaphysical definition like this, without the definition in § 344, is quite intelligible. Hitherto we have been dealing with 'criminal force' and making the use of 'criminal force' penal. I submit with a great deal of deference that the term "force" is unnecessary to be defined in this Code.

His Excellency the LIEUT.-GOVERNOR said that it appeared to him that the word 'force' was not used here as a synonym for 'criminal force.' He therefore thought that the word ought to be defined because unlike 'keeping a lottery,' and 'waging war' it was not easily understood without a definition.

The Hon. the QUEEN'S ADVOCATE said that the best answer he could give for the retention of the definition of 'force' was that given by the Law Commissioners on the Indian Penal Code. This is what they said:—"We have found a great difficulty in giving a definition of this term. But at present as it includes all that we wish to include under the term, and excludes all that we wish to exclude, we have adopted it." [Later on, the hon. the Queen's Advocate said that he had inadvertently read the Law Commissioners' remarks on 'criminal force' as though made on the definition of 'force.']

His Excellency the LIEUT.-GOVERNOR: I quite sympathize with the hon. member's objections, but we are just in the same position with the Indian Law Commissioners, that we cannot find a better definition. Would the hon. member now move for the omission of the clause from the Code?

The Hon. P. RAMA NATHAN:—I quite foresee that I shall be singular again, so that I do not press for a division.

The Hon. the QUEEN'S ADVOCATE:—I quite sympathize with the hon. member.

His Excellency the LIEUT.-GOVERNOR:—The hon. member will have our sympathy, but we cannot promise him our votes. (Much laughter.)

The clause was passed.

§ 346.—MEANING OF THE WORD "ASSAULT."

The Hon. P. RAMA NATHAN wanted to know whether the word 'to assault' was the same as 'to use criminal force.' The case in § 344 is said not to be an assault, a justifiable assault. There have been one or two cases where schoolmasters have been fined for beating their pupils. In section 345 'assault' is coupled with 'criminal force' and is as it were on all fours with it. Yet the heading of these sections is "Of Criminal Force *and* Assault."

The Hon. the QUEEN'S ADVOCATE said that the English definition of assault was not included, but a gesture might be an assault

His Excellency the LIEUT.-GOVERNOR:—What we call 'assault' is the 'criminal force' meant here.'

The Hon. the QUEEN'S ADVOCATE: What is 'criminal force' amounts to something more than an assault or to a battery.

H. E. the LIEUT.-GOVERNOR:—Assault is the threat, the insult, not the act of striking.

The HON. P. RAMA NATHAN here read Sir James Fitz-James Stephen's remark condemning the definition of "assault" given in the Indian Code.

His Excellency the LIEUT.-GOVERNOR:—The hon. member has at least the sympathy of Sir James Fitz-James Stephen.

THEFT OF PRŒDIAL PRODUCTS; NECESSITY FOR SPECIAL LEGISLATION.

On coming to § 371, which read thus:—

"Whoever commits theft of any bull, cow, steer, buffalo, heifer, or calf, or of any fruit, vegetable, or other prædial production, or any cultivated root or plant used, or capable of being used, for the food of man or beast, or for medicine, distilling or dyeing, or in the course of any manufacture, may, in addition to any other punishment for theft, be punished with whipping,"

The Hon. J. L. SHAND said:—I beg, sir, in this connection to draw attention to the apparent absurdity of extending special protection to coffee generally, by the Coffee Stealing Ordinance, and not extending that protection to other prœdial products which are equally liable to theft. Of course, when the Coffee Stealing Ordinance was passed in 1874, a large extent of land was under coffee cultivation, and it was liable to excessive depredation. At that time coffee and coffee alone were grown. But this cannot be said now, seeing that we now have tea, cinchona, cocoa, cardamoms and many other products which are equally liable to depredation, and which are equally valuable and which equally suffer from removal by our dishonest neighbours. I think, sir, it is really an absurdity that these other products, being all liable to similar depredation, and all being equally capable of being converted into money, should not be allowed that special protection which is afforded to coffee.

The Hon. the COLONIAL SECRETARY said the words 'or other prœdial production' would cover all the productions mentioned by the hon. member.

The Hon. J. L. SHAND said that he was talking on the presumption that, according to clause 4 of the Code, the Coffee Stealing Ordinance of 1874 would not be repealed. The main point of this ordinance was that the *onus probandi* was thrown on the party in whose possession the green coffee was found. That was the clause which afforded the greatest protection.

His Excellency the LIEUT.-GOVERNOR said it was certainly intended to repeal the Coffee Stealing Ordinance. This clause would give special protection to all new products, and the question of the *onus probandi* is intended to be met by clause 353 of the Procedure Code which provides that upon the trial of every accused, he shall be informed of his right to make a statement. This clause, His Excellency thought, would prove very useful in cases of cattle stealing, petty larceny, &c., by throwing upon the accused party a certain *onus* arising from the thing he was found in possession of. It would be well for the hon. member to consider this point between now, and the time when they would come to the schedule of the repealing clauses of the Ordinances, in the Procedure Code. The Government view of the matter was that it sufficiently meets the case. Of course this was a most important point, but it did not necessarily arise now. His own impression was that sufficient protection is given by clause 371, coupled with clause 353 of the Procedure Code.

SEC. 383-384.—WHIPPING DEMANDED AS AN ADDITIONAL PUNISHMENT FOR ROBBERY.

The Hon. J. L. SHAND asked whether, considering the prevalence of this crime, the punishment provided in these two clauses should not be accompanied with whipping. He thought that that would be a great deterrent to evil-doers and a great economy to the State.

His Excellency the LIEUT.-GOVERNOR said that it was merely to accentuate the punishment in certain cases (*i.e.*, in cases of the theft of cattle, prædial products, &c.) that this punishment was taken away from other cases, as it is against the policy of Government to subject people to whipping.

SEC. 396—ON THE RECEIVING OF STOLEN PROPERTY.

The Hon. the QUEEN'S ADVOCATE proposed to amend this section, according to the Indian Code, by deleting the words "offence of" in line 3 and adding after the words "and designated as stolen property" in line 5—"whether the transfer has been made, or the misappropriation or the breach of trust has been committed within or without this colony." Agreed to.

§ 398.—WHAT DOES "HABITUALLY RECEIVING STOLEN PROPERTY" MEAN?

The Hon. P. RAMA NATHAN wished to know what "habitual receiving" meant? How often was a man to be convicted of receiving stolen property before he became a habitual receiver?

H. E. the LIEUT.-GOVERNOR. This depends upon the circumstances of each case. If he is convicted 3 times in five-and-twenty years he would probably not be considered one, but if 3 times within one year he probably would be.

The Hon. P. RAMA NATHAN:—Under the Vagrant Ordinance (4 of 1841) if a man were convicted of robbery a second time he was deemed a rogue and a vagabond, if a third time an "incorrigible rogue." Seeing that the penalty under the section extended to 20 years he thought a time ought to be fixed.

H. E. the LIEUT.-GOVERNOR. We may leave that until we receive a definition. I think there ought to be a definition

The Hon. the QUEEN'S ADVOCATE:—I quite agree with the hon. and learned member that there ought to be a definition if possible.

The clause was laid over for consideration.

SEC. 400.—WHIPPING RESERVED FOR THEFT OF PRÆDIAL PRODUCTS AND CATTLE.

His Excellency the LIEUT.-GOVERNOR remarked to the hon. the planting member that this clause would meet the case of a receiver of stolen coffee and other products.

SECTION 409.

The Hon. P. RAMA NATHAN wanted to know if a notary came under this clause?

His Excellency the LIEUT.-GOVERNOR:—He does.

The reading of the clauses stopped at § 410.

THE MARRIAGE LAWS.

His Excellency the LIEUT.-GOVERNOR said he wished to draw the attention of hon. members to the chapter on "offences relating to the marriage laws." The subject was one of a very important character, and the Executive Council were not decided whether to leave it to a special law or retain this chapter. The law of Kandian marriages for instance was a most important one. The Government therefore felt some hesitation whether offences against marriage should not be specially legislated upon.

ORDER OF BUSINESS.

The Hon. J. VAN LANGENBERG wished to know what course the Government meant to pursue after the Penal Code was read through, as he believed it would be after the next sitting. Would they go on to the Procedure Code or to the schedule of the Penal Code?

His Excellency the LIEUT.-GOVERNOR:—As far as my experience in the colony goes I think it would be advisable to go through the Procedure Code first. The Schedules might be referred to a Sub-Committee.

THE MINUTES.

The Hon. P. RAMA NATHAN said that he would like to refer to the record of the recent sittings in Council. He did not think that the proceedings as recorded by the clerk of the Council gave an accurate account of what had transpired at the previous meeting. For instance the record made and printed by Government read thus:—'Clause 161, motion made and question put, That this clause stand part of the Bill," and he was represented as being in a minority of one in regard to it. Now this was no doubt what actually occurred. But really the question turned upon the use of the word 'gratification,' which word he objected to, as he considered it to be a very elastic expression. But for anything that appears in the minutes it would seem that he objected to bribery and corruption being punished by the law! Some more details must be given, he thought, by the Council clerk.

H. E. the LIEUT-GOVERNOR:—*Hansard* will give that. Besides the hon. member may have removed all misconception if he moved that some other word should be substituted for 'gratification.'

The Hon. MR. RAMA NATHAN said that as for the reporter for *Hansard*, the members of Council could not dictate to him, as he was connected with a paper belonging to a private gentleman.

H. E. the LIEUT.-GOVERNOR: The division was taken on the question whether the clause should form part of the Bill.

The Hon. P. RAMA NATHAN:—I only pray that a record of what actually transpired may be given.

H. E. the LIEUT.-GOVERNOR:—I hope it will appear in *Hansard*.

Council then adjourned for Wednesday next, 8th August.

WEDNESDAY, AUGUST 8.

Present:—His Excellency the Lieut.-Governor (President), the Hons. the Colonel Commanding, the Acting Colonial Secretary, the Queen's Advocate, the Acting Auditor-General, the Treasurer, the Government Agent W. P., the Acting Government Agent C. P., the Acting Surveyor-General, and the Hons. J. Van Langenberg, P. Rama Nathan, W. W. Mitchell, A. L. de Alwis and J. L. Shand.

PAPERS:

The Hon. the Acting COLONIAL SECRETARY laid on the table:—

(1) Sessional Paper VIII. on "Village Tribunals":—A statement showing the Districts, Presidents, their salaries and staff, and the number and the nature of the cases disposed of during the year.

(2) Sessional Paper XLIII. on "Forest Administration of Ceylon": Report of the Conservation and Administration of the Crown Forests in Ceylon by F. d'A. Vincent (of the Indian Forest Department.)

THE COUNCIL IN COMMITTEE ON THE GENERAL PENAL CODE.

§ 411.—ON "MISCHIEF."

The Hon. the QUEEN'S ADVOCATE referring to the corresponding clause in the Indian Penal Code said that the words making it penal to cause damage to "agricultural produce" were omitted in this Code.

His Excellency the LIEUT.-GOVERNOR said that there were very few cases of persons setting fire to agricultural produce in Ceylon, and therefore the subject did not require to be legislated upon.

§ 423.—MISCHIEF WITH INTENT TO DESTROY OR MAKE UNSAFE A DECKED VESSEL OR A VESSEL OF 10 TONS BURDEN.

The Hon. W. W. MITCHELL wished to know if mischief committed to a vessel *under* ten tons could be punishable under this section. There were passenger vessels under that tonnage.

His Excellency the LIEUT.-GOVERNOR said that such mischief would come under § 421 (whoever commits mischief by fire or any explosive substance, intending to cause damage to *any* property) or some one of the other sections. This section inflicts a higher penalty than the other.

The remaining sections on the subject of "mischief and illegal removal of wrecks" were passed without any comment.

CHAPTER XVIII.—OF TRADE AND PROPERTY MARKS.

Sec. 470.—"A mark used for denoting that goods have been made or manufactured by a particular person or at a particular time or place, or that they are of a particular quality or quantity, is called a trade-mark."

The Hon. W. W. MITCHELL said that this did not appear to him to cover the whole ground. He suggested the substitution of the words "by *or for* a particular person for "by a particular person." The importer is not a manufacturer of the goods. The importer may have his own trade mark, and the limitation of this section may operate as a hardship. The hon. member added that the want of protection was very much felt.

The Hon. the QUEEN'S ADVOCATE said that perhaps the succeeding sections would meet the difficulty.

The Hon. W. W. MITCHELL said that there might not be a name at all on the goods, but merely a figure or mark with nothing to indicate whom they were made by, and thus the clause may become inoperative.

His Excellency the LIEUT.-GOVERNOR thought that offences of this sort would be prevented not by a criminal suit but by something in the way of an injunction against using some other person's trade mark, just as it is done in the case of a song, or the use of a song.

The Hon. J. VAN LANGENBERG said that there was special legislation on the subject. He referred to Ordinance 5 of 1865. He thought it desirable to embody the provisions of that ordinance in this chapter.

His Excellency the LIEUT.-GOVERNOR :—This does not give the same protection as Ordinance 5 of 1865.

The Hon. W. W. MITCHELL asked if the registration of trade and property marks would be provided for.

His Excellency the LIEUT.-GOVERNOR replied that this might require to be done by special ordinance, but that it would have attention, when the question of repealing, or otherwise, the ordinance relating to the use of fraudulent trade marks, came up for discussion.

The Hon. the QUEEN'S ADVOCATE said that section 470 seems taken from an ordinance still in operation. It is doubtful whether this Code is to repeal the old ordinance *in toto* or only to a limited extent. He was not prepared to say anything definite, or frame an amendment, till he had seen the Chief Justice on the point.

The Hon. W. W. MITCHELL :—I would ask that a special ordinance should be made in reference to registration of trade marks.

THE NECESSITY OF SPECIAL PROTECTION FOR PRÆDIAL PRODUCTS.

On concluding Chap. xviii.

The Hon. the acting GOVERNMENT AGENT, C. P., rose and said that he wished to refer back to a matter started by the Planting member at the last sitting of Council, at which he was not present. He had for some time been receiving petitions from all parts of the province with which he was connected with reference to the stealing of prædial products, and praying that a clause may be inserted in the Code which would meet the case of unripe products being found in possession of anyone. That was provided for at present only in the case of coffee, but there is a very increasing complaint throughout the country of unripe fruit being stolen. He brought the matter up chiefly in the interest of the native community, who are suffering very severely from such depredations (Hear, hear.) It certainly seemed to him that some clause ought to be inserted which would give the desired protection.

His Excellency the LIEUT.-GOVERNOR drew the hon. member's attention to section 371, where to accentuate the punishment for a theft of this kind the penalty of whipping was specially added. By another clause (§ 397) special punishment was provided for the possession of stolen property. Under the Criminal Procedure Code section 353, "upon the trial of every accused person the court shall inform the accused, that he may make any statement he pleases as to the charge brought against him," and upon this statement he is liable to be cross-examined. These are the safe-guards and special provisions which have been introduced for the protection of the parties referred to by the hon. member.

The Hon. the GOVERNMENT AGENT C. P. :—But supposing a man refuses to make a statement? The mere possession of unripe produce, green arecanuts say, would not make any one liable under the present Code. Supposing he were the owner of a garden and he found that he was losing all the produce of it by thefts committed by his neighbours. What was he to do?

The Hon. the GOVERNMENT AGENT W. P. said that the want of some such provision had been grievously felt by natives of the Western Province. At one time the evil complained of was met by a rule which the gansabawas had made for themselves. This rule, however, came before the Executive Council, and it was decided that the gansabawas were acting *ultra vires* in making use of it. The rule was a very good one—

His Excellency the LIEUT.-GOVERNOR said that he feared the hon. member was not exactly in order.

The Hon. the GOVERNMENT AGENT W. P. said he was about to ask what there was that made the possession of green arekanuts criminal under the Code.

His Excellency the LIEUT.-GOVERNOR :—Because it is alleged green arekanuts are not likely to be plucked by the owners.

The Hon. the Acting GOVERNMENT AGENT C. P. said he knew that unripe arekanuts were made use of for medicinal purposes by the people.

The Hon. J. L. SHAND said that from the remarks that had fallen from the two hon. members who have had such considerable experience in the administration of the island it was evident that it was no idle or careless question that he had started. He feared the Executive Council had not a correct idea of the greatness and urgency of the evil against which protection was sought. It was not "class legislation," in the bad sense of that expression, that was sought for, but protection against an imminent and wide-spreading evil. He (the speaker) moved a great deal among the natives and knew how they suffered from the theft of produce from their gardens, and the hon. the Government Agent for the Central Province would admit, the great hardships the people suffer from not being sufficiently protected against the plunderers of the new products growing in their gardens. If hon members who had been engaged in the administration of the island, with all their experience, could not understand the clause, how could they expect members of the Civil Service to understand it?

His Excellency the LIEUT.-GOVERNOR said that it was on account of the strong representations that were made to Government on this subject, and the equally great objection Government had to anything like 'class legislation,' that clause 371 was introduced into the Code and that it was resolved to confine whipping to persons who were convicted of offences of the class referred to. This punishment was introduced for no other reason than because exceptional punishment was desired.

The Hon. the Acting GOVERNMENT AGENT C. P. said he did not think the definition in § 396 would cover all the cases that might arise, and that many of the junior magistrates would think it unfair to convict a man of this offence, if he did not make a statement.

The Hon. the GOVERNMENT AGENT W. P. returned to the question he had once put, and asked whether some legal member would not tell them authoritatively whether the possession of green coffee or arekanut would establish a legal presumption of being in possession of stolen property, simply because the law

states that a man in possession of produce may be asked to make a statement, and be cross-examined upon it.

The Hon. the QUEEN'S ADVOCATE said that as he had not drafted the bills he of course could not venture upon making any very authoritative statement regarding it. In regard to an accused person making a statement upon his trial, it was a thing hitherto unknown to English law. In French law and in certain other laws such a thing was deemed necessary to attain to the real truth of the subject. But what presumption a judicial officer is to draw, from what the accused says, or what he does not say, he could not take upon himself to state.

The Hon. J. VAN LANGENBERG said he did not exactly know what the question at issue was. But if it were as to whether a man was guilty of theft because unripe fruit was found in his possession, all he could say was that there might be here a presumption of guilt. Now presumption is not evidence, and an offence must be proved to be so by the laws of evidence before it can be made punishable. The simple possession of unripe fruit cannot be a crime. Well, a charge is brought against a man for having unripe fruit in his possession. He is asked to make a statement as it is considered a shame to close a man's mouth, when he can help so materially in eliciting the truth. Now suppose the man declines to make a statement. Is he therefore a thief? He (Mr. VanLangenberg) might himself, if he is so minded, pluck and be found in possession of unripe fruit from his own garden, and that was no offence. In the case of green coffee the great point is that a theft of green coffee must first be established. Then comes the charge against a person found in possession of some green coffee The burden of proof is then upon him to shew how he came by it. The judges of the Supreme Court have been obliged to dismiss many cases brought up under this ordinance owing to the prior theft not having been clearly established before it was sought to bring it home against the accused.

His Excellency the LIEUT.-GOVERNOR:—There can be no doubt that before a man found in possession of stolen coffee can be charged with the offence it must be proved that there was a theft in the neighbourhood. However, there have not been more than 5 or 6 cases brought up under this Ordinance. Every one of these cases where corporal punishment has beeu inflicted has been reported to the Government.

The Hon. the Acting GOVERNMENT AGENT C. P. asked if the smallness of the number of cases (some 5 or 6 alone) under the ordinance was not a direct testimony to the fact that the ordinance had had a deterrent effect.

His Excellency the LIEUT.-GOVERNOR :—I am afraid not.

The Hon. J. L. SHAND said it was well known that during the year the ordinance was allowed to relapse coffee stealing had most alarmingly increased.

His Excellency the LIEUT.-GOVERNOR said that the number of cases of coffee stealing had been very numerous. and the convictions had been very large too.

The Hon. J. L. SHAND said that there could be no doubt the theft of green coffee had decreased after the promulgation of the 1874 Ordinance.

His Excellency the LIEUT.-GOVERNOR :—In some districts coffee stealing has decreased, whilst in others it has increased. The convictions have been chiefly under the Common Law. It is a fallacy to think that special legislation had anything to do with it.

The Hon. the Acting GOVERNMENT AGENT C. P. said that he was satisfied with His Excellencys assurance that sections 371 and 396-7 of the Penal Code together with the clause in the Procedure Code would afford protection against loss of unripe fruit by stealing.

The Hon. J. L SHAND asked for a clear and simple answer from the hon. the Queen's Advocate to the question put by the hon the Government Agent, W. P.

The Hon. the QUEEN'S ADVOCATE said he could not take upon himself to state what the intention of the framer of the bill was.

The Hon. J. L. SHAND asked if the Council was not going to get the aid of the Chief Justice who had drafted the Code? Perhaps he might help in framing a clause to meet the case.

His Excellency the LIEUT.-GOVERNOR :—We cannot ask the Chief Justice to tell us what his decision would be when the case came before him.

The Hon. the GOVERNMENT AGENT W. P. said that as the Chief Justice could not be asked he would refer to his hon. friend the Queen's Advocate.

The Hon. J. L. SHAND inquired if the hon. the Queen's Advocate may not be asked to draw up a clause embodying the presumptions which might lawfully arise if a man were found in possession of new products.

The Hon. the QUEEN'S ADVOCATE said that one of the objects of the "statement" which accused parties will be asked to make is (1) to protect the accused, (2) in order that the whole truth of the case may be elicited. The magistrate will then have the right to cross-examine the accused.

His Excellency the LIEUT.-GOVERNOE said that the Home Government greatly disliked anything like legislation of the kind demanded.

The Hon the QUEEN'S ADVOCATE thought that the question had better be taken up again when the Procedure Code was discussed, than be despatched at once.

His Excellency the LIEUT.-GOVERNOR thought it had better be taken up when the Coffee Stealing Ordinance came before them to be repealed.

The Hon. J. L. SHAND said that when the Coffee Stealing Ordinance came to be discussed, it would be coffee only and not other products that would be referred to. He wanted special protection for prœdial products.

His Excellency the LIEUT.-GOVERNOR said that to go so far as to make special legislation in the way that is proposed, the Government were certainly not prepared to do.

The subject then dropped, and the question of the Marriage Laws—chapter xix.—was entered upon.

His Excellency the LIEUT.-GOVRRNOR said that in regard to chapter xix.—the one which treats of offences relating to Marriage—he would be glad if the hon. members would give the Council some idea of their views on the subject and as to whether it should be left in the Code or not.

The Hon. J. VAN LANGENBERG said his own view was that the chapter should be left out. The whole of the criminal law of marriage is here attempted to be codified in 4 short sections. The second of these four sections is the most important and defines what bigamy is, and prescribes the punishment for it. In a country like this, however, with so many diverse systems of marriage it would be exceedingly difficult to apply one general law to all of them. Now a clause of the Ordinance 6 of 1847 defines what bigamy is and prescribes the penalty for it. The Ordinance is still in operation. But Muhammadans are specially exempted from it. By Ordinance 3 of 1870, an "ordinance to amend the laws of marriage in the Kandyan Provinces," the offence of polygamy is defined and penalties are attached for its commission. The Penal Code proposes to deal with these offences generally. making it applicable to each of the different nationalities that dwell in this country. If we make no provision for offences relating to marriage in this Code, what remains special to each class in the various ordinances regarding marriage will be preserved intact. He thought there was no necessity for this chapter, and that it would be much better to leave it out.

The Hon. P. RAMA NATHAN said that the law relating to marriage was exceedingly uncertain. To such an extent was this felt that last year the Government introduced a bill to consolidate and amend the law relating to marriage For some reason or other it withdrew this bill before it could be passed. He thought that the Council should defer the considertion of these four sections to a future date. No lawyer in Ceylon he thought knew the law that regulates Hindu marriages. He remembered pleading in cases in the District Court when neither he nor anyone else could tell what

ceremonies were necessary to be gone through and what essentials constituted a valid marriage among Hindus. This was true in the case of Muhammadan and Christian marriages also. He therefore thought the question ought to be deferred.

His Excellency the LIEUT.-GOVERNOR : We are not going to introduce any legislation.

The Hon. P. RAMA NATHAN said he knew that, but he suggested the deferring of the clauses because the Penal Code says no offence will be punishable unless it is contemplated by this Penal Code." The law relating to bigamy appears in one of the Ceylon Ordinances (6 of 1847), but abduction for the purposes of marriage is not punishable under any of the Ceylon Ordinances so far as he knew. It was no doubt punishable under the Common Law. Now as no offence is punishable unless it comes within the provisions of this Code or is included under some local law it will happen that offences of this kind will go unpunished. It appeared to him therefore necessary that the Council should address itself seriously to the question of the reform of the marriage laws once for all. He thought the hon. members would like to have some further time to read up the subject. As for himself he said if time were allowed he meant to study the subjects of Kandyan Law and the law of the Maritime Provinces in regard to marriage as quickly and as thoroughly as possible.

The Hon. A. L. DE ALWIS said that as there are several nationalities in Ceylon, and each nationality has its own law of marriage, and what is marriage under one law is not necessarily marriage under another, he therefore thought that these four sections should be deleted from the Code.

His Excellency the LIEUT.-GOVERNOR said that his own feeling was that this chapter should be deleted. Some of the members of this Council might remember how it was said of them at the time the Kandyan Marriage Ordinance was being discussed in Council that they had "invented bigamy and created adultery." He had himself studied the question of Kandyan Marriage very deeply and had written a good deal on the subject. Take five or six different categories of actual Kandyan marriages, and it will be left an open question whether certain people have committed bigamy or not. He was afraid that zealous public officers have at times led people to the commission of wholesale bigamy in registering marriages without previous notice. If the marriages were invalid, as they possibly were, this altered the face of things completely. He thought that the people themselves did not know exactly how they stood. As regards most of the other laws he could not pretend to say much, but the Kandyan Marriage Laws he had certainly deeply considered, and he knew that if they adopted these four sections they should be legislating for an unfortunate people who had been legislated for without it being very well known what it was that was exactly wanted. He therefore thought it would be premature to adopt these sections into this Code.

The Hon. the GOVERNMENT AGENT W. P. said that he quite agreed with His Excellency that this chapter should be deleted, although he could not say he thought that the "Amended Kandyan Marriage Ordinance, 1870," was passed without due consideration. It was passed under the government of Sir Hercules Robinson, a very wise and sagacious ruler, and the measure itself was a well considered one.

HIS EXCELLENCY said that he did not refer to the Amended Kandyan Marriage Ordinance, but to the first Ordinance (13 of 1859).

The Hon. the GOVERNMENT AGENT W. P. said that clause 482 ("Every man, who by deceit, causes any woman who is not lawfully married to him to believe that she is lawfully married to him, &c.") if passed would work an immense amount of mischief. It touched upon the key to very many Kandyan marriages. A great many people live, as they think, in honourable wedlock, without registration. If a man then leads other people to believe that he was married, and it is then discovered that he was married before to a woman still living, he becomes chargeable under this section at once.

The Hon. the ACTING GOVERNMENT AGENT C. P. said that as one of the "zealous public officers" referred to by His Excellency he admitted that he could look back upon many thousands whom he had induced to marry in accordance with the forms prescribed by the Ordinance. He believed, however, that in the great majority of cases no difficulties whatsoever had been experienced. He thought, however, that it would be wise to leave this subject for special legislation.

The Hon. the QUEEN'S ADVOCATE said that it was quite clear that the general feeling is that this chapter should be omitted from the Code, and from the little insight he has already gained into the subject he felt that the marriage laws required amending and under the circumstance he thought it would be better to postpone that subject for the present. Under the circumstances, he moved that §§ 482 to 485 be omitted from the Penal Code.

The Hon. the COLONIAL SECRETARY seconded.

The Hon. P. RAMA NATHAN wished to know if Government intended to take action in regard to the Kandyan Marriage Ordinance.

His Excellency the LIEUT.-GOVERNOR said that he he could not exactly say at present what Government intended to do in regard to it.

CH. XX. SEC. 486.—TENTH EXCEPTION.—WHAT IS MEANT BY "A CAUTION"?

The Hon. P. RAMA NATHAN said that it appeared to him that this exception destroyed the effect of the preceding sections. Nobody could say what exactly goes to make up a "caution." Is it a matter of opinion? One man might say that the words of caution he offered were calculated to have a good effect, another might deny it. This exception opens the door for libel. The necessary safeguards have been expressed in the previous 'exceptions,' and therefore the 'tenth exception' may well be omitted.

The Hon. QUEEN'S ADVOCATE put a case before the Council. Supposing a person were to come to another and were to ask him about the character of a servant. Confidentially and in good faith and in order to convey a caution, the character of the servant is given. This is a thing which is constantly done. This exception takes in a case of this kind. Now by English law a person who makes an accusation against another even in good faith unless it be a privileged communication becomes liable to a prosecution. It is very necessary sometimes to say in good faith something about a person without running the risk of being proceeded against.

The Hon. P. RAMA NATHAN :—But what about a caution addressed in a public place? There are some well known cases in the Ceylon Reports where actions have been brought against persons for addressing these "cautions" publicly.

The Hon. the Acting GOVERNMENT AGENT C. P. directed the hon. member's attention to the "first exception": 'It is not defamation to impute anything which is true concerning *any* person," &c.

The Hon. Mr. RAMA NATHAN referred to cautions addressed in the newspapers, the only difference being that the vehicle is altered and the caution is circulated over a wider area.

His Excellency the LIEUT.-GOVERNOR said that if a gentleman saw at his friend's dinner table a servant who had once robbed him and in confidence cautioned his friend against that servant such conduct was not actionable. But if he wrote to the press about it that would be a different matter.

The Hon J. VAN LANGENBERG said that in the interpretation clause of the Indian Penal Code he found that the expression "one person," (*It is not defamation to convey a caution to one person against another*) meant "any number of persons."

The Hon. the GOVERNMENT AGENT W. P. said that the word "intended" in this section (*ntended for*

the good of the person) was a very important word and meant a great deal.

The Hon. J. VAN LANGENBERG:—The only real question is, is it said in good faith or not.

The Hon. the GOVERNMENT AGENT W. P:—That depends on the constitution of the individual—some persons think that the publication of such things is for the public good. Whether or not it is for the public good is a question of fact. *(vide first exception.)*

The Hon. P. RAMA NATHAN.—If a man make a definite charge against me, I can put him to the proof.

The Hon the GOVERNMENT AGENT W. P.:—A man gets convicted in a court of justice. Surely a newspaper may announce that such a man was convicted. Yet under English law such newspaper is liable for an action of libel.

His Excellency the LIEUT.-GOVERNOR said that when section 153 of the Procedure Code came to be discussed this subject will come on again before the Council.

SECTION 495.

By this section the penalty for "misconduct in public by a drunken person" is imprisonment for a term which may extend to twentyfour hours, or fine which may extend to ten rupees or both.

The Hon. the QUEEN'S ADVOCATE said that this matter had been considered and that such punishments were deemed too light and he proposed that R10 should be altered into R100 and "24 hours" into "1 month." Agreed to.

NOTICE OF MOTIONS.

The Hon. J. VAN LANGENBERG gave notice of 2 motions he would make at the next sitting of Council, before the Procedure Code was taken up. He intended to take the sense of the Council on these two motions, because if the Council agreed with him in his views it will have to alter the Code considerably. The following are the motions:—(1) That preliminary proceedings, with a view to committal for trial be as hitherto, conducted by Justices of the Peace. (2) That no party accused be committed for trial by Justices of the Peace except upon the direction of the Queen's Advocate.

The Hon. the GOVERNMENT AGENT W. P.:—Before we can discuss the question whether Justices of the Peace are to be abolished, or not, we must know what the Procedure will be in that eventuality.

The Hon. J. VAN LANGENBERG wished to know whether the Codes had been submitted to the Judges of the Supreme and District Courts and other judicial officers, for their opinon.

His Excellency the LIEUT.-GOVERNOR said that copies had been sent to these functionaries but that no opinons had as yet reached the Government.

The Hon. P. RAMA NATHAN said he would like to ask if the Council could limit its consideration to a certain number of sections only each day. When the Penal Code was gone through, as many as 200 sections were read over at one sitting! The Procedure Code was even more important than the Penal Code and the changes which it proposed to make on existing Criminal Procedure more violent and radical. The greater, therefore, the necessity for deliberation. Again there was a proposal that the Council should sit three days this week! He felt this would be putting too great a strain on the non members, many of whom were professional men and had besides other private work to attend to.

His Excellency the LIEUT.-GOVERNOR said that it was difficult to lay down limits because some clauses were difficult, whereas others contained nothing but machinery.

The Hon Mr. RAMA NATHAN said he was emboldened to ask this because that was the procedure adopted by the Law Commissioners, and the feeling in the country was that the Council was galloping through the sections. He would suggest that 75 sections be the maximum for each sitting.

His Excellency the LIEUT.-GOVERNOR:—75 is a very safe maximum.

In regard to the two motions, notice of which was given by the Hon. Mr. Van Langenberg, His Excellency said that he would like to get the drafter's view on the points raised before he committed himself to any view, and this more especially so in regard to the second motion. He would ask the Chief Justice to be present in Council on Saturday.

The Hon. J. VAN LANGENBERG said that if the Chief Justice were asked to be present he hoped the Deputy Queen's Advocate for the island (Mr. Ferdinands) would be asked too, as he thought it important that the two law officers should be present when the question of Procedure was entered upon.

His EXCELLENCY said that the Deputy Queen's Advocate would also be asked.

The Council then adjourned to Saturday, the 11th instant, at 2 p m.

SATURDAY, AUGUST 11.

Present:—His Excellency the Lieutenant-Governor (President), the Hons. the Acting Colonial Secretary, the Lieut.-Colonel Commanding, the Acting Auditor-General, the Treasurer, the Govt. Agent W. P., the Acting Government Agent. C. P., the Acting Surveyor General, and the Hons. J. Van Langenberg, P. Rama Nathan and A. L. de Alwis.

Absentees:—The Hons. W. W. Mitchell and J. L Shand.

The Chief Justice (the Hon B. L. Burnside) and the Deputy Queen's Advocate for the Island (Hon C. L. Ferdinands) were by request in attendance, the former being accommodated with a chair at the table, on the Lieutenant Governers' left.

THE GENERAL PENAL CODE IN COMMITTEE.

The Hon. the QUEEN'S ADVOCATE referring to sections 53 and 54 of the Penal Code moved that they be struck out inasmuch as they are practically provided for in sections 398 and 399 of the Procedure Code. He had referred clauses 53 and 54 to the Chief Justice who pointed out to him the comparative uselessness of retaining these, when the Procedure Code contained them, in a more complete form.

THE COFFEE STEALING ORDINANCE.

The Hon. the QUEEN'S ADVOCATE said that before proceeding with the Penal Code it would be better for him to refer to a subject upon which much was said at the last meeting of Council, viz. the Coffee Stealing Ordinance. That ordinance was passed in 1879 and was to be in force for two years and to the end of the then Legislative Session. The first section of the Ordinance No. 4 of 1881 provided that the same Ordinance should continue in operation for a further period of two years and to the end of the then Session of the Legislative Council. This ordinance was passed in November 1881, The session referred to will be the one which will probably meet before the close of the present year. The Government therefore thought it expedient not to propose repealing the Coffee Stealing Ordinance by the Penal Code. The ordinance will probably have expired unless renewed before the new Penal Code begins to have the force of law. It was therefore thought better to postpone any discussion as to whether the ordinance should be amended or repealed until the ordinance itself would be about to cease to operate by the expiry of the time for which it was enacted. At the time it is about to expire the subject might be discussed if it be thought right to do so. Some mention was made at the last sitting of Council about repealing the ordinance and therefore he had mentioned the subject in order to state that no express provision would be made in the Penal Code for repealing the Coffee Stealing Ordinance.

His Excellency the LIEUT.-GOVERNOR said that they had the advantage of the Chief Justice's presence, so that hon. members might put before him whatever

points in the Code were yet not clear to them after discussion and remained as yet unpassed. He thought that one of the hon. members wished to know why 'public authorities' were not defined in § 94.

The Hon. Mr. VAN LANGENBERG said that it was he who had made the inquiry.

The Hon. the CHIEF JUSTICE said that the term was advisedly left undefined, because particular questions may hereafter arise as to who was and who was not a public authority. The term may refer to the Chief Justice at one time, to a police officer at another. The difficulty was apparent to him and to the framers of the Code.

H. E. the LIEUT.-GOVERNOR: The hon. member was also anxious to know why §§ 219-220 of the Indian Penal Code were omitted from the Ceylon Code.

The Hon. the CHIEF JUSTICE said that they had been omitted advisedly after consultation with the Governor of the Colony at the time.

WHAT IS A "CAUTION"

His Excellency the LIEUT.-GOVERNOR said the next point to be inquired into was § 486: what was meant by conveying a caution in good faith. Now, of course, they could not ask the Chief Justice for a legal definition of the clause, though they might ask him the meaning of it.

The Hon. the CHIEF JUSTICE said that any remark made in good faith and without intending malice would come under that term. He would wish to explain the term without, at the same time committing himself to a legal decision.

His Excellency the LIEUT.-GOVERNOR said it appeared to him that a caution such as was intended meant a caution made between one person and another.

The Hon. P. RAMA NATHAN said his difficulty was as to the meaning of the term 'a caution.' Now supposing he went and told half-a dozen persons in whom he was interested, in pure gossip, "Now take care, don't depend upon such and such a bank," and next day there was a great rush upon the bank and the bank stopped payment on account of this rush. Would not the 10th exception to this section be a good handle to this gossiping person? Could he not say he had given a caution in good faith?

His Excellency the LIEUT.-GOVERNOR said that by section 51 of the Code "nothing is said to be done or believed in good faith, which is done or believed without due care and attention." Now if in good faith he merely cautioned one friend or two that would scarcely make him liable.

The Hon. P. RAMA NATHAN:—Supposing I mention my suspicions to my friend A at one time and to B two days afterwards, and between us three the information went abroad?

His Excellency the LIEUT.-GOVERNOR said that if the caution were not accompanied by proper care his good faith would not protect him. Whether it was said in good faith or not is for the Court to decide.

The Hon. P. RAMA NATHAN said there seemed to him nothing definite in the expression 'caution conveyed in good faith,' and that it was likely to do much harm. But, however, he would submit to the Chief Justice's wider experience.

The Hon. the GOVERNMENT AGENT W. P. thought that the expression 'one person against another' meant one person only and not a body of persons. It would be defamation to convey a caution to a body of persons even if such caution were for the public good. Only the other day it was stated in Council that it would be a libel to state of a person who had been convicted that he was convicted and to caution others against him as such.

His Excellency the LIEUT.-GOVERNOR: to state in the newspaper the hon. member said:

The Hon. J. VAN LANGENBERG said that as he had mentioned before, the great question was whether the caution had been administered in good faith. In the Indian Penal Code he found that 'one person' was explained in a marginal note to mean 'a body of persons.'

The CHIEF JUSTICE said he was afraid the marginal notes to the Indian Penal Code were most inaccurate, and that they were by no means to be looked upon as authorities. They were the opinions of private individuals.

H. E. the LIEUT.-GOVERNOR said that a person would be quite right in warning another in confidence against a dishonest client.

The Hon. the CHIEF JUSTICE remarked that he did not think there would be any difficulty in practically applying this clause.

The Clause was allowed to form part of the Code.

THE LAW OF ENGLAND IN CEYLON.

The next point submitted to the Chief Justice was whether, by sections 194 and 195, people in Ceylon were not presumed to be acquainted with the law of England as well as that of Ceylon.

The CHIEF JUSTICE said that the offence mentioned in these two sections was that of "fabricating false evidence." Now a person could not well fabricate testimony, in order to have a man convicted by English law, without first knowing what that law was. Suppose for instance a man considered a certain section of English law to be in force in the Island, and fabricated testimony against another, and got him tried under that clause. At the last moment the Court decides that that law is not in force in the Island. Surely this man would not be allowed to escape on the ground that the testimony he fabricated was not sufficient to convict a man under the law of Ceylon.

The HON. J. VAN LANGENBERG said that he understood the explanation given by the Chief Justice. The man so fabricating evidence had in view the punishment which would have been visited by English law upon the person charged with the offence.

H. E. the LIEUT.-GOVERNOR said that the thing was quite clear to him now.

The CHIEF JUSTICE said the words 'punishable by the law of England' means 'punishable by the law of England but not punishable here.'

MEANING OF "GRATIFICATION."

THE HON. P. RAMA NATHAN said that he would like to ask for information as to the meaning of the word 'gratification' in section 161. In this section the word gratification' is stated not to be restricted to pecuniary gratifications or gratifications estimable in money. It is also stated that the taking of a gratification may or may not be illegal. In section 161 the words 'corruptly or illegally' do not occur. It seemed to him that the clause would cover a case of this kind: suppose the Hon. the Government Agent C. P. had a son whom he wished to see provided with a place under Government, and that the acting Colonial Secretary had a berth in his gift at the time. The Government Agent C.P. accordingly writes to the Colonial Secretary to give the place to his son, and the place is given him. It appeared to him that this was a gratification which Mr. Ravenscroft had received and which was yet not estimable in money nor reckoned as any pecuniary gratification. If Mr. Ravenscroft gave the place it appeared to the hon member that he was subjecting himself to the penalty under clause 161. The letter moved him to do an act.

H. E. the LIEUT.-GOVERNOR:—That would depend on the gratification the letter gave him. He could not help thinking that the hon. member was creating for himself a bugbear, and that the clauses were simple and easily understandable.

The Hon. the CHIEF JUSTICE said that clause 161 was intended to provide for the case of a man doing his duty for any other reason than for his duty's sake, and clause 162 provided for the case where a man obtained a gratification for doing his work corruptly.

POLICE MAGISTRATES OR JUSTICES OF THE PEACE?

The Hon the GOVERNMENT AGENT W. P. said that on looking further into the Procedure Code he thought he saw now what was not sufficiently apparent then, but yet he would like to know exactly when a person is to be considered as on his trial before a police magistrate and when the inquiry which he is subjected to at first is to cease. As far as he could understand it, any person may come before a police magistrate with a string of charges against another man. Then the police magstrate examines the complainant as mentioned in § 158. The 158th section

read thus :—"In cases falling under heads 1, 2, 3 and 4 of section 154, the Police Court shall commence the inquiry by examining the complainant, police officer, or informant, or other person or persons professing to be able to speak to the material facts of the case." The 218th clause says:—"The following procedure shall be observed by police courts in all cases falling under head 5 of section 154 in which and in all cases falling under heads 1, 2, 3 and 4 of section 154, after the examination required by the 158th section, it appears that a police court has jurisdiction to try summarily." Was he to undertand that directly the information in writing is read, the police magistrate was to decide whether he was to act as police magistrate and try the case summarily or was he to act somewhat after the nature of a J. P. inquiry until the charge is framed? It would appear as if it was intended that the charge should not be framed until all the witnesses for the prosecution had been heard. What he wanted to know was, whether the police magistrate, immediately after the information was presented, was to decide whether he would proceed as a police magistrate or to continue the inquiry as Justice of the Peace.

The Hon. the CHIEF JUSTICE said if the offence indicated in the charge be one which showed that the police magistrate had no summary jurisdiction he will proceed at once on that part which requires him to proceed as Justice of the Peace. If a man is charged with murder he will proceed to investigate it after the manner of a J. P. investigation. If the charge is a theft of two rupees, he will proceed to try the case summarily. If as he goes on with the case the charge be discovered to be a theft of two hundred rupees for which he was no jurisdiction to try then he would immediately make the transition and proceed to investigate the case as J. P.

The Hon. the GOVERNMENT AGENT W. P. said that if the charge ran, in the usual form of a theftuous assault of a comb highway robbery, &c., was it to be tried as if it were (as it generally is) a case of mere words passing between the parties or as if it were a case to be tried before a higher court?

The Hon. the CHIEF JUSTICE said that the magistrate would proceed with the case as if for a higher offence. If he found out, as he went on, that it was for a trivial offence he would dispose of it summarily.

The Hon. the GOVERNMENT AGENT, W. P. wished to know whether the accused was to be informed that his case was altered from an inquiry into a trial. If the accused thought he was on his trial he would naturally like to cross examine the witnesses, whereas he might not think it worth his while to do so if this was merely a preliminary investigation.

The Hon. the CHIEF JUSTICE referred to sec. 170 which states that if the police magistrate finds that the offence is one over which the police court has jurisdiction, he may proceed to try him under chapter xix.

The Hon. the GOVERNMENT AGENT W. P. wished to know whether the police magistrate could actually frame a charge until the whole evidence of the complainant's had been taken.

The Hon. the CHIEF JUSTICE :—The charge is not framed until the magistrate is convinced what offence has been really disclosed. If he then finds it is a case for the Supreme Court it is sent on to the Queen's Advocate, if it be a case which he can try he proceeds to do so by first reading the charge over to the accused, and calling upon him for his defence.

The Hon. the GOVERNMENT AGENT W. P. :—In section 217 it is said when the accused is first brought up he shall be asked why he should not be convicted after particulars of the offence of which he is accused shall have been stated, these particulars being such as have been gathered from the prosecutor's story only. If he says he has cause to show, then a day is fixed for hearing the charge. After the witnesses for the prosecution have been heard, the magistrate frames a distinct charge and asks the accused to plead to that charge. If this is the new system of procedure, he did not see any very great difference from the old system except that the magistrate could use the evidence he had taken in the preliminary inquiry in the Police court case. A great deal more of signing evidence &c. would however be required than had hitherto been the case. He did not on the whole think that the change of procedure would be for the better.

The Hon. the CHIEF JUSTICE said that this was the course strongly recommended by Sir John Phear, and that he had had many conversations with Sir Richard Cayley too regarding it

His Excellency the LIEUT.-GOVERNOR said that there was this advantage in the proposed system, that supposing a man was brought up before the magistrate charged with the theft of some cloth valued at a few rupees the punishment of which would be comparatively slight, and the Magistrate discovers in the course of the trial that the man was a habitual thief, whose punishment would extend to imprisonment for 3 or 4 years, he can forthwith stop proceedings on the ground that the case was beyond his jurisdiction, and send it up before a higher court.

The Hon J. VAN LANGENBERG said that this could be done even now, and that it was the fault of the magistrates and not of the law if this power were not availed of. For if he were of opinion that a case which he was hearing should go before a higher court, he could quash the proceedings, and begin an inquiry as J. P.

The Hon the CHIEF JUSTICE remarked that the only objection to that would be that the magistrate would have to open up proceedings *de novo*.

The Hon. J VAN LANGENBERG said he would like to ask a question of the Chief Justice as regards the second motion of his *i. e.*, whether there can be any commitment for trial except under the direction of the Queen's Advocate. He found that, in the Code after the police magistrate has received all the evidence he has in support of a charge, he has to send all the proceedings to the Queen's Advocate who is to decide before what court the man shall be committed for trial. The Queen's Advocate may afterwards refuse to prosecute the accused though he himself had elected the Court at which the accused was to stand his trial. He asked if it would not be better that reference should be made before commitment.

The Hon. the CHIEF JUSTICE said such a reference must be made, for according to section 243 "upon such proceedings being forwarded to the court which the Queen's Advocate shall have selected (§ 177), or upon the record of any inquiry being transmitted to the Queen's Advocate (§ 187), it shall be competent for the Queen's Advocate, if he is of opinion that no further proceedings should be taken in the case, to make an order &c. directing the accused person to be discharged. The Queen's Advocate does not direct the commitment; but he may say: "stop, go no further with the case."

His Excellency the LIEUT.-GOVERNOR said that the Justices of the Peace objected to being told to commit or discharge. The case had been very fully discussed between the Local and Imperial Government and it was held that the Queen's Advocate ought not to have the power to interfere with the consciences of J. P.'s. By the new mode of procedure the Queen's Advocate would be prevented from interfering with the "consciences" of Justices of the Peace, because he would have no power to direct the commitment, but merely to say to what Court the accused should be committed.

The Hon. the CHIEF JUSTICE said, that Justices of the Peace would now have uncontrolled exercise of their powers subject to the appellate jurisdiction of the Queen's Advocate. After the J. P. has done all that he thinks necessary and taken down all the proceedings he sends them on to the Queen's Advocate, for instructions as to what Court to commit the accused to.

His Excellency the LIEUT.-GOVERNOR said, that the responsibility would thus be placed on the proper party. Now when a Justice of the Peace discharges an accused party, it was only nominally he who did so, because he has to obey the directions of the Queen's Advocate.

The Hon. the CHIEF JUSTICE said that Sir John Phear held very strong opinions on the subject and thought that the discretion of police magistrates should not be subject to any other jurisdiction than that of the appellate court.

The Hon. J. VAN LANGENBERG said that he quite appreciated the distinction which was a very important one.

The Hon. the CHIEF JUSTICE said that he had drafted these clauses two or three times over, and that they had gained the special sanction of the Secretary of State. With regard to discharges the power of the magistrates to do this is left untouched. But if the Queen's Advocate once gets the proceedings into his hands at whatever stage of the inquiry before the magistrate, he can make what order he likes, but until then the magistrate can discharge, and his discharge is perfectly legal.

The Chief Justice left at this point, as he had now given his opinion on all the points that were laid over for his consideration.

The Hon. J. VAN LANGENBERG said he would not detain Mr. Ferdinands any longer, as the reason why he had requested Mr. Ferdinands' presence was to ask him his opinion in regard to the question of the desirability of referring all cases before committment to the Queen's Advocate, but the Chief Justice had shown that provision was made for it. He therefore would not detain Mr. Ferdinands any longer. Mr. Ferdinands then bowing to the members withdrew. After these two gentleman had left the Hon. J. Van Langenberg introduced the first of his two motions in a long and eloquent speech.

ARE JUSTICES OF THE PEACE TO BE ABOLISHED ?

The Hon. J. VAN LANGENBERG said that the discussion which had already taken place threw considerable light upon the motion he was about to submit to the Council. The Procedure Code was intended to effect a radical change in the procedure of the courts. The present practice so far as regards the investigation into offences with which persons were charged was that if any person wanted to charge another with an offence triable only by a superior court he went before a Justice of the Peace and preferred his complaint to him. The Justice of the Peace then made inquiry, and if he was satisfied that the offence was committed he would submit it to the Queen's Advocate, who would then commit the party for trial. But this procedure is now to be altered The office of Justices of the Peace is to be done away with, and Police Magistrates, who hitherto by virtue of their office were Justices of the Peace, are to investigate all charges without any reference to the magnitude of the offence. When we endeavour to reform anything the first question to be asked is: is it defective in any point? and the second : is there any advantage to be gained by the change? thought that there was no defect in the present form of procedure. (Hear, hear, from the hon. Mr. Rama Nathan.) By the Procedure Code a Police Magistrate is compelled to entertain all complaints. He inquires into any case that comes before him, quite uncertain, whether it will have to be decided by himself as Police Magistrate or have to be committed for trial before a higher court. The party accused to is uncertain, because he does not know whether the magistrate is simply making an inquiry or trying his case. As practising lawyers some of the members of the Council would know that it is not desirable to cross examine the witnesses at an ordinary Justice of the Peace investigation, because any discrepancies in the evidence will be quickly brought to light. The object of the Justice of the Peace investigation is to see whether there is or is not a *prima facie* case, and counsel simply watch proceedings. But now a great change is to be introduced and the proceedings in the first instance are to partake of all the solemnities of a trial A man may not know what his offence is when the investigation begins ; though at the close of it the defendant is informed what the specific charge is, and he is then called upon for his defence. Now had he known this at the commencement of the proceedings he might have cross-examined the witnesses for the prosecution, but he may have abstained from doing this, and now he does not know what course to adopt. This is the advantage of the other system : a man knows that an inquiry is simply a preliminary inquiry and acts accordingly. He would press upon the attention of the Council, the question whether the change proposed to be effected was a change for the better? His only object in bringing this subject up for discussion was that the matter might be thoroughly examined before a decision was come to. His desire was that the administration of justice in this colony shou'd be placed on a footing satisfactory to all parties and to the colony. By abolishing the office of Justice of the Peace they might be placed in some difficulty. Now they knew that there were two kinds of Justices of the Peace,—these had the same rights, powers and functions : only the one class were *paid* functionaries, the other *unpaid*. The former are also Police Magistrates. Now it sometimes happens that a Police Court is situated about 40 or 50 miles from the extreme limits of the station, and so a party would have to travel all this distance to prefer a complaint, whereas now he has only to go to the nearest Justice of the Peace, who would be easily accessible. According to the new Code a man must come for a warrant to apprehend an offender, as for a search warrant to a Police Magistrate. Police officers no doubt there are to whom information might be given, but it was always desirable that such information should be taken by a properly constituted Justice of the Peace. He would put before them another defect in the Procedure Code. It was well known that all Government Agents are Justices of the Peace, and very often when they are on circuit they have occasion to make use of their powers as Justices of Peace. But now the Government Agent will be no longer a J P., and thus it will happen that though he is the chief administrator of the district he may be powerless to give the least assistance even if a very serious offence is committed. The Government Agents, he felt sure, would support him when he said this. No very serious objections have been offered to the manner in which Justices of the Peace have hitherto done their work. True it is that a great deal has been said about the indiscriminate manner in which Justices of the Peace exercise their authority, whereby a large number of frivolous cases were committed for trial before the Supreme Court. But beyond this he had seen no other objection taken to the present system. He thought that Government by the new Procedure Code were going to abolish the office of Justice of the Peace without providing a proper substitute in its stead. If the Government wished merely to strike off the phrase Justice of the Peace, that would be comparatively a small matter. But there was this to be said, that complaints would now have to be made to the paid officials and to nobody else. The unpaid officials would not be able to act in any matter of complaint at all. Upon these grounds in spite of the Chief Justice and the authority of Sir John Budd Phear and Sir Richard Cayley, he would still maintain that the present system was a good one. If there were defects in it, let them be pointed out and then they might try to remedy them. The system ought not to be surrendered merely because the other system has been found to work well in India. Arguments should be offered to prove this superiority, not bare statements. It may be that the system in vogue here is far in advance of India, but so far as the working of it went, he must say it had worked admirably. He therefore moved:—"That preliminary proceedings with a view to committal for trial be as heretofore conducted by Justices of the Peaces.

The Hon. P. RAMA NATHAN said that he had much pleasure in endorsing almost every word that had fallen from his hon and learned friend, and that he could only reiterate what had been stated by him, that the criminal work of the colony has been very successfully carried on by the Justices of the Peace according to the present system. Unless therefore a better system was suggested, he considered it foolish to abandon the well-established lines upon which the present system had gone on. It had been stated by his hon. friend that Sir John Phear consented to the abolishing of

the office of Justice of the Peace. Now he had Sir John Phear's Code by him as revised by the Law Commissioners, and there it would be found that Sir John specially *conserved* the powers of J.P.'s and that under that Code it was provided that the jurisdiction of J. P.'s should not be interfered with. The effect of the procedure as put forth in the Code is this :—that Police Magistrates are called upon to undertake duties commonly performed by a proctor. A client comes to a proctor, who inquires into the special circumstances of the case, sees that all the witnesses support each other and that the charge is fully substantiated. After this enquiry he formulates the charge and presents it for hearing before a Police Court or a Justice of the Peace. Thereupon enquiry is instituted and an order made dealing with the charge. All this work hitherto done by proctors and advocates is to be transferred to Police Magistrates and the Police Courts would seem to be established to invite charges and to induce people to make false statements. If a proctor after examining his client's case finds that the charges are false he immediately tells him:—"The case is not one to go before a Court. I warn you that if you persist in pushing the case on, you will be charged with perjury." Now the aggrieved suitor rushes direct into Court because he knows the Police Magistrate will put everything right. He gives his evidence on oath, and after listening to the whole case, the Police Magistrate makes out a charge. But before the charge is made out the suitor and his witnesses may lay themselves open to a charge of fabricating false evidence for which there are heavy penalties in the new Code. The result will be that the Procedure Code will work great hardship in the country and rather than give redress to grievances, it will have the effect of creating grievances. He would repeat that he endorsed every word that had fallen from his hon. and learned friend. It may be that the acceptance of his hon. friend's motion may subject the Council to some difficulty and necessitate a great alteration in the Code, and for this reason perhaps the Government may oppose the motion. But he submitted that in the interests of justice an argument of that kind must not be entertained, and that the Government should weigh the arguments adduced in the balance, apart from any difficulty that would be caused by their acceptance.

The Hon. A. L. DE ALWIS said that he had very little to say after the very exhaustive manner in which his honorable friend (Mr. Van Langenberg) had introduced the subject. Before introducing a new procedure in criminal matters it must be ascertained whether it is more advantageous than the one they were accustomed to. The procedure they had been accustomed to had not been found fault with and the new procedure is by no means an advancement on it, either in saving time or in any other respect. Greater amount of time was lost he thought, by this mode than by the other, because what had hitherto been done by several parties was now going to be entrusted into the hands of one single individual. Under all circumstances, Justice of the Peace investigations had been attended with very great advantages, which would all be lost by abolishing the office. Under those circumstances they should hesitate before doing away with a system which had always been acting very well, and if there were any defects in the working out of the details of the system, that was surely no reason for abolishing the whole system, instead of amending it where it was proved that it needed amendment He thought that the remarks of his hon. friend (Mr. Van Langenberg) deserved great consideration and although it may entail some trouble if the Code had to be revised and the name of Justices of the Peace introduced wherever it had been omitted, yet the innovations proposed under the new Code ought not to be allowed unless proved to be absolutely necessary.

The Hon. the GOVERNMENT AGENT W. P. said that although he was not prepared to vote with the hon. member who had brought forward the motion, yet he must say that he had considerable misgivings as to the wisdom of making a change in the criminal procedure. It seemed to him that the hon. member had very well sketched the procedure under the new Code, and had shown the several disadvantages under it, the chief of which was that the accused person does not know until all the evidence for the prosecution had been taken down whether he was being tried for a particular offence, or only a preliminary inquiry was being made. A string of charges are put down on paper against an accused person. The Police Magistrate takes the prosecutor's story from his own mouth. If the charges involve any one which is not triable by a Police Magistrate he has to proceed to act very much after the manner of Juctices of the Peace at present. He fixes a day for the enquiry, the accused is brought before him, and he asks him if he has any cause to show why he should not be convicted. Otherwise he proceeds to hear witnesses. The accused does not know yet what the charge is against him, whether theft, assault, highway robbery, or it may be all three. After hearing all the witnesses for the prosecution, the Police Magistrate makes up his mind, and says that he is going to try the accused on a charge of theft. He then calls upon the accused to show cause why judgment should not be pronounced upon him. The Police Magistrate is not bound to frame a charge of theft. He merely says "You are now going to be tried under such and such particulars," and asks him if he has any cause to show why he should not be convicted. If the man says he has cause to show, then every witness may be recalled and cross examined. The accused then knows for the first time that he is being tried on some particular charge. This being done and the witnesses having been cross-examined by the accused, the defence is entered into. It seemed to the hon. member that nothing had been gained by this, but that every Police Court case has been transformed into a J. P. case. All the proceedings will have to be entered on the record twice over, and altogether it seemed as if by the new Code they would have a most laborious procedure. In some cases it would in in his opinion work most injuriously. In cases of conviction for instance. For if a man knows he was being tried he would cross examine the witnesses thoroughly, and all the evidence will be gone through in the Police Court, and so when the case comes on for trial before the Supreme Court the advantage will be on his side as well as on the side of the prosecution. It appeared to him, however, that the present system, whereby a Justice of the Peace made a preliminary inquiry just to satisfy himself that a *prima facie* case had been made out and whether the accused ought to be made to stand his trial, is a better system. However, the system is said to work very well elsewhere. It has received the approval of very many officers who have had experience both in India and Ceylon and therefore he should hesitate before giving his vote in favour of the motion made by his hon. friend. He thought they should give the new system a trial. But he must express his serious misgivings as to the Procedure Code. As to the other question, whether there should not be other persons beside Police Magistrates who should have the power of Justices of the Peace he thought that a still more serious point. He had received several letters from Magistrates speaking to the great assistance they had received from unofficial Justices of the Peace. There are many stations united together under the jurisdiction of one Police Magistrate. Take for instance the case of Pasyala and Awi awella. He got a letter from the Magistrate there saying that when he is at Pasyala persons are brought up to Awisawella charged with cutting and wounding, &c. Now unless there were someone at Awisawela to take affidavits and give orders to the medical officer to examine the persons wounded, the complainant would have to go away, and come

back, often for days and weeks together. Medical officers moreover will not examine unless with the Justice of the Peace's certificate. This only shows that where there are two courts and only one Magistrate, people will come to a point where they know that there is only one Magistrate who can listen to their complaints. They come to him, and find him gone and no one else on the spot to whom they can make that preliminary complaint which will cause their case to be called on a month or two earlier than it otherwise would. There can be no doubt also that Government Agents are often called upon, to act as Justices of the Peace, not so much in issuing warrants, as in counselling and advising peace officers and headmen. Now he would wish the question decided as to who is responsible for the peace of a district, the Government Agent or the Police Magistrate. If it is the Government Agent he must then be entrusted with such powers as have been hitherto possessed by Justices of the Peace, otherwise it would be impossible for him to undertake the responsibility of keeping the peace of the district. He did not know whether it was intended to take a vote on the present question. He was however not prepared to oppose the introduction of the new Procedure, though he hoped that the subject would be well considered before they were committed to any course of action.

The Hon the QUEEN'S ADVOCATE said, It appeared to him that two questions had been somewhat mixed up in the discussion which had taken place, the first as to the proposed abolition of some of the powers of Justices of the Peace, the other as regarded the procedure proposed by the new Code. From the observations that had been made it would appear that all the powers of J. P.'s, and all the Justices of the Peace now in the colony, were to be done away with. Now he could not say from a persual of the papers on the subject that he had discovered either the one thing or the other. The new Code merely lays down that certain duties are to be hereafter performed by Police Magistrates, but it is not proposed to do away with Justices of the Peace nor with all the powers which Justices of the Peace at present have. The question therefore of Justices of the Peace must be looked upon as one question, while the question of the new procedure must be looked upon as another question. The hon. member who moved the resolution stated that the present system admittedly worked well, and that before we propose a new system it must be proved that the new system would work better than the old. He said he was inclined to disagree with such a proposition, because it would be quite impossible to say, until a new system is brought into operation, whether it is an improvement on the old system or not. The hon. member alluded to the preliminary inquiry before a Justice of the Peace, and he stated that the object of a preliminary inquiry is to see whether there is a *prima facie* case against the accused or not, and whether he is or is not to be committed for trial. That the cross-examination is conducted very shortly, and as a matter of fact very little trouble is taken in these preliminary inquiries inasmuch as the sole object is to see whether a *prima facie* case has been made out. Now he (the Queen's Advocate) somewhat demurred to this proposition. He thought there were few proceedings in which more care should be taken than in a preliminary inquiry, as it may chance that some little point, omitted to be taken at a preliminary inquiry, may make a very serious difference when the case came up for trial before a superior tribunal. He, himself, had not been here sufficiently long, nor had his experience been sufficiently great, to enable him to pass an opinion as to the way in which preliminary inquiries by Justices of the Peace had been conducted in the colony, but he did remember that in a case of murder tried during the late sessions of the Supreme Court, a statement made by the accused before a J. P., was not allowed by the Chief Justice to be read in evidence, because the date when it was made was not inserted in the document. Now that was indeed a very material omission, and the non-admission of a statement like that, although it may not necessarily result in the breaking down of a case, might yet be attended with very serious consequences. The hon. member only mentioned this to show that every care should be taken in a preliminary inquiry, —whether such preliminary inquiry be taken before a Justice of the Peace or a Police Magistrate. The question whether preliminary investigations should be held before Justices of the Peace or Police Magistrates as now proposed was very carefully considered, before and at the time the Code was drawn up, and the result of that investigation was that it was considered better to have these inquiries held before Police Magistrates rather than before Justices of the Peace. The procedure with regard to this inquiry before a Justice of the Peace had been compared by hon. members to the procedure which has been proposed in the present Code, and it was stated by the hon. and learned member who moved the resolution that the present procedure is a simpler and a quicker one than the one proposed by the new Code. Now he felt inclined to differ from this observation, and after what had been heard today from the Chief Justice he thought it must be admitted that the new system was simpler and in all probability would prove more expeditious. So far as he understood the existing system it was this :—The Justice of the Peace enters upon the inquiry of a case. He hears the witnesses. At the end of the inquiry he finds there is no case to go before the Supreme Court, but that he has power to deal with it in another capacity. He may then have to go through the trouble of recalling all the witnesses who have to a certain extent been witnesses in the Justice of the Peace case. The Procedure Code proposes an amendment upon this, and whatever may be said against the provisions of the Code it must be admitted that the manner in which Police Magistrates may deal with the preliminary inquiry would appear far more simple and satisfactory than that in which a Justice of the Peace can do it now. It had been said that the proceedings under the new Code are very complicated and that the accused party does not know at any particular time what the charge is which is brought against him. But after reading through the different clauses of the Code and after listening to the explanation which the Chief Justice had been good enough to make, he was at a loss to see how the accused could be put to any disadvantage with regard to this Code. As far as he could make out, the procedure under the Code would be this :—A complaint is made before a Police Magistrate. If, on the face of that complaint the case seems to be one which the Police Magistrate can hear and adjudicate upon in his capacity of Police Magistrate, he can do so. If however the complaint be one which he cannot hear and adjudicate upon in his capacity of Police Magistrate, he makes his inquiry in the first instance in the supposition that he cannot deal with the case. As he goes on with the case he finds that the complaint is a greatly exaggerated one, and one which ought not to be sent before the Supreme Court for trial, but that it contains matter which he can adjudicate upon himself. He then tells the accused that the matter is not one which should be sent before a higher tribunal, but that it is one which he the Magistrate can try. He tells the accused what the charge is, and the rules of the new Procedure Code have provisions in virtue of which the witnesses who have been already examined may be recalled and subjected to a cross-examination. Now either the old system or the new must be followed, and the hon. member thought that the new, at all events as far as this particular point was concerned, was by far the more simple of the two. All the time the Justice of the Peace has spent in going through a lengthy inquiry is liable to be lost under the present procedure, whereas it does not follow under the new procedure that the time spent must necessarily be wasted. It has been also mentioned that the procedure is entirely a new

one, and one quite unknown to the colony where hitherto all such inquiries have been conducted by Justices of the Peace, and that therefore unless it can be shown that this is an improvement on the present system the old system should be retained. Now it must be apparent to all that it is utterly impossible to say whether a thing that has been proposed is an improvement or not until it has been tried. He therefore agreed with the hon. member who last spoke (the Hon. the Government Agent W. P.) that it was their duty to try and see whether the system proposed was not an improvement on the old. He might state that in most English colonies the system existed for preliminary inquiries to be conducted by Police Magistrates as distinguished from Justices of the Peace. There are not many British colonies where Justices of the Peace exercise such powers as they do here, and in most colonies where they have Police Magistrates who investigate charges and complaints, and either deal with them summarily themselves, or send them before a superior court, the system has been found to be on the whole a beneficial system and one that was conducive to the welfare of the people. If therefore attention is paid to the system as it works elsewhere, it will be seen that the system which gives this power to Police Magistrates has proved a satisfactory system. Then again it has been urged that there may be districts in this colony where the Police Magistrate may be far from the people who may wish to make complaints, and that the latter may have to travel 30 or 40 miles to find a Police Magistrate. He (the Queen's Advocate) was at a loss to know what would prevent the executive from appointing as many Police Magistrates as may be necessary for the good of the community. It will be in the power of the Government to add to their number. There was another point he should like to bring before them and that was this. The Procedure Code only lays down the duties of a Police Magistrate, and does not in any other way interfere with certain duties of the Justices of the Peace He therefore thought under the circumstances which he had stated and under the circumstances mentioned by the hon. member who last spoke, there was every reason why they should give the new measure a trial. It is a Code which has come before the Council not unadvisedly, but after this particular question has been thoroughly discussed and therefore it is a Code the value of which depended, he thought, to a very considerable extent upon the change that was now proposed. The particular change contemplated he submitted was something more than an unimportant particular of the ordinance. Although it might be considered that the Code would not work without difficulty, he (the Queen's Advocate) hoped that they would give it a trial, and perhaps it would be found to work with greater satisfaction to the public than many hon. members seemed to anticipate.

The Hon. the ACTING GOVERNMENT AGENT C. P. :—Am I to gather that it is not intended to abolish Justices of the Peace ?

His Excellency the LIEUT.-GOVERNOR said that under clause 7 of the Administration of Justice Ordinance Justices of the Peace were mentioned, and if that chapter is not included in the schedule then they will remain much as before.

The Hon. the QUEEN'S ADVOCATE said that all powers inconsistent with the terms of the Code would be taken away.

The Hon. the ACTING GOVERNMENT AGENT C. P. :—Will the power of holding a preliminary inquiry be saved ?

The Hon. the GOVERNMENT AGENT W. P. wished to know whether the power given to gansabawas of issuing warrants for apprehending persons who had committed grave and serious offences would be taken away by the Code.

The Hon. the QUEEN'S ADVOCATE said that the Committee would have to consider which ordinances would have to be repealed. So far as it appeared to him all powers inconsistent with the terms of the Code would have to be done away with. But this was a matter which could be discussed when the Council came to consider the repealing schedule.

The Hon. the GOVERNMENT AGENT C. P. :—The power for instance of holding a preliminary inquiry would be taken away, and such powers alone retained as that of taking affidavits ?

The Hon. the QUEEN'S ADVOCATE :—Whether the power will or will not be abolished I cannot say. What powers are consistent with the terms of this Ordinance and what not, will come before us hereafter.

The Hon. the Acting COLONIAL SECRETARY said that the hon. the Queen's Advocate had exhausted the subject under discussion and he had very little to add. He thought his learned colleague's remarks must carry a great deal of conviction and that the new Procedure in regard to the point debated would give less trouble and secure the best results. It had received the sanction of Judges like Sir John Phear and Sir Richard Cayley, who had referred to it in the Report of the Committee on the Administration of Justice in 1879. This, together with the opinion of the present Chief Justice in its favour, should remove all doubts as to the superiority of the new Procedure. It was once proposed by Sir John Phear that all the powers which Justices of the Peace now possess should be taken away except that of administering oaths and attesting documents. Taking all these circumstances together, he felt that there could be no doubt as to the course which they should adopt.

The HON. J. VAN LANGENBERG said that he had not heard anything like argument in support of what he might call the Government view of the question. He was not convinced by the arguments that fell from the Hon. the Queen's Advocate and afterwards from the Hon. the Colonial Secretary that the present system was bad and should be displaced by the new. The Hon. the Queen's Advocate had urged against the view taken by him that it was scarcely competent to any one to give an opinion on the subject until the Code was first worked. The Colonial Secretary said that he had no occasion to say much because the Queen's Advocate had spoken in support of the bill. He must say that speaking for himself except under very peculiar circumstances he was always opposed to tentative legislation. Here we are, said the hon. member, going to do away with a system not proved to be defective. The only argument—if it is an argument—urged by those who wish to bring this about is, that the new procedure is a part of the Indian Procedure Code. If there are any parts of that system which are not improvements upon the system now in vogue in Ceylon he would consider it his duty to pray that such parts should be expunged, and that only such should be introduced as would work a manifest improvement on the present system. It was merely begging the question to say that they should adopt this Code because it has the approval of somebody and because it is in vogue in India. The Hon. the Queen's Advocate, he regretted to say, had entirely misunderstood him as to his remarks on the present system of conducting a preliminary inquiry. He (Mr. Van Langenberg) did not say that these investigations were carried on without care and attention.

The Hon. the QUEEN'S ADVOCATE said that he did not think he had said that. What he intended to say was that he understood the hon. member to have said : that the chief object of a preliminary inquiry is for the purpose of seeing whether a *prima facie* case has been established.

The Hon. J. VAN LANGENBERG said that he was very glad to find that his hon. and learned friend had not misunderstood him. What he had intended to say was that the object of a Justice of the Peace inquiry was to see if a *prima facie* case had been established. He had pointed out that in certain cases under the new procedure, the accused party would not know what position he was in, until the Police Magistrate had informed him. Being in that state of uncertainty

the accused would not cross-examine the witnesses minutely, until he knew for certain that the investigation had turned from an inquiry into a trial. This was what he had said. The Queen's Advocate had said in reference to the objection that the Police Magistrates may sometimes be far away from the people who would require their assistance, that the Executive might deal with the matter by appointing additional Police Magistrates. There is nothing of course to prevent the Government from appointing a Police Magistrate for each village. But there was the expenditure to be considered which would then be necessary, an element in the question which ought not to be forgotten. If the new system therefore would necessarily entail a heavier expenditure, this was an additional argument for retaining the present system. There is one other point to be noticed, and that is this. The sole object of the Council in connection with this subject, must be to place the administration of justice on a safe footing. There is this to be said in favour of the present system that it is thoroughly well understood by the justiciary who are called upon to practice it, while the new system will have to be learnt by them. He thought that his plain and simple duty was to oppose the bill, and it was in the discharge of that duty that he brought this matter before the Council. He could almost anticipate what the fate of his motion would be, but still he felt at his duty to take the sense of the Council on the motion that he had in form submitted. He felt that they must take care that in what they did they were doing something to secure a better and more advantageous method in regard to these preliminary inquires.

The Hon. the GOVERNMENT AGENT W. P. said that the Hon. the Colonial Secretary had quoted a remark of Sir John Phear's in the Administration of Justice Ordinance, but if he would refer to the middle of the report he would find that the members of the Committee were divided in their opinion, and so his impression was that Sir John Phear agreed to allow the question to stand over until they came to consider the Criminal Procedure Code. The discussion arose on an Ordinance they had before them in reference to Coroners, Justices of the Peace, &c.

His Excellency the LIEUT.-GOVERNOR said, he could not but attach great weight to the remarks that had fallen from the three unofficial members who had spoken on the subject, or rather on the two subjects, for they must not confuse between them, the first referring to preliminary inquiries, the second to powers conferred on Justices of the Peace outside the ranks of the public service. He somewhat sympathized with the hon. member who had said that they must not alter the present system unless they had a reasonable prospect of altering it for the better. But he felt in the first place that the motion before the Council saps the very initial foundation of the bill, and that if it were carried the bill would have to be withdrawn, and he did not feel that he was at liberty on behalf of the Government to agree to such a motion. In the second place he himself was constrained to believe that the alteration would be beneficial. He had had eleven years' experience of the system of preliminary inquiries conducted by Justices of the Peace in this Colony, and thirteen years' experience of Police Magistrates conducting the enquiry from beginning to end in other Colonies. He remembered when the subject first arose of amending the criminal procedure of the island, having had frequent consultations on the subject with Sir Richard Cayley who had had a more varied experience than any one in the island, perhaps, as a judicial officer, and who was therefore more competent than any other to say whether this colony should differ from other colonies in the practice of taking preliminary investigations or not. Sir Richard Cayley said he saw no reason why this colony should differ from other colonies, and that he meant to alter the system in the Criminal Procedure Code which he had it in contem pla tion to bring in. He felt able to concur with Sir Richard Cayley in the course he meant to adopt, although he (the Lieut.-Governor) of course judged only from results and not from any personal knowledge. He might say, however, that he had seen the other system at work in various other English colonies where he had been, and he had not found any such inconvenience arising as some of the hon. members thought would arise here. In some respects the system even worked better. There was no difficulty whatever, in a Police Magistrate, when a charge was brought up against a person, inquiring into it himself as if it were within his jurisdiction, and dealing with it; if he discovered it was beyond his jurisdiction he would still go on with the enquiry to discover whether the charge should go before a higher tribunal; or (as frequently happens) when the immense superstructure of invention was removed whether it was one containing a foundation of fact and coming within the jurisdiction of a Police Court. If a reference were made to the correspondence with the Colonial Office, it would be seen that the Secretary of State considered the present procedure of preliminary inquiries before Justices of the Peace to be very undesirable. Here then is a defect in the law which requires to be remedied. The inquiry before a Justice of the Peace is a ministerial inquiry and not a judicial one, and is, therefore, of a very informal character. That before a Police Magistrate is a much more important one, and exposes the person who brings the charge to much greater risk if he brings a false charge. This strikes at once at the foul blot in the judicial system which is now in vogue. It will be admitted that five-sixths of the cases that come before a Justice of the Peace are false, either absolutely or substantially. A variety of causes induces people to bring these false charges. One man owes another a few rupees and he brings a charge simply to get his money back by frightening the debtor into paying his debt. He never intends to press the charge, because he knows the Justice of the Peace investigation is of very small moment. And so the creditor brings a false charge of robbery, or anything else, simply in order to frighten and coerce the debtor into paying his debt. This is one of the greatest blots in the present judicial system. Another and perhaps a more common thing is this. One man calls another bad names and the other retaliates. What is the result? One man charges the other before a Justice of the Peace with assault and battery, while the other charges him with highway robbery for stealing a comb! It is needless to say that both charges are absolutely false. What was intended by the new procedure was to shew to the natives of this country that when they charge another groundlessly with crime and obtain a warrant which deprives that other of his liberty, they are doing a solemn act of injustice which the law will visit upon him. He did not therefore agree with the hon. member who watches Tamil interests in this Council that they should go back to the informality of a J. P. inquiry. A foul blot which the legislature should endeavour to remove existed, since, as he had said before, five-sixths of the cases that are brought before the minor courts are substantially false from beginning to end. The courts of justice are wrested by the natives of the colony for the gratification of personal spite or for the recovery of their debts. Year after year the matter was brought to the notice of Government in the Administration Reports, and he hoped that by making the inquiries into the accusations which one person brought against another more formal, more judicial and more responsible, they should go one step nearer to remove the blot which now exists and prevent the courts of law from being made a tool of, for the perpetration of injustice and for cansing the personal liberty of the subject to be interfered with for no cause whatsoever. The Criminal Procedure Code would he thought strike at that evil. In the other colonies in which he had had the honor of serving Her Majesty, and in which the preliminary inquiries were conducted by the Magistrates, there had

not been one-fourth of the false cases that so abound in this colony. As regards the other question, that of giving unofficial Justices of the Peace the powers which they now exercise, that was a mere question of machinery. He thought that the power given to issue warrants was far too large, and that the liberty of the subject could be interfered with under the present system far too recklessly. He himself had seen a warrant given to a peon to "arrest Ramasami and forty others whom the bearer will point out!" There was a still more glaring case of the abuse of this power when a warrant was issued for the arrest of the newly married wife of a man on a charge of desertion, on the information of one who merely wanted to get the woman into his hands for immoral purposes. In the new Procedure Code however such powers would be restricted to persons directly responsible to Government. He did not mean to say that difficulties would not be met with, such as where there was only one magistrate for two courts as in the case of the Awisawella and Pasyala courts. But it was better to meet with difficulties such as these than to give persons the power of issuing warrants indiscriminately which might be sent across the island and persons be kept in gaol under them until they are brought before a Police Court. The difficulty in connection with Government Agents was a mere matter of detail. Every Government Agent in the island has been early in his career a Police Magistrate, and he saw no reason why they should not exercise in some cases this same power as Police Magistrates which they did 15 years before. He (the Lieut.-Governor) had entered thus largely into the subject, partly to express his own views and partly in courtesy to the hon. members who had spoken against the introduction of the new Procedure Act, to shew that in adhering to the Government policy on the question he was not doing so without reason and without giving the subject his most anxious consideration.

The sense of the Council was then taken on the motion: —"That preliminary proceedings with a view to committal to trial before a superior court be as heretofore taken before a Justice of the Peace."

The following was the result :—

Ayes :	Noes :
Hon. A. L. de Alwis.	Hon. the Actg. Surveyor-General.
,, P. Rama Nathan.	,, Acting G. A. C. P.
,, J. Van Langenberg.	,, G. A. W. P.
	,, Treasurer.
	,, Acting Auditor-General.
	,, Queen's Advocate.
	,, Acting Colonial Secretary.
	,, Colonel Commanding.
	H. E. the Lieut.-Governor.

Ayes 3, Noes 9 :—Motion lost.

His Excellency the LIEUT.-GOVERNOR :—Will the hon. member press the other motion?

The Hon. J. VAN LANGENBERG said that he would not. Indeed, after what had fallen from the Hon. Chief Justice, he would beg leave to withdraw the motion.

The Council then adjourned to Monday at 2 p.m.

MONDAY, AUGUST 13.

Present :—His Excellency the Lieut.-Governor (President), the Hons. the Col. Commanding, the Acting Colonial Secretary, the Queen's Advocate, the Acting Auditor-General, the Treasurer, the Government Agent W. P., the Acting Government Agent C. P., the Acting Surveyor General, and the Hons. J. Van Langenberg, P. Rama Nathan, W. W. Mitchell, and A. L. de Alwis. *Absentee* :—Hon. J. L. Shand.

His Excellency the LIEUT.-GOVERNOR said that he proposed to correct the numbering of the sections of the Penal Code before proceeding to the Procedure Code. This had been rendered necessary by the deleting of some of the clauses and of the whole of the chapter on "Marriage." The total number of clauses in the Penal Code is now 490.

The Hon. the QUEEN'S ADVOCATE said the only clause that now remained unpassed was clause 398, the one on "habitually receiving or dealing in stolen property." Since the last occasion when the Council met he had looked into the Indian Penal Code to see if he could there find an explanation of this section. He had found a note to the following effect :—"When several items of property stolen from different places are found in the house of an accused person, they can be regarded as evidence of an offence described in this section." It appeared to him that if a person is charged as an habitual receiver it must be proved that he had been found in the possesion of property, stolen from different places or from the houses of various parties. In England when a man has been convicted of an offence several times, he is called an habitual criminal and may be placed under police supervision. It would be necessary to prove under this section of the Code first of all that certain property had been stolen, and evidence must be led showing that different items of property stolen from different places had been found in possession of the accused. He would suggest the insertion of the following as an example :—"In A's house is found property which has been stolen from the houses of B, C, D,: under these circumstances A can be charged with having habitually received or dealt in property which he knows or has reason to believe was stolen property."

His Excellency the LIEUT.-GOVERNOR :—You might take a man under two categories: (1) That he was convicted a number of times of receiving stolen property; or (2) that he was found in possession of a quantity of stolen goods stolen at different times from different people.

The Hon. the QUEEN'S ADVOCATE said he fancied this section referred to a case where it is not intended to expressly charge previous convictions, but where circumstances such as he above alluded to could be proved against him.

His Excellency the LIEUT.-GOVERNOR :—In one case you charge him with a crime which is punishable with 20 years' imprisonment, in the other with a crime punishable with 3 years' imprisonment.

The Hon. the QUEEN'S ADVOCATE :—Yes, but there might be many counts under one section of the Code and not under the other.

The Hon. P. RAMA NATHAN :—At present as the law stands if a man is a "habitual receiver" he cannot be charged as such, but he can be charged as a receiver of stolen property. After he has been found guilty the Judge may ask if the prisoner has been convicted on previous occasions. On that fact being proved the punishment is accumulated. The clause before us creates a new offence. Instead of charging a man with one act only, instances are given in the same indictment that he had been condemned on three or four previous instances. What is the reason of the English law that forbids this? It is that the Judge may not be influenced by the previous life of the prisoner. Under the Code it would appear that there is reason seen why the Judges should be thus influenced.

The Hon. J. VAN LANGENBERG said, that the substantive charge here was that of "habitually receiving." Now there was an analogy to this in the Vagrant Ordinance (4 of 1841) where persons convicted a third time of being idle and disorderly, or a second time of being rogues and vagabonds were deemed "incorrigible rogues" and punished accordingly. Part of the evidence here would be the previous convictions.

The Hon. the QUEEN'S ADVOCATE said, that the fewer notes and fewer examples there were in any Code the better. He thought, however, that there might be an example and he would give the matter consideration. The substantive charge must doubtless be a charge of "habitual receiving," and the jury must find him guilty of that charge before he can be punished under this section.

The Hon. the COLONEL COMMANDING wished to know whether if the clause contemplated previous convic-

tions it would not more properly have been worded:—"The offender shall for a first offence receive so much punishment, and for a second or any subsequent offence so much (severer) punishment," for the previous convictions being included in the charge would, he thought be apt to prejudice the judge's mind against the prisoner

H. E. the LIEUT.-GOVERNOR said he was afraid that was unavoidable, and that in England in such cases notice was always given that evidence of previous convictions would be produced to prove the charge of habitually receiving.

The Hon. the GOVERNMENT AGENT W. P. said that where a man is charged with an offence of which he has been already convicted a second or third time, it will be manifestly necessary to state these facts in the indictment.

The Hon. J. VAN LANGENBERG said that the English law of evidence was in force in Ceylon and not the Indian Evidence Act. Evidence of previous conviction may therefore be admissible in India though not here.

The Hon. P. RAMA NATHAN said that they were too much in the habit of vesting their duty upon Judges and Magistrates. He thought that this was one of those clauses which required illustration, and he would therefore move the additon to this clause of the two following illustrations :—

A, in whose possession is found articles stolen on divers occasions from one and the same person, or stolen from different persons comes within this section.

If the charge be laid and proved that A received stolen property on one occasion and that he had been condemned on previous occasions for a similar offence, he would be guilty of habitually receiving.

The Hon. the TREASURER said a habitual receiver can certainly be tried before a Superior Court.

The Hon. the GOVERNMENT AGENT W. P.:—A man cannot be said to have habitually stolen unless previous convictions are put in.

The Hon. J. VAN LANGENBERG :—The previous convictions can be proved at the inquiry.

The Hon. the ACTING GOVERNMENT AGENT C. P. :—If the hon. member (Mr. Rama Nathan) wishes to press his motion I think he should let the matter lie over for the next sitting.

It was agreed to let the matter stand over.

SECTION 65.

The Hon. the GOVERNMENT AGENT W.P. :—I would ask leave to refer back to clause 65 of the Penal Code. In amending clause 65 we have so amended it that a road defaulter sentenced for non-payment of road tax, can only be sent to gaol to undergo "simple imprisonment" I do not think this was the intention of Council and I therefore call attention to the effect of the amendment.

H. E. the LIEUT.-GOVERNOR :—I have considered this matter since the hon. member spoke to me on the subject at last meeting. Of course the amendment was not intended to have this effect, but as the Code will not come into operation until the 1st January 1885, and it is probable the Road Ordinance will come under the consideration of the Council before then, it will perhaps be better to make whatever amendment may be considered necessary in the new Road Ordinance rather than in the Code. If no new ordinance is passed before the Code comes into operation, then we must resort to some special legislation.

THE CRIMINAL PROCEDURE CODE IN COMMITTEE.

SEC. 2.—REPEAL OF ORDINANCES.

The Hon. P. RAMA NATHAN suggested that the words "and Rules and Orders of the Supreme Court" should be inserted after the word "Ordinance," and the section made to read thus :—"On and from the day when this ordinance comes into operation the Ordinances and Rules and Orders of the Supreme Court," &c.

The Hon. J. VAN LANGENBERG said that by Ordinance 8 of 1846 only such Rules and Orders of the Judges of the Supreme Court became law as were enacted by the Legislature, but many Rules and Orders made before 1846 are still in operation and these would have to be formally repealed if opposed to the terms of this Code.

His Excellency the LIEUT.-GOVERNOR said that this section might be kept for the consideration of the Select Committee which would have to be appointed to consider the Ordinances and Rules to be repealed.

§ 3 *e*.

The Hon. the QUEEN'S ADVOCATE :—I beg to move that the title of "Attorney-General" be substituted for "Queen's Advocate."

The Hon. P. RAMA NATHAN :—I formally object to that, sir.

H. E. the LIEUT.-GOVERNOR nodded assent.

The Hon. the GOVERNMENT AGENT W. P :—I would ask whether it is intended to confer like powers on Crown Counsel as on the Queen's Advocate. The powers given to the Queen's Advocate are exceedingly large, and I think it would be objectionable to give them to Crown Counsel as well. Is the "authorization" referred to special or general?

H. E. the LIEUT.-GOVERNOR said that only the Attorney-General and Solicitor-General would be competent to deal with murder cases and other really important cases.

The Hon. the GOVERNMENT AGENT W. P. wished to know whether Police Magistrates would have the right of appealing to the Attorney-General or Solicitor-General when Crown Counsel reverse their decisions? Whenever there was a *prima facie* case he thought it should go to trial. It is only when a man is on his trial that he is entitled to the benefit of the doubt. He thought that magistrates should have the power of sending their cases to the highest legal functionary.

His Excellency the LIEUT.-GOVERNOR :—That is a mere matter of machinery, and is left to the consideration of the Queen's Advocate.

The Hon. the QUEEN'S ADVOCATE :—So far as my experience goes cases are not dismissed in such a summary way as is supposed. I may say that whenever the views of Deputy Queen's Advocate and Justices of the Peace differ, or where any difference of opinion takes place between Police Magistrates and the Deputy Queen's Advocate of the locality, with regard to any important point I think the matter should be referred to the Queen's Advocate of the Island.

§ 3 : (*f*) PLEADERS.

The Hon. P. RAMA NATHAN objected to this word which in India included men of different social and legal status, so much so that the generic name stank in the nostrils of all good men in India. He proposed the term "counsel" instead. He would wish the members of the Bar (the advocates and proctors) to be thought well of and designated by a decent name. Deputy Queen's Advocates are to be styled "Crown Counsel." Why should not private advocates and those who do the duties of advocates be styled "counsel"? If hon. members went to India they would find how badly "pleaders" in general were thought of.

The Hon. the QUEEN'S ADVOCATE said there was a great difference between "counsel" and "pleader." "Counsel" meant any who are regularly called to practise at the Bar, such as barristers or advocates. "Pleader" was intended to include advocates and proctors. "The object of this particular sub-section is to define the meaning of the word pleader." It means "any person who under special circumstances is allowed to plead a case in Court."

The Hon. the GOVERNMENT AGENT W. P.:—A man would not lose his title of being called "Mr. Proctor so-and-so" because he came under the general designation of "pleader"

Hon. J. VAN LANGENBERG :—An advocate does not cease to be an advocate, nor a proctor a proctor, because he is included under the general term "pleader." By Ordinance 11 of 1868 clause 85 the Commissioner may, on sufficient cause shown, allow *any* person to appear and plead a cause on behalf of

another. Such a person cannot be styled a "counsel" but he can hardly be called a "pleader."

The subject then dropped.

PART 2, CH. 2.

§ 5. "The courts for the *ordinary* administration of criminal justice within this colony shall continue as heretofore to be as follows:—

1 The Supreme Court;
2 District Courts;
3 Police Courts."

Hon. P. RAMA NATHAN:—What is the meaning of "ordinary" administration? The word does not appear to be taken from the Indian Penal Code, but from Sir J. Phear's Draft Code, in which however those words have a meaning as Sir John conserved the powers of Justices of the Peace, Village Tribunals and Admiralty Courts.

The Hon. the QUEEN'S ADVOCATE:—Ordinary, as distinguished from courts of a special nature.

H. E. the LIEUT.-GOVERNOR:—The maxim applies here *inclusio unius est exclusio alterius.*

The Hon. P. RAMA NATHAN?—Is it meant to abolish the Gansabawa Courts, Benches of Magistrates, Admiralty Courts?

H. E. the LIEUT.-GOVERNOR:—They are under special laws.

The Hon. P. RAMA NATHAN:—There is no mention of Municipal Courts, Admiralty Courts &c. I make these observations because I do not know what the views of Government are. Our legislation cannot abolish Admiralty Courts founded by imperial legislation, but as to the benches of magistrates of municipalities, which now exercise exactly the same powers as police courts, is it the intention of Government to abolish them? If not, should they not be be included in cl. 5.

H. E. the LIEUT.-GOVERNOR:—The benches of magistrates &c., are under special laws which will continue to operate unless they are repealed.

The HON. P. RAMA NATHAN:—But the municipal courts cannot try any of the offences under the Penal Code, and therefore the benches are indirectly divested of the powers which at present they possess

H. E. the LIEUT.-GOVERNOR:—Nothing will happen to municipal courts unless the Ordinance says so.

The HON. P. RAMA NATHAN:—But the Code distinctly says that the offences under the Penal Code shall not be tried by any court but the Supreme Court, District Court and Police Court.

H. E. the LIEUT.-GOVERNOR:—The jurisdiction of municipal courts will extend only to the trying of cases under municipal byelaws. I think this is desirable. The Government are against giving concurrent jurisdiction to Police Courts and Bench of Magistrates Courts.

The Hon. the GOVERNMENT AGENT W. P.:—The Municipal Councils Ordinance gives special power to try all crimes and offences committed within the Municipality and cognisable by Police Courts in this Island according to law. The Code ought not to interfere with Municipal Council law. Municipalities should receive due notification if the powers of their benches are intended to be abridged. I think it would be fair to the Municipal Council to tell them "we intend to dissolve the Municipal Council benches of magistrates."

H. E. the LIEUT.-GOVERNOR:—It is one thing to deprive it of concurrent jurisdiction and quite another thing to deprive it of the right of trying offences against municipal bye laws.

Hon. P. RAMA NATHAN:—Is it the intention of the Government to bring in a bill as to municipalities?

H. E. the LIEUT.-GOVERNOR:—I cannot say what Sir Arthur Gordon will do.

SECTION 6.—COURTS TO BE OPEN.

The Hon. the GOVERNMENT AGENT C. P.:—Any place in which a criminal court is held is deemed an "open and public court." Does the court then follow the Magistrate?

H. E. the LIEUT.-GOVERNOR:—At present the Police Court has to be proclaimed.

The Hon. the ACTING SURVEYOR GENERAL:—If a revenue officer is on circuit and holds an inquiry in a private house he may have to exclude the public. So also if if he were investigating into a crime of murder he may have to exclude the public.

The subject then dropped.

§ 8.—CRIMINAL JURISDICTION OF DISTRICT COURTS.

The Hon. P. RAMA NATHAN wished to know how much of the Ordinance 11 of 1868 it was in the intention of Government to repeal.

The Hon. the QUEEN'S ADVOCATE:—We should have to go through it very carefully to see what parts of it should be omitted and what not.

The Hon. J. VAN LANGENBERG:—The words in this section "subject to the provisions of this Code" raise the question about the appellate jurisdiction of the Criminal Court.

The section, with the insertion, on the suggestion of the hon. Mr. Van Langenberg, of the word "offences" after the word "which" in the 8th line was duly passed.

SECTION 9.

Hon. J. VAN LANGENBERG:—This section is taken over from 11 of 1868. The jurisdiction of Police Courts was by that ordinance clear and defined. The maximum punishment was three months' imprisonment and R50 fine. There was no difficulty in knowing what offences were cognisable. A Police Magistrate had certain separate and distinct functions. But according to the new Code the distinction between Justices of the Peace and Police Magistrates, has been abolished. The word 'cognisable' which was appropriate enough for the Ordinance of 1868 is not so now.

H. E. the LIEUT.-GOVERNOR:—The word 'cognisable' here means 'triable' I think.

Hon. J. VAN LANGENBERG:—Perhaps 'cognisable' may mean 'power of trying.'

Hon. J. VAN LANGENBERG:—I don't think there is any definition of the words "all suits or prosecutions." Here we take words from the Ordinance 11 of 1868 and make use of them just as we please.

Hon. P. RAMA NATHAN:—The word 'cognisable' must be explained by the words "under and subject to the provisions of this Code."

The Hon. the QUEEN'S ADVOCATE said that if the hon member would allow the clause to pass, he would consult the Chief Justice before the next sitting.

SECTION 15.—SENTENCES WHICH POLICE COURTS MAY PASS.

Hon. W. W. MITCHELL:—Under the clause I regret to find that the punitive powers of police courts in respect of whipping will be confined to persons under 16 years of age, so that if an offender is 17 he cannot be whipped, but will probably have the objectionable alternative of imprisonment. I think it a mistake not to give police courts the power to whip irrespective of age, for there is no doubt that the effect is wholesome when carried out promptly. Whatever the opinion may be as to whipping in the mother-country, we have to legislate for things as we find them here, and I should regret to find that offenders over 16 will not be punishable with whipping, which in itself is such a valuable deterrent.

H. E. the LIEUT.-GOVERNOR:—If the Police Magistrate thinks it necessary that the offender should be flogged, he must lay the case before the proper tribunal. There is a strong determination on the part of Her Majesty's Government not to give to police courts the unrestrained liberty of whipping.

In answer to a question from the Hon. the GOVERNMENT AGENT W. P. about flogging.

H. E. the LIEUT.-GOVERNOR:—I cannot say what the next Governor may feel.

The Hon. the GOVERNMENT AGENT W. P.:—I have no doubt Your Excellency has read that in a recent debate in the House of Lords, Lord Kimberley said that it was the opinion of the members of the Civil Service in India that flogging should not be restricted. It was clear that flogging in India was given for the most trivial offences.

H. E. the LIEUT.-GOVERNOR said he did not think that any very great inconvenience would result.

Hon. A. L. DE ALWIS:—Only in some cases it is a wholesome thing, as where a man is found redhanded in the commission of a crime. In other cases I quite agree that whipping ought not to be allowed, except to young people.

H. E. the LIEUT.-GOVERNOR:—The utmost we can get is to restrict the power to Judges of District Courts who are equivalent to magistrates of the 2nd class in India.

§—17. SENTENCE IN CASE OF CONVICTION FOR SEVERAL OFFENCES AT ONE TRIAL.

The Hon P. RAMA NATHAN said that this section opened the question whether the indictment may not be multifarious. Perhaps the proper time for raising the question would be when the Council had come to §§ 208 and 209. He wished to say that his assent to this section was subject to his assent to those. He wished to make an enquiry concerning another matter, and that was whether a Police Magistrate who began an inquiry into a case may not finally have to try it as a District Judge. In an inquiry several kinds of information may be derived, and from various individuals, such as head clerks &c. Suspicious circumstances too may be received, the reception of which will not be sanctioned in a trial. A Police Magistrate may leave the case to be tried in a superior court because a *prima facie* case is made out. He finds that he has to try the case as District Judge. Can he avoid being prejudiced? Numerous cases have been brought before the Supreme Court where committing Justices of the Peace have tried these cases as District Judges. Now the Supreme Court has repeatedly condemned a procedure of this kind. If the principles of justice are fixed and invariable the Council cannot assent to this. It cannot agree to a procedure of this kind that a Police Magistrate who works up a case for the purposes of a higher tribunal should sit as judge over it. It will be very hard for the best balanced minds not to be guided by evidence which, however proper to be received by a committing Magistrate, is utterly inadmissible by a Judge.

The Hon. J. VAN LANGENBERG said that Police Magistrates now have to a certain extent a judicial discretion. It is deemed the duty of a Police Magistrate to conduct an inquiry from beginning to end. If he finds the case beyond his jurisdiction as Magistrate, he will then ask the Queen's Advocate to select the court in which the case ought to be tried. The Queen's Advocate may quash the affair. He exercises a judgment independently of the Police Magistrate. The present practice is for a Justice of the Peace to conduct the preliminary inquiry. Yet notwithstanding the fact that a man who has held the preliminary inquiry would have his mind biassed and prejudiced, it happens that he has to sit and judge the case as if he knew nothing of what had transpired. Justices of the Peace who happen to be District Judges also, should not commit cases before themselves. No doubt in the great majority of cases the Queen's Advocate will not allow it, and will so avoid the farce of a trial by sending the case to a higher court.

§ 17, PROVISO (*a*).—CAN A COMMITING MAGISTRATE COMMIT A CASE TO HIMSELF IN HIS CAPACITY OF DISTRICT JUDGE?

Hon. J. VAN LANGENBERG said that such a committal, as that indicated above, should be substantively declared to be a bad committal. The party accused cannot have a fair and just trial. He would leave it to the Queen's Advocate to select a court having due regard to the circumstances of the case.

H. E. the LIEUT.-GOVERNOR said he certainly saw the objection, but there could be no doubt it was put in to consult the real convenience of witnesses. The distance of one station from another is sometimes very great. Take the case of Mullaitivu. Here is a District Judge. Being by the nature of his office a Police Magistrate as well, he makes the preliminary investigation into a crime. Having done so, he finds that the trial should take place before a District Judge, and he has thus either to try the case himself or send it to Mannar or Jaffna or Anuradhapura. Or again when a case is transferred from Mannar to Mullaittivu the unfortunate prisoner is seldom able to get his witnesses to go to Mullaitivu. The prosecutor *i.e.*, the Crown generally finds no difficulty in this, so that after all it becomes a question which objection is the greater of the two. There is only one officer who is at Mullaittivu and Vavuniyavilankulam, and no other officer nearer than Anuradhapura, Mannar and Jaffna.

The Hon. J. VAN LANGENBERG:—I should be sorry that a question of principle should be lost on considerations of convenience.

The Hon. the GOVERNMENT AGENT W. P. said that the question which had been raised was not a new question, but had formed the subject of a division when the Law Commissioners were sitting. The question was proposed by Mr. Lawrie, the D. J. of Kandy, and there were 3 votes on the one side and 3 on the other, the Chief Justice (Sir John Phear) not voting.

The Hon. the QUEEN'S ADVOCATE said that there could be no doubt that there was a great deal to be said on both sides. The question of any difficulty would be met by the dissatisfied party asking the Queen's Advocate to name the court.

Hon. J. VAN LANGENBERG said the time between the commitment and the trial would then be too long.

The Hon. QUEEN'S ADVOCATE said that there must be a reference to the Queen's Advocate. He knew himself how objectionable it was for a Judge to form an opinion on a case before trying it, so that he would be the first, on theoretical grounds, to support the motion. The object of this proviso was however to obviate the great inconvenience that resulted from the judges' stations being so far one from the other. If the accused consented to be tried there was nothing more to be said. He would go further however to the extent of making it imperative that the accused's consent be taken then and there.

The Hon. P. RAMA NATHAN said consent in criminal law is not the same as in civil law.

The Hon. QUEEN'S ADVOCATE:—Consent does not necessarily give jurisdiction. But in this case it gives jurisdiction by the very terms of the law.

H. E. the LIEUT.-GOVERNOR thought the way suggested by the hon. the QUEEN'S ADVOCATE was the easiest way of getting over the difficulty.

It was agreed that the clause do stand with the addition of the words "provided the accused shall have consented to be tried by such District Judge"

As soon as Part 2 had been read over the hon. P. RAMA NATHAN reminded His Excellency that it was now past 5 p.m.

His Excellency the LIEUT.-GOVERNOR said he would like to finish downto section 23, and they were as yet well within the 75 clauses which the hon. the member had proposed should be the maximum limit of the sections passed at one sitting. (Laughter.)

The Council then adjourned to Wednesday at 2 p.m.

WEDNESDAY, 4 AUGUST 15.

Present:—His Excellency the Lieutenant-Governor (President), the Hons. the Acting Colonial Secretary, the Queen's Advocate, the Acting Auditor-General, the Treasurer, the Acting Surveyor-General, the Government Agent, Western Province, the Acting Govenment Agent, Central Province, and the Hons. J. Van Langenberg, P. Rama Nathan and J. L. Shand.

Absentees:—the Hons W. W Mitchell and A L. de Alwis.

His Excellency the LIEUT.-GOVERNOR, before the reading of the Procedure Code was resumed, directed the attention of the hon. member (Mr. Rama Nathan) who was to move for the insertion of two illustrations to the section on "Habitual Receiving"—to the Imperial Statute 32 and 33 Victoria ch. 99 which

gave a most exhaustive definition of 'habitual Receiving.' He thought it was perhaps advisable to adopt the English definition of "habitually receiving stolen goods." Since we follow in Ceylon the English law of evidence, he thought it was better to adopt the mode of proof which obtains in England as to a man being a habitual receiver.

The Hon. P. RAMA NATHAN said that he was quite willing the subject should stand over for consideration.

His Excellency the LIEUT.-GOVERNOR thereupon asked the hon. the Queen's Advocate to draft a clause on the lines of the clause in the Imperial Act referred to, on the crime of habitual receiving.

THE CRIMINAL PROCEDURE CODE IN COMMITTEE :

CHAPTER V.—ON ARREST, ESCAPE, AND RETAKING.

In section 26, providing for the case where ingress into a house is not obtainable for serving a warrant of arrest the following proviso appears :—"Provided that if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who according to custom does not appear in public, such person or police officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it."

His Excellency the LIEUT.-GOVERNOR said that this section was new to our legislation in Ceylon and he invited attention to it as introducing a principle which though necessary in India might not be so here.

The Hon. P. RAMA NATHAN thought it very desirable that it should be retained.

The HON. J. VAN LANGENBERG :—As in the case of Muhammadans.

The Hon. the GOVT. AGENT W. P. thought the proviso very undesirable and not at all fitted to the other portions of the Code so far as they had already gone. The thing was entirely new to Ceylon law, and its introduction would be the introducing the thin end of the wedge of a new system. He thought that magistrates had hitherto sufficiently guarded against the invasion of the privacy of females. If the Council was not prepared to delete the proviso he would move that it stand over for consideration. His own feeling was that it should be left out, unless it was afterwards found necessary to include it.

The Hon. P. RAMA NATHAN could not help feeling that his hon. friend (the Government Agent W. P.) was labouring under a misconception by saying that the thing was new to Ceylon. No man if he is a gentlemen would rush into the apartment of a woman, but would ask her first to withdraw. The proviso merely puts in explicit words what every gentleman is expected to do.

His Excellency the LIEUT.-GOVERNOR thought that this was a case of special legislation for the protection of a particular section of the Inhabitants seeing it did not apply to the English, Sinhalese and other races, but to Muhammadans alone whose women were of that class, which, *according to custom* do not appear in public.

The Hon P. RAMA NATHAN :—There is not a word about Muhammadans here.

The Hon. the QUEEN'S ADVOCATE opposed the striking out of the words "according to custom," without further consideration, and so making the clause more general. As the proviso was put into the Code, and had been drafted with every care by the Chief Justice, he thought it would be a pity to strike it out. (Hear hear, from the hon Mr. Rama Nathan.) Unless the Chief Justice thought it was necessary he might not have inserted it.

His Excellency the LIEUT. GOVERNOR :—I think we may allow the proviso to stand over. We cannot however, allow it to stand over indefinitely, but for one week. The subject is one, the bearing of which is new to our feelings of legislation though not to our feelings of courtesy.

The Hon. the GOVT. AGENT W. P. :—I give notice that I shall propose an amendment on this clause, this day week.

The Hon. the TREASURER :—Does this clause appear in the Indian Code ?

The Hon. the QUEEN'S ADVOCATE :—It does appear and that may be the reason why the Chief Justice has incorporated it into the Ceylon Code.

The clause to stand over.

SEC 30.—MODE OF SEARCHING WOMEN.

On coming to this section the hon. Mr. RAMA NATHAN said he believed there was no penalty attached to the case of a *man* who searches a woman. There was a bare direction that the search should be made by a woman without a penalty for the case where a man searched a woman.

The Hon. the QUEEN'S ADVOCATE said that the offence was met by section 335 of the Code which provided for assault and use of criminal force, including the lifting up of a woman's veil against her will.

SEC. 32. SUB-SECTION 2.

The Hon. P. RAMA NATHN :—This introduces a thing quite new to the Police Ordinance (16 of 1865). Coolies have crowbars in their houses which they use for husking coconuts. They have axes also which they use for household duties and duties abroad. A clause of this kind will be a very convenient clause for dishonest policemen. Crowbars, knives, and things of that kind were the instruments used for house breaking as the calendars of the Supreme Court will testify. This clause will interfere needlessly with the liberty of the subject.

The Hon. the QUEEN'S ADVOCATE said that the hon. member would see that it is only persons who possess implements of house-breaking *without lawful excuse* that could be arrested without a warrant. All that a man would have to do would be to show that the possession of such an instrument was lawful and not for the purpose of house-breaking. It was not only in this country, but also in London, that people who went about with crow bars could be summarily arrested.

The Hon. P. RAMA NATHAN said that if a man were found having such implements in suspicious corners or times the act should certainly be considered unlawful but under the present clause it was possible for a policemen to enter a man's house and to ask him about his implements and forthwith to arrest him, and the matter would usually end with the coolie handing over a sixpence to the policeman.

The Hon. the COLONIAL SECRETARY :—A policeman has no business to enter a cooly's house without his permission unless authorized to do so by warrant.

The clause was passed.

§ 33.—PROCEDURE WHEN PARTY COMMITTING A NON COGNIZABLE OFFENCE REFUSES TO GIVE NAME AND RESIDENCE.

The Hon. P. RAMA NATHAN said he believed there was an omission of procedure here. A person arrested under this section may give his name and residence to the arresting officer and may thereupon *execute a bond* for his appearance before a police court. Before whom is this bond to be executed ? There is a provision in clause 52 which empowers a police court *upon the offender being brought up* to direct the execution of a bond with sufficient sureties before the officer to whom the warrant is directed. But here in cl. 33 no mention is made as to the party before whom the bond has to be made. Section 39 too does not say before whom the bond is to be executed. Is the bond to be executed before a policeman ?

The Hon. the GOVERNMENT AGENT W. P. said he was glad the hon. member had raised the question. He would draw attention to the fact that the giving of bail is now extended to even constables and village headmen of every grade. He thought that this was a bad thing, because the Code makes non-bailable a vast number of offences hitherto bailable.

Theft, for instance, is by the Code made a non-bailable offence, and the person may be arrested on that charge without a warrant on the mere statement of another. He thought that this should be borne in mind and amended when they came to the consideration of the Schedule.

The Hon. the QUEEN'S ADVOCATE :—I beg to draw the attention of the hon. member to the definition of "bailable offence" given in the Code. "Bailable offence" is there defined as "an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force." There may be offences not mentioned in the Code.

The Hon P. RAMA NATHAN said :—This clause deals with a case in which when the name and residence were ascertained, the suspected man may be released by the police officer upon his giving a bond to appear before a police court. He considered it an important question. As it stood a police constable or vidana could have bonds executed before them. On what authority did they do this at present? Was it desirable that this power which was said to exist should be perpetuated under the Code ?

His Excellency the LIEUT.-GOVERNOR :—The power might be given to a police officer in charge of a station now.

The Hon. the GOVERNMENT AGENT W. P. :—By the 55th clause of Ordinance 16 of 1865, the senior officer in charge of a police station can have bail bonds executed before him.

The Hon. the QUEEN'S ADVOCATE :—It does not appear before whom bonds are to be executed?

The Hon. the GOVERNMENT AGENT C. P. drew attention to section 477 of the Procedure Code wherein it is stated that the deposit of a sum of money might be made in lieu of a recognizance.

The Hon. P. RAMA NATHAN : Rather a pleasant thing for a constable ! (Laughter.)

His Excellency the LIEUT. GOVERNOR said he believed that under the existing system a man is locked up in the headman's house or put in the stocks.

The Hon. the GOVERNMENT AGENT W. P. said that it was well known if a fiscal's officer was entrusted with 20 or 30 warrants he would go and make arrangements with the parties, and say to each one that he was due on such and such a particular day. It was not an uncommon thing on trial day to see a fiscal's peon waiting anxiously because uncertain whether he was to say "Defendant is not to be found" or "Defendant is arrested, and is herewith produced before the court." (Laughter.)

The Hon. P. RAMA NATHAN :—This clause might be amended by adding the words "before the officer in charge of the police station,"

H. E. the LIEUT.-GOVERNOR drew the hon. member's attention to § 457 of the Procedure Code.

The Hon. P. RAMA NATHAN said he did not know what might be done in the case of refractory individuals, but, generally, persons under arrest were taken to headmen's houses and were treated as members of the family with liberty to roam about the headmen's premises.

H. E. the LIEUT.-GOVERNOR :—Let the clause stand over till we come to chapter 33, which deals with bails generally. We shall perhaps understand the subject better when we come to the consideration of that chapter.

The Hon. J. VAN LANGENBERG said that by the 55th clause of 16 of 1865 every person taken into custody by any police officer without warrant (except persons detained for the mere purpose of ascertaining their name and residence) shall be forthwith delivered to the senior officer of the police station in order that they may give bail for their appearance before a magistrate.

Clause was allowed to stand over.

§ 35—ARREST BY PRIVATE PERSONS.

The Hon. P. RAMA NATHAN wished to know who was the person to be satisfied that the person in question came under section 32 ?

H. E. the LIEUT.-GOVERNOR :—Any police officer. The Police Officer shall determine whether the offence is a bailable or non-bailable one.

The Hon. the GOVERNMENT AGENT C. P. suggested that the word "proper" should be substituted for "presiding."

His Excellency the LIEUT.-GOVERNOR said that in heavy courts like Colombo, Kandy, or Galle, it would be impossible for the "presiding officer" to sign all the summonses. He makes an order "summons to issue" and the secretary issues the summons. He had received several reports from magistrates referring to the difficulty which would be caused by this section.

The Hon. the GOVERNMENT AGENT W. P. said he did not think it at all necessary to require the judge to sign the summonses. It was not at all usual to do so.

The Hon. J. VAN LANGENBERG : According to the present rules the summonses are signed by the chief clerk, the warrants by the magistrates. He did not think the change suggested at all desirable.

H. E. the LIEUT. GOVERNOR said that after the magistrate has sanctioned the issue of a summons he did not see why he should sign it as well.

This clause too to stand over.

The Hon. the GOVERNMENT AGENT, W. P. said that from section 37 where a person arrested is directed not to be detained for more than twenty-four hours, it will be evident how necessary it is that there should be at each station persons exercising the functions of J. P.'s. The time of going from one station to another might occupy a great deal more time than 24 hours !

Section 37 to stand over.

CHAPTER VI.—OF PROCESSES TO COMPEL APPEARANCE.

Section 44:—"Every summons issued by a court under this Code, shall be in writing, in duplicate, and signed by the presiding officer of such court. Such summons shall ordinarily be served by a fiscal's officer of the district in which the court by which it was issued is situated, but the judge or magistrate issuing the summons may, if he see fit, direct it to be served by any other person."

The Hon. the QUEEN'S ADVOCATE suggested that "responsible officer" was better than "presiding officer;" because the duty should not be left to every one and the presiding officer might not always be able to perform it.

The Hon. the Acting SURVEYOR-GENERAL thought that in all cases the Secretary should refer to the District Judge before issuing summons.

His Excellency the LIEUT.-GOVERNOR said the public ought to know who the person is that issues the summons.

The Hon. the GOVERNMENT AGENT W. P. :—Surely the Magistrate will know whom to empower with this authority.

Finally on the motion of the Hon. the QUEEN'S ADVOCATE it was decided that the following words should be added after "presiding officer"—"or by the Registrar, Deputy Registrar, Secretary, or Chief Clerk of such Court as the case may be," and for "issuing the summons" the following should be substituted "at whose Court the summons is issued."

The Hon. the Acting GOVERNMENT AGENT C. P. remarked that nothing was said about translations of the summon

The Hon. the TREASURER said that under the "Rules and Orders" translations must be issued. The duplicate has to be the language of the person on whom the summons is served.

The Hon. J. VAN LANGENBERG : There is a form in Rule 15.

The clause as amended passed.

Section 45. "The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons. Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate."

The Hon. the GOVERNMENT AGENT W. P. remarked that great difficulties would arise if the section were passed in its integrity. A good many people to whom summonses are issued cannot read. A server can easily produce a duplicate with a mark on it. Was it necessary besides, to introduce so totally new a feature into the procedure? He moved that the last three lines which read thus "every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate" should be deleted.

The Hon. Mr. RAMA NATHAN said that it was was the practice in India to require persons who were served with a summons, to sign a receipt on the back of the duplicate.

The Hon. the LIEUT.-GOVERNOR said he did not see the object of this. Those who wished to evade the summons would say that they were unable to write.

The Hon. the QUEEN'S ADVOCATE :—Notwithstanding the fact of the name appearing on the back of the duplicate, it might be necessary to prove service of summons.

The Hon. P. RAMA NATHAN proposed that after the words "so required" in sec. 45 should be added the word "wherever practicable."

H. E. the LIEUT.-GOVERNOR said that the hon. the Government Agent W. P. had already moved the deletion of the last three lines.

The Hon. P. RAMA NATHAN said that if the majority of the members of Council were agreed that the deletion should be made, he would not press his motion. He would only remark that by accepting the motion of his hon. friend the Council has defeated the main object which the framer had in view in making duplicate summons necessary.

Clause, as *amended*, passed.

§ 46.—The Hon. the GOVERNMENT AGENT W. P. moved to omit the last 3 lines in the clause as well. Agreed to.

The Hon. J. VAN LANGENBERG remarked that there was no provision made for the return of summonses except in the case of a summons served outside the local limits of the jurisdiction of the court which issued it.

H. E. the LIEUT.-GOVERNOR read the 29th clause of the Fiscals Ordinance (4 of 1867) :—"Every return to process shall be made by the Fiscal or Deputy Fiscal or Marshal, and shall be duly verified by the oath or affirmation of the officer employed to execute the same. And for such purpose, the Fiscal, Deputy Fiscal or Marshal is hereby authorised to administer such oath or affirmation." The provision made in this ordinance would apply.

In section 48 the following words were substituted for the last two lines:—"and shall return it to the Court with an endorsation of service."

SECTION 50.

It was agreed on the suggestion of his Excellency the LIEUT.-GOVERNOR to leave the alterations necessary to be made in this clause to the Queen's Advocate.

The Hon. P. RAMA NATHAN said that now that they had done away with Justices of the Peace, it was necessary that persons should attend court to make affidavits. A statement before a fiscal should be sufficient proof of due service of Writ.

The Hon. J. VAN LANGENBERG said that an affidavit of service could be verified before a Fiscal.

The Hon. the GOVERNMENT AGENT C. P. :—Then omit the words "purporting to be made before a magistrate."

To stand over.

The Hon. Mr. RAMA NATHAN wished to know what was the object of a summons being issued in duplicate? The object of the Code was that one should be served on the party, the other should be returned with the receipt of the party on whom it was served. This receipt being now done away with he considered that the necessity for a duplicate no longer existed.

H. E. the LIEUT.-GOVERNOR said that hitherto the originals of the summons were alone signed by the presiding officer.

The Hon. the RAMA NATHAN :—What is the use of the Judge signing two documents?

The Hon. J. VAN LANGENBERG :—The duplicate is with the defendant, the original is returned to the fiscal.

H. E the LIEUT.-GOVERNOR said he thought the person summoned was entitled to a duplicate. What does a copy mean?

The Hon. P. RAMA NATHAN said he was now 11 years at the Bar, yet he did not know one instance where any false summons was served on a party.

The Hon. the GOVERNMENT AGENT W. P. said that hitherto the original summons went and a translation. It did not always happen that the chief clerk knew the native languages. In the case of a native the summons was always served upon him in the language he understood.

The Hon. the GOVERNMENT AGENT C. P. said the "duplicate" was better than a "copy" because signed by the person who had signed the original at the same time.

H. E. the LIEUT.-GOVERNOR:—A duplicate is a facsimile.

The Hon. the QUEEN'S ADVOCATE :—We could not have a translation signed.

The subject dropped.

B—WARRANT OF ARREST.—SECTION 51.

H. E. LIEUT.-GOVERNOR thought that the concluding words of this section—"Every warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed"—gave too wide a discretion, because by it a man might keep a warrant in his possession for even 7 years to arrest anybody. In murder cases such a power would perhaps work well. In all other cases he thought the warrant should be made returnable by a certain fixed day.

The Hon. J. VAN LANGENBERG said that by the present rules, a warrant is made returnable 'forthwith.' In a Police Court or Justice of the Peace case the warrant is made returnable on trial day.

H. E. the LIEUT.-GOVERNOR said that one of the most efficient magistrates in the public service thought that the warrant should be made returnable on a fixed day.

The Hon. J. VAN LANGENBERG said that if a man is a clever thief and runs from place to place with several warrants after him there might be an abuse of process.

H. E. the LIEUT.-GOVERNOR :—I should be quite satisfied if the new procedure should be based on the lines of the Ordinance now existing.

The Hon. the GOVERNMENT AGENT W. P. said it would seldom happen that a warrant would be overlooked.

The Hon. P. RAMA NATHAN :—A warrant appears to be issuable on mere verbal information. It is frequently issued, and then lost sight of. What an engine of oppression it can be made to be! Writs get superannuated now in a year and a day, but according to this section the vitality of a warrant may last for a century.

H. E. the LIEUT.-GOVERNOR :—Warrants must be issued and made returnable according to the circumstances of the case.

The subject then dropped.

OUGHT NOT HEADMEN AND PEACE OFFICERS TO BE PAID FOR THEIR WORK.

§ 53. Headmen and peace officers are *authorized* and *required* to serve every warrant, &c.

The Hon. P. RAMA NATHAN thought that it was very hard to require men to do work of this kind without payment. He thought that these men were the hardest-treated men in Ceylon. They had sometimes to keep and maintain twenty or thirty men to execute warrants for them. There must be an inducement held out to them.

H. E the LIEUT.-GOVERNOR :—What inducement ?

Hon. P. RAMA NATHAN :—It is true they love position and rank, but they certainly object to having to spend their money.

The Hon. the ACTING COLONIAL SECRETARY :—Their fields are exempted from taxation

The Hon. the GOVERNMENT AGENT W. P.:—Not in the Western Province.

The Hon. the ACTING GOVERMENT AGENT C.P. said he did not think headmen should be made to act as Police officers.

The Hon. the GOVERNMENT AGENT W.P. agreed with the hon. member Mr. Rama Nathan. All the headmen are police officers and cannot be exempted. He thought that the Executive must take care not to burden these headmen. They should have this duty laid upon them as seldom as possible.

H. E. the LIEUT.-GOVERNOR said that by section 144 of the Ordinace 11 of 1868 all headmen are authorized and required to arrest persons who commit any crime or breach of the peace in their presence.

The Hon. the TREASURER said that by clause 28 of the Fiscals Ordinance (4 of 1867) all headmen are authorized and required to execute process, and in the execution thereof they shall be maintained and protected by law.

The Hon. the GOVERNMENT AGENT W.P. said that the gansabawas also issue warrants to headmen, as only one peon is attached to each of them, thus increasing their work.

H. E. the LIEUT.-GOVERNOR:—It will be impossible to continue this discussion. We cannot raise the question of payment to native headmen in this clause. It is hardly germane to the subject.

The Hon. P. RAMA NATHAN :—The question has been raised, and he could bear witness to the loudly-expressed complaints of the people concerned. If the revenue cannot afford to pay them. he would say abolish the system altogether. As a matter of principle he would move the deletion of the words "and all headmen and peace officers."

The Hon. the TREASURER thought the difficulty might be removed by deleting the word 'required.' It was a very onerous duty to cast on these people, and he did not think it was the desire of the Executive to visit upon them pains and penalties for non-performance of it.

H. E. the LIEUT.-GOVERNOR said that if you "authorise" an officer to do a certain thing you cannot leave it optional with him whether he did it or not.

The Hon. the ACTING GOVERNMENT AGENT C. P, said he thought there was some confusion in the expression of this section. Fiscals and their officers should be "required to serve," but the headmen and police officers ought not be placed in the same category.

H. E. the LIEUT.-GOVERNOR :—As long as people are what they are, a writ addressed to a fiscal would assuredly be sent to a headman for service!

The Hon. the QUEEN'S ADVOCATE ;—So far as I am able to judge headmen must have power to arrest. It will be dangerous to say they have the authority and not have the power to require them to exercise it.

The Hon. the GOVERNMENT AGENT W. P. said that by sec. 22 of the Fiscals Ordinance all headmen are required to aid the fiscal in the execution of process, but this was a different thing from sending him wholesale a bundle of warrants asking him to execute them.

The Hon. the TREASURER said that by a subsequent clause (sec. 28) to which he had drawn attention a little while before, headmen were required and authorised to execute process.

H. E. the LIEUT.-GOVERNOR :—If the hon. member (Mr. Rama Nathan) wishes to repeal this section he should make a motion.

The Hon. P. RAMA NATHAN :—I see a great piece of injustice committed. My duty is to see this not perpetuated. By the Penal Code headmen are to be punished for non-performance of their duties. They may have had to do this for a long series of years. I leave the past alone. I think hon. members will see their duty not to assent to this clause, as it teems with injustice.

A division was then taken, with this result.

Motion :—That in clause 53 the words " all headmen and peace officers" be deleted.

Ayes.	*Noes.*
	Hon. the Actg. Surv.-Genl.
Hon. J. L. Shand,	,, Actg. G. A, C, P.
,, P. Rama Nathan,	,, G. A., W. P.
,, J. Van Langenberg,	,, Treasurer
	,, Actg. Auditor Genl.
	,, Queen's Advocate.
	,, Actg. Col. Secretary.
	,, Colonel Commanding.
	H. E. the Lieut.-Governor.

Ayes 3; Noes 9. Motion lost.

Section 54 :—" The court issuing the warrant may direct it to any other person or persons [than the Fiscal, &c.] and such person or persons, *or any police officer*, may execute the same."

The Hon. J. VAN LANGENBERG wished to know if the warrant was directed to one person how "any police officer" could execute it?

H. E. the LIEUT.-GOVERNOR thought this was perhaps taken from the Indian Code.

The Hon. J. VAN LANGENBERG said it was not taken from the Indian Code, and he did not see the object of it.

The Hon. the QUEEN'S ADVOCATE said it simply explained the previous section " every officer of police is hereby authorized to execute such warrant"; although it may be directed to others. It is at times necessary to direct a warrant to an unofficial person, but a police officer may have to execute it.

The Hon. P. RAMA NATHAN :—If a warrant is addressed to me to arrest another person I cannot depute the work to another. The Supreme Court has decided that A. B. (Police Sergeant of Nawalapitiya) cannot depute his work to C. D. The Indian Code allows a person other than the one to whom it is directed to execute a warrant provided his name appears on the face of the document. He quite agreed with his hon. friend (Mr. Van Langenberg) that the clause as it stands has no legal meaning.

The Hon. J. VAN LANGENBERG said that Clauses 77 and 78 clearly contemplate that the police should be the machinery used. He thought that the power was a permissive one. But the intention in clause 54 is clear that a Police officer not named in the warrant may execute. This was very objectionable.

H. E. the LIEUT.-GOVERNOR :—I should like to consult the Chief Justice, although I see there is an advantage in the Code.

The Hon. J. VAN LANGENBERG :—What I object to is that a warrant addressed to A. should be executed by B.

H. E. the LIEUT.-GOVERNOR thought that they had better leave the question of warrants of arrest and summonses to the hon. the Queen's Advocate. There ought to be a provision for a translation of summonses.

SEC. 58.—WARRANT FORWARDED TO COURT FOR EXECUTION OUTSIDE JURISDICTION.

The Hon. the GOVERNMENT AGENT, W. P. said he would like to know whether a magistrate could sign a warrant unaddressed to anyone?

The Hon. the GOVT. AGENT C. P. said that the case contemplated is simply when one magistrate forwards a warrant to another magistrate for execution instead of to a fiscal.

The Hon. the QUEEN'S ADVOCATE :—The warrant will be sent by a magistrate to the magistrate of the district where it is to be executed, and he will direct it to another.

The Hon. J. VAN LANGENBERG :—There is no limitation at all. It says a warrant of arrest may be executed in any district of the island. There is a

provision in the Administration of Justice Ordinance section 150 to this effect: "The justice of the peace issuing the warrant may, if he see fit so to do, direct the warrant specially to any person."

H. E. the LIEUT.-GOVERNOR:—The practical question is whether when the police magistrate, say, of Matara sends a warrant to be executed in Jaffna, such warrant could be executed without the intervention of the police magistrate?

Hon. P. RAMA NATHAN:—It could be executed if directed to some special officer in Jaffna by name.

H. E. the LIEUT.-GOVERNOR:—How is the police magistrate to "cause it to be executed" when the warrant is sent to a police court for execution?

Hon. P. RAMA NATHAN:—To whom is it addressed?

H. E. the LIEUT.-GOVERNOR:—It is not addressed at all. The meaning being that the sender does not address it, because he does not know whom best to address it to.

The Hon. the QUEEN'S ADVOCATE thought that the police magistrate of the District in which the warrant is to be executed would probably be the best judge as to who should execute it.

The clause was passed.

SECTION 61.

The HON. P. RAMA NATHAN thought that the words "or a magistrate thereof" in the first line of this section unnecessary. In India there are Benches of Magistrates whereas in Police Courts there can only be one.

The HON. THE QUEES'N ADVOCATE said that of course additional Magistrates could be appointed if so required.

The clause according to the Hon. M. Rama Nathan's emendation was then passed, and the Council adjourned to Wednesday next, the 22nd inst. at 2 p. m.

WEDNESDAY, AUGUST 22.

Present:—H. E. the Lieut.-Governor (President), the Colonel Commanding, the Hons. the Acting Colonial Secretary, the Queen's Advocate, the Acting Auditor-General, the Treasurer, the Government Agent W. P., the Acting Government Agent, C. P., the Acting Surveyor-General, and the Hons. J. Van Langenberg, W. W. Mitchell and P. Rama Nathan.

Absentees:—The Hons. A. L. de Alwis and J. L. Shand.

The ACTING COLONIAL SECRETARY laid on the table the following papers:—"Dispatches relating to the New Lunatic Asylum: in continuation of Sessional Paper No. XXII of 1882"; and "Village Tribunals: a statement showing the District Presidents, their Salaries and Staffs, and the number and the nature of the cases disposed of during the year 1882."

The Hon. W. W. MITCHELL asked:—

(1) What was the total amount of the Engineer's estimate of cost of the Nanuoya section of railway extension as finally passed by Sir C. H. Gregory, consulting engineer?

(2) Whether the accepted tender of Messrs. T. Nowell & Co. for construction (taking the slump sum, R7,218,144) shows any saving on that portion of the engineer's estimate?

(3) Whether the Government have any reason to suppose that the engineer's estimate will be exceeded in respect of expenditure outside the contract?

(4) Whether the balance of the million pounds sterling raised under debentures for the Nanuoya section may be considered available for the Haputale section of railway?

The Hon. the Acting COLONIAL SECRETARY replied:—

1. The total amount of the Engineer's Estimate for the Nanuoya section of the Railway Extension is R10,215,774.

2. The accepted tender by Messrs. Nowell & Co. for R7,218,144 shows a saving as compared with the Engineer's Estimate of R373,064 on the "under contract" amount of the Engineer's Estimate.

3. Government has reason to suppose that the Engineer's Estimate will be exceeded in respect of expenditure "beyond contract," but at present it is impossible to state with any certainty what the amount of such excess will be.

4. Clause 2 of Ordinance 9 of 1878 provides that the one million pounds sterling authorized to be raised shall be applied exclusively to the construction of a railway from Nawalapitiya to Nanuoya, and in the purchase of such material, plant, rolling stock and other things as may be required for or in connection with such work.—Any balance of the sum raised under this Ordinance can therefore only be dealt with by the Legislature, and Government is not prepared to say whether it will be available for the Haputale section of the Railway.

The Hon. W. W. MITCHELL next asked "whether the seven-years' arrangement referred to in the dispatches of 1867, at the end of which the Ceylon Military Contribution was to be reviewed, was ever observed, and whether any formal review of the compact entered into between the colony and the mother-country has taken place since that time." In doing so, the hon. gentleman made a few remarks referring to former dispatches, more especially to those from Sir F. Rogers to Sir Edward Lugard at the War Office; and from Sir H. Robinson to the Secretary of State, in which the arrangement subject to the seven-years' re-consideration was distinctly recorded; and also to the dispatch from the Duke of Buckingham to Sir H. Robinson in reply, in which this arrangement was recognised. His desire was to know if the option of revising the arrangement every seven years' was still preserved to us.

The Hon. the Acting COLONIAL SECRETARY said the arrangement was observed. By Ordinance 12 of 1867, the contribution to be paid annually by the colony was fixed at £160,000. In 1872 the Native Infantry Regiment was disbanded, and the contribution was reduced to £121,000. In 1874 negotiations were entered into, with the War Office, with a view to a further reduction of the contribution, and Sir William Gregory and the Lieutenant-Governor attended a conference on the subject at the War Office, and the matter was left in the hands of the Secretary of State for the Colonies. Since then negotiations have taken place between the Secretary of State for the Colonies and the War Office, but no final result has been arrived at. The War Office has since 1872 accepted R1,240,000 in full payment of the annual contribution. The understanding come to in 1867 was that at the end of 7 years from the commencement of the agreement the question of amount of military contribution to be paid by Ceylon should be open for reconsideration. No arrangement was entered into for the reopening of the question at the termination of succeeding periods of 7 years, but as no final result of the negociation commenced in 1874 has yet been arrived at, the question may be deemed to be still open for consideration.

The Hon. W. W. MITCHELL thanked the Government for the information.

WIDOWS' PENSION FUND.

Before proceeding to the business of the day.

His Excellency the LIEUT.-GOVERNOR said that the Government had received a dispatch from the Secretary of State containing the report of the Actuary on the Widows' Pension Fund scheme, and that they hoped to lay it before the Council with as little delay as possible.

THE CRIMINAL PROCEDURE CODE IN COMMITTEE.

His Excellency the LIEUT.-GOVERNOR asked the Hon. P. Rama Nathan whether he had since the last meeting of Council considered the subject of "habitual receiving."

The Hon. Mr. RAMA NATHAN said he had not as he understood that the hon. the Queen's Advocate was to draft out a clause based on the Imperial Act 32 and 33 Victoria.

H. E. the LIEUT.-GOVERNOR said that since then he and the Queen's Advocate had had a conference with the Hon. the Chief Justice on the subject, and that the Chief Justice was strongly opposed to the making of any change in the clause as it stood in the Code. Consequently the charge against the "habitual receiver" must remain as a substantive charge, and the offence remain a substantive offence.

Hon. P. RAMA NATHAN:—I will then move that the illustrations I gave notice of be added. Thereupon the hon. member read his two illustrations which are as follow:—

Illustration (*a*).—A., in whose possession is found articles stolen on divers occasions from one and the same person, or stolen from different persons comes within this section.

Illustration (*b*).—If the charge be laid and proved that A. received stolen property on one occasion and that he had been condemned on previous occasions for a similar offence, he would be guilty of habitually receiving.

The Hon. the Queen's Advocate said, that, as His Excellency had just mentioned, since the last meeting of Council, His Excellency and himself had been in conference with the Chief Justice. In the opinion of the Chief Justice it would be a pity to put in any definition or example. The clause was clear enough as it stood. What is charged is a substantive offence, and in order to prove that charge it will be necessary to prove that the person charged is a man who is more or less in the habit of receiving stolen property. The Chief Justice thought it unecessary to define the clause more clearly. He might add that when the hon. member first drew attention to the subject he (the Queen's Advocate) did not see the matter in the light in which he now saw it. He was most anxious that the Council and those who should come hereafter should have no doubt or difficulty as to the exact meaning of the clause. He thought with the Chief Justice, that the clause was quite clear as it stood and that it had better not be altered. So far as the Codes are concerned he would repeat that he thought the fewer the explanations were the better. It would be for the Courts to decide as to the meaning of the different words of the clause if any question arose subsequently. He thought that it was better that a Legistative Council like this should not define too particularly or too closely.

The Hon. P. Rama Nathan said that when he first stated his objection to this clause both His Excellency and the Queen's Advocate were agreed that it was difficult to determine what cases came under that clause. He had suggested one or two cases which he thought would be covered by that clause and His Excellency had also suggested one or two cases. The Queen's Advocate disagreed with His Excellency and himself, and that in itself showed the difficulty of realizing the true meaning of the clause. Therefore it was he saw the necessity of an illustration or two in order that committing magistrates and Crown counsel might know what was the meaning of the term. He now learnt that the Chief Justice was under the impression that there was no difficulty in understanding the meaning of the clause. He had the highest respect for the learned Chief Justice. But the members of Council were, he thought, called upon to exercise their powers and privileges, and they should not surrender their judgment to any person, however high and exalted he might be. They must contemplate a case where the framer may not be at hand to adjudicate upon the matter. If the framer is not present as judge of the Supreme Court in such a case, to whom are they to go? Supposing another Chief Justice came, what then? The hon. the Queen's Advocate had filled the post of Puisne Justice in another colony. Yet he had found a difficulty in understanding the clause. His Excellency had had 30 years' experience of public affairs in various colonies, yet he had found some difficulty himself. Yet because the Chief Justice says "Leave the clause alone because I do not see any difficulty in understanding it," they must not try to render the subject more intelligible. He deprecated the surrendering of their opinion to the Chief Justice, however able a man he was, and undoubtedly is.

The Hon. the Govt. Agent W. P. said he understood that when the clause came up for discussion again the Council was to receive some information as to what evidence was necessary to prove who a habitual receiver was. When a person is charged as a habitual receiver he must be proved to be in receipt of stolen property. If it is according to the law of evidence that when you charge a man as a habitual receiver you can put in evidence two or three cases of previous convictions to that effect all the difficulty vanishes. If you cannot do this until he is convicted of the charge before the court, it will be extremely difficult to prove that he is in the habit of receiving stolen property. The whole question seems to hinge on this: what is the law of evidence on the subject, and what is the proof necessary to prove a man a habitual receiver.

The Hon. the Acting Government Agent C. P. said that the procedure in cases of this kind was given in § 320 of the Procedure Code. The procedure was as follows:—"In the case of a trial by jury where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid down in sections 284,298,299, shall be modified as follows:—The part of the indictment stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence." That was the course he presumed that would be a guide in Police Courts and District Courts. But he could not find, as far as he was able, anything with reference to the trial before inferior Courts.

H. E. the Lieut.-Governor said that the hon. member who had just spoken had touched the precise point. He had thought himself that the procedure given in section 320 would apply to the case of an habitual criminal, but the Chief Justice said it would not, and that it only applied to the case in which a man was charged with the possession on such and such a day of stolen property, and where previous convictions do not form part of the charge, but are merely cited in aggravation of the sentence. But in a charge of "habitual receiving" previous convictions would have to form a part of the definite charge.

The Hon. the Government Agent W. P. said that after the explanation given by the hon. the Chief Justice he did not see the need of any further definition of 'habitual receiving.'

The Hon. the Acting Government Agent C. P. :—One previous conviction would suffice?

H. E. the Lieut.-Governor said that would depend very much on the circumstances of the case. It might suffice. By the English law of evidence the previous theft must have taken place within twelve months of the present offence. But this is a matter for the Court. He was very glad to have had this opportunity of explaining to the Council how the difficulty he had felt himself, and which he had raised on this point, had been explained. As to what had been said about his experience, he would remind the hon. member that he was not a lawyer. He interpreted the Code to the best of his ability and gave the Council the benefit of his opinion. But when any difficulty arose and when he found a legal opinion—or at least something like a legal opinion based upon the experience of the highest legal authority in the island, then he was not afraid to surrender his private judgment. He wished to know if the hon. member desired to divide the Council on the point.

The Hon. P. Rama Nathan replied in the affirmative, and a division was accordingly taken, with the following result:—

Ayes.	*Noes.*
The Hon. W. W. Mitchell.	The Hon. the Actg. Surveyor General.
„ P. Rama-Nathan.	„ Acting G. A. C. P.
„ J. Van Langenberg.	„ Govt. Agent W. P.
	„ Treasurer.
	„ Actg. Auditor-Genrl.
	„ Queen's Advocate.
	„ Actg. Col. Secretary.
	„ Officer Commanding.
	H. E. the Lt.-Governor.

Ayes, 3; Noes, 9. Motion lost.

PROVISO, CLAUSE 26.—BREAKING OPEN THE PRIVATE APARTMENTS OF WOMEN.

The Hon. the GOVERNMENT AGENT W. P., I propose, sir, to move the omission of the proviso to clause 26 in the Criminal Procedure Code, which runs as follows:—"Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who according to custom does not appear in public, such person or police officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it." I think, sir, my reasons for moving the omission of this proviso were stated at the last meeting of Council. I have considered the matter since, and I am still convinced that it would be politic to omit this proviso. It seems to me that we are now introducing an entirely new law on a particular point. No such law has existed up to date, but there has been the practice of always following out what is here laid down in the case of such women who according to custom do not appear in public. They have been invariably treated with courtesy, and in every case which has been brought before the Courts in which there has been any respect whatsoever wanting to women who according to custom do not appear in public, the Courts have invariably stretched their procedure so as to admit as of little inconvenience as possible being occasioned to women who have those prejudices. I think myself that to make a substantive law of what was before a matter of courtesy in practice would be highly undesirable. It seems to me that we are going back in introducing such a law. The object of legislation has been to get over those prejudices by the higher education of women and to induce them to see life and understand the duties of women to society. We should continue as far as possible to tolerate these prejudicies and to show extreme deference to women who have such prejudices; but we certainly should not introduce a new law—one effect of which, it seems to me, will be to give an excuse to a person who wanted to resist a proper service of summons; whilst if we leave it to the law, as it is now, we have still the safeguards of courtesy and discretion, which the Courts have always shown on such occasions. I think it will be decidedly a retrogate move to alter the law. I beg to move the omission of this proviso.

The Hon. P. RAMA NATHAN said that when the subject last came before the Council he had suggested the desirability of retaining the proviso. The Queen's Advocate too had stated that unless the Chief Justice had seen a necessity for it he would not have introduced it from the Indian Code. He (Mr. Rama Nathan) had no very strong opinion either as to the retention or deletion of the clause, and would acquiesce in whatever course the Government might see fit to adopt.

H. E. the LIEUT.-GOVERNOR said that the Government had no opinion on the subject. His own opinion was that unless grave cause was shown it would be better to refrain from introducing a new thing like this into Ceylon legislation. The hon. member who was in favour of its retention did not give a single instance in which proper courtesy was not shown to women. He did not think therefore that there was any necessity for retaining the proviso.

The Hon. the QUEEN'S ADVOCATE said that it seemed to him that the question depended on whether it was expedient to retain this clause taking into consideration the circumstances of the colony. As the hon. member (Mr. Rama Nathan) was unwilling on the last occasion to have it struck out, he thought it was better not to decide the question until after he had consulted the Chief Justice. The Chief Justice had he thought no very strong opinion on the subject, one way or the other. If any case in which the privacy of a woman had been invaded in the manner indicated in the clause, so as to render the retention of the clause expedient or necessary had been brought to the notice of Council, he should have voted for such retention; or if the circumstances that in India made this provision necessary existed here he would say retain the provision. But no such case had been shown. It was to a certain extent class legislation, which unless there be exceptional circumstances to warrant it, should not be encouraged or favourably looked upon. He would repeat that if any reason did exist for retaining this provision, he for one would not have opposed it, but if none such were shown then he thought we should do away with it. The hon. member (the Government Agent, W. P.) had said that he would not press the matter to a decision. Under these circumstances he thought the subject should be dropped, as it was a question which might lead to a great deal of talk without much good resulting from it.

The proviso was omitted from the clause.

On passing the sections dealing with summons,

The Hon. the GOVERNMENT AGENT, W. P., pointed out that there was no provision made for the stamping of processes. He did not wish to discuss the matter now, but he simply brought it to the notice of the Government. At the present time, stamps are affixed to Police Court plaints and summonses. No such stamps are affixed to J. P. summonses, and the question now is whether, when a statement or narrative of grievances is given in to the magistrate, it is to be considered as a J. P. case or a Police Court case, and whether stamps are to be affixed, and, if so, when.

The subject was laid over for consideration.

§ 69.—SUMMONS TO PRODUCE DOCUMENT OR OTHER THING.

The Hon. P. RAMA NATHAN said that in regard to this clause the corresponding section of the Indian Procedure Code makes an exception of documents in charge of postal or telegraph authorities only. He wished to know why in the Ceylon Code the provision was made to extend to documents "in any public office" or "in charge of any public officer."

The Hon. the GOVERNMENT AGENT W. P. said that the Ordinance 12 of 1864 was the one which gave to public officers the power to produce in evidence copies, instead of originals of public documents. That Ordinance was introduced to check a very great evil. Most of the judges, he thought, now understood that copies and not originals were good evidence and public officers generally availed themselves of the provisions of that Ordinance.

H. E. the LIEUT.-GOVERNOR said that this clause was introduced in order to provide for Ordinance 12 of 1864 which would necessarily lapse when the Code came into operation. This clause was never meant to override the principle of "privileged communications." If any document could not be produced before the Court for State reasons, this clause was not intended to make it compellable that it should be. He was glad to say that District Judges now thoroughly understood the working of the Ordinance 12 of 1864, and he thought that the provision under clause 7 of that Ordinance very applicable. It gave all the inferior courts power to prevent any such documents as those referred to in this section from being made away with. They could be kept within the jurisdiction of the Court and then the Supreme Court would decide whether the originals should be produced or not. The Ceylon Government had for some time been in correspondence with the Home Government as to the law relating to the production before the Courts of public documents and private telegrams.

The Hon. P. RAMA NATHAN asked what was the power invested in the Supreme Court in regard to the production of documents? It may be necessary for the District Court for purposes of prosecution or defence to demand the production of certain documents. How were District Court to obtain their production? through the Supreme Court?

His Excellency the LIEUT-GOVERNOR said that it was very necessary that private telegrams which might affect the vital interest of a mercantile firm for instance should not lightly be compelled to be made public. The Government thought it right to leave the subject to the Supreme Court for decision. Telegrams, he understood, were ordinarily be destroyed within a certain number of days.

The Hon. P. RAMA NATHAN said that if the Supreme Court wanted any document for the purpose of investigation it would make an order on such public officer, postal or telegraph authority, as the case may be, to deliver such document to such person as the Court may direct. But supposing the District Court wanted the production of a letter which was in the possession of the Post Office authorities. Would it have to ask the Supreme Court to make an order requiring its production?

His Excellency the LIEUT GOVERNOR :—The District Court would have to direct the Postmaster-General to keep such letter till the Supreme Court makes its order.

The Hon. P. RAMA NATHAN :—This is a round about way of doing things.

His Excellency the LIEUT.-GOVERNOR hereupon read the clause 70, which is as follows:—'If any (such) book, letter, postcard, telegram or other document is, in the opinion of the Supreme Court, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, the Supreme Court may require the public officer, postal or telegraph authorities, as the case may be, to deliver such document to such person as such court directs. If any such document is, in the opinion of any District Judge or Police Magistrate, wanted for any such purpose, he may require the public officer, Postal and Telegraph Department, as the case may be, to cause search to be made for and to detain such document pending the orders of the Supreme Court." He thought that the procedure was quite clear enough.

The Hon. J. VAN LANGENBERG said that he would suggest a slight verbal alteration in section 70, viz., the substitution of the word "authorities" for "department" in the expression "postal or telegraph department."

His Excellency the LIEUT.-GOVERNOR concurred and the clause as amended was passed.

§ 74.—PROCEDURE ON SEARCH WARRANTS TO BE EXECUTED WITHOUT THE JURISDICTION.

"When it is necessary for a search warrant to be executed out of the local limits of the Jurisdiction of the Police Court by which it was issued, a magistrate of a police court within the local limits of the jurisdiction of which the warrant is to be executed shall endorse his name thereon. Such endorsement shall be sufficient authority for the police officer charged with the execution of the warrant to execute the same within the local limits of the said last-mentioned Jurisdiction."

The Hon. the GOVERNMENT AGENT W. P. said that this was the procedure he should like to see adopted in the case of warrants of arrest clause 58. The warrant should be addressed to a particular individual, and the Police Magistrate should endorse it. He had on a previous occasion drawn attention to this point.

SECTION 79.—SEARCH FOR PERSONS WRONGFULLY CONFINED.

"If any Magistrate of a Police Court has reason to believe that any person is confined under such circumstances, that the confinement amounts to an offence, he may issue a search warrant."

The Hon. P RAMA NATHAN said that the procedure under this section vested in magistrates a power now possessed only by the Supreme Court. It is virtually giving the power of issuing writs of habeas corpus to the Police Magistrates. A writ of habeas corpus does not issue as a matter of course. An affidavit has first to be sworn to by the party asking for the production before the Court, an individual said to be in wrongful confinement and certain materials have to be laid before it substantiating the charge. The Supreme Court then issues a rule calling upon the party charged to show cause why such and such a person should not be produced before it. It is a matter demanding grave consideration whether a power of this kind should be given to Police Magistrates. If such power is to be vested in them, then the question must be considered as to what materials are necessary to be placed before a Magistrate before he can cause such a warrant to issue. The clause says if any Police Magistrate "has reason to believe" that any person is illegally confined, &c. This is a famous phrase and runs through the Code. The reasons which might induce the Magistrate to believe a certain state of facts may be based upon no good ground whatever, and instead of the very strict proceedings under the existing system being followed by a better, we shall be introducing a very lax system altogether. If the Government gave Magistrates the power of issuing writs of habeas corpus, then it ought to prescribe the procedure upon which an order of this kind may proceed. He (Mr. Rama Nathan) thought that the words "has reason to believe" conferred upon magistrates too great an authority, and invests him with almost the power of an autocrat. A magistrate "has only reason to believe" a certain state of facts and then he can exercise this power as a matter of course.

The Hon. the GOVERNMENT AGENT W. P. said that he had consulted several magistrates on the subject of this clause, and they were unanimous in considering the clause a very beneficial one. From his own experience as a Police Magistrate he thought that some such provision as that mentioned in the Code to be very necessary.

The Hon the QUEEN'S ADVOCATE said that he could not of course venture to pronounce any very decided opinion on this question without knowing more of the circumstances of this colony than he did so far. But from what little he did know and from the cases referred to in the course of the discussion he thought that the provision under this clause was a very beneficial one. He would refer however to a few minor alterations which had been suggested in the wording of it. Instead of the words "such Magistrate" in the last line but two, it had been proposed to insert "before the nearest Magistrate," and instead of "as in the circumstances of the case seems proper," read "as soon as possible." These were, however, mere matter the words of detail. He quite agreed with the hon. member (the Government Agent W. P.) that such a provision was necessary, and said that it was very much to be hoped it would tend to prevent such reckless conduct on the part of natives and others as has been referred to.

The Hon. J. VAN LANGENBERG said that he could not help thinking that the hon. member (Mr. Rama Nathan) was labouring under a misconception when he thought that the powers to be given under this clause were in conflict with the interests of criminal justice. It was not merely necessary to show that a woman, for instance, had been carried away from her lawful husband's house by another man, to secure a warrant from the Magistrate ordering that she should be brought before the Court. It would be necessary to shew that she was there against her will. He did not think that such power should be withheld from a Police Magistrate. The charge contemplated is that a person is wrongfully confined, and the Magistrate simply makes an order that such person should be brought before him.

The Hon. P. RAMA NATHAN said that his hon. and learned friend the member representing the interests of the Burghers had credited him with misconceiving the effect of the clause. His hon'ble friend it was that was labouring under a misconception of the nature of a writ of *habeas corpus ad subjiciendum* In every case in which such a writ issues, there is an allegation of illegal confinement. The offence of

illegal confinemement may be said therefore to have been committed. As regards what his hon'ble friend (the Government Agent of the Western Province) had stated namely that many magistrates think it desirable that such powers should be conferred on them, he would like to ask whether there were sufficient safeguards under which such powers would be exercised by Police Magistrates. He objected to the words "has reason to believe" because they have a tendency to give despotic power to Magistrates. He thought that if for these words the following were substituted "upon information duly verified by an affidavit" that would be a sufficient safeguard, otherwise a Magistrate may issue a search warrant upon very feeble grounds. To ask a person why another is illegally confined, and for the producing of such other before the Court, is a power at present exercised only by the Supreme Court, and therefore he thought it but just that the public should know upon what materials the Magistrate was to exercise the power proposed to be conferred on him by this clause.

H. E. the LIEUT-GOVERNOR said that this power of granting a warrant to search for a person wrongfully confined had as much connection with Writs of habeas corpus issued by the Supreme Court as with the Goodwin sands! He understood the hon. member to say that even though no offence of illegal confinement may really have been committed, it would now be competent for Police Magistrates to issue search warrants to produce persons before the Court. That hitherto such a power was confined to the Supreme Court, but that it is now proposed to confer it upon Magistrates as well. Now this warrant *takes its basi upon the offence having been committed*, which is altogether a different matter, and, therefore, he could not support the hon. member in his contention.

The Hon. P. RAMA NATHAN said that he referred to writs of *habeas corpus ad subjiciendum*. Those writs are now generally issued by the Supreme Court under circumstances such as the following. A father intrusts his female children to the custody of strangers. After a time the father requests that the children should be returned to him. The other man refuses, and tells the father that he means to bring them up himself, perhaps for purposes of prostitution. Then the father appeals to the Supreme Court. The Supreme Court issues a writ of habeas corpus and calls upon the offending party to shew cause why the children should not be produced before it. Such are the cases brought before the Supreme Court by writs of habeas corpus and such a power he thought was now in effect going to be exercised by Police Magistrates.

The Hon. J. VAN LANGENBERG :—No.

The Hon. P. RAMA NATHAN :—The man illegally confines those children and will not leave them to go to their natural guardian.

The Hon. J. VAN LANGENBERG :—That is a case merely of the infringement of civil rights.

The Hon. the GOVERNMENT AGENT W. P. said that the offence must fall under one of the heads 1, 2, 3, 4, in § 154 before a Police Magistrate can issue a search warrant. He must follow the procedure as laid down in § 154, and when he has examined the party before him, he will then know whether the case can be entered into by him or has to be sent to a higher Court.

His Excellency the LIEUT.-GOVERNOR :—If the detention is such that it involves a criminal offence the Police Magistrate must have that power.

The Hon. P. RAMA NATHAN :—Upon what materials, I ask : the magistrate may exercise his discretion upon flimsy grounds. It is important that some record should exist shewing the reasons which the magistrate had for exercising his discretion.

His Excellency the LIEUT. GOVERNOR :—Much would depend upon the circumstances of the case.

The Hon. the GOVERNMENT AGENT W. P. referred the hon. member to section 154. He said a police court would proceed to enquire into the matter of the alleged offence, (1) on a complaint being made by any person to a police court that an offence has been committed over which the court has jurisdiction or, (2) on a formal written report being made to a police court by a police officer to the like effect, or (3) on information received by the police magistrate of a police court which the police magistrate considers credible, and from which the police magistrate draws the inference that an offence has been probably committed, over which the court has jurisdiction, or (4) on any person being brought before a police court in custody, accused of having committed an offence. Now in cases falling under these four heads, the police court (by section 158) has to commence the enquiry by examining the complainant, police officer or informant, or other person or persons professing to be able to speak to the material facts of the case. Section 216 then says what the procedure is to be in each of these four cases. Now there was the material to be placed before the Court, and if the court has reason to think that a person is unlawfully confined it will give a search warrant. It seemed to him that the difficulty vanished if we read clauses 154 and 158 in connection with clause 216.

The Hon. P. RAMA NATHAN.—Police Courts have two kinds of power, (1) summary jurisdiction, (2) regular procedure. These clauses may be taken to affect cases coming under regular procedure, and not those coming under the summary procedure. I am anxious that some materials should be laid before the magistrate before he is called upon to interfere.

His Excellency the LIEUT.-GOVERNOR :—The hon. member has moved to insert the following words into the clause, viz., "upon information duly verified by an affidavit."

Ayes.	*Noes.*
The Hon. P. Rama-Nathan	The Hon. W. W. Mitchell.
	„ J. Van Langenberg.
	„ Acting Surveyor General.
	„ Acting Govt. Agent C. P.
	„ Government Agent W. P.
	„ Treasurer.
	„ Acting Auditor General.
	„ Queen's Advocate.
	„ Colonial Secretary.
	„ Officer Commanding.
	„ H. E. the Lieut.-Governor.

Aye 1; Noes, 11. Motion lost.

The Hon. the QUEEN'S ADVOCATE :—Section 80 runs thus : "The provisions of sections 21, 51, 53, 54 and 57 shall, so far as may be, apply to all search-warrants issued under section 71, section 73 or section 79." But warrants under section 79 may be executed in any place in Ceylon.

The Hon. the GOVT. AGENT W. P. said that the provision of requiring persons to be taken up before the Justice of the Peace in whose jurisdiction the offence was committed might sometimes press hardly. For instance, a person goes before a magistrate at Awisawella and obtains a warrant for the production before the Court of a woman illegally detained at Rakwana. Now she has to be taken through Rakwane and Ratnanpura to go before the Awisawella Court whereas she might be brought up before the Rakwana Court. We want to ensure that persons wrongfully confined shall be brought before a Court as soon as possible.

The Hon. the QUEEN'S ADVOCATE :—It may be expedient to so alter the clause that the person may be taken before the nearest magistrate.

After some conversation the subject dropped.

CLAUSE 80.

Hon. P. RAMA NATHAN suggested that by allowing bystanders to assist in the execution of search warrants, great evils would follow. A person interested in the conviction of a man whose house is being searched, may take care to be a bystander and may in that event be called upon to help in the search, and during the search he may drop an article said to be stolen, and thus a case may be concocted

against the innocent person. Clause 21 should not therefore be included in clause 80.

H. E. the LIEUT.-GOVERNOR :—We hope such cases will not occur.

Hon. P. RAMA NATHAN :—I hope so too, but there is no saying what interested persons would not do.

Hon. the GOVERNMENT AGENT W. P. referred the hon. the Tamil member to clause 82, which enjoins that the search should be made in the presence of witnesses.

§ 88.—SECURITY FOR KEEPING THE PEACE.

Hon. P. RAMA NATHAN said that here a magistrate is called upon to act merely upon information that such and such a person is likely to commit a breach of the peace, and the result of this proceeding is that a man is bound over to keep the peace for 6 months. Under the existing law, proceedings of this kind are based upon an affidavit, and the right of appeal is also given to aggrieved persons. But under this clause there are no regular proceedings. It does not appear in what manner the magistrate gets the information, nor upon what materials he acts.

H. E. the LIEUT.-GOVERNOR :—The procedure under this clause is very much simpler.

Hon. P. RAMA NATHAN :—It may be so, but the present system is to swear an affidavit.

Hon. the GOVERNMENT AGENT W. P. :—The police magistrate may give a man a hearing.

The Hon. P. RAMA NATHAN :—The warrant goes merely on information. A man is brought up without affidavit and then he may be released if the charge proves to be groundless. The existing procedure is very much better because the proceedings have to be initiated by an affidavit, and thus the man who brings a false charge can be proceeded against for perjury. Before a man is brought up on a warrant a regular charge ought to be formulated. Under the Code, however, a magistrate merely receives information or has reason to believe that such and such an act is likely to be committed, and then proceeds to act. All this simply tends to make the magistrate all-powerful.

The Hon. the QUEEN'S ADVOCATE :—There can be no doubt that the information referred to by the Court is not necessarily sworn information. The report of a subordinate officer is sufficient ground for issuing a summons.

The Hon. the Acting COLONIAL SECRETARY referred to §§ 97 and 99 which gives the procedure to be adopted by magistrates in cases of this kind.

The Hon. the GOVERNMENT AGENT C. P. :—The whole proceedings are subject to appeal. I certainly have known of cases in which the magistrate might very well have the power given him by this Code. I think it perfectly safe.

H. E. the LIEUT.-GOVERNOR said that the hon. member (Mr. Rama Nathan) seemed to have forgotten how very easy it is to get an affidavit sworn to by people. Swearing is a matter which does not deter a native bent on litigation from making false and groundless charges in this country. But if the charge is proved to be perfectly groundless, a man will be heavily punished by section 183 of the Penal Code. The maximum punishment being 6 months' imprisonment and one hundred rupees fine, or both.

The Hon. P. RAMA NATHAN :—All that an accused person will know is that from information received he has been charged with an offence. Now unless the magistrate tells him who his enemy is he will not know the name of the informant.

H. E. the LIEUT.-GOVERNOR :—Surely a magistrate will not make an order unless he is convinced that the information is *bona fide*.

The Hon. the GOVERNMENT AGENT W. P. said that supposing he were a magistrate and received information that two persons A and B were going to fight a duel tomorrow. He would immediately cause a warrant of arrest to issue for the apprehension of A and B. On their production before the Court he would put the informer into the box and then proceed as in a Police Court case.

The Hon. P. RAMA NATHAN said every one knew what the procedure was in a trial before a police magistrate. What he contended was that they were legislating in a very lax manner and wilfully passing clauses after clause when the law as it stands was quite good enough to meet the cases. The people of Ceylon possessed certain rights and privileges under the existing law, and one of them was that criminal courts should not be lightly moved except upon proper materials being laid by way of affidavit or written statements before such courts. The Code, however, gave magistrate despotic powers as their interference with the liberties of private citizens could be effected on uncertain grounds. The magistrates had only to say that they "had reason to believe" and they were empowered to do many things which they could not do now. The hon. member added that he had called attention to this lax legislation repeatedly and hitherto had been met by such arguments as "we hope such cases will not occur," or "we trust that officials will perform their duty better," &c. He too hoped and trusted that officials will do their duty intelligently and well, but legislation ought not to count upon such things. It was of no use that he should waste his breath any longer. He would not press his motion. He felt sorry he was obliged to raise discussions so frequently, but he owed a duty to the Council and felt unhappy unless he spoke out his mind on the subject that came before him.

H. E. the LIEUT.-GOVERNOR said that it was within his own personal knowledge that a case arose when two gentlemen had arranged to fight a duel. They were both most anxious that the thing should not come off, and each unknown to the other apprized the magistrate of the affair. They were greatly chagrined when the magistrate bound neither of them to keep the peace.

The subject dropped.

§ 94.

The Hon. the GOVERNMENT AGENT W. P.:—It is necessary to see what constitutes a "court." Does it mean, as at present, the specified place at which trials are held or any place at which a magistrate may be holding an enquiry.

H. E. the LIEUT.-Governor:—By "court" is understood the place where the magistrate is sitting.

§ 97.—ALLOWING EVIDENCE OF REPUTATION TO BE GIVEN IN CASES OF HABITUAL OFFENDERS.

The Hon. P. RAMA NATHAN said that in a country like this where lying is said to be so rampant the procedure under this clause would be a dangerous one. He did not know that such evidence was admissible under the existing law.

The Hon. J. VAN LANGENBERG referred to § 233 of the Ordinance 11 of 1868. This was the present law on the subject.

In § 103 His Excellency the LIEUT.-GOVERNOR thought that the word "prison" should be substituted for "jail."

CHAPTER IX.—DISPERSION OF UNLAWFUL ASSEMBLIES.

The Hon. the GOVERNMENT AGENT W. P. referring to the clauses on this chapter said he assented to them subject to the consideration of the powers and privileges of Justice of the Peace.

His Excellency the LIEUT.-GOVERNOR nodded assent.

§ 112—DUTY OF OFFICER COMMANDING TROOPS REQUIRED BY MAGISTRATE TO DISPERSE ASSEMBLY.

His Excellency the LIEUT.-GOVERNOR said he should be glad to leave out sec. 112 for the present, as the Government were just now in correspondence with the Secretary of State as to how volunteers should be called out in time of public disturbance.

The Hon. the GOVERNMENT AGENT W. P. asked whether "Government Agent" included "Assistant Government Agent" because in Trincomalee the senior officer of Government is the Assistant Government Agent. There is no "Inspector-General of Police" in that station.

The Hon. the COLONEL COMMANDING :—If the Government Agent is to include the "Assistant Government Agent," then "Inspector-General of Police" should include "Superintendent of Police."

H. E. the LIEUTENANT GOVERNOR said that there was no probability of anything ever happening to call for the application of this clause. There were in the island only four stations where any military force is stationed, viz., Colombo, Kandy, Galle and Trincomalee. Of course if the Government Agent is away from the station the Police Magistrate will then be the officer on whom the responsibility of quelling a public disturbance would be. It is advisable that the responsibilities thrown by this clause should rest upon such superior officers as the Government Agents and Inspector-General of Police.

Clause 112 to stand over.

CHAPTER X. PUBLIC NUISANCES.

The Hon. the GOVERNMENT AGENT W. P. wished to know whether it was intended by this clause to take away the powers hitherto exercised by the various Municipalities in regard to the removal of public nuisances. Clause 149 of the Municipal Councils Ordinance (17 of 1865) gave the Council precisely the same powers which clause 115 now gives to Police Magistrates. If it is so intended, then it may chance that he, as Chairman of the Colombo Municipality, may order a certain work to go on, and the Police Magistrate may give orders to stop it, and thus there will be a direct conflict of authority between the two.

H. E. the LIEUT.-GOVERNOR said the clause had better stand over for the present, and the subject be reconsidered so that the rights of the Municipality may be saved.

SECTION 121.—PROCEDURE WHERE JURY FINDS MAGISTRATE'S ORDER TO BE UNREASONABLE.

The Hon. the GOVERNMENT-AGENT W. P. said :—Suppose there are nine jurymen empannelled, and the magistrate makes a certain order. Five of the jury consider it a bad order, and four consider it good. Will the order have to be quashed?

His Excellency the LIEUT. GOVERNOR :—If the magistrate's own nominees disagree with him, the order must be presumed to be a bad one on the face of it.

The Hon. the GOVERNMENT AGENT W. P. :—The whole procedure appears strange to us who have been used to the absolute power of magistrates in their own Courts.

PART 5.—CHAPTER XIII

SEC. 136.—STATEMENTS TO MAGISTRATES OR POLICE.

Any Police Magistrate may record any statement or confession made to him, at any time before the commencement of an inquiry or trial.

The Hon. the GOVERNMENT AGENT W. P. asked whether the expression "any statement" in the first sentence included "any statement made by an accused person." There was mention made of certain "statements" and certain "confessions." Was a distinction to be drawn between statements which contained a confession and statements which did not?

H. E. the LIEUT.-GOVERNOR said if a man was caught red-handed in the commission of an act, he could scarcely make a "statement to the Magistrate or Police Officer After some conversation

The Hon. the QUEEN'S ADVOCATE said that he would endeavour before the next meeting of Council to look into the Indian Penal Code to see whether the terms were to be found there

The Council then adjourned until Thursday 23rd Aug.

THURSDAY, AUGUST 23.

Present :—His Excellency the Lieut.-Governor (President), the Hons. the Colonel Commanding, the Acting Colonial Secretary, the Queen's Advocate, the Acting Auditor General, the Treasurer, the Government Agent W. P., the Acting Government Agent C. P., the Acting Surveyor-General and the Hons. J. Van Langenberg and P. Rama Nathan.

Absentees :—Hons. W. W. Mitchell, A. L. de Alwis and J. L. Shand.

The Council resumed consideration in Committee of the Criminal Procedure Code.

The Hon. the QUEEN'S ADVOCATE said that before the Council proceeded further with the consideration of the Criminal Procedure Code it might be well to go back to Chapter VI. Several clauses in that chapter were amended and clause 50 stood over to be further considered. Since the Council had dealt with those clauses he had further examined the matter to which they relate, and it appeared to him that clause 44 would have to be slightly amended and clause 50 to run in the way he would now propose. In clause 44 he would suggest the striking out of the words in the second paragraph : "of the district in which the court by which it was issued is situated, but the judge or magistrate issuing the summons may, if he see fit, direct it to be served by any other person," and the second paragraph made to run thus : "Such summons shall ordinarily be served by a fiscal's officer, but the court issuing the summons then may if it see fit direct it to be served by any other person".

The Hon P RAMA NATHAN said that with reference to that suggestion he felt he ought to bring to the notice of the Council the opinion of some of the best judges of the Island that there ought to be a certain number of process-servers appointed to each court who should be inhabitants of the town and acquainted with the people The District Judge of Colombo has frequently expressed his opinion that unless this were so the fiscals would not be able to identify the proper person. Take the case of a fiscal's officer brought from Kandy or Galle and made to do duty in Colombo. He might very easily be misled, through not being acquainted with Colombo people, whereas a Colombo man would not be. He therefore saw a particular necessity in the words proposed to be struck out

His Excellency the LIEUT.-GOVERNOR said there was undoubtedly a meaning in the paragraph as it stood, but the reason why it was proposed to do away with it was on the ground of expense. The idea Sir John Phear had was that every one of the process servers should appear before the court on the trial day.

The Hon J VAN LANGENBERG :—The object of clause 50 is to obviate the necessity of such attendance on the part of process servers.

His Excellency the LIEUT.-GOVERNOR :—Each court would only have a certain limited number of process servers, and it would be inconvenient to have these sent away to execute process issuing from the court in places outside its jurisdiction. He would recommend that clause 49 be struck out and things left altogether as they were now

The Hon. J. VAN LANGENBERG :—That is that a summon may be sent by a police magistrate to any fiscal for execution.

His Excellency the LIEUT.-GOVERNOR :—This is a subject on which the hon. members who are in the legal profession have had more experience than I. What I mean is that process should be served exactly as it is now, except in the matter of duplicates. In all other respects the procedure should be exactly the same.

The Hon. the QUEEN'S ADVOCATE formally moved to amend clause 44 and to strike out clause 49. Both motions were agreed to. He also gave notice that he would at the next meeting move the following amendment on clause 50 :—"When a summons issued by a court is served, an affidavit purporting to be made before an officer duly authorized to administer an oath or affirmation to the truth of such affidavit or in the case mentioned in section 48 the endorsement therein mentioned that such summons had been served shall be admissible in evidence and the statements therein made shall be deemed to be correct unless and until the contrary is proved."

§.—141 ESCAPE FROM CUSTODY.

"The offence of having escaped from custody may be inquired into any Police Court, or tried by a District Court within the local limits of whose jurisdiction the person charged is."

The Hon. the GOVERNMENT AGENT, W. P., asked whether a person who had escaped from custody should not rather be tried before the District Court of the district from which he made his escape. At any rate this Court should have jurisdiction as well as the Court in whose district the prisoner was found. It would be easier he thought to secure a conviction if this were the plan adopted. For instance, a man escaping from custody at Ratnapura and secured at Matara. It would perhaps be easier to have the man tried at Ratnapura, for all the evidence of his imprisonment and escape would be there.

His Excellency the LIEUT.-GOVERNOR:—Clause 141 does not conflict with clause 137.

The Hon the GOVERNMENT AGENT W. P. :—If that is clear I have nothing further to say,

The Hon. the ACTING GOVERNMENT AGENT, C. P., suggested that the difficulty might be got over by inserting the word "also" before the words "may be inquired into" in clause 141.

The Hon J. VAN LANGENBERG suggested that the wording of the next clause may be adopted into this—"may be inquired into or tried either by the Court within the local limits of whose jurisdiction the offender was caught, or by the Court within the local limits of whose jurisdiction the offence was committed. After some further discussion the clause was amended by altering the words "the person charged is" into "the offence was committed." The amended clause was passed.

SECTION 149.

On coming to this clause which points out the cases which cannot be prosecuted without the sanction of the Queen's Advocate previously obtained.

The Hon. P. RAMA NATHAN, said that with reference to the sub-section (*a*) in this clause and as to whether it would be advisable to get the previous sanction of the Queen's Advocate to prosecute cases of contempt of the lawful authority of public servants, he would leave it to official members to deal with this portion of the case But under the sub section (*b*), cases of perjury and false statement are not to be prosecuted "except with the previous sanction of the Queen's Advocate, or on the complaint of the Court itself before which the false statement was made" At the present day if a man charged him with an offence falsely, or gave evidence against him in a case falsely, he had a right to prosecute him criminally for perjury independently of the Queen's Advocate He did not see why the Queen's Advocate should be made to interpose between him and his opponent. He may mention that from what they had already seen of the present Queen's Advocate, he had shewn himself eminently fair in dealing with the Codes, and also in the remarks he has made. So long as the present Queen's Advocate occupied that chair he (Mr. Rama Nathan) felt confident that he would be satisfied with the manner in which powers and privileges of this kind would be dealt with But it was possible to have a Queen's Advocate unlike his hon. and learned friend. Then a discretion like this might work prejudicially to the interests of private suitors. On that account he thought that before a change was introduced into the law of this colony, the Council should afford some explanation to the public why any interference with so long-standing a privilege should now be made.

The Hon the GOVT. AGENT, W. P :—I, sir, gave notice that I would also move an amendment on this cause.

H. E. the LIEUT.-GOVERNOR said that the Hon. the Tamil member's motion was before the Council, and that one subject had better be disposed of first.

The Hon. the GOVERNMENT AGENT W. P., said that his motion was rather in support of the hon. member. He at first proposed to bring certain classes of offences under this clause, so that no court should take cognisance of these cases without the authority of the Queen's Advocate. But on further examination of the clauses, he had come to the same conclusion as the hon. member, and doubted whether it was necessary to bring in the authority of the Queen's Advocate at all into any of these cases. Were they introducing a new law, and were they so afraid of it that they thought it necessary that the Queen's Advocate should intervene between the two parties in a case? If so, he considered it very right that offences under Chapter IX of the Code should be brought under that clause. But if there was no new law, if there was nothing extraordinary in the Code, he inquired why it was necessary to bring in the Queen's Advocate's authority at all. At the present moment there was only one offence, which he could think of in which the Queen's Advocate's authorization was necessary before a person could be tried for it, and that was in the case of lotteries. (Clause 7 of the Ordinance 8 of 1844, for the suppression of lotteries). Now the Code provides in sec. 291 that in such a case the Queen's Advocate's authority should first be given. Up to that time the prosecution of a person who had given false evidence against another was in the hands of the injured person and he saw no reason why the consent of the Queen's Advocate should be required. He agreed therefore with the hon. member in thinking that some explanation was necessary.

OFFENCES WHICH THE Q. A. ONLY CAN AUTHORIZE TO BE PROSECUTED: THE HON. J. VAN LANGENBERG TO THE RESCUE.

The Hon. the QUEEN'S ADVOCATE said that it would of course be impossible for him to say why these cases in particular should not be prosecuted without the previous sanction of the Queen's Advocate, with the exception of one of them, which introduces what to some extent may be considered as a new class of offence so far at all events as the punishment for it is concerned. Under clause 191 hon. members would find that any person who fabricates false evidence with intent to procure a conviction for a capital offence is liable to suffer death. This is new so far as the punishment is concerned which cannot be inflicted in England. With regard to the other offences, it was of course impossible for him to say why those offences were included in the list of offences for the prosecution of which the previous consent of the Queen's Advocate had first to be obtained. Speaking for himself personally, he thought that the Queen's Advocate's duties were quite laborious enough without every case of perjury being sent to him. But at the same time he thought he must admit that a great many cases of perjury are instituted in Ceylon which give a considerable amount of trouble and expense, but which are altogether frivolous and unjustifiable. Many cases had been brought before him in which one party charged another with assault and robbery. The cases had been investigated into, and very often dismissed by the Justice of the Peace without any reference to the Queen's Advocate. Therefore there could be no question at all in these cases, about the Queen's Advocates interference. As soon as the Justice of the Peace dismisses the case, it frequently happens that a counter-charge is immediately brought against the complainant and most of his witnesses. The ground for bringing that charge is that the Magistrate considered that the evidence in the previous case was not sufficient to commit the accused for trial. It may be that perjury was committed in the previous case. It may be that the complainant, in the first instance, entered a false complaint. He did not mean to say that such a thing was impossible; but he thought there was an impression in the minds of suitors, that if a Magistrate or Justice of the Peace dismisses a case, that is sufficient ground for bringing a charge of perjury against the complainant

and his witnesses. What the Magistrate has to do is to declare, on the evidence brought before him, whether there is sufficient to commit the accused to trial or not. A Justice of the Peace or a Police Magistrate, under those circumstances, does not necessarily arrive at the conclusion, that, because he did not think there was sufficient evidence, upon which to commit that the plaintiff and his witnesses have been telling untruths. What was alluded to above might have been one of the reasons which induced the framer of the Bill to make the provision, that cases of perjury should not be instituted without the previous sanction of the Queen's Advocate. He could not, however, speak positively, because he had not yet spoken to the Chief Justice on the point. So far as he was personally concerned he would be rather glad if these duties were not thrown upon him, and so he fancied would most Queen's Advocates. The duties of the Queen's Advocate would be considerably increased if these duties also were laid upon him. It seemed to him that there must have been some reason for including these offences under this class, and therefore it would not be wise to strike them out without further consideration. As far as he was concerned however, he could not explain to the Council the exact grounds upon which it was thought necessary that these offences should be brought before the Queen's Advocate for authority to prosecute.

The Hon. the LIEUT.-GOVERNOR said that the law which they were now enacting would give enormous facilities for the bringing in of false cases, and therefore it was necessary to provide some means to check this. This was no doubt the reason which made the Chief Justice think it better to restrict the power of bringing in counter-charges of perjury. Such charges were, he considered, offences more against justice, than against individuals, though they were to a certain extent offences against individuals as well. The Government did not wish to give unusual opportunities to people for making false accusations.

The Hon. P. RAMA NATHAN said that as regards the wholesale charges of perjury which would be made in the event of the deleting of this section, all he had to say was that very few cases of this kind have come before the Supreme Court. He appealed to his hon. friend, the Burgher member, to state what his experience had been in the matter. That there is perjury in Ceylon who can for a moment doubt? But he denied that it was usual when the evidence in a case had in any way broken down, for the other side to try to implicate the witnesses in a charge of perjury. Such cases of prosecution of witnesses or complainant for perjury are, as a rule, rare in Ceylon, and therefore the fears entertained by the hon. and learned Queen's Advocate, and by His Excellency, might be disposed of by reference to facts. Then as regards the other point to which reference was made, namely, the opportunities which are said to be given to the natives of Ceylon by the elaboration of the criminal machinery to bring false charges he hardly thought that a fair reason to interfere with the just rights of one citizen against another. They had been for some time past endeavouring to curtail expenses, and the idea of retrenchment had become so familiar to them that even the meting out of justice was endeavoured to be made subordinate to measures of retrenchment. That was a bad rule to adopt. Upon the whole, his opinion was quite against conferring upon the Queen's Advocate this power. His Excellency had himself heard the Queen's Advocate say that he did not like to intervene between one suitor and another, and that he (the Queen's Advocate) could not realize the reason which had induced the learned framer of the Code to introduce a clause which did not exist in the Indian Penal Code. He could understand prosecutions against the State being made subject to the authority of the Queen's Advocate, but prosecutions for the redress of private grievances should not rest upon him as well. This was the way he thought in which this clause will come to be applied. There are Deputies to the Queen's Advocate who will hereafter be called Crown Counsel. They will each have their own duties to perform. The prosecution of a case will thus depend, in the first instance, upon the opinion which the Deputy to the Queen's Advocate may entertain upon it, just as Government Agents—or heads of other departments—sanction, as a general rule, everything done by the Assistant Government Agent and senior officers. The result will be that a private grievance will be allowed to go unredressed. He also thought on grounds of public policy that Deputy Queen's Advocates should not be allowed private practice.

The Hon. Mr. VAN LANGENBERG said that before they had entered upon the consideration of this Code, one of the two motions he had submitted to the Council was that there should always be a prior reference to the Queen's Advocate, before the Justice of the Peace commits a person for trial. It would hardly be consistent with the position he then took, to ask that this clause should be removed, as his great desire was that they should have the Queen's Advocate's opinion and advice as much as possible. He agreed with his hon. friend to some extent that it was not very common, though it might be said, at the same time, to be not uncommon for parties prosecuting to retaliate upon their adversaries in a previous case, by bringing false charges of perjury against them. But he thought there should be some safeguard, such as was given by this clause. This is a special class of cases. In an ordinary case the Queen's Advocate has scarcely sufficient evidence before him to decide whether the charge was made out or not. In the case, however, where one party is charged with fabricating false evidence, the Queen's Advocate would have the original case out of which this one arose, and provided with such materials it would be comparatively easy for him to decide whether the charge should be instituted or not. It was also to be observed that in cases of this kind, unless reference were made to the Queen's Advocate, the person who is to investigate the charge, and to judicially determine the question before him, is the very person who had dismissed the original charge. Assuming then that the original case is false—at all events false in the magistrate's opinion—we in so many terms say, by the law which is now going to be enacted, that a man should not himself investigate into a case in which he has already expressed an opinion adverse to one of the parties. This reference to the Queen's Advocate is required in order that the party accused may have a fair hearing Hon. members will see that there is some sort of a safeguard here, and he thought that it was right and proper that there should be a provision of this sort. His own view was that this clause ought to be retained. It cannot be said that this is a matter where a personal grievance is concerned. The interests of public justice require that there should be some sort of a safeguard before a prosecution for perjury takes place.

His Excellency the LIEUT.-GOVERNOR said that in his opinion the Queen's Advocate was a much safer guide in a case of this sort than the court which had already to a certain extent adjudicated upon the case. The Queen's Advocate would enter upon its investigation without any previous bias or prejudice. A very elaborate machinery is now provided, and the fear was that a large opening would be provided for litigious natives to do a great deal of harm unless some such safeguards were adopted This is a question of expediency upon which the Government was most anxious to get the opinion of hon. members. The Government had no policy on the subject, and he would be glad to hear what the Council had to say, and take a vote upon it. What he stated was not so much his own opinion as the reasons which had induced the Chief Justice to make this provision.

PROSECUTION FOR PERJURY WITH THE LEAVE OF THE QUEEN'S ADVOCATE.

The Hon. the GOVERNMENT AGENT W. P. said that it seemed to him that the words "except with the

previous sanction of the Queen's Advocate" merely placed a bar on the speedy hearing and trial of such cases. His principal objection was to sub section (a), because he did not see why prosecutions for contempts of the lawful authority of public servants should require the consent of the Queen's Advocate. If the Indian Code were followed in this matter he would be quite content. But this chapter of the Indian Code had been touched up and altered here and there, and he thought they would find that it had been altered very much for the worse. Now according to the new procedure one hardly knows who is the person to take up a case. When perjury is committed before the Court, surely the Court is the proper authority to say whether the man that committed it should be prosecuted or not. He did not follow the hon. member (Mr. Van Langenberg) when he said that the same Court would have to try the perjury case that had dismissed the original case. The perjury case can only be tried upon the complaint of such court, and that complaint would have to be preferred before another court and he thought there were certain clauses in the Procedure Code which provided for this.

The Hon. the QUEEN'S ADVOCATE said that the hon. member who watched the interests of the Tamil community had seemed to think that he (the Queen's Advocate) had made too wide a statement when he referred to the number of perjury cases that took place. All that he had to say on the point was that during the short time he had been here, he had seen a great many of the few perjury cases to which the hon. member had alluded. (Laughter.) If such was not the usual course of events he would be much better satisfied than if it were. The hon member had also stated that he (the Queen's Advocate) had expressed a dissent from the views the Chief Justice had in framing these clauses. Now all that he had intended to say was that he could not take upon himself to say what the particular reasons were which induced the Chief Justice to frame these clauses. The Chief Justice had no doubt his reasons, but he (the Queen's Advocate) was not aware at the time he spoke of what those reasons were. The hon. member had also referred to the possible danger that might arise from cases being sent to the Queen's Advocate with an expression of opinion from the Deputies, and from the Queen's Advocate's natural unwillingness to go counter to the opinion of his subordinate officers. Now he would not take upon himself to say what other Queen's Advocates would do under similar circumstances; but he could say for himself that he would never write his *fiat* on any conclusion arrived at, without examining and reading over for himself the matter to which it referred. (Hear, hear, from the Hon. Mr. Rama Nathan) Several cases had lately been placed before him, and he could say that he had read nearly every word of them. With some of the conclusions arrived at he had agreed, with others he had not. He did not think that the Queen's Advocate, however much his time may be occupied, would be performing his duty if he at once jumped to the conclusion that the opinions arrived at by others were correct. It is his duty to examine every document and to see whether the conclusion arrived at by others is agreeable to his own judgment or not. His own feeling was that the Queen's Advocate should not interfere in these offences. It would be dangerous to interfere too much with the liberty of the subject as to the institution or carrying on of prosecutions for offences. But at the same time there may be circumstances where an illegitimate use is made of laws by a large class of people who enter charges against others, not because they have reason to believe that those charges are true, but in a spirit of anger and revenge. If this be so, and if charges, without sufficient grounds, are likely to be made, it was very expedient to put some check upon them, because the liberty of the subject will be far more interfered with by unjust accusations than by putting some check on accusations being made. He should have been glad to have voted with the hon. the Tamil member, but after hearing the remarks that fell from the hon. the Burgher member who had spoken in support of the clause, he was inclined to think that there are a certain number of people in this Colony who are ready and willing to enter complaints against others without sufficient cause and that it was necessary to put some check on such proceedings. Whether the best check would be that the authority of the Queen's Advocate should be obtained before such offences are prosecuted was another question, but he thought that if there was to be some such authority it would be better to have the authority of the Queen's Advocate than leave the power to authorize such proceedings to the Court alone. He knew how unwilling a judge is to order a prosecution for perjury to take place in the case of a witness before him who has perhaps spoken an untruth. It is very difficult for a judge, when the evidence is conflicting, to spot a witness who has spoken an untruth, and to take upon himself the responsibility of ordering that he be prosecuted for perjury. Therefore if it was necessary to have some check upon these prosecutions and at the same time to allow of some other authority than that of the Court to authorize them, it seemed to him that the Queen's Advocate's department was the only department that could properly deal with the matter. Under these circumstances, although it was contrary to his own personal feeling, to throw any additional work on the Queen's Advocate, he would be obliged to vote in favour of retaining the clause.

The Hon. the Acting GOVERMENT AGENT C. P. said that he was in favour of retaining both the clauses in this section. He said he was thoroughly surprized to hear what the two hon. and learned gentlemen had said in reference to the paucity of such cases as were referred to by His Excellency. Perhaps moving in that higher plane of existence, as advocates, they were less familiar in their professional life with the practical difficulties which Police Magistrates experience in these matters. His own experience was that the number of such cases was really enormous, and with the increased machinery referred to by His Excellency, he thought it was very necessary that there should be some such check as was now given in the section under consideration. It seemed to him that the restriction insisted upon—viz., that the institution of such proceedings must be authorised by the Queen's Advocate—was a very wise one, because, as was pointed out by the learned Queen's Advocate, very possibly the Court that was concerned would be reluctant to move in the matter. It seemed to him desirable that the Queen's Advocate and not the Court should be the authority without whose sanction such proceedings should not be permitted to be instituted. With regard to the remarks that fell from the Government Agent for the Western Province he must confess that he did not see any objection to the retaining of clause (a). It seemed to him that with regard to prosecutions for contempt of the lawful authority of public servants it was most desirable that there should be some control exercised over their feelings, or otherwise persons might be influenced departmentally or otherwise. He thought himself that it was a very safe security and wise provision that the sanction of the Queen's Advocate should be obtained for that class of prosecutions also. He would be inclined to go further and to move the deletion of the words "or on the complaint of the public servant concerned, or of some public servant to whom he is subordinate" and leave such prosecution to depend entirely upon the opinion of the Queen's Advocate.

The Hon. the GOVERNMENT AGENT W. P. said that perjury was very rife, and Police Magistrates as a rule do not like to be the actual complainants in a prosecution for perjury, and it was well known how very seldom Queen's Advocates wish to institute proceedings of this sort. If this clause were passed he thought it would be very hard indeed to get cases of perjury instituted at all. What he would recommend would be to make this section go on all fours with the corre-

sponding section in the Indian Penal Code by deleting the words "except with the previous sanction of the Queen's Advocate." However he would not press the amendment.

The clause was accordingly passed.

SEC. 151-152.

There was some discussion over clauses 151 and 152 in regard to the prosecution of Judges and public servants and the power of Government as to prosecutions. On the motion of the Queen's Advocate, however, they were allowed to stand over, the words "appointed by commission or warrant from the Crown" being apt to bear a doubtful interpretation.

CHAPTER XV.—§ 155.

The Hon. P. RAMA NATHAN said that he thought that the present system whereby a complaint made orally has to be taken down on a separate sheet of paper by the Magistrate himself, was a great deal better than keeping a charge book in the Police Court, as required by this section.

The Hon. the TREASURER said he remembered that this was the rule laid down many years ago, but it was not found to be of the slightest use. So far as he could recollect, the record books were never referred to after they had been submitted for the inspection of the Supreme Court Judge on Sessions duty; sometimes he made remarks in them, but more frequently he merely initialled them.

Hon. J. VAN LANGENBERG said the Ordinance 18 of 1871 requires the Police Magistrate to see whether the plaint discloses a legal crime or offence before he allows process to issue, and besides it requires the Magistrate himself to take down the plaint and not the chief clerk of the Court, although in effect it is the chief clerk who takes it down now.

The Hon. the GOVERNMENT AGENT W. P. said that keeping charge books had been strongly objected to by magistrates, as the charges very often proved to be a mere farce, and in cross-examination the complainant contradicted himself grossly.

His Excellency the LIEUT.-GOVERNOR said that some of the best Police Magistrates had made the same complaint.

The Hon. J. VAN LANGENBERG asserted that such an examination was a part of the new procedure, as the powers and functions hitherto exercised by Justices of the Peace are now transferred to Police Magistrates, so that a magistrate must take down everything even the statements made, and he feared that as the offence of perjury has by the Code become so greatly extended, the new procedure would act very hardly on people in Ceylon.

After some discussion it was finally agreed that the concluding words of the section should be made to run thus:—"If [the complaint be] made orally, the substance of the complaint, or the information referred to in the third head shall be entered by an officer of the Court on a separate sheet of paper."

SEC. 180.

On coming to section 180, which enacts that a Police Magistrate may summon supplemental witnesses after commitment, and that a copy of the evidence shall be given to the accused person free of cost,

H. E. the LIEUT.-GOVERNOR remarked that it was something altogether new to the procedure in Ceylon to give such a copy "free of cost" to the accused person.

The Hon. the QUEEN'S ADVOCATE said that the same proviso was made in section 186. The Deputy Queen's Advocate for the Island had shown him that this would give rise to a considerable deal of trouble, and suggested to him that such a thing might be fitly done only in murder cases. He (the Queen's Advocate) would therefore move that the clause do stand over until he should have the opportunity of seeing the Chief Justice on the subject.

H. E. the LIEUT.-GOVERNOR said that the Chief Justice was not in favour of retaining this clause in the Code.

The Hon. J. VAN LANGENBERG said that the accused person should be allowed a copy of the evidence, but not free of charge. Finally the words "free of cost" in clauses 180 and 186 were deleted and the following substituted "with such terms as to charges as shall be imposed by the Government."

The Hon. the QUEEN'S ADVOCATE:—It is of course understood that all exceptions are excepted.

The Hon. P. RAMA NATHAN said that the rule of payment by the folio was very deceptive. At present for a full brief, consisting of 16 or 17 pages, counsel only pay R1·50, whereas if the same work were calculated by the rule of folios, it would cost about five times as much.

In § 187 the words "and anything which is to be produced in evidence" were deleted and the clause made to read thus:—'When the accused person is committed for trial, the Police Court shall forthwith transmit the record of the trial to the Attorney-General.'

CHAPTER XVII.

On coming to section 196 a,

The Hon. the GOVERNMENT AGENT W. P. said that section 159 would have to be altered, so as to include the words "or person appointed by § 196 a." The alteration was accordingly made.

The Council then adjourned, after a long sitting, until Saturday, the 25th instant, at 2 p.m.

SATURDAY, AUGUST 25.

Present:—His Excellency the Lieutenant-Governor (President), the Hons. the Acting Colonial Secretary, the Colonel Commanding, the Acting Auditor-General, the Treasurer, the Government Agent, W. P., the Acting Government Agent C. P., and the Hons. J. Van Langenberg, P. Rama Nathan, and W. W. Mitchell.

Absentees:—Hons. A. L. de Alwis and J. L. Shand.

The Hon. the QUEEN'S ADVOCATE:—Sir,—I beg to move the amendment to clause 50, of which I gave notice at the last meeting of Council. I have to make a slight change on the amendment, as worded and would propose that the following stand instead of clause 50:—"When a summons issued by a Court is served, an affidavit purporting to be made before an officer duly authorized to administer an oath or affirmation, or in the case mentioned in section 48 the endorsement therein-mentioned that such summons has been served, shall be admissible in evidence, and the statements therein made shall be deemed to be correct unless and until the contrary is proved."

His Excellency the LIEUT.-GOVERNOR:—It is moved that the clause which has just been read be inserted for clause 51.

The clause was duly passed.

The Hon. the QUEEN'S ADVOCATE:—With regard to clause 53 and clause 54, the hon. and learned member on my left (the Government Agent W. P.) raised certain objections at the last sitting. The hon. member did not see how an officer of police could be authorized to execute a warrant directed to some one else. I mentioned this matter to the Chief Justice, who, however, is of opinion that the clauses should remain. Although a warrant may be addressed primarily to the Fiscal of the district, it is also expedient that a police officer may be required, if necessary, to execute it. This is, in fact, a part of a police officer's duty. The Chief Justice does not anticipate any danger arising from the execution by a police officer of a writ addressed to a fiscal or fiscal's officer. The same objection of the hon. member to clause 53, applies equally to clause 54. I move that clauses 53 and 54 be retained.

The Hon J. VAN LANGENBERG said that if there be no objection to the principle he would not object to the retention of these two clauses in the Code.

These two clauses were accordingly passed.

SEC. 112.—WHEN VOLUNTEERS MAY BE CALLED OUT?

The Hon. the QUEEN'S ADVOCATE said that this clause stood over for consideration, as it was thought expedient that there should be some words added to the effect that the Volunteers could only be called out under the special direction of His Excellency the Governor. He would accordingly propose the insertion of the words "by direction of the Governor" after the word "or" in line 4.

His Excellency the LIEUT.-GOVERNOR said that the Home Government were of opinion that the responsibility of calling out the Volunteers to quell any tumult or popular disturbance should rest with the Governor.

The clause, as amended, was duly passed.

SEC. 135.—STATEMENTS *vs.* CONFESSIONS.

The Hon. the QUEEN'S ADVOCATE said that when the clause came under discussion at the last meeting of Council, the Hon. the Government Agent W. P. stated that he did not altogether understand the word "statement" in the 2nd paragraph. He (the Queen's Advocate) had, since then, referred to the Chief Justice, who thought it would be better to strike out the second paragraph altogether. It has been thought that, as a matter of fact, the paragraph was unnecessary, whether the "statement" referred to the statement of the party interested, or of some other person.

The clause was passed with the omission of the second paragraph.

SECTIONS 151 AND 152.—PROSECUTIONS OF JUDGES AND PUBLIC SERVANTS.

The Hon. the QUEEN'S ADVOCATE said that with regard to these two sections some difficulty arose inasmuch as the definition of the word "judge" is now considerably extended, and includes a large body of public servants, *e. g.*, "police magistrates," "presidents of village tribunals," "provincial registrars," &c. It was therefore considered that these two clauses had better be left out of the bill.

His Excellency the LIEUT.-GOVERNOR said that the Chief Justice was of the same opinion.

Clauses 151 and 152 were accordingly deleted.

The Council then resumed the reading of the clauses of the Code beginning at Chapter XVIII, section 197.

On coming to clause 210, by which a man could be tried for more than one offence at one trial,

The Hon. the GOVERNMENT AGENT W. P. said that supposing a man had an altercation with a woman, and abuses her, her two brothers coming to her aid, the accused person assaults both and robs one of them. Could he be tried, at one and the same trial, for the abuse, the assault and the theft?

The Hon. the QUEEN'S ADVOCATE :—If the abuse, assault and theft formed part of one and the same transaction, then, I think, the accused person could be tried for these three offences at one trial.

The Hon. the GOVERNMENT AGENT W. P. :—That is, he could be so tried when one offence seems to be the natural consequence of the other. But what he would like to understand was whether such a thing would be allowed if one offence merely followed another?

His Excellency the LIEUT.-GOVERNOR said that if a man assaults another, and within an hour after steals his comb, these two offences, being quite distinct and separate, could not be included in one charge.

The Hon. the QUEEN'S ADVOCATE said a case might certainly be supposed where a person commits in the course of one affray offences against 3 different individuals, that is to say, he beats one, steals from another and abuses a third. In this case he thought it might be more doubtful whether the charges could be lumped together in one plaint, although from the reading of the clause he was rather inclined to the opinion that they could i. e., if the offences committed formed part of one and the same transaction.

The clause was passed.

§ 212 :—WHERE A PERSON IS CHARGED WITH ONE OFFENCE, CAN HE BE CONVICTED OF ANOTHER?

The Hon. J. VAN LANGENBERG asked whether if a man were charged with one offence, and it appeared in evidence that he had committed a different offence, this would not necessitate the amendment of the charge laid against him.

His Excellency the LIEUT.-GOVERNOR said that he thought if the offence were on all fours with the other, there would be no necessity of amending the plaint.

The Hon. the QUEEN'S ADVOCATE said that the clause clearly referred back to § 70 of the Penal Code, where a person might be punished for being guilty of one of several offences, the judgment stating that it is doubtful of which.

The Hon. J. VAN LANGENBERG said he could not understand why a person should be charged with one offence and found guilty of another.

H. E. the LIEUT.-GOVERNOR asked whether this was not what was often done by the Judges of the Supreme Court in appeal when they decree that a man is not guilty of the charge of assault and highway robbery laid against him but only, say, of common assault.

The Hon. J. VAN LANGENBERG said that as the law now stands, if a man is charged with theft, he cannot be convicted of having received stolen property. If such a judgment were made, it would be sure to be set aside in appeal. A man was once charged under the Ordinance with resisting a Fiscal's officer in the execution of his duty. The police magistrate found him guilty of assault. In appeal, the Supreme Court decreed that the man should be tried by common law for assault, as the charge of obstructing the Fiscal's officer had failed.

The Hon. the QUEEN'S ADVOCATE said that there were many cases in England where a man was charged with one offence, and the jury found him guilty of another. For instance, a man might be charged with rape and the jury might find him guilty of an attempt to commit rape, although this was of course done under a special statute.

The Hon. the GOVERNMENT AGENT W. P. said that there have been three separate Acts in India, the Acts of 1872, 1875, and 1877, upon this subject, and in all these Acts this provision has been repeated. If we were passing a statute to aid the law in criminal matters, why should we not follow the Indian Code? A man is clearly not prejudiced if this clause be read with 211. It merely prevents a guilty person from escaping punishment on technical grounds. The Code will have the effect of securing the conviction of a really guilty person, who might otherwise escape through a technical error in the charge.

The Hon. J. VAN LANGENBERG said, all he asked for was, that a man should not be charged with one offence and tried for another. Let the man only have a fair and proper opportunity for defending himself.

The Hon. the QUEEN'S ADVOCATE said that it very often happened in England that in the course of a trial it transpired that the accused was guilty of a different offence from that for which he was tried. It might be in the power of the Judge to allow the indictment to be amended, and proceed with the investigation of the charge as amended, or the prosecution might have to abandon the case. The hon. and learned member perhaps thought that the principle was being carried still further in Ceylon.

The Hon. J. VAN LANGENBERG :—If the evidence discloses something different from the offence charged, then let the information be amended, so that the accused may have a chance of defending himself.

His Excellency the LIEUT.-GOVERNOR :—I think we might leave the clause to stand over. I do not myself like that a man should be tried for one offence and be found guilty of another.

§ 160,— EXAMINATION OF COMPLAINANT TO BE MADE ON OATH OR AFFIRMATION.

The Hon. the GOVERNMENT AGENT W. P. said that surely all statements made by complainants, and taken

down by the magistrate, should be on oath or affirmation. Yet it would appear from this section that it was only when the accused was brought up in custody that the statement of the complainant was to be on oath or affirmation. He thought there was an error somewhere, else how could the Magistrate proceed against a man who had made a false statement before him, if the same were not made on oath or affirmation?

The Hon. the QUEEN'S ADVOCATE said the words "on oath or affirmation" clearly referred to the whole section.

The Hon. J. VAN LANGENBERG said that the difficulty merely arose from a misplacing of the words "and shall be on oath or affirmation" which should immediately follow the word "magistrate."

His Excellency the LIEUT.-GOVERNOR said that he was more afraid of altering any small matter of machinery than he was of touching a large one and he would therefore reserve the point for consideration.

The clause was accordingly reserved for consideration.

§ 223.—PROCEDURE IN CASE OF ADMISSION OR DENIAL OF THE OFFENCE BY ACCUSED.

The Hon. the GOVERNMENT AGENT, W. P. said that the procedure seemed to him rather peculiar, and reminded him of the famous story of the Irishman, who, when he was asked by the magistrate if he was guilty or not guilty of the offence alleged against him, is reported to have said: "How can I tell, yer honor, until I hear the evidence?" (Great laughter.) Here a man is brought before the court and before the charge is formulated even, he is asked to show cause why he should not be convicted. After evidence has been heard and a charge has been formulated he is asked to show cause why he should not be convicted. He is next asked if he is guilty or not guilty. He thought the process should be reversed.

The Hon. the QUEEN'S ADVOCATE said that the procedure was exactly the same as if he were asked at the very first, whether he was guilty or not guilty. He first makes an informal plea, and then a formal plea is recorded afterwards.

The hon. Member said he would not press the matter.

The hon. the QUEEN'S ADVOCATE remarked that it would be a pity to go on altering the Code except where a matter of principle was concerned.

The clause was passed.

SEC. 235.

The Hon. the GOVERNMENT AGENT W. P. remarked that the word "may" here has not the force of "shall," as a magistrate was not compelled to permit a case to be withdrawn, or the offence compounded.

SEC. 236—CONVICTION NOT LIMITED TO COMPLAINT OR SUMMONS.

The Hon. the GOVERNMENT AGENT W.P. said this section was not like the former one where a person was charged with one offence and convicted of another.

SEC. 237, SHALL THE IMPRISONMENT DECREED FOR INSTITUTING FALSE OR VEXATIOUS COMPLAINTS BE RIGOROUS OR SIMPLE?

The Hon. the GOVERNMENT AGENT W.P.:—Sir,—Is there any reason why the imprisonment decreed for bringing false and vexatious charges should be 'simple' and not 'rigorous'? Better not send persons to gaol at all, than send them at such considerable expense to the Colony, merely to undergo simple imprisonment.

The Hon. the QUEEN'S ADVOCATE said that a similar discussion arose when the Council was discussing the penalty for giving false evidence in the Penal Code. As a matter of fact, under this Code, a magistrate can only indirectly make the complainant suffer by fine.

The Hon. the GOVERNMENT AGENT:—Limit the discretion: let it be 'rigorous' or 'simple.'

The Hon. the QUEEN'S ADVOCATE:—This section seems taken from the Indian Penal Code.

The Hon. the GOVERNMENT AGENT W. P:—I move to amend clause 237 by inserting in the 2nd paragraph the words "rigorous or" between the words "be" and "simple."

H. E. the LIEUT.-GOVERNOR said the Council could not accept the amendment, and thereupon a division was taken with the following result:—

Ayes.	*Noes.*
The Hon. Acting G. A., C. P.	The Hon. W. W. Mitchell
" G. A., W. P.	" J. Van Langenberg
" Treasurer	" Actg. Surveyor Gen.
" Auditor General	" Queen's Advocate
" Officer Commanding	" Actg. Colonial Secy.
	H. E. the Lieut.-Governor

Ayes 5, Noes 6, Motion lost.

[The Hon. Mr. Rama Nathan had not come to the Council at the time of the division.]

His Excellency the LIEUT.-GOVERNOR said that at present there was no stamp or charge for processes issued in Justice of the Peace cases. Under the Ordinance 18 of 1871, there is a stamp of 15 cents on plaints and 5 cents on subpœnas in Police Court cases. Under the procedure in this Code, preliminary inquiries by Police Magistrates run so nearly into proceedings of summary jurisdiction that it was found impossible to preserve the stamp prescribed by the Ordinance 18 of 1871, and which stamp was levied, not for swelling the revenue, but to put a check on the institution of frivolous cases, by making the man who brought a frivolous case pay for it. This only strikes at one portion of the evil. A frivolous case may be brought up at a Justice of the Peace inquiry without any fee whatever. A false charge of highway robbery for instance, is made, and the Government has to set in motion the whole machinery of the Court upon a ridiculous charge. Levying a stamp in a Police Court case is undoubtedly often a hardship. In mere cases of assaults coming under the jurisdiction, the complainant should have his remedy free. What the Government propose is to abolish stamps in Police Court cases, and to give magistrates power to levy a small fine by way of Crown costs in any cases which may have been brought without sufficient reason, or where the complainant has withdrawn the case without the sanction of the Court. This, it is hoped will put a stop to the institution of frivolous cases. A clause giving magistrates this power will probably be proposed at the next meeting of Council. Such a clause will naturally follow the clause just passed.

§ 242.

The Hon. the QUEEN'S ADVOCATE moved the insertion in this clause, of the words "if he considered it desirable" after the word "may" in line 3, and the words, "if any" after the word "commitment" in line 4. Agreed to.

SEC. 243.—ORDER OF DISCHARGE BY QUEEN'S ADVOCATE.

The Hon. the GOVERNMENT AGENT W. P.:—The Queen's Advocate's order is said to be an order of discharge to the jailor. If the Queen's Advocate can order a jailor or Fiscal, I would make the committal of the Queen's Advocate the committal in the case. He selects the Court why should he not sign the committal?

H. E. the LIEUT.-GOVERNOR:—In the last letter of Mr. Burnside to the Secretary of State in the published correspondence the procedure is explained. The Magistrate after he has framed the charge, and taken the statement, forwards the case to the Queen's Advocate for directions, and the Queen's Advocate sends the case back with directions as to what Court the case should be committed to. The Magistrate then sends the case again to the Queen's Advocate by whom it is transmitted to the Court in which he finally elects to try it. This puzzled me at first. But it is quite clear now. There is a double reference between the Police Magistrate and the Queen's Advocate.

The Hon. the GOVERNMENT AGENT W. P.:—I point to the course laid down in the Code. By § 243 the order in writing signed by the Queen's Advocate, directing the discharge of the accused, is accompanied with a release order to the Jailor ordering the discharge—"thereupon the Jailor shall forthwith release him." Why should not the Queen's Advocate take upon himself the responsibility of signing the committal as well as of ordering it.?

H. E. the LIEUT.-GOVERNOR:—The point really under discussion is this : whether the Queen's Advocate or the Magistrate should exercise his discretion as to whether the accused should be committed or not. It was decided that this discretion should be left to the Magistrate. If the Magistrate thought there was a case he would send the proceedings to the Queen's Advocate, who would instruct him as to the court to which the commitment was to be made. This is altogether different from the Queen's Advocate committing the accused himself. There is no interference here with the conscience of the Magistrate, because the Queen's Advocate is not asking the Magistrate to commit a man against his conviction that the man is not guilty.

The Hon. the GOVERNMENT AGENT W. P. :—Then why does he not commit the man himself. Why ask the Magistrate to commit him ?

The Hon. the QUEEN'S ADVOCATE said that the case was sent to the Queen's Advocate for the choice of the Court, before which the case was to be tried but the committing of the accused was part and parcel of the duty of the Magistrate. So far as he understood the Code, if the Magistrate thinks that a case has been made out, he sends the proceedings to the Queen's Advocate with his expression of opinion. The Queen's Advocate sends the proceedings back to the Magistrate with his opinion as to the Court before which the accused is to be committed. When the case is sent to him again if he thinks that, after all, the accused ought not to have been committed to that Court, he might alter his order or discharge the accused.

The Hon. the GOVERNMENT AGENT, W. P. said that the wisdom of entrusting to the Queen's Advocate the power of discharging an accused person whom a magistrate thought ought to be tried was very doubtful. What he thought was that the Court who has to commit the accused should bear the responsibility of discharging him as well. He thought that we ought to have a grand jury to say whether a man should be tried or not. There have been many cases especially of late years, where persons charged with grave and serious crimes, whom the Magistrate thought ought to be committed for trial, had been discharged and grievous public scandal was caused thereby.

H. E. the LIEUT -GOVERNOR said that he had had experience of a grand jury in another colony, but it was after all voted a nuisance and abolished. The responsibility of deciding whether a man should be tried or not had better be left with the public prosecutor. He would wish to impress upon the hon'ble member the points of the new procedure. The Queen's Advocate has no power to commit. He (the Lieut.-Governor) would not be doing his duty, he thought, if he allowed this power to pass away from the hands of the Police Magistrate. It is the Magistrate who commits. When the Magistrate wishes to commit, the Queen's Advocate merely states before what Court the trial of the accused should take place. In the case where the Queen's Advocate thinks that the accused should be discharged, he makes the order, and the accused is forthwith discharged. The whole procedure in fact may be conveniently divided thus:—(1) preliminary reference by the Police Magistrate to the Queen's Advocate for instructions ; (2) the Queen's Advocate returns proceedings to Magistrate directing before what Court the trial should take place; (3) the Magistrate now sends back to the Queen's Advocate the record of the inquiry (section 187) ; and then (4) the Queen's Advocate makes his final order and makes any change, if change is required. The entire procedure is referred to in the letter from the Colonial Office to Mr. Burnside (p. 10 of the published correspondence) clause 17.

The Hon. the GOVERNMENT AGENT, W. P. said that he thought that as soon as the Magistrate said "Let the prisoner be committed for trial" his responsibility should be altogether ended. If the Queen's Advocate had to select the Court let him sign the committal, just as when he exercised his power to discharge, he signed the order for the discharge by the Jailor.

H. E. the LIEUT.-GOVERNOR : No. There is a double reference to the Queen's Advocate.

The Hon. P. RAMA NATHAN :—Has the Queen's Advocate the power, independently of what Magistrates can do, to commit prisoners to trial ?

The Hon. the QUEEN'S ADVOCATE :—The Attorney-General need not bring an indictment before the Supreme Court. If after reading the evidence he thinks that no case has been made out he orders the discharge of the prisoner.

The Hon. J. VAN LANGENBERG said that the object of the procedure was to prevent the different functions of different officers from clashing one with another and to prevent any conflict of Courts. That the power of discharge should be vested in the Queen's Advocate was undeniable.

The clause was passed.

POWER OF THE QUEEN'S ADVOCATE TO INTERFERE WHEN ACCUSED WRONGFULLY DISCHARGED. SEC. 255.

Hon. P. RAMA NATHAN said that this clause extended the power conferred on the Queen's Advocate by sec. 240. In that section certain limitations are imposed upon the power of the Queen's Advocate in respect to filing informations, whereas this section enlarges them. He drew particular attention to this, as it would form part and parcel of the discussion that would hereafter arise upon the Law Officers' Titles Bill.

H. E. the LIEUT.-GOVERNOR said that section 240 gives the Queen's Advocate the same powers as the Attorney-General possesses in certain specific cases. Clause 255 was intended to mitigate an evil which has been a long time under consideration. A magistrate holds an investigation and dismisses a case. Now if it is thought that the dismissal was due to a mistake on the part of the Magistrate the necessity will be seen of some machinery by which the case might be brought before higher judicial authority. It will not be said that this is interfering unduly with the discretion of the Justice of the Peace. There was once an idea that the case should in such a case be brought before another Justice of the Peace, but there are not so many Justices of the Peace to spare. He thought that making the Queen's Advocate file an information whenever he was of opinion that the accused should not have been discharged was saddling the responsibility on the right horse. He was not speaking theoretically, but because he had heard of numerous cases in which there had been a miscarriage of Justice by wrongful discharges of accused persons.

The Hon. the GOVERNMENT AGENT W. P. :—I only wish there was an equal remedy provided when the Queen's Advocate throws out a case.

The Hon. the QUEEN'S ADVOCATE said he would like to ask the Chief Justice when the Queen's Advocate may call upon a Magistrate to reinvestigate a case.

The Hon. P. RAMA NATHAN said that he had given notice that he would oppose the 3rd reading of the bill referring to the Law Officers of the Crown. After reading Sections 240 and 255 he felt he had no legs to stand on.

The clause was passed.

CHAPTER XXI.—SEC. 273.

On coming to this clause which refers to the defence which an accused party may make before a District Court.

The Hon. P. RAMA NATHAN said that the accused in District Court cases should have the same privileges as accused persons in Supreme Court cases, of being allowed to sum up the evidence led by them. Under the present Code most of the offences hitherto confined to Supreme Courts are triable by District Courts. The sentiment of the Bar was that the accused should have that privilege and the English barristers had told him that this was a privilege allowed to the accused in the English County Courts. He would therefore propose that the wording of Section 302 be added to Section 273, or all events that the suggestion should be referred to the Chief Justice for his opinion.

After some discussion,

H. E. the LIEUT.-GOVERNOR said he would make a note of it and consult the Chief Justice.

COMMITTALS BY POLICE MAGISTRATES.

The Hon. the GOVERNMENT AGENT W. P. said that with reference to the discussion on committals by Police Magistrates, the Chief Justice had stated in his last letter to the Secretary of State that he regretted he had "not been able to suggest some more ready way of arriving at the desired object," but that he would continue to give his best consideration to the subject. Perhaps he would be able to suggest a more ready way by this time, if reference were again made to him.

His Excellency the LIEUT.-GOVERNOR said he could not hold out any such prospect, as he had had a long conversation with the Chief Justice that very morning on the subject.

APPOINTMENT OF SUB-COMMITTEE TO CONSIDER SCHEDULE.

The Hon. the Acting COLONIAL SECRETARY moved that the following do form a Sub-Committee to consider Schedule 1 of Criminal Procedure Code :—Hons. Acting Colonial Secretary, J. Van Langenberg, Queen's Advocate, P. Rama Nathan, Government Agent W. P., and W. W. Mitchell.

The Council then adjourned to Wednesday, 5th September.

WEDNESDAY, SEPTEMBER 5.

Present:—H. E. the Lieut.-Governor (President), Hons. the Officer Commanding, the Acting Colonial Secretary, the Queen's Advocate, the Acting Auditor-General, the Treasurer, the Government Agent W. P., the Acting Government Agent C. P., the Acting Surveyor General and the Hons. J. Van Langenberg and P. Rama Nathan.

Absentees :—Hons. W. W. Mitchell, A L. de Alwis and J. L. Shand.

PENAL PROCEDURE BILL IN COMMITTEE: § 280.

The Hon. J. VAN LANGENBERG said that he thought there was an omission here, because no mention is made of a commitment for trial by fiat of the Attorney-General i. e. Queen's Advocate. A case may have been committed for trial by the Police Court to the District, and by the fiat of the Queen's Advocate the case may be transferred to the Supreme Court. The fiat of the Queen's Advocate is as good as commitment.—The words "or by fiat of Attorney-General" were added to the clause at the beginning of the third line.

§—282 OUHGT THE REGISTRAR OF THE SUPREME COURT TO BE ALLOWED TO FRAME THE INDICTMENT.

The Hon. P. RAMA NATHAN :—I do not know, sir, why the duty now done by the Queen's Advocate's department of framing indictments should be discharged by registrars. Hitherto, the indictments have been drawn by the Queen's Advocate or his Deputy. The fate of a trial may depend upon the wording of the indictment. By this section the duty is thrown upon the registrar. When I was at Calcutta, a very important case turned upon an indictment drawn up by an officer corresponding to the registrar of the Supreme Court. Both the Standing Counsel (Mr. W. C. Bonnerjee) and Mr. Justice Norris complained that, but for the indictment in that case having been so badly and unskilfully drawn by an officer of the Court, a miscarriage of justice would have been avoided. In England, indictments are drawn up by the Grand Jury, informations by the Attorney-General. In Ceylon, indictments have been invariably drawn up by the Queen's Advocate. I submit, sir, that this will greatly prejudice the right administration of justice. In the registrar's office there are officers who have each their appointed duties to perform, but he (Mr. Rama Nathen) did not think that they themselves would like this duty thrown upon them, nor indeed would it be safe to do so.

The Hon. the QUEEN'S ADVOCATE said that he did not see the danger the hon. member who had just spoken had referred to. He thought so far as he could judge from reading the clauses that the registrar would have to frame the indictment only in the case contemplated in section 281 when the Supreme Court made an order for the transfer of a trial before itself from another court. He did not think it was intended that the registrar should frame the indictment in every case, or in any case save that contemplated in section 281. but as the point might not be free from doubt he would ask that the clause be allowed to stand over.

The Hon. P. RAMA NATHAN :—Then I understand under section 280 the duty of the Queen's Advocate is to frame or approve of a charge. Now everybody can say what the charge is. It is the legal phraseology in which the charge should be framed and presented to the court, that is the difficulty. Section 280 says expressly that the charge should be framed "having regard to the rules as to the form of charges." I have already given my reason for this condition, and referred to the Calcutta case in which Mr. Bonnerjee and Mr. Norris complained so bitterly of the miscarriage of justice caused by the bad wording of an indictment. I submit, sir, that the Queen's Advocate should take upon himself the duty hitherto discharged by him. I shall submit the substitution for the words "the Registrar of the Court" the words "the Attorney-General or any officer deputed by him."

The Hon. the QUEEN'S ADVOCATE said that without referring to the Chief Justice, he could not agree to any change of the kind suggested. He himself thought that this section only applied to cases coming under section 281. The mode suggested must have been thought a simpler way than requiring the Queen's Advocate to draw up the indictment. He should be sorry to interfere in these two clauses before knowing the reason why they were put in. He was quite ready, however, to allow the clauses to stand over.

His Excellency the LIEUT.-GOVERNOR thought there was a reason for this machinery. The Supreme Court is appealed to, and makes a transfer of a case from another court to its own jurisdiction. In such a case the machinery should be within the Supreme Court itself. Take the case where a police magistrate has committed a case to the Supreme Court. If the Queen's Advocate by his fiat transfers the case to the District Court, and the Supreme Court transfer it from the District Court to its own Court, in such a case it seemed to him advisable that the Supreme Court, by its registrar, should frame the indictment rather than refer the framing of it to the Queen's Advocate. He was afraid the hon. member had not grasped the point involved. This is a case where the Supreme Court intervenes to transfer a case to its own jurisdiction. It seemed to him (the Lieut.-Governor) that where that was done the case should be wholly within its own jurisdiction.

The Hon. P. RAMA NATHAN:—The Supreme Court will not divest itself of its capacity of judge and become a party. The duty purely falls upon the registrar, and the registrar would have to consult others before he frames the indictment. The fate of a trial depends sometimes upon a word. How can the registrar be expected to see to all this in addition to his other duties?

The Hon. J. VAN LANGENBERG said he did not understand that § 282 was to be limited to § 281. He understood § 281 was to refer to all indictments whatsoever. There is no provision for the Attorney-General framing any indictment at all. By § 280 "When any accused person comes for trial before the Supreme Court, either under a commitment for trial made by a Police Court, or by virtue of an order of the Supreme Court of transfer of trial from another court, the charge shall be framed or approved by the Queen's Advocate, having regard to the rules as to the form of charges." The Queen's Advocate may frame or approve in any of these cases. Then the next clause provides for the case where the Supreme Court makes a transfer of a case from another court to its own jurisdiction. A man may be committed upon a specific charge, yet the charge framed by the Supreme Court need not be substantially identical with, nor comprehend the charge made by the other court. Now

he failed to see what difference there was between the terms "charge" and "indictment" Clearly the officer who is to present the indictment is the registrar, and he certainly thought this to be most undesirable. The registrar is not in all cases a duly qualified person There is another point to be noticed and that is that the control of the work would be entirely taken away from the Queen's Advocate Whether the Queen's Advocate is ready with a case or not the registrar may present the indictment and the Queen's Advocate will have to go on with the case. If the Queen's Advocate is not ready, it will be a benefit to the accused, and possibly perilous to the prosecution for the Queen's Advocate to be forced to go on with his case. He would also like to know whether there should not be an interval between the framing of the indictment and the trial of the case.

After some further conversation the clause was held over for further consideration.

§ 283.—OUGHT THE ACCUSED TO BE FURNISHED WITH A COPY OF EXAMINATION FREE OF CHARGE?

The Hon. the QUEEN'S ADVOCATE said that the burden of supplying copies of statements made by accused, and depositions of witnesses would fall upon the Queen's Advocate's department or the Police Court. Each of the accused would require a copy and it would take a considerable time before such deposition were copied. He would therefore propose that either the words "free of cost" should be struck off, or that the clause be allowed to stand over for further consideration.

The Hon. J. VAN LANGENBERG recommended that the clause should be treated in the same manner, as section 180, and the recommendation was adopted.

§ 285.—SHOULD THE PLEA OF GUILTY MADE BY AN ACCUSED PERSON ON A CHARGE OF MURDER BE ACCEPTED?

The Hon. the QUEEN'S ADVOCATE said that he would move the insertion in this clause of the words that had been struck out, making it discretionary with the Judge to accept the plea or not. It might chance that though the accused pleaded "guilty" yet, when the case was proceeded with, the jury might bring in a verdict of acquittal. He quite felt the necessity, in a case of murder of the Executive Council having some evidence before it upon which it could form an opinion. But he would make it discretionary with the Judge to accept the plea, because a man may insist on his plea being taken, and the Judge himself might consider that the plea should be taken. He said that with his short experience of the Bench he thought he could say that in 9 cases out of 10, judges would be unwilling to take a plea of guilty if they could possibly help it, so that there would be very little danger in making it discretionary with the Judge, whether he should or should not receive the plea of guilty.

His Excellency the LIEUT.-GOVERNOR said he quite appreciated the point raised by the Queen's Advocate. In ordinary trials the accused person has necessarily the option of pleading guilty or not guilty. This clause, however, was to the effect that notwithstanding the plea of guilty being tendered by the accused in a murder case, the case should be proceeded with. Now it happened two years ago, when he had the honor of administering the affairs of this island, that in one month two murder cases came before him in both of which the Judge—a different judge in each case—had accepted the plea of guilty and did not proceed on with the case. When the cases were referred to him he felt that owing to the absence of evidence he was not in a position to pronounce any opinion. In Ceylon as the Governor in murder cases is bound to consult the Executive Council and personally to decide whether the accused should be executed or not, it is essentially necessary that he should be provided with materials for coming to a decision. In the two cases referred to he had nothing to guide him to a decision. He consulted the then Queen's Advocate (the present Chief Justice) and he felt bound to accept Mr. Burnside's advice that the sentences should not be carried out. He had no means of determining whether there was anything, in either of the two cases, to justify him in exercising the prerogative of mercy conferred on the Governor, but yet, he could not take upon himself the responsibility of ordering the two men to be hanged and so, commuted the sentence of death. He could not help feeling that there was a failure of justice in both the cases referred to.

The Hon. J. VAN LANGENBERG said he assumed there would an inquiry before the Police Court and there would be the record of the Police Court to guide the Supreme Court Judge as the Police Magistrate would not merely accept the plea of party accused that he is guilty. It would be the duty of the Police Magistrate to go fully into the case, and these proceedings ought to guide His Excellency in coming to a decision.

H. E. the LIEUT.-GOVERNOR:—In the Justice of the Peace inquiry, the accused before referred to had no counsel, and therefore he could not tell whether these were cases of murder of the first degree or the second degree. This is the real reason why it is so necessary that all the evidence in a trial for murder should be gone into. When a man is tried for his life, and it comes to be decided by the Governor whether the man shall be executed or not, the Supreme Court should place before the Governor such a form of trial as shall guide him in his responsibility.

The Hon. the GOVERNMENT AGENT W. P. said that a responsibility like this should be made to rest on the Queen's Advocate. He could hardly conceive however, how there could be much difficulty in coming to a decision, seeing that the case would be first heard by the Police Court, then gone into by the Queen's Advocate, and lastly brought before the Supreme Court. If the proceedings taken down by the Police Court are loose and the man was then committed for trial, that would be a different matter. But then, if the Queen's Advocate exercised a proper control he would send the case back to the Police Court for further hearing. It seemed to him, however, that the present system was better than to allow a plea of guilty to be recorded on the indictment and the Supreme Court to come to the conclusion that the accused was not guilty.

His Excellency the LIEUT.-GOVERNOR said it was not with the responsibility of the Queen's Advocate he was then dealing, but with the responsibility placed upon the Governor by the constitution of the colony. The Council has no power either of imposing this responsibility or taking it away. In the two cases he had referred to, he commuted both the sentences, and the Queen's Advocate felt he was quite justified in advising him to adopt that course. He did not want to provide for a supposititious case. It is not a matter of the hon. member's conception, but of a difficulty which had actually occurred. If the Governor is to exercise the special responsibility which the constitution of the colony lays upon him he must be provided with sufficient material to enable him to form a judgment in the case, and the investigation of the Police Court is not sufficient material to enable him to do so. In a Police Court the distinction between murder in the first degree and murder in the second degree might not be observed. He (the Lieut.-Governor) knew the necessity there was for this, both as a member of the Executive and as the officer adminstering the Government.

The Hon the TREASURER:—When the clause was being discussed in the Executive Council, Sir James Longden expressed very much the same views as His Excellency has to the grave responsibility resting on the Governor, and Sir William Gregory also when such cases came before him for final decision, in no way minimized the responsibility which fell upon the Governor. In deference to those views, I hold that the words which the Queen's Advocate proposes to restore should be deleted.

His Excellency the LT.-GOVERNOR:—Still I am bound to say that I feel a difficulty: what I want to understand is if you give a judge a discretion of accepting a plea of guilty, would there be a clear distinction between the present system and the system proposed to be adopted. Because I want the Supreme Court to under-

stand that the practice they have hitherto followed by accepting a plea of guilty in murder cases is a practice which we deprecate strongly on account of their being insufficient materials to enable the Executive to revise the sentence.

The Hon. the QUEEN'S ADVOCATE :—I think, so far as I can judge, that the exercise of that discretion will meet this difficulty. If a person is tried for murder, and persists in pleading guilty, the judge is now bound to take that plea. Here it is left discretionary. Under these circumstances, the judge who accepts such a plea will afterwards be able to give reasons for accepting such a plea, and will make it clear to the Governor and the Executive Council. Therefore, the change which Your Excellency has alluded to as a matter-of-fact comes to this : under the present system, if a prisoner pleads guilty, though it may be against the wishes of the judge to accept such a plea, yet if the prisoner persists in it, the judge is bound to take the plea ; whereas under the system (which was at first suggested and which I propose to re-introduce) if the judge has any reason to think that such a plea ought not to be accepted, he, in his discretion can enter a plea of not guilty. I think myself that the insertion of these words will prevent the difficulty arising again which has unfortunately risen before. My position is : If you put in a discretionary clause and the Supreme Court Judge who has the responsibility of passing the sentence is perfectly satisfied both by the depositions and the plea of the prisoner that there are sufficient grounds for him to sentence the accused to be hanged, he will no doubt be able to explain to the Governor or Executive Council, if necessary, the grounds which induced him to accept the plea. By the words that are now proposed to be inserted and which I would ask to be struck out, the present law will be so altered that a Judge of the Supreme Court must record a plea of not guilty, notwithstanding what the accused may persist in saying he is guilty, and this, I think, ought not to be the case.

The Hon. the GOVT. AGENT W.P. rose to explain. He said that he qualified his previous statement by saying provided every officer of government did his duty properly. Now, continued the hon. member, my impression was that the Judge of the Supreme Court could absolutely refuse to take the plea and to order the trial to proceed. The Queen's Advocate corrected me. If the present procedure is persisted in, the Supreme Court would be in the same difficulty as His Excellency, in arriving at a decision of the case.

The Hon. the Acting GOVT. AGENT C. P. :—I understand the case to be this :—If a person pleads guilty, the charge being murder the law should be that the Court should cause the trial to proceed. There is no discretion provided—the court must cause the trial to proceed.

His Excellency the LIEUT.-GOVERNOR :—That is as it stands in the Code before you.

The Hon. the Acting GOVT. AGENT C. P. : Yes, as the wording of the section now stands : there is no discretion, the charge being murder and the plea of guilty having been put in, the Court must cause the trial to proceed and the jury may return a verdict of "not guilty" which would certainly be anomalous. This is as it stands in this section. The Queen's Advocate has suggested that when a plea of guilty is put in, and the Judge finds it sustained by the depositions and other [illegible] before him, the Court should be given the power of [illegible]iving the plea. Your Excellency's views will be met if the section were so worded that the Court shall cause the trial to proceed refusing to accept the plea of guilty. We only want to know whether it is desirable to put in some words which shall oblige the Court to refuse to accept the plea of guilty and cause the trial to proceed.

His Excellency the LIEUT.-GOVERNOR said that the hon. member did not quite understand him (His Excellency), but only understood him to a certain point. The Government were anxious, if possible, that the plea shall be recorded because, in considering the case, under the responsibility which lies upon the Governor, it is of material assistance to the Governor to know whether the prisoner has pleaded guilty or not guilty. That goes a very long way in assisting the Governor in deciding upon the case. Therefore, it would be an advantage to find the plea recorded in some way or other. Up to that point they were agreed. But the hon. member has stated that if we introduced the words proposed by the Queen's Advocate the case will stand as it does now. Now, he was anxious that the case should not stand as it is now, because of the inconvenience (which he had already pointed out) that would arise. However, as it was so strongly suggested that the Court should have a discretion and should be allowed to exercise that discretion, there would be no very great objection to giving that discretion, because he thought a Supreme Court Judge would hesitate very much before he refused to exercise a discretion in a case of life and death which the law offered. When the law personally offers a Judge a discretion, he thought the Judge would be very slow in refusing to exercise that discretion in favour of the prisoner in a case of life and death. He was therefore not opposed to the reinsertion of the words, provided it is understood that they make a difference in the present practice.

The Hon. J. VAN LANGENBERG said that though he had stated that the plea of guilty is not accepted and that the man after trial may be acquitted, yet he found that according to the rules of the Supreme Court the Judge is bound to record the plea though he may in a case of murder say that the prisoner does not understand the gravity of the charge, and enter a plea of not guilty. As a matter of law, however, the judge is bound to accept the plea, if the man persists in making it.

H. E. the LIEUT.-GOVERNOR :—There will be a change in the law then. If we reinsert these words, the law will suggest to the judge that he could refuse to accept a plea of guilty, whereas the suggestion at present is that he could not refuse to accept such a plea.

The Hon. J. VAN LANGENBERG :—That is so.

The Hon. the QUEEN'S ADVOCATE: If the prisoner plead guilty and it appears to the Judge that he rightly comprehends the plea, then by English law the Judge is bound to accept it. Clause 20 of the Ordinance No. 28 of 1865 is very much to the same effect. Under the present Rules of Court, therefore, it would appear that the Judge strictly speaking has no discretion, and if he refuses a plea of guilty it means that he thinks the prisoner does not rightly comprehend the force of the plea he has made.

H. E. the LIEUT.-GOVERNOR :—I am well satisfied.

The Hon. the QUEEN'S ADVOCATE :—The word "Court" is used in the clause. Now, there is no definition of Supreme Court in the Code, because in some sections it refers to the Supreme Court as consisting of one judge, sometimes more. Complications might arise on account of this, and therefore he thought that before they finished with the Code they would have to define the term "Supreme Court."

The Hon. J. VAN LANGENBERG, referred to § 287 where mention was made of the "judge of the Supreme Court."

The clause was passed with the addition of these words to it after "murder," (in line three) the judge may in his discretion refuse to receive the plea."

TRIAL BY JURY: IN A CAPITAL TRIAL OUGHT THE VERDICT TO BE UNANIMOUS ?

§ 288. "The jury shall consist of nine persons ; in all cases where the trial is for an offence punishable with death, the verdict shall be unanimous ; in other cases the verdict may be returned by a majority in number of the jury."

H. E. the LIEUT.-GOVERNOR said that this was a very important question whether there should be an unanimous verdict in a capital trial, and if by a majority what majority?

The Hon. J. VAN LANGENBERG :—I think the verdict should be unanimous in murder cases, especially now that the jurors are reduced in number from 13 to 9, because it may chance that 4 may be for an acquittal and 5 for a conviction, and so a man's life would really depend upon the opinion of one man. I should rather

be inclined to think that the verdict must be unanimous, unless we can have, as in India, a special jury who are presumed to have greater intelligence. In that case the verdict of two-thirds of the number might be taken. In any other case unanimity must be insisted on.

H. E. the LIEUT.-GOVERNOR :—There are so many murder cases that this could not be done.

The Hon. P. RAMA NATHAN :—As the law stands the punishment for murder is death. If the unanimity is among 9 men the punishment should be death. If there be no such unanimity still if 6 men are for a conviction and 3 for an acquittal it will be a matter for regret that the verdict should not be accepted by the judge and punishment meted out. It therefore strikes me that a verdict in the proportion of 2 to 1 might very well be taken as a sound verdict and be acted upon. At the same time I do not wish sentence of death passed upon such a man, but would suggest that, on appeal to the Governor, he should act upon that fact in estimating the punishment and commute the sentence of death to 20, or say 10, years' penal servitude.

The Hon. the GOVERNMENT AGENT W. P.—The present law requires 13 jurymen. With such a number a majority is sufficient to ensure a conviction and the majority accordingly decides the verdict. It is a question whether the reduction may not be carried still further and the number reduced to 7. I think that a mere majority should not count. It seems to me almost impossible in this country to get 9 persons to agree in any single thing. Consequently many persons would escape if unanimity were required. If it is agreed that in any ordinary case there should be 9 jurymen, then he (the Govt. Agent, W.P.) thought that 10 should be the number for murder cases. If there are 9 jurymen then the lowest majority will be in the proportion of 5 to 4. If 10, then 6 to 4. If the number of jurymen in ordinary cases be reduced to 7, in capital cases there should be 8, and the lowest majority will be in the proportion of 5 to 3. The smaller the number and the larger the majority the better chances there will be of a good verdict. He thought the verdict should be decided by a majority, but not by a bare majority. He certainly thought that a majority of 5 to 3 in a jury of 8 persons was better than a majority of 7 to 6 in a jury of 13. He would move, therefore, that, instead of the number of the jurors being limited to 9 in ordinary cases, it should be 7, and that in capital cases the number of the jurors should be increased to 10.

The Hon. the QUEEN'S ADVOCATE said, that he found it somewhat difficult to follow the hon. member. At present we have a jury of 13, and therefore the lowest majority will be in the proportion of 7 to 6. It seemed to him either that the majority should be increased and that the verdict should be decided by a majority of at least two-thirds, or the clause stand as it does now. There has been some reference as to what the Judge would do if the jurors persist in bringing the same verdict though sent back to consult. If the hon. member would refer to sec. 315, he would find that except where the verdict is unanimous the judge is not bound to receive that verdict. Section 315 reads thus :—"If the jury are not unanimous, the judge may require them to retire for further consideration. After such a period as the judge considers reasonable, the jury may deliver their verdict, although they are not unanimous. If the judge is dissatisfied with the verdict, he shall at once record such dissatisfaction and discharge the jury and order a new trial."

Hon. P. RAMA NATHAN :—I have some observations to make on that clause.

The Hon. the QUEEN'S ADVOCATE continued, that his own opinion was that a bare majority ought not to decide a case where the accused is charged with murder. At present they had at least seven men agreeing to a verdict. If the number of the jury be reduced to nine the verdict might be the opinion of only five of them. A great deal has been said about unanimity, and the fact that a jury in England consists of 12 men who must all agree to a verdict. In a jury consisting of 12 men there might of course, be one who is reluctant to be brought to reason. Verdicts which have raised a considerable amount of discussion as to their correctness have no doubt been returned by juries. There is however one strong argument which tells in favour of the jury being unanimous and that is that it obliges each juryman to exercise his own independent judgment and makes him feel in a capital case that he is in a measure responsible for the life or death of the prisoner at the bar. He thought he could not do better than read the words of one who for a considerable time presided over the Supreme Court of this Colony, their late Chief Justice, Sir Edward Creasy. In his work on the British constitution, Sir Edward Creasy said that "so long as the present system holds in England, each juror knows that it is not by him alone but by him and his eleven fellow jurors conjointly that the verdict is to be arrived at. Each juror therefore knows that, if any of the eleven differ from him in opinion at the end of the case, they must argue the matter out among them ; each juror therefore watches the entire progress of the trial with his reasoning faculties intent on every part of each litigant's case, and thus prepares himself for a full and fair discussion and judgment of the whole."

The Hon. J. VAN LANGENBERG said that the point raised required consideration before finally determining upon passing the clause.

The Hon. the QUEEN'S ADVOCATE suggested that the word "trial" in the second line should be deleted and the words "verdict returned" be substituted.

This suggestion was agreed to.

The Hon. the GOVERNMENT AGENT W.P. :—I spoke on the question before I had time to refer to Sir John Phear's code. I think hon. members will see why the number 9 was finally fixed upon. The subject was discussed for a very long time, and, finally the number was fixed at 9. My object in moving that there should be 10 jurors in a trial for murder was that there might be a majority of at least 6 to 4 *i.e.* a clear majority of at least two-thirds. (Laughter.) I mean a majority in the proportion of 3 to 2.

H. E. the LIEUT-GOVERNOR said, that with regar to the opinion of Sir Edward Creasy on the question of juries which had been read out to them by the Hon. the Queen's Advocate he thought it must have been written before Sir Edward Creasy came to Ceylon. He (the Lieutenant Governor) thought that it was a matter pretty generally admitted that a high sense of responsibility is not felt by the ordinary Ceylon juror. He felt that the circumstances of the colony are so different from what they should be that he did not feel inclined to agree that only an unanimous verdict in a case of murder should be accepted. It is said for instance that a Buddhist will not convict on a *poya* day, his religious feelings being thus stronger than his conscience. He did not think that it should be in the power of one jury-man to prevent a verdict from being given. On the other hand he would not be prepared to accept a verdict by a majority of one. But when a large minority is for bringing in a verdict of manslaughter or assault, he thought the prisoner should have the benefit of such opinion. He was opposed to the number of jurors being fixed at 10, because if 4 of these were in favor of a verdict of guilty the prisoner would still have to be hanged. He thought that the majority must consist of two-thirds. This was better than a verdict of 6 to 4. The question is certainly a most important one. The Government however have no policy on the subject and would wish to be guided by the opinion of the Council. His own opinion agreed with that of the Hon. Tamil Member, and he thought that if the votes were as 2 to 1 in a case of murder that would give a sufficient majority for the court to act upon. If in Hon member would make such a motion, he would vote for it.

The Hon. P. RAMA NATHAN :—I shall move, Sir, that clause 288 be amended thus : "The Jury shall consist of nine persons ; in all cases where the *verdict returned* is for an offence punishable with death, the verdict shall be *a majority of at least two-thirds* ; in other cases the verdict may be returned by a majority in number of the Jury.

The Hon. J. VANLANGENBERG seconded. Agreed to.

SEC. 298.

The Hon. the QUEEN'S ADVOCATE :—The amendment in section 288 will necessitate a change in this section. I move that the following words be read for the first nine words in line 5, "the verdict of all, or of two-thirds, or of the major part of them as the case shall be require." Agreed.

SECTION 300.

"The evidence of a witness, duly taken in the presence of the accused before the committing magistrate, may, in the discretion of the presiding judge, if such witness is produced and examined, be treated as evidence in the case."

The HON. P. RAMA NATHAN :—The clause is quite new to our procedure. If the witness is produced and examined before the Court, what is the necessity of evidence in the Court below? Does it dispense with his examination.?

His Excellency the LIEUT.-GOVERNOR said, in reply to the hon. member, that it was not unknown that, in the interval between the Police Magistrate's inquiry and the Supreme Court trial, the witness is often meddled with. It often happened that a witness was threatened by parties interested that if he did not unsay at the Supreme Court trial the evidence he had given at the Police Court enquiry he would be beaten or some harm be done to him. In such a case the original statement would be produced and laid before the jury, and they could then believe whatever statement they thought was the true one.

The Hon. P. RAMA-NATHAN said that with referring to the Indian Penal Code, he found that the decisions based on this section have been very conflicting. Questions on this clause arose even when Sir John Phear was there. Sir John Phear himself was in favour of the clause. If the law of evidence for this country is not changed, he did not see why this clause should be introduced which is so opposed to the English law of evidence.

His Excellency the LIEUT.-GOVERNOR :—It is a very useful clause. A man may speak the truth before a Police Magistrate and then deny it before the Judge of the Supreme Court. The object of the clause is to put a check on this. I think, besides, the hon. member will be satisfied with the judgment of Sir John Phear (Laughter).

The Hon. the QUEEN'S ADVOCATE :—That particular point comes under a special power of local legislation. As matters now stand, if a deposition taken before a Magistrate is entirely different from the statement made before the Supreme Court Judge, the witness can be confronted with his previous statement. This is the present law on the subject.

His Excellency the LIEUT.-GOVERNOR :—Is the hon. member going to to propose an amendment?

The Hon. P. RAMA NATHAN :—No. I merely asked for information.

§ 311. CAN A JUDGE EXPRESS HIS OPINION TO THE JURY ON A MATTER OF FACT AS WELL AS ON A MATTER OF LAW?

On coming to this clause the Hon. Mr. RAMA-NATHAN said: may I ask the learned Queen's Advocate as to whether a judge in England has the power of expressing to the jury his opinion upon any question of fact, as well as on a matter of law.

The Hon. the QUEEN'S ADVOCATE: The hon. and learned member has asked me a question which it is difficult to answer satisfactorily and a question with regard to which some of the most eminent judges in England, have differed in opinion. Some judges, among them Sir Alexander Cockburn have seemed to think that a judge should not refrain from at times, expressing his opinion on matters of fact to a jury and some judges have certainly been, in the habit of expressing their opinion on matters of fact as well as on matters of law. Other judges have held that a judge ought to refrain as far as possible, from expressing any opinion to the jury on a pure matter of fact: that he ought to lay the case before the jury as clearly as he can, and that it is for the jury to say what verdict they shall return. I think myself that it is very difficult, indeed, to exactly do either one thing or the other. If a judge, while hearing a case, has formed a strong opinion, it is difficult altogether to keep from the jury the opinion he has formed. My own feeling is that a judge ought not so far as he can possibly help it, let a jury know what his own ideas of the facts are. He ought to lay before them the questions of law involved and to explain to them those questions of law. So far as mere facts are concerned, he ought as a rule simply to lay the facts before them and let them decide all questions of fact. However, there have been many eminent judges who have held a contrary opinion and thought it part of the judge's duty to let the jury know what their opinions were on matters of fact. As I have already stated, the question is a very difficult question to answer, inasmuch as there has been such a difference of opinion among eminent judges on the subject. I regret I cannot give a more satisfactory answer.

The Hon. P. RAMA NATHAN: I am very much obliged to the learned Queen's Advocate for the opinion he has expressed. Your Excellency must see the inadvisability of making a general law of this kind in the present Code. The natives of this island are generally guided in forming their opinions by the opinions of men high in authority, much more so than in England where there is an intelligent public opinion and where the standard of education is far higher than in Ceylon. If, under these circumstances, we make a general provision to the effect that a judge may, when he thinks necessary, express to the jury his opinion on questions of fact as well as on questions of law, I think it will come to this: that the opinion of the jury will be simply a reflection of the opinion of the judge. The jury would endeavour to divest themselves of the responsibility of giving an independent opinion and be guided more or less by the judge's view of the case. I therefore think that this clause should be omitted from the Code. Then the matter would stand thus: we fall back upon the law as it stands. When we think there has been a misdirection to the jury, we argue with the judge upon the point, and endeavour to convince him, if counsel can, that he should not have done so and so. But if this clause were now passed, the judge can always fall back upon it, and say to counsel: "I have a perfect right to express my opinion to the jury."

The Hon. J. VAN LANGENBERG: The law, as it at present stands, sir, has been correctly stated by my learned friend the Queen's Advocate. There is no doubt that some judges have abstained from expressing their opinions upon questions of fact which are more properly to be determined by the jury. I don't believe there can be any objection to a judge expressing his opinion in an exceptional case, and I believe the cases are exceptional in which such opinions are expressed. I think that even if this section were deleted, it will not prevent the judge from expressing his opinion. It does happen that there are complicated cases, and with a view of assisting the jury, the judge does sometimes express his opinion to them: if he thinks it absolutely necessary to do so. I do not see that there is any particular harm in simply giving effect to what is practically the case now, for a judge when summing-up, may, if he chose to do so, express his opinion to the jury. My hon. and learned friend has based his argument against giving this discretion to the judge upon the ground that the jury would be influenced by the opinion of the judge. If that were likely to be the case, I think it better to abolish trial by jury altogether. If it can be supposed that persons who are bound by oath to express their opinion upon the facts can be influenced by the opinion of any one, then we had better abolish the system of trial by jury. No doubt, the jury would be disposed to listen, and do listen to anything that comes from the bench with very great respect, but surely they would not consider that that

would absolve them, as a jury, from the responsibility of forming their own opinion upon the evidence as to whether the prisoner is guilty or not guilty.

The Hon. P. RAMA NATHAN : If your Excellency is of the same opinion, I shall not press the deletion of this clause. I was only desirous of doing justice to the jurors of Ceylon : at the same time I must respect facts.

H. E. the LIEUT.-GOVERNOR said that in the case of an educated jury, they would not need much guidance. But where you have an uneducated jury and the facts of the case were complicated, it would be of advantage that the judge should be able to explain those facts and in doing so, the judge could hardly avoid sometimes expressing his opinion. He thought it would be safer to leave the clause in and that they would gain nothing by omitting it altogether.

The clause was then passed.

SECTION 315 :—

"If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous. If the Judge is dissatisfied with the verdict, he shall at once record such dissatisfaction and discharge the jury, and order a new trial."

The Hon. P. RAMA NATHAN :—I submit, sir, that I have an objection to the last three lines in this clause : "If the Judge is dissatisfied with the verdict, he shall at once record such dissatisfaction and discharge the jury and order a new trial." I believe, sir, the present law is this, that the judge may refuse to receive an incorrect verdict and ask the jury to reconsider. He has no power to set aside the verdict and order a new trial. In Ceylon, sir, we have cases when judges have entertained very strong opinions as to the merits of certain cases and then sent the jury once or twice to reconsider their verdict, but if the jury still adhered to their verdict, such a verdict had to be recorded and acted upon. In such cases there was no imputation of corruption. But unless there be any imputation of fraud or corruption, in which case all proceedings are vitiated, I think it undesirable that the opinion of 9 men or a majority of them should be put aside by the opinion of one man on a question of fact. In a question of law it is otherwise, but these are men specially qualified to judge of facts, and if the majority are agreed on a verdict they might, in the event of the judge being dissatisfied with the verdict, be directed to reconsider it ; but if they come back with the same verdict, I think that verdict ought to be accepted. The judge, by the very act of asking the jury to reconsider their verdict, makes a suggestion that they are wrong, and if, notwithstanding such a suggestion, they bring in the same verdict, I do not see why such a verdict should be set aside.

The Hon. J. VAN LANGENBERG :—I would go a great deal further than my hon. friend, and would propose that the second part of this clause be also deleted:—"After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous." To permit a judge to interfere with the verdict will be to strike at the very root of the system of trial by jury. The object of the system of trial-by-jury is that the accused party may be tried by his own peers or by persons who have had experience themselves in determining questions of fact. The very system of our law is to keep distinct and clear as much as possible questions of law and questions of fact and to allow judges to determine questions of law and jurors questions of fact. To put a supposititious case. We have now limited the number of jurymen to 9. Suppose 8 jurymen take one view and the other one differed from them. it will be competent for the judge who, after all is really no judge of the fact, to enquire whether the verdict was unanimous or not, and, if it be not unanimous, to send them back to reconsider their verdict. Suppose the eight men still adhere to their opinion, the prisoner at the bar may not have the benefit of these eight votes, but would be at the mercy of the Judge who probably had taken a strong and, perhaps, erroneous view of the question of fact, and the man will thus have to be placed on his trial again. It will also, I think, lead to unseemly proceedings between judge and jury. The jury, particularly if you have an intelligent jury, will adhere to their own opinion, and the very act of sending them back to reconsider their verdict involves the reflection that they had not considered the question and that they had been dead to the solemn obligation required by law. In the case of an uneducated jury, they might bring in a different verdict, but in the case of an intelligent jury, when they do retire they would probably adhere to their verdict, for to give a different opinion would be to acknowledge that they have not done their duty properly the first time. Let the questions of law and the questions of fact be kept distinct. Where the question to be decided is a question of fact, it is undesirable to give the judge this power to set aside the verdict of the jury and to order a new trial. The jury are bound to accept the ruling of the judge in a question of law. It is not left to the jury to say whether he is right or wrong, but to take the law from him and exercise their duties on the questions of fact. I, therefore, agree with my learned friend that the last three lines should be deleted. I do not think it right that a man should be imperilled by a second trial because the judge takes a different view from the eight men. In the case of the second part of this section, the judge will have the power of imprisoning the jury in the case of men who are intelligent enough to adhere to their opinion. Here the men retire and, after having given it must be presumed, all possible attention to the questions of fact brought before them, they come back with a verdict opposed to the judge's view of the case. So far as the judge is concerned, he may send them back to reconsider their verdict and detain them for as long a time as he thought reasonable. They might come back almost immediately with the same result, and the judge may again send them back virtually saying "You shall stay where you are until you agree with me." This would be a most unseemly proceeding. A case of that kind should never occur in the administration of justice. If there must be a provision of this kind, let it be as in an inferior Court where the judge takes the entire responsibility. But let not the judge in any way coerce the jury. To allow a judge to set aside the verdict of the jury and to order a new trial is to make a farce of the entire system of trial by jury. We must have first a system, and second the machinery to work that system. There may be cases of murder, where eight out of a jury of nine may be for conviction or eight for acquittal ; yet, if absolute unanimity were required, the man may have to stand a new trial. If the duty of deciding questions of fact is to be left to the jury, they should assume the whole responsibility of it. We have thrown the responsibility on the party who decides. If the judge considers that a verdict of acquittal is not a correct one, let him take upon himself the responsibility of convicting. It is so in the District Court when a judge and assessors try a case. If the judge takes a different view from the assessors, the decision of the judge holds sway. Here a judge who disagrees with the verdict sends it back for further consideration, and though the jury may see no reason for altering their verdict, the judge may discharge them after a reasonable detention, and have the accused placed upon his trial again. I do not consider the proposed principle a right one to adopt having regard to the different functions of judge and jury.

The Hon. the GOVERNMENT AGENT W. P. said, that he agreed with the hon. and learned member who had just spoken but would go even further. He at first supposed that this clause was intended to apply only in those cases where unanimity was

required. If that were so, he considered it would be quite right, because it had always been held that the judge ought to know whether the verdict had been given according to law ; but he has no right to know anything more than that. At present the formula is : "Have seven or more of you agreed upon your verdict ?" If a juryman were to state that the jury were unanimous, that would be to disclose the opinion of every single juror, which they are strictly bound not to do. Under this Code, in cases where a majority is required the question that would be put will be : "Have you agreed upon your verdict ?" and the answer will be : "We have." In cases where six or more are required to agree in the verdict the question put will be : "Have 6 or more of you agreed on your verdict ?" But where unanimity is not required by the law, it is not right that they should be asked whether they were unanimous in their verdict or not ("Hear, hear," from the Hon. Mr. Rama Nathan). It would be right to put it in cases where a bare majority was required and the judge was satisfied that the verdict was an erroneous one, in order that he might ask the jury to re-consider their verdict. He was opposed, therefore, not only to the second and third portions of this clause, but to the whole clause.

His Excellency the LIEUT.-GOVERNOR said, if the hon member (the Government Agent, W. P.) would refe. to the dispatch of the Secretary of State, her would find that this clause had nothing to do with cases in which unanimity was required. The clause was meant to deal with what was a crying evil in the opinion of some judges of the Supreme Court. He was not expressing his own opinion so much as that of the opinions of certain judges of the Supreme Court frequently expressed in regard to cases when the verdict was simply nonsensical. In fact, some judges had gone so far as to propose the abolishing of the jury system altogether. This clause, he thought, was inserted to meet the evil pointed out by Mr. Justice Clarence. Mr. Clarence wrote about the miscarriage of justice which often occurred especially when influential men were in the dock, and this clause was intended to meet the objection [a passage from Mr. Clarence's letter was here read by His Excellency.] This clause is intended to meet the case where if the judge thinks the verdict of the jury either an incorrect or foolish one he might have the power not of trying the accused himself, but of discharging the jury and ordering a new trial. The question was discussed at very great length in the Sessional Paper. He thought himself that if the judge were given the power contemplated in this clause, and the jury made to endure some sort of imprisonment until they agreed on a proper verdict it would probably lead to a comflict between the judge and the jury ; but the other question was the graver one of the two. It is not a question of incorrect verdicts, but of verdicts which the judge states he had often known to be utterly corrupt. This is indeed a difficult question, and there are objections to the proposed way of dealing with it. But he thought the only question was whether it was better to interfere to a small evtent with the jury system in order to give the judge power to order a new trial or to accept the present system as it is.

The Hon. J. VAN LANGENBERG :—I feel very strongly upon the question. I am not convinced by what Mr. Justice Clarence has written. But that letter referred not only to the jury system, but to other matters in which I certainly cannot agree with him. With all the respect one may have for Mr. Justice Clarence I hope that one may be allowed to differ from him. He (Mr. Van Langenberg) did not think that this power should under any circumstances be vested in a judge of the Supreme Court. He felt it would be wrong to give this power unless the judge would take upon himself the entire responsibility of acting upon his own opinion. If there is any reason to think that we cannot get honest jurymen, or that juries are so corrupt, the proper outcome of such a state of things would be the abolition of the system of trial by jury. If it is considered that honest men cannot be found to discharge the functions of jury men, do not preserve the system of trial by jury in this hybrid fashion, bub abolish it altogether. According to the proposed system, at the close of a trial, the jury may as well be told that if they do not agree with the judge, they may expect imprisonment, or if they still continued to differ from him they would be ignominously discharged, their verdict set aside, and a new trial ordered. It should be remembered that under this Code they were giving the judge the power of expressing his opinion to the jury on matters of fact, and if the jury knowing the judge's opinion, and knowing that they are liable to be sent back to reconsider their verdict, still persist in a different opinion what would be the consequence ? The judge would state his opinion on the question of fact and send the jury back to reconsider. The jury would return with the same verdict, the judge would say "I discharge you" and order a new trial. Such a scene in the highest court in the Island should never be permitted. He did not say such a scene would occur, but it might occur. The proceedings before the Supreme Court should be conducted with proper decorum and gravity. A poor native jury might perhaps, when sent back to reconsider their verdict be coerced into giving a verdict in accordance with the view of the judge, but in the case of an intelligent jury they would simply hold to their own opinion. Then would follow this indecorous scene. It is the unfortunate prisoner who would suffer. Under the proposed system if the verdict happened to be in his favour, the poor man would have to bear all the agony of a second trial and perhaps also all the expense and inconvenience. He did not say that the system of trial by jury was a perfect one—no human system can be perfect. But because in one or two instances the verdicts of juries have not met with the approval of the judges the system must not be said to be a bad one. I am not prepared to say, said the honourable member, that in those one or two instances to which Mr. Clarence referred that he was in the right and the jury in the wrong. It may have been far otherwise. I believe that in that letter Mr. Clarence said that he thought a certain class of the community was particularly noted for bringing in bad verdicts. Now it is not to be said that because jurymen are drawn from this class or that class, that therefore they are incompetent to discharge the functions of jurors. Nothing he said was calculated to work more mischief than remarks of that kind, and that it should be said that any one class was better than another to perform this duty. The jurors who are summoned are men who are supposed to understand the language in which the trial takes place, and to be otherwise competent to discharge the duty laid upon them. Yet if they bring in a verdict different from the opinion of the judge, it must be supposed that they are all in the wrong and the verdict either perverse or corrupt ! They all knew cases in which unanimous verdicts have been given quite counter to the popular opinion of the case. Is it therefore to be supposed that the jurymen did not wish to do their duty properly ? All that can be said is this that they were right or they were wrong according to our view of the case. Each juror returns his own individual opinion on a question of fact, and unless there are strong grounds for believing that the jury are corrupt, their verdict should be received as representing an honest and fair opinion. A general and a sweeping charge like the one made by Mr. Clarence ought not to have the slightest weight with Government. To preserve the system, and to make the judge work the system as he likes, is surely not the proper thing to do. The Judge's duty is to expound the law, and as the Queen's Advocate stated, the Judge has nothing to do with questions of fact. It does frequently happen that the Judge expresses

his opinion on questions of fact as well. But we should now be empowering him to do so whenever he thought proper. The power might be used in such a way that a native jury might think they were bound to vote according to the direction of the Judge. With the little experience of the Procedure Code that he had already, he must say that he felt this was not a power to be given to be exercised by the Judges of the Supreme Court. But however, that may be let not the jurors be placed in a position calculated to lower them in their own estimation.

The HON. P. RAMA NATHAN :—I was wondering, Sir, where this clause came from.

H. E. the LIEUT.-GOVERNOR :—It is in the Indian Procedure Code, sections 302, 307.

The Hon. P RAMA NATHAN. But that refers to an Indian Sessions Judge. Now an Indian Sessions Judge corresponds to our Judge of the Supreme Court.

H. E. the LIEUT.-GOVERNOR :—No ; the Indian Sessions Judge corresponds in most respects to our District Court Judge, whereas the Judge of a High Court corresponds in every respect to our Judge of the Supreme Court.

The HON. P. RAMA NATHAN :—Where the opinion of a Sessions Judge disagrees with that of the jurors he can immediately appeal to the High Court. Now it must be understood that the standing and the legal ability of a High Court judge is undoubtedly much higher than that of a judge of the Supreme Court. The reason of this is not for to seek. It is not likely that men of the highest legal ability would come out on a pittance of R18,000, whereas the salary of a Judge of the High Court is no less than R50,000. They have no doubt had some very eminent men in Ceylon. But that was the exception. But to return to the subject. His Excellency had aid that the clause was the outcome of the representation made by Mr. Justice Clarence and that Mr. Justice Clarence had discussed the subject at great length. Well the greater the length of the letter the more hopelessly in the wrong he was. As an individual member of the Legislative Council he (Mr. Rama Nathan) was only astonished that the Government should have acted on the individual opinion of one judge who really had very little experience of the country. Before a drastic change of this kind was proposed, he thought that in common fairness to the inhabitants of the country the Government ought to have called upon them for their opinion and to have been guided by the opinion of the majority. Instead of this, the Executive Council met, referred Mr. Clarence's letter to the Secretary of State, and the Secretary of State, doubtless endorsed that opinion. In a matter of this kind was it not right that the opinion of the other two judges should also have been invited? and the opinions of the members of the Legislative Council and of other men in the country quite as competent to pronounce an opinion on the subject as Mr. Justice Clarence? Let alone the opinions of others: was it right that the opinions of the two other judges should not have been taken before a slur so nasty should have been thrown upon the people of Ceylon? At the time that Mr. Justice Clarence wrote that letter, people were not aware that he held that opinion and had written that document, else public meetings would have been arranged for, throughout the country and by that means, and the agency of the press, that opinion would have been effectually stamped out. It came out in a smuggled form and took the whole country by surprize. When that letter of Mr. Clarence was made public, the bar united together and wanted to express its opinion. But their senior member, the leader of the bar, forbade them.

H. E. the LIEUT.-GOVERNOR :—This is hardly relevant.

The Hon. P. RAMA NATHAN :—Your Excellency stated that the clause was the outcome of Mr. Justice Clarence's representations, and if I could convince Your Excellency that Mr. Justice Clarence's reasons were wrong I think I should be in order.

H. E. the LIEUT.-GOVERNOR :—The hon. member is not arguing at present on Mr. Justice Clarence's reasons, but about the suppressed indignation meeting of the Bar. This is scarcely relevant.

The Hon. P. RAMA NATHAN :—The Government then said they would not act upon Mr. Justice Clarence's opinion. It was now seen that that opinion is acted upon. It became therefore their duty to make their voice heard and to state to Government what their views were. This clause was felt to be a slur upon the educated portion of the inhabitants of Ceylon. I am sure, continued the hon. member that your Excellency will not do the jurors of Ceylon the injustice of retaining in the Code this clause 311 in its entirety, and thus perpetuating a wrong that had been needlessly done them.

The Hon. the QUEEN'S ADVOCATE said he would endeavour to discuss this subject in a calmer spirit than the hon. members who had spoken previously. They ought to bear in mind the difference that exists between trial by jury in England and trial by jury in Ceylon. They all knew that a verdict come to in a trial by jury in England must be an unanimous verdict. He did not say that all unanimous verdicts have been invariably given in strict accord with the evidence adduced, and that they all escaped criticism at the hands of the judges. Still the verdict represented the opinion of 12 men. But it was different in Ceylon, where verdicts need not be unanimous. He thought that it was only fair to bear in mind the fact that there is far less reason to suspect a verdict unanimously arrived at by a jury of 12 men as in England, than in Ceylon, where the number is so much less and the verdict may represent the opinion of a bare majority It may have been that this was taken into consideration when a similar clause to this was inserted in the Indian Code, and it might have been thought unsafe to be obliged to accept in every case the judgment of a bare majority, and therefore discretion was given to the judge to state that he disagreed with the verdict of the jury and to order a new trial. When 12 men cannot agree to a verdict in England a new trial usually takes place. He therefore thought that bearing that in mind we must not think that the clause had been inserted in any hostile spirit, or with any idea that the jurors of this country, as a matter of fact, arrive at erroneous verdicts in every case. He thought at the same time that there was a good deal of force in what had been said as regards the scenes that might ensue between the judge and jury. He should be sorry to retain any clause which would create any ill-feeling between judge and jury. He thought it was very material, for the administration of justice that there should be a good feeling between those who act as jurors and those who act as judges.—Bearing in mind that in Ceylon a majority in nearly all cases, was all that was required, and not unanimity in a verdict, he thought it would be almost a pity to retain this clause. It had been stated that by this clause the jury could be compelled to agree with the opinion of the judge, or if not, that the judge could keep them confined for a considerable length of time and then discharge them. He could not see it in that light at all. It seemed to him that the last two lines only propose to carry out what is done in the present day. If a jury tells a judge that the majority required by law can not be obtained, the judge would tell the jury to retire and further consider the case, and it might chance that the jury would be locked up a day and a night before they could come to a conclusion. He knew of several instances where it had been held that judges should not be too ready to accept a jury's statement that they could not agree upon a verdict and then discharge them. A case took place in England some years ago in which a woman who had made away with several children was placed upon her trial for murder and when the verdict of the jury was asked, the foreman said that the jury could not agree upon their verdict. The judge eventually discharged them. The Criminal Court thought that the

judge was warranted under the circumstances in discharging them as every endeavour had apparenlty been made, but it was urged that they had at all events been discharged too soon to make them come to a decision. His (the Queen's Advocate's) own feeling was against the provisions of this clause on the ground that it might create a bad feeling between judge and jury, and he thought himself that the jury are the best judges of fact. If it is thought that it would be better to abolish the jury system and that the trials should be carried on by one or two judges, such might be proposed, but so long as we have the system of trial by jury, he thought it would be very inexpedient to interfere with jurors too much. He was sure Mr. Justice Clarence would not have said what he did, if he had not good reason for doing so. If any judge thought that the verdicts given were not satisfactory verdicts, it was quite his duty to bring the matter to the notice of those whose duty it would be to consider the question and change the law if necessary. At the same time he must say that unless he saw some very strong grounds, he would be strongly inclined to oppose the retention of the provision in question.

The Hon. J. Van Langenberg said he did not wish it for one moment to be supposed he had discussed this subject in anything but a temperate spirit. He thought he was sufficiently long in the legal profession to claim for himself the right of differing from Mr. Justice Clarence. He thought that Mr. Justice Clarence had not sufficient grounds for proposing the abolishing of the present jury system, or for holding that erroneous verdicts were generally returned if men of a certain class were being tried. Unless there were very strong grounds for an imputation of this kind, it should never have been made. Suppose it were granted that there were perverse verdicts. What did it prove but that the jury system did not work well. What he would take exception to, however, was the conflict there might happen to be between the judge and the jury. It is now left to the option of the judge whether he would give expression or not to his opinion even on questions of fact. If then this clause were passed, the judge would be able to hold out *in terrorem* over the heads of the jury that a different view from his might possibly cause him to subject them to some inconvenience. He remembered a scene of that kind when a planting jury in the Kandy Criminal Sessions stuck to their verdict, in spite of the then Chief Justice (Sir Edward Creasy) sending them back to reconsider. There might be occasional miscarriages of justices no doubt. But he would rather have one or two incorrect—he would not say corrupt—verdicts than have any of the indecorous scenes which would certainly take place if the clause were allowed to pass.

H. E. the Lieut.-Governor said that he had no desire to express any opinion of his own on the ubject. What he had done was to explain a misunderstanding entertained by an honorable member as to what the effect of the clause is, and also as to how it came to be there. The reason why the clause was inserted was this :—When His Excellency was administering the Government on a previous occasion, Mr. Justice Clarence addressed a letter to the Secretary of State, through him, upon the subject of the Criminal Code. His Excellency forwarded Mr. Clarence's letter to the Secretary of State, and in doing so acted merely as the vehicle for forwarding these observations. Naturally Mr. Clarence's observations came under consideration when the Criminal Code was being drafted out in England, and it being found that in the Indian Code provision was made for the case in which the Sessions Judge or Judge of the High Court disagreed with the Jury, a similar provision was introduced into the Ceylon Code. The Secretary of State has mentioned the fact in his letter to Mr. Burnside. He fully felt the weight of the objections urged by the two hon. members who had spoken, and he wished to take the sense of the Council, because he thought it was an important point and one upon which he ought to be able to place before the Secretary of State the opinon of the Council.

The Hon. P. Rama Nathan : I propose to delete all the words after the word "unanimous" in line 4, *i. e.* the following words:—"If the judge is dissatisfied with the verdict, he shall at once record such dissatisfaction and discharge the jury and order a new trial."

Ayes.	*Noes.*
The Hon. P. Rama Nathan	None
,, J. VanLangenberg	
,, The Act. Surveyor General	
,, Govt. Agent C. P.	
,, Govt. Agent, W. P.	
,, Treasurer	
,, Actg. Auditor General	
,, Queen's Advocate	
,, Actg. Colonial Secretary	
,, Officer Commanding	
H. E. the Lieut.-Governor	

Motion carried *nem con.*

The Hon. J. VanLangenberg next moved the deletion of the words "after such a period as the judge considers reasonable, the jury may deliver their verdict although they are not unanimous."

Ayes.	*Noes.*
The Hon. P. Rama Nathan	The Hon. The Actg. Colonial Secretary
,, J. VanLangenberg	
,, The Actg. Surveyor General	
,, Actg Govt. Agent, C. P.	
,, Govt. Agent, W. P.	
,, Treasurer	
,, Actg. Auditor General	
,, Queen's Advocate	
,, Officer Commanding	
H. E. the Lieut-Governor	

Ayes 10. No 1. Motion carried.

The Hon. the Acting Colonial Secretary dissented for a reason he stated later on.

The Hon. the Govt. Agent W. P. moved an amendment on the first two lines to the effect that if the judge were not satisfied with the verdict of the jury, he should require the jury to retire for further consideration, and the jury after such consideration may return their verdict, which shall be accepted and received.

His Excellency the Lieut.-Governor said he did not agree with the hon. member, because he thought it was very important that a judge should know whether a verdict was unanimous or not, so that he (the Lieut.-Governor) might know and the Executive Council might know whether the verdict was unanimous or not. Lately there was a case where one of the headmen was being tried. He was informed by the Government Agent of the W. P., that the verdict was entirely wrong and was strongly pressed to revise the sentence Now it would have been a great advantage for him if he had known, and through him the Executive, if the verdict was unanimous or not in such a case.

The Hon. the Acting Surveyor-General :—I do not see why "unanimous" should be left here at all.

The Hon. the Govt. Agent W. P.:—I move to omit the words :—"If the jury are not unanimous, the judge may require them to retire for further consideration."

Ayes.	*Noes.*
The Hon. P. Ramanathan.	The Hon. J. VanLangenberg.
,, Acting Surveyor General.	,, Actg. Government Agent C. P.
,, Government Agent W. P.	,, Treasurer.
	,, Acting Auditor General.
	,, Queen's Advocate.
	,, Acting Colonial Secretary.
	,, Colonel Commanding
	H. E. The Lieut.-Governor.

Ayes 3, Noes 8, Motion lost.

The Hon. the Acting Colonial Secretary said that this was the reason why he objected to the second clause being deleted.

His Excellency the Lieut.-Governor :—It will be necessary to insert some words here owing to the deletion of the second portion of clause 345.

The following words were accordingly inserted: "after such further consideration, the jury may deliver their verdict although they are not unanimous."

The Hon. the GOVERNMENT AGENT, W. P. :—The procedure does not say what the verdict was, whether unanimous or not. What I say is having carried a principle, you must provide for it.

The Hon. J. VAN LANGENBERG :—With reference to individual votes the judge may ask (316) "such questions as are necessary to ascertain what the verdict is."

The Council rose at about 6 p. m., adjourning its sitting till the next day, Thursday the 6th at 2 p.m.

THURSDAY, SEPTEMBER 6.

Present :—His Excellency the Lieutenant-Governor (President), the Hons. the Colonel Commanding, the Acting Colonial Secretary, the Queen's Advocate, the Government Agent W.P. the Acting Government Agent, C. P., the Acting Surveyor General, and the Hons. J. Van Langenberg and W. W. Mitchell.

Absentees :—The Hons. P. Rama Nathan, A. L. de Alwis and J. L. Shand.

The Hon. the ACTING COLONIAL SECRETARY laid on the table the following paper :—Sessional Paper XLII —1882. Postal Service Contract: Correspondence on the Subject of a Proposal to obtain Contributions from the Colonies towards the cost of the Postal Service.

THE PENAL PROCEDURE CODE IN COMMITTEE. SEC. 322—DISQUALIFICATIONS OF JURORS.

The Hon. J. VAN LANGENBERG thought that this list should be extended—Under the 121st section of the Ordinance 11 of 1868 besides the Judges of the Supreme Court and their private secretaries, all Judges, Commissioners and Magistrates of all other Courts, all Advocates and Proctors and their Clerks, Apprentices and Pupils, and all habitual Petition Drawers, &c., were disqualified. He would certainly include in the proposed list all Advocates and Proctors, and all habitual Petition-drawers. These latter are connected with almost every case, and are acquainted with everything that comes before the Courts, and it is not desirable that they should be allowed to sit on the jury.

His Excellency the LIEUT.-GOVERNOR :—I think as regards Advocates and Proctors, the Queen's Advocate is disposed to exempt them. The only question was whether they should be "disqualified" or "exempted." I am of opinion they should be disqualified. But the rule should not extend to proctor's clerks and apprentices. He might say that the policy of Government was to give many fewer exemptions than before. The exemptions at present were far too many, and the consequence was that the duty fell too heaviy upon those who have not been exempted; but Advocates and Proctors and habitual Petition drawers should certainly be disqualified.

The Hon. the QUEEN'S ADVOCATE :—If an Advocate or Proctor were to cease practising, I do not see why he should be either disqualified or exempted.

The Hon. J. VAN LANGENBERG :—I am sure he would be a troublesome juror (Laughter).

On a suggestion of the Queen's Advocate, the Hon. Mr. Van Langenberg also proposed that medical men should be exempted.

The Hon. the Acting GOVERNMENT AGENT C. P. jocularly remarked that the clause disqualifying all persons labouring under bodily or mental incapacity might be very largely availed. (Laughter).

His Excellency the LIEUT.-GOVERNOR, said that by bodily disqualification was only meant deafness, or incapacity to sit up, or the like.

The Hon. the GOVERNMENT AGENT W. P. asked whether clergymen should not be "exempted" rather than "disqualified."

The Hon. the TREASURER drew attention to the fact that all Post office officers were excluded by the previous Ordinance from serving on the jury.

His Excellency the LIEUT.-GOVERNOR said that the Government had already received representations from almost all departments of the public service requesting that they be ex empted. He found, however, that whenever a subordinate wanted a fortnight's leave he could easily make arrangements to get it. Why should they not make the same arrangements to enable them to perform their State duties? The argument cuts both ways. The larger the number of exemptions the heavier the duty on those who are not exempted. Medical officers ought to be exempted because they belong to a department in which matters of life and death are concerned.

The Hon. the TREASURER said he did not see any sufficient reason for withdrawing the exemption from the Post Office inasmuch as any inconvenience caused to that department, by the absence of an officer, would affect the interests of the public. Take for instance the case of post offices in the Central Province. Suppose a Postmaster is summoned as a juror. He is the only man to attend to his duties, and if he were summoned, from time to time, to attend on the jury, it would be at great public inconvenience. He would therefore suggest the exemption of the Post Office, as a department in which we are bound to meet the wishes of the public for the public good.

His Excellency the LIEUT.-GOVERNOR said that exactly the same thing was urged by every department of the public service. If the postmaster could get a fortnight's leave when he wanted it, why should he not make arrangements just once in two or three years to serve on the jury?

The Hon. the Acting COLONIAL SECRETARY said that he thought the case of the Post Office was perhaps a stronger one than most of the others; but it must be remembered, that it is not as if the summons to serve on the jury is made only a day or two beforehand. Summons are usually served a week or ten days before its date on which the persons are required to attend, and there is ample time for arrangement to be made to enable an officer so summoned to serve on the jury without undue inconvenience.

The Hon. the GOVERNMENT AGENT W. P. said that as one of the few heads of departments who do not object to their subordinates being summoned to serve on the jury, he thought he might be allowed to say a few words. There are certain officers, registrars for instance, like Post Office authorities, whose absence would cause great inconvenience to the public, and who should therefore be exempted from juries. With regard to the argument put forward that clerks could always obtain leave when they wanted it, he would point out that they generally take leave when business is slack. The summons to serve on a jury, however, was very often served when there was a press of business and very little time to make arrangements in. But, if the policy of Government be to reduce exemptions, it would be better to give the Fiscal the responsibility. In the case of a registrar, a person cannot be appointed to act as such without being first gazetted, and so a district may be left without a registrar for a week. He would repeat that arrangements might be made with the Fiscal for the public convenience to be met.

In this clause the following exemptions were added after "district Judges and Police Magistrates"—Advocates and Proctors" and "habitual petition drawers.

In Clause 323 the following was added to the list of exemptions :—"all persons duly admitted to practise as physicians and surgeons."

§ 324. QUALIFICATIONS OF A JUROR.

The Hon. J. VAN LANGENBERG:—I desire to draw the attention of Council to the report of the Retrenchment Committee recommending an increase in the qualification of English-speaking jurors to R1,500 a year, and of Sinhalese or Tamils jurors to R500 a year. The object of this is to

raise the tone and status of the juror, and as with that view the number of the jurors has been reduced to 9 the weight of serving on the Jury will fall more lightly than it does now.—By this restriction many postmasters would necessarily be disqualified.

The Hon. the QUEEN'S ADVOCATE remarked that the Deputy Queen's Advocate (Mr. Ferdinands) who had studied the subject very carefully had mentioned to him that he (the D. Q. A.) considered the qualification of an income of R500 a year was far too small in the case of English-speaking juries, and that it should be raised from R500 to R750 or R1,000. He (the Queen's Advocate) had not had the opportunity to consider the subject himself, but it seemed to him that it would be advisable to adopt Mr. Ferdinands' suggestion.

The Hon. the acting GOVERNMENT AGENT C. P. : said that he certainly thought that the qualification should not be raised to over a R1,000, as there are a very large number of people whom it would be advisable to secure as jurors—the subordinates in the estates, for example. They were a very valuable class of people, and if you make the qualification more than R1,000, the duty of serving as jurors would fall very heavily, on those who were not exempted. He thought a thousand rupees should be the limit, but certainly not above that.

H. E. the LIEUT.-GOVERNOR :—I may say that the Government are quite at one with the hon. member in thinking that the qualification should be raised; but we thought it better that the amount of the qualification should be fixed by the Legislative Council and that is the reason why the qualification has been left in the Code as it at present stands, in order that the Legislative Council and not the Executive Government might fix the qualification and fix the sum it thought most advisable. I think myself that R1,000 is high enough and that by fixing the qualification at that sum we shall secure a large number of useful jurors.

The Hon. J. VAN LANGENBERG :—I shall then move a substantive motion that the qualification be fixed at R1,000. (After a pause). I see something here about "property in his own or his wife's right." I do not see that because a man's wife is worth R1,000, he would therefore have the intelligence to sit on a jury. (Laughter). I must confess that it struck me as rather peculiar. In the case of a qualification to serve as juror, we look to the intelligence of the man, and his intelligence is generally gauged by the salary he draws.

The Hon. the acting GOVERNMENT AGENT, C. P. :—(Laughingly): I think it requires a certain amount of intelligence on the part of a man to secure a wealthy wife. (Laughter).

The Hon. the QUEEN'S ADVOCATE remarked that a very small amount of intelligence on the part of a man might secure a wealthy wife. (Laughter).

The Hon. J. VAN LANGENBERG :—I can understand it in the case of a Sinhalese or Tamil juror.

The Hon. the GOVERNMENT AGENT explained that the reason why a Sinhalese or Tamil gentleman whose wife was worth so much, was taken to be qualified to serve on the jury was this: that the property of the wife generally consisted of a personal estate and the man was engaged in looking after the estate, thus having a stake in the country, and if he had the intelligence to manage the estate, it was presumed that he had enough intelligence to enable him to sit on a jury.

The Hon. J. VAN LANGENBERG I don't want to delete the words, unless the Council is with me.

The Hon. the GOVERNMENT AGENT, C. P., was of the opinion that it would be very unadvisable to raise the qualification for Sinhalese jurors who have got R500 in property or R250 in income. He thought it would exclude a large number of very useful men. He would propose that the qualification should be R500 in value or R250 in income.

The Hon, the QUEEN'S ADVOCATE pointed out that under the proviso the Governor and Executive Council would have the power to reduce the amount of qualification: therefore if the qualification were fixed at a high figure and any difficulty arose hereafter in consequence, the Governor and Executive Council would have the power to reduce the qualification; but if the amount were fixed too low, they would not have the power to raise it. He therefore thought it better to be on the safe side by fixing a reasonably high figure.

H. E. the LIEUT.-GOVERNOR :—We have reduced the number from 13 to 9. The hon. member has perhaps forgotten that we have done so.

The Hon. J. VANLANGENBERG :—I see the Retrenchment Committee has recommended the abolition of special juries, but in some of the clauses we have already passed, provision is made for special juries. Perhaps with this qualification, I think, we might as well allow this to stand at R2,000.

SEC. 328. A PANEL TO CONSIST OF 18 JURORS.

The Hon. J. VANLANGENBERG :—Before we go further: it is stated here that a panel shall contain the names of 30 persons. So that there will be 3 panels consisting of 90 jurors in all.

H E. the LIEUT.-GOVERNOR :—I was intending to call the attention of the Council to this point.

The Hon, J. VANLANGENBERG thought that 18 would be quite enough.

H. E. the LIEUT.-GOVERNOR :—Perhaps 20 would be better.

The Hon. the QUEEN'S ADVOCATE said that the Deputy Queen's Advocate for the Island who had considerable experience in these matters thought that 30 was certainly too large a number and that the number might be reduced to 15.

The Hon. J. VANLAGENBERG remarked that the right of challenging was very rarely exercised. Only in special cases was the right availed of.

H. E. the LIEUT.-GOVERNOR considered that the impressing of bystanders into the service of the jury was by no means desirable. On the whole he thought that perhaps 18 would do.

It was ultimately resolved to fix the number at 18.

SECTION 355 :—

FOR HOW LONG CAN MAGISTRATES REMAND PERSONS BROUGHT TO TRIAL BEFORE THEM ?

His Excellency the LIEUT.-GOVERNOR :—I do not know whether it would not be advisable to leave this clause to be determined by the Governor and Executive Council. At present we have in several parts of the Island, Chilaw and Maravila for example, two Courts served by the same Magistrate. It will, therefore, be necessary to insert in such case, some exception from the provision that a person may be kept in prison for more than seven days. Now if the Court at Maravila was abolished, there would be no need to continue the exception in regard to Chilaw which could then again come under the ordinary provision of the section. If it is thought that the providing for such cases is a power which may be safely given to the Governor or Executive Council, it will facilitate the regulation in this respect of Circuit Courts. It will enable the Government to restore the duration of the first provision to Chilaw in the case I have above put, or in any place where the Circuit had been abolished, without an ordinance. The intention is this: that where a magistrate has to leave his principal court and go to another court, it may be a matter of necessity that the accused person should be detained more than 7 days, because otherwise he would have to be taken all the way from, say, Awisawella to Pasyala, in order to remand him. Or again suppose we desire to add a Circuit Court to any one of our present single courts we shall be unable to do so owing to the ordinance. Certainly it will be more convenient if the power be left to the Executive Council, instead of laying down a schedules, which could only be amended, or added to, by special legislation.

The Hon. the QUEEN'S ADVOCATE thought that the matter had better lie over for further consideration.

The Hon. the ACTING GOVERNMENT AGENT C. P. If this clause be passed there would be necessary

three times the number of endorsements that there are at present.

The Hon. the GOVERNMENT AGENT W. P: The only question is if the new procedure will be workable. Seven days is considered a sufficient time for a postponement. All that means, however, a great deal of trouble, and time, and the marching forward and backward of the accused from the prison to the Police Court and *vice versa*. Besides Police Courts can now sit anywhere. To go from 21 days to 7 days would be a very great jumble.

The Hon. the QUEEN'S ADVOCATE said that seven days is a sufficient time to remand a man. If a large discretion were allowed he was afraid that the largest margin would be availed of, and accused persons remanded for 14, 15 or 20 days. If the case is ready the Magistrate should go on with it. It will be a wholesome reminder to the Magistrate if the accused are brought up to the Court at intervals of 7 days.

H. E. the LIEUT.-GOVERNOR:—This clause was introduced in order that Magistrates may remand accused persons from week to week. Cases ought not to be allowed to go postponed in the way that he had heard some were. He had been told of terrible instances of postponements of cases: one in particular where a case was postponed for six months, and was then sent to arbitration! There were no doubt difficulties connected with the proposed system, but the Government were inclined to try it, as being the lesser evil of the two.

The clause was laid over for further consideration.

§ 356. COMPOUNDING ACTION FOR DEFAMATION.

The Hon. J. VAN LANGENBERG:—I find from the Indian Penal Code that the offence of defamation may be compounded by the person defamed. I should like to know why this has been omitted from the present list?

H. E. the LIEUT.-GOVERNOR:—It was done after due discussion in the Executive Council.

The Hon. the GOVERNMENT AGENT W. P.:—In the old edition of the Criminal Procedure Code the offence of defamation comes in the first section. When the Executive Council decided that no action for defamation should be brought without the sanction of the Queen's Advocate, this might well have been omitted from this table. But he thought it was only right that now that the Legislative Council had decided to allow an action for defamation to be taken by a private person without the sanction of the Queen's Advocate, this should be transferred into this table. The offence of "defamation" was therefore included in the list of offences which might be compounded, and was inserted in the table immediately below the offence of 'House trespass."

§ 362. OUGHT THE EVIDENCE TAKEN DOWN BY JUDGES AND MAGISTRATES TO BE INVARIABLY READ OVER TO THE WITNESSES?

The Hon. the Acting GOVERNMENT AGENT C.P.:—I do not see why, in the District Court or in the Police Court, there should be anything more necessary to be done than recording the answers given by the witness, as duly interpreted by the Interpreter. I think this clause will only increase the work of the Court and that it will delay the transaction of business. I see no reason for this provision whatever. Why should the statements of a witness, as interpreted and taken down in English, and signed by the magistrate, not be sufficient in a Police Court or District Court case? If the magistrate is competent to sit on the Bench, the evidence as taken by him should be unimpeachable.

The Hon. the GOVERNMENT AGENT W. P.:—It has been found unworkable even in Justice of the Peace cases. It would be impossible to allow every witness to have his evidence read over to him and then contradicted half-a-dozen times, and that he should be allowed to wrangle with the magistrate as to what he did or did not say, and that he should be accorded the right of explanation and stating the objection to it. I feel sure that in the case of a troublesome pleader or witness he would be able to take up the whole time of the magistrate.

The Hon. J. VAN LANGENBERG:—I do not myself, sir, see any advantage in this provision. As my hon. friend very properly pointed out, it will entail a considerable amount of work. I do not see any possibility of its being worked. In cases where depositions are taken down with a view to committal before a higher Court, it may be necessary. But where the judge has himself to try and to decide the case, I cannot see that any advantage will be gained by this provision.

The Hon. the QUEEN'S ADVOCATE:—I quite admit that it will necessarily entail a great deal of extra work. But if we do not pass this clause I think we shall have to go back to clause 360. I do not exactly know why these provisions were inserted, and therefore I cannot take upon myself to say that they should be struck out, but from the experience I have had before Inferior Courts elsewhere, I think it would be very difficult, if not impossible, in every single case for the magistrate to take down the evidence of every witness, and then for the evidence to be read over to the witness and for him to be allowed to make any explanations or alterations. The doing of all this will consume a great deal of time. In some countries such a proceeding would be impossible, unless the judicial staff were largely increased.

H. E. the LIEUT.-GOVERNOR:—There can be no doubt about it that if the Government pass the clause in its present shape, it must make up its mind to increase the judicial staff. In fact, it will be impossible for the present number of magistrates to carry out the provisions of the clause. If there is no particular virtue in this clause, I think it should be amended.

The clause was accordingly held over for consideration.

SEC. 369. PROCEDURE IN CASES WHERE THE ACCUSED HIMSELF IS EXAMINED.

His Excellency the LIEUT.-GOVERNOR said it would be very necessary in such cases to take down the whole statement of the accused.

The Hon. the GOVERNMENT AGENT W. P.:—Section 353, by which provision is made for the accused party himself to make a statement and be examined thereon, makes a revolution in Criminal law. If a man does not make a statement but is defended by counsel, he may be examined by his counsel as a witness is examined in chief, and the prosecution will have the right of cross-examination.

His Excellency the LIEUT.-GOVERNOR thought that in such a case every question that is put to, and every answer made by the accused person would require to be taken down.

The Hon. the GOVERNMENT AGENT W.P.:—Does the "statement" refer to the statement mentioned in 353 only, or to all statements?

The Hon. the QUEEN'S ADVOCATE:—I should most strongly urge that the statement and examination of the accused be taken down word for word, because it may be used as evidence against him.

H. E. the LIEUT.-GOVERNOR:—I think this section should stand as it is.

CHAPTER XXVI.

§373—ALTERNATIVE JUDGMENTS WHENEVER JUDGE DOUBTFUL WHICH OF TWO OR MORE OFFENCES COMMITTED.

The Hon. the QUEEN'S ADVOCATE said that the 3rd paragraph of this clause must be struck out, and that the copy of the judgment should be given to the accused party not "free of cost" but "on such terms as to charges as may be approved of by the Governor in Executive Council." He moved that these words be substituted for the words "free of cost."

Agreed to.

CHAPTER XXVII.

EXECUTION.

§ 375 (e). 'The Fiscal and the Jailor of the prison and such Justices and other persons present as may be

required or allowed shall also sign a declaration to the effect that judgment of death was executed in their presence on the prisoner who had been executed."

The Hon. the GOVERNMENT AGENT W. P. asked whether everybody present at any execution would be required to sign the declaration.

His Excellency the LIEUT.-GOVERNOR said only such persons as the Fiscal might require.

The Hon. the GOVERNMENT AGENT W. P. inquired whether the Fiscal would be bound by this section to carry out the sentence of death immediately on the expiration of the usual respite of a month even if no communication were received from the Governor.

The Hon. the QUEEN'S ADVOCATE :—He is bound to obey the order of the Court. The law in force in the Colony, there can be no doubt, contemplates a certain fixed day on which the sentence is to be carried out. The interval between the pronouncing of the sentence and this day is considered a sufficient time to give opportunity to the Governor to peruse the papers and make an order if he thinks necessary. The execution is to be carried out in virtue of the warrant issued by the Judge of the Supreme Court, and not by virtue of any warrant issued by the Governor. In some other colonies the practice is very different, the execution being dependent on the Governor's warrant. Indeed, he (the Queen's Advocate) thought it would be excessively doubtful if a sentence of death, unless the sentence were respited by the Governor, could be carried out on any other day than that fixed upon by the judge.

The Hon. the GOVERNMENT AGENT W. P. said he remembered that in a Batticaloa murder case many years ago certain complications arose in the matter of the execution of the prisoner, and it was then decided that no Fiscal should carry out the sentence of death till he has had the Governor's approval.

The subject dropped.

CLAUSE 376.—SHOULD A PREGNANT WOMAN CONDEMNED TO DEATH BE EXECUTED ?

The Hon. the QUEEN'S ADVOCATE said, with reference to this clause, that there was no provision made as to how its provisions were to be carried out. He would propose to delete this clause and to insert the corresponding English clause of the Criminal Procedure Code of 1870. The clause as it now stands does not state how the fact of being pregnant is to be ascertained. He would therefore propose to insert the English clause as follows :—"If sentence of death is passed upon any woman, she may move an arrest of execution on the ground that she is pregnant. If such a motion is made, the court shall direct one or more medical practitioners to be sworn to examine the woman in some private place, either together or successively, and to enquire whether she is with child of a quick child or not. If upon the report of any of them it appears to the court that she is so with child, execution shall be arrested, or until it is no longer possible in the course of nature that she should be so delivered."

The motion was agreed to.

§ 375.

The Hon. the GOVERNMENT AGENT W. P. said that, before the Council adjourned he wished to revert again to clause 375. He found that under the rules and orders of the Supreme Court the Fiscal was prohibited from carrying out a sentence of execution until he hears from the Governor, notwithstanding that the day fixed for the execution was passed. It is only continued the hon'ble member with a view of ascertaining whether it is the intention of the council to carry out this clause, that I bring the subject up. I think myself that if the judge fixes a day, the fiscal is bound to carry out the sentence on that day, and if he does not do so a difficulty will probably arise.

H. E. the GOVERNOR :—Perhaps this clause will conflict with the Governor's Instructions, which are a part of the constitution of the colony—and we should not pass any law which conflicts with those instructions—and according to the Governor's instructions no sentence of death can be carried without his warrant.

The Hon. the QUEEN'S ADVOCATE said he had already observed that in many colonies the practice was very different, and he thought that possibly a difficulty might arise if the sentence were not carried on the day mentioned by the judge. He remembered in this connection a rather singular case. It was that of a judge who in sentencing a man to death, omitted forgetfully to say that the man should be hanged *till he was dead* ; and there was afterwards very considerable doubt as to whether the man should be hanged or not.

The Hon. J. VAN LANGENBERG said, he believed there was now a change in the form of the sentence of death. Formerly in passing a sentence of death, the judge specified the precise day on which the man was to be hanged ; but as some difficulty arose, the form of the sentence was altered in consequence, and the punishment respited for a month simply with a view to preventing such a difficulty occuring again.

The clause was held over for consideration.

SECTION 378 :—

The Hon J. VAN LANGENBERG said, that under this clause the warrant of commitment was to be directed to the Fiscal or Deputy Fiscal. He would like to ask in whose custody the prisoner may be said to be in then ? He drew attention to the matter, because he thought that the direction under the clause conflicted with section 81 of the Prison's Ordinance (16 of 1877). He did not know if it was intended to place convicted persons in the custody of the Fiscal or under the Superintendent of Prisons.

His Excellency the LIEUT.-GOVERNOR :—The gaoler must be the person to take charge of the prisoner. There are some stations where there are no Fiscals.

This clause was passed.

The Council adjourned to Saturday, 8th Sept.

SATURDAY, SEPTEMBER 8.

Present :—His Excellency the Lieut.-Governor (President), the Hons. the Colonel Commanding, the Acting Colonial Secretary, the Queen's Advocate, the Acting Auditor-General, the Treasurer, the Government Agent W. P, the Acting Government Agent C. P., the Acting Surveyor-General, and the Hons. J. Van Langenberg and P. Rama Nathan.

Absentees :—The Hons. A. L. de Alwis [illegible] L. Shand.

The Hon. the ACTING COLONIAL SECRETARY laid on the table the following paper :—Return to an order of the Legislative Council :—"That a return be furnished showing :—(1) List of churches towards the erection of which Government has contributed. (2) List of churches where Government has exercised patronage, stating from what fund or funds the clergyman's stipend was paid. (3) A statement showing for each church in the island in detail in whom patronage vests, and when Government patronage ceases.

CRIMINAL PROCEDURE CODE.

The Council resumed consideration in Committee of the Criminal Procedure Code.

The Hon. the QUEEN'S ADVOCATE :—Before proceeding further with the Criminal Procedure Code I would ask leave to add to the interpretation clause, the following words by way of definition of the term "Supreme Court";—"Supreme Court of the colony of Ceylon for the time being, or the Chief Justice, or any judge thereof."

The Hon. the Actg. GOVERNMENT AGENT C. P., said he presumed that a "Commissioner of Assize" would be included under the term "Judge of the Supreme Court."

His Excellency the LIEUT.-GOVERNOR said that it would be so. In making the rules it would be necessary to mention "two judges" or "three judges of the Supreme Court" as the Council might think proper.

The words proposed by the Hon. the QUEEN'S ADVOCATE were then agreed to be inserted.

SECTION 404 :—NO APPEAL AFTER PLEA OF GUILTY.

The Hon. P. RAMA NATHAN said that he objected to this clause because he knew of cases where persons had pleaded guilty and subsequently found just reasons to appeal against the sentence. In our courts there are various classes of complainants, such as police officers and others. It frequently happens that these men persuade the accused to plead guilty, saying that the magistrates would deal leniently with them in such a case, and pass a light sentence upon them. To their dismay they find that the magistrate passes a heavy sentence on them in spite of their plea and they appeal. On appeal it frequently happens that the sentence is mitigated. He had himself pleaded such cases before the Supreme Court. He thought that the clause if carried would work very prejudicially. He desired to know what his hon. and learned friend opposite thought of the clause.

The Hon. J. VAN LANGENBERG thought that in any matter where coercion was used to make the accused plead guilty, the Executive could interfere. He would move to amend the clause by adding the words in the Indian Code "except as to the extent or legality of the sentence." As regards the right of appeal to the Supreme Court on the legality of the sentence, he thought that right should not be taken away, as it was a right which had been successfully exercised.

The Hon. the QUEEN'S ADVOCATE said that the consideration of that amendment should be postponed until the Council got lower down in that chapter. The amendment would affect section 406 The hon. member must bear in mind that appeals are not allowed in every case. And so with clause 413. Of course it might make a difference whether we allowed clause 406 to stand as it does now or not. Clause 406 provides there should be no appeal when the punishment is under a certain account except upon a question of law. An appeal upon a sentencemay perhaps be considered a question of law. The amendment had better be postponed till the Council had come to clause 406, which introduces a change from the present system. The present systemallows an appeal even upon questions of fact in every case.

His Excellency the LIEUT.-GOVERNOR :—I am afraid the hon. member (Mr. Rama Nathan) will scarcely consider it fair if I ask him a question in regard to clause 409. Now it is well-known that the Supreme Court is flooded with work, owing to appeals taken upon false and frivolous grounds with the simple object of delaying the operation of the sentence. I am of opinion that a stamp of R5 had to be affixed on every appeal, as contemplated in clause 409, there would be a sufficient safe guard against such appeals. If the hon. member is inclined to oppose that, it would be perhaps better to discuss that clause first.

The Hon. P. RAMA NATHAN said that he had an objection to that clause, but would not oppose its discussion before § 406, if His Excellency desired that the discussion on the subject of appeals should be taken all at once.

The Hon. J. VAN LANGENBERG :—We had better take up clause 409 first.

SECTION 409 :—EVERY PETITION OF APPEAL SHALL BEAR A STAMP OF FIVE RUPEES.

The Hon. P. RAMA NATHAN said that he could not better illustrate his view than by stating what had taken place that very day in the Colombo District Court. Six men were charged with aggravated assault. Of these, two were sentenced to imprisonment and three were fined R10 each. These men waited till the close of the day, and then went to the judge's chambers and told him with a great deal of weeping and lamentation how utterly unequal they were to pay the fine. The non-payment of the fine meant one month's imprisonment. The judge it is said was so overcome that he ordered the Secretary to enlarge these men on bail, and if they failed in payment the Judge, he heard, was going to pay the fine himself.

His Excellency the LIEUT.-GOVERNOR :—Hearsay is not evidence ! (Laughter.)

The Hon. P. RAMA NATHAN (continuing) :—Now, if these men were unable to pay a fine and so release themselves, it is not likely they would have the wherewithal to pay R5 for a stamp in addition to the other expenses attendant on the lodging of an appeal. In the Supreme Court there are about 1,000 cases coming up annually by way of appeal from Police Courts. It is true that a large proportion of these cases are unimportant. But yet a large number admit of good grounds of appeal, though the Judges are averse to interfering on questions of fact. If a clause of this kind were passed, it will be the means of depriving a *bona fide* appellant the opportunity of his case coming up in review. He (Mr. Rama Nathan) would rather that a multitude of frivolous cases be brought up in appeal, than that people should be deprived of their lawful rights. He would ask that the part of the clause making it essential that every petition of appeal shall bear a stamp of five rupees be deleted, and that one rupee should be substituted for five. His Excellency would remember that it was deemed advisable that Police Court plaints and summonses should bear a small stamp, and that a stamp fee of 25 cents had had the effect of putting down litigation to a great extent. He therefore thought that a stamp fee of one rupee would have the same effect in putting down frivolous appeals.

The Hon J. VAN LANGENBERG said that in looking at the correspondence that passed between the Secretary of State and Mr. Burnside there was no mention made of such a procedure as that they were now discussing. It was originally intended that the party who desired to prosecute an appeal should give security. The Secretary of State, however, disallowed this on the ground that it might be oppressive in some cases. This provision also was not to be found in the draft Procedure Code. So that it must have been put in subsequently to check what was considered to be a very great evil. It was deemed unnecessary to burden the Supreme Court with a vast amount of business. This fee of R5 would however prevent many from seeking that redress which they were entitled to get. He considered the charge a quite prohibitory one. The proper remedy for checking false and frivolous appeals was to be found in the present law. That law was framed for the special use of the Supreme Court Judges. It was only the other day that the Chief Justice called upon a man to shew cause why he should not be fined for lodging a false and frivolous appeal. The provision is contained in the Ordinance 7 of 74, clause 7 :—" It is hereby declared that the Supreme Court or any Judge thereof hath jurisdiction to punish by fine in its discretion all appellants of false, frivolous or vexatious appeals from Police Court decisions." That would be the proper remedy to be pursued. That the evil existed there could be no doubt. The only question was whether this was the right course whereby to check it. He considered it both impolitic and unwise, and he felt that it would act somewhat injuriously upon innocent parties. Take the number of cases in which the Supreme Court had set aside convictions from inferior courts, and then it will be clearly seen that if we lay down the rule that every party appellant should present his petition of appeal upon a stamp of five rupees, it would be to take away the right of appeal from a large number of innocent people. He would therefore suggest the insertion of the provision in Ordinance 7 of 1874 in lieu of this, and that a party should be mulcted in five rupees if he is proved to have lodged a false and frivolous appeal. This would act as a powerful deterrent. According to this clause, the rich suitor would have an advantage over the poor. A rich man could easily place a five-rupee stamp on his petition of appeal, whereas if the clause that he suggested were inserted, the man upon whom the odium was thrown would have to pay the fine of five rupees. He felt sure that that power would be exercised only upon the clearest and most manifest proof of a false and vexatious appeal having been lodged.

The Hon. the QUEEN'S ADVOCATE said that it would be scarcely necessary for him to say that the fee of

five rupees was that settled upon after long consultation by the Executive Council, and they did this because it seemed to them expedient to check frivolous appeals. The hon. member who last spoke quoted an ordinance that has been in force for the last seven years and recommended the insertion of the 7th clause of that ordinance into the Procedure Code. The hon. member said that if that ordinance were carried out, there would be no necessity of imposing the stamp fee of five rupees. If that be the case, he (the Queen's Advocate) was at a loss to know why frivolous appeals exist today. It is difficult to think that this ordinance will be made use of. During all these seven years he believed there had been only one case where the appellant was punished for bringing in a false and frivolous appeal. The Supreme Court may come to the opinion that a certain case was a false one, yet at the same time as it is difficult to dive into a person's motives, very likely the Supreme Court must have hesitated in making use of the power given to them. If some check were put, in the very institution of an appeal, he considered it would be a very much better course to adopt. It must also be remembered that it was only a Petition of Appeal that required a stamp. The intending appellant would have a certain time to consider whether he has good grounds for appeal or not. He (the Queen's Advocate) could scarcely see that there would be any great difficulty for the intending appellant to obtain in the course of a few days the sum of five rupees If the sum is considered to be one which would practically put an end to all appeals, that was another question. But there can be no doubt that the matter was fully discussed, before this sum was finally agreed upon. All in Council are however agreed that some check must be put by this means, by the clause of the Ordinance 7 of 1874, or by some other means on frivolous appeals. It must be remembered, with regard to this Ordinance that in all the years in which the Ordinance had been in operation, only one case is on record in which the Judges took advantage of the clause referred to. Itwill be for the Council to decide what particular means to check unnecessary appeals they should adopt.

The Hon. the Acting Government Agent C. P. said he felt very great hesitation in agreeing to anything which would prevent the lodging of appeals, although he would not venture to vote against the introducing of a stamp duty on such petitions. Whether the circumstances of the Colony called for it he knew not but he felt great doubts as to the expediency of the step now contemplated. It seemed to him that if one of the specific purposes of the Supreme Court was to attend to the appellate work of the Colony, it was not proper that any step should be taken whereby to defeat that purpose. The endeavour should be to check appeals and not prevent them, and therefore some procedure analogous to that mentioned in clause 7 of the Ordinance 7 of 1874 was still open to them It had been said that this ordinance had not been found efficacious in checking appeals on frivolous grounds, and it seemed to him that perhaps this arose from the wording being too strong—"false, frivolous or vexatious appeals." The Judges of the Supreme Court were perhaps unwilling to pronounce that any appeal that came before them was utterly false, frivolous or vexatious. A new enactment might perhaps be made, that if any appeal appeared to the Judges to be an improper or unnecessary one they should mark their sense of disapprobation by levying a fine on the appellant. If the fine were only imposed in a few cases, the people would soon discover that there was no use in taking such appeals, and what was more important their legal advisers would be more careful about sending up appeals.

The Hon. the Government Agent W. P. said that he was himself opposed to the imposing of stamps in criminal cases, and more particularly of stamps on petitions of appeal. This is a stamp fee which will have to be paid whether the party be successful or not. If he is unjustly condemned in the lower Court he has still to pay rupees 5 before he gets redress. That he considered to be quite indefensible. Still he was of opinion that the spirit of lodging frivolous appeals should be checked. The Supreme Court does not like to levy such fines, as has been proved by their slowness to take advantage of the clause in Ordinance 7 of 1874. He would therefore propose that in all cases where an appellant has been successful in appeal the amount of the stamp fee should be returned to him. Also that the Supreme Court may have power to remit the payment of the stamp fee. The Supreme Court could say where they considered that an appeal might have been lodged. The appeal might have been on a point of law, and the Supreme Court could say where the point was a good one to raise, although they did not give judgment in favour of the appellant. Mere non-interference by the Supreme Court, with the decision of the lower Court, should carry with it a small fine. In what way a clause may be constructed including all the points must be left to the Queen's Advocate to say. He (the Government Agent W. P.) thought that power should be given to the magistrates to permit in special cases an appeal going, even though parties could not pay the amount of stamp fee.

His Excellency the Lieut.-Governor said the grounds for the introduction of the clause into the Procedure Code were two-fold. There was first the minor ground of the imposing of unnecessary work on the Supreme Court. It was a most undesirable thing that the time of the highest tribunal of the Island, which might be profitably employed in considering important decisions should be frittered away in cases where one, two or three rupees were at stake. The time of the Supreme Court ought to be expended on causes involving something more than this. Again since appeals now, strictly speaking, cost nothing, it is used too often merely to postpone and to defeat the ends of Justice, and appeals are instituted merely to gain time. If a person adjudged guilty of a charge does not wish to pay a fine or go to gaol he forthwith lodges an appeal in order to delay the punishment by a considerable length of time.

The Hon. P. Rama Nathan :—There is no greater delay than six weeks.

His Excellency the Lieut.-Governor :—In some cases six or seven months.

The Hon. J. Van Langenberg :—Not in [illegible] Court cases.

His Excellency the Lieut-Governor :—But if it be so, if the appeal is merely lodged in order to defer payment, then something must be done. As to the amount of stamp fee to be charged that is a mere matter of convenience. Something he felt must be done to put a stop to the number of trumpery cases that are sent to the Supreme Court. After the appeal is lodged no further steps are taken by the appellant, and the decision of the inferior Court is generally affirmed. As regards the hardship referred to of those who could not pay the stamp fee, he remarked that people in this country always find enough money to go to law with. Those unfortunate men who made such an impression on the heart of the District Judge would perhaps, if searched, have had the money required from them in their pockets. Nothing was more common than for people to say they have no money to pay for the Road Commutation Tax. But when they are searched, as some magistrates have properly caused them to be, the amount required from them has frequently been found neatly done up in their pockets! He could not therefore uphold the objection to this clause or the ground of hardship. The existence of a clause in the Ordinance 7 of 1874 did not give a sufficient safe-guard. If a safe-guard in existence for nine years, has proved inoperative, he was afraid we must not depend upon that to check frivolous appeals in the future. The Supreme Court has been loudly complaining of the mass of useless work with which it has to cope.

If the remedy be an easy and applicable one the Supreme Court during these nine years would have found it so. The infliction of an *ex post facto* fine was always a difficulty. Now this is what frequently happens. A man is found guilty by the magistrate and sentenced to a fine. He sends an appeal. The appeal is not heard of it for at least six weeks. During the interval the man has generally got rid of whatever property he possessed, and the consequence is he has to be sent to prison in lieu of the fine. He (the) Lieut,-Governor) was himself very much opposed to sending men to prison for non-payment of a fine because it tended to vulgarise the idea of imprisonment. It took away the sting of the imprisonment and made it very little degrading. This is not a question in which the Government has any policy. They were burdened with an evil which ought to be remedied. If the remedy now before them was judged to be indefensible, hon. members must provide some other remedy to grapple with the disease.

The Hon. P. RAMA NATHAN :—Under our Code no stamps are required to be paid for plaints in Police Court cases. Therein we befriend the complainant—but we are prepared to do some injustice to the accused party who generally are the appellants.

The Hon. the ACTING COLONIAL SECRETARY said that it appeared to him to be necessary to provide some check on frivolous appeals. He thought that the power which was vested in the Supreme Court had not been used, and was not likely to be used. He should be inclined to move that a stamp fee of R5 be required from each appellant, but he would allow magistrates the power to allow a petition of appeal to go up without the stamp fee, if they were satisfied that the appellant had good grounds for appealing or that he was a pauper. Police Magistrates have the power even now of allowing unstamped process to be filed in certain cases, and there would be no difficulty in extending the power to appeals. He would move that the course he had sketched out be adopted.

The Hon. J. VAN LANGENBERG :—The true remedy for frivolous appeals should be in the nature of punishment. If on non-payment of the fine the liberty of the individual is taken away, it will be found such a hardship that frivolous appeals would sensibly decline. If the Supreme Court had only exercised the power given to it by the Ordinance, a great check would have been given to frivolous appeals. It would be interesting to know what was the number of appeals from the Police Courts that came up shortly after the Ordinance of 1874 came into operation. The Supreme Court should exercise the power given them. The power was not given them to be not exercised, but to be exercised by punishing the guilty party. But by the clause we are punishing everybody, the innocent as well as the guilty. His objection was on a question of principle. The only way of punishing a party who lodges a frivolous appeal is by imposing a fine as at present provided. Simply because others abuse the privilege that was no reason for withdrawing the privilege. There was the evil of the right of appeal being abused. The only remedy for that was to punish the party appellant. He hardly thought that in the case of appeals from decisions of the Police Courts, those appeals were taken with a view to gain time. Some years ago the appeal work was in arrears, but by the introduction of a different system, the work was kept abreast of the demands made on it. Decisions are now prompt and they were, he believed, duly carried out into effect. The proper remedy for the evil is to punish the guilty party. His Excellency had said that where a man was punished by way of fine it would be difficult to get at him. But he (Mr. Van Langenberg) confessed that he saw no difficulty, as the party would either be in custody or have to give bail for his appearance It had also been said that the work of the Supreme Court is by means of these appeals considerably increased. That was a fault inherent in the very constitution of the Supreme Court. The work of the Supreme Court could no doubt be considerably lightened. And the only remedy for that is either to have more judges or to establish another and an additional court of appeal. Or the Police Courts might be empowered to appeal to District Courts and District Courts to Supreme Courts. We have our constitution and wish to keep to it. If the Supreme Court knows that that is the only way of effecting a change, the Supreme Court will give effect to the Ordinance and the evil will be checked. When a man has been fined one rupee, he can appeal against it and the work is thrown on the Supreme Court and the Supreme Court must do the work. Men with less judicial qualifications might be appointed to decide these cases We are going to abridge the right of appeal by imposing a tax upon all appellants. By thus doing we in express terms take away the right of appeal. The right course to adopt is to follow the Ordinance 7 of 1874 and to give the Supreme Court, the power and to make it exercise the power in obedience to the wishes of the legislature.

His Excellency the LIEUT.-GOVERNOR :—The Supreme Court considers that it should impose so much by way of Crown costs. We tell the man who has raised the appeal :—"You have put the whole machinery of justice in motion for the purpose of securing the reversal of a sentence. You must therefore pay such a sum by way of Cnown costs.'

The Hon. the J. VAN LANGENBERG :—I wish to guard against anything like this mulcting of the successful party. If the Supreme Court has the power of punishing the man who has lodged the frivolous appeal, let it be made to exercise it.

The Hon. the GOVERNMENT AGENT, W. P. :—It seems to me that we are all agreed that the principle should be that an unsuccessful appellant should be punished. But the question is how to punish him ? The hon. member (Hon. J. Van Langenberg) says that the provision of the Ordinance 7 of 1874 will answer. But I must say I see no reason to suppose that the ordinance will work a bit better in the future than it has done in the past. We then come to consider how we can punish an unsuccessful appellant without at the same time materially injuring or punishing the whole community. We should recollect who are the persons who will be required to pay this stamp fee. They will only be persons who have been accused of crimes and who after a trial have been found guilty, so that to a certain extent they must be prepared to be put to a small amount of inconvenience and perhaps cost. But we should endeavour to make that only temporary costs, if it should turn out that the Court has been mistaken and that the man ought not to have paid the fee. I would therefore commence my amendment by stating that in all cases where an appellant has been successful in appeal, the amount of the stamp shall be returned to him, and then the proviso suggested by the Acting Colonial Secretary might be inserted after, to the effect that, if the court from which the appeal is taken shall see fit it may allow the stamping of the appeal to be deferred until after judgment in appeal, when it shall be recovered or not according to the result of the appeal and that the Supreme Court shall have the power to remit all or any such stamp fees. An appellant might appeal to the Supreme Court and say to the Magistrate : "I feel perfectly convinced that the Supreme Court will reverse your decision : will you allow my appeal to go ?" If he is successful the fee under the first provision is dropped out altogether. It seems to me that such a system is more likely to work. I should be very glad if the same rule be adopted in the case of Crown costs, but I think it will be found that the Supreme Court will as they do now very seldom inflict the costs. If a five-rupee stamp is made a fee, the Supreme Court will have the power to tax it on with the Crown costs, and this is what they are more likely to do.

The Hon. the QUEEN'S ADVOCATE :—I think the Supreme Court would be more inclined to remit than to impose a fine. Crown costs would simply refer to the fine of R5. I think it will be very reasonable to give discretion to Courts, to allow in certain cases the

payment of the the fee to stand over until the case is settled by the appellate Court.

The Hon. the TREASURER:—I think it would be best to let the stamp fee stand as proposed at R5, unless the judge or magistrate countersigns the petition in proof of his opinion that there are good grounds for appeal. I don't suppose any judge or magistrate would object to doing this.

The Hon. the QUEEN'S ADVOCATE:—There might be cases in which a judge might be very happy that an appeal should be taken from his decisions on questions of law. But on questions of pure fact or on questions of law about which there is not the least doubt whatever, a judge or magistrate might be rather reluctant to forward an appeal with the statement that he saw 'reasonable grounds' for sending it.

The Hon. P. RAMA NATHAN:—I may mention that the idea of Crown costs is on all fours with the imposing of a stamp duty.

H. E. the LIEUT.-GOVERNOR:—Yes, the Supreme Court will not assign over, or fail to exercise the power of levying costs.

The Hon. the QUEEN'S ADVOCATE:—As the law now stands an appeal can be taken on a matter of fact, not merely on a matter of law. No doubt if the former right were removed, a great many appeals would be stopped.

H. E. the LIEUT.-GOVERNOR:—I think the discussion has gone far enough. There are two motions before the Council: (1) That clause 409 be deleted. (2) That other words be added to the clause.

That Cl. 409 be deleted.

Ayes.	*Noes.*
The Hon. W. W. Mitchell	The Hon. the Acting Surveyor-General
„ P. Rama Nathan	„ Acting G. A., C. P.
„ J. Van Langenberg	„ Treasurer
„ Govt. Agent, W. P.	„ Acting. Auditor-Genl.
H. E. the Lieut.-Governor	„ Queen's Advocate
	„ Actg. Col. Secy.
	„ Officer Commandg.

Ayes 5. Noes 7. Amendment lost.

H. E. the LIEUT.-GOVERNOR. The second motion before the Council is, that the Clause be retained with the following provisoes.

(1.) To return the stamp fee to a successful appellant.

(2.) To give the inferior Court power to forward an appeal without a stamp in special cases.

(3.) To give the Supreme Court power to remit all or any such stamp fees.

The Hon. the QUEEN'S ADVOCATE:—These are not to be the exact words I presume.

Ayes	*Noes.*
The Hon. W. W. Mitchell	None.
„ P. Rama Nathan	
„ J. Van Langenberg	
„ Actg. Surveyor-Genl.	
„ Actg. G. A., C. P.	
„ G. A., W. P.	
„ Treasurer.	
„ Actg. Auditor-Genl.	
„ Queen's Advocate	
„ Actg. Col. Secy.	
„ Officer Commanding	
H. E. the Lieut.-Governor	

Clause as amended carried.

THE RIGHT OF APPEAL ON QUESTIONS OF FACT:

SHALL WE RETURN BACK TO THE POLICY THAT EXISTED ANTERIOR TO 1874.

Clause 406 was next taken up. The clause runs as follows:—"Except as excepted in the last preceding sections, there shall be no appeal from a District Court in cases in which such Court passes a sentence of imprisonment not exceeding three months, or fine not exceeding one hundred rupees; nor from a Police Court in cases in which such Court passes a sentence of imprisonment not exceeding one month, or fine not exceeding twenty-five rupees; unless upon a matter of law."

The Hon. P. RAMA NATHAN: I move the deletion of this clause, sir. I do not think that I need speak at length about this clause. Hitherto every judgment that may be passed in the District Court is subject to an appeal, and the same remark may be made as regards the Police Court, provided the judgment has the character of finality about it. I do not know, sir, that the standing and qualification of judges in Ceylon have risen since the ordinance 11 of 1868 was passed. The character of the men who administer justice is very much the same as it was in 1868, and, unless the colony can afford to get a better class of men as judges, I do not think it fair that the inhabitants of Ceylon should be deprived of a privilege which they prize very highly indeed. I am aware that in India the rule is different, and I believe that this clause has been borrowed from the Indian Code. I think, however, that this is one of those matters in which we need not copy Indian models.

The Hon. the GOVERNMENT AGENT W. P.: Might I ask sir, why the words in the original clause, "or unless with the leave of the Court," are left out?

H. E. the LIEUT.-GOVERNOR: It was thought it would be invidious to allow the words to remain.

The Hon. J. VAN LANGENBERG: I do not know, sir, what really is the ground upon which this provision is based: whether it is out of tender consideration to the fact of the Supreme Court being overburdened with work, or whether it is considered we shall secure a certain amount of justice from those who are called upon to administer justice, if the right of appeal in certain cases is taken away. Hitherto in every case tried by a Police Magistrate the right of appeal has been accorded, and the discussion which took place today upon the 409th section sufficiently expresses our views upon the impolicy of in any way abridging the right of appeal. In every civil case—even in a case involving perhaps only a rupee—a party has the right of appealing to the Supreme Court and engaging its attention. So in the case of Gansabawas, if a person feels aggrieved by the decision of a Gansabawa upon a complaint made before it, there is a right of appeal to the Government Agent in the first instance, and to the Governor in the next. But here we propose by this clause to abridge to a great extent the rights which have been hitherto enjoyed by all persons convicted, of seeking redress against what they may consider [illegible] unjust conviction. Unless, indeed, there be [illegible] grounds—and certainly none have yet been [illegible] fore this Council—to show why this privilege [illegible] be abridged, I should simply feel it my duty to oppose this section. I think in all cases—more particularly in matters affecting the administration of justice—where the rights and liberties of the subject are concerned, it is absolutely necessary, before any person is deprived of his liberty, that he should himself have confidence to a great extent in the Court which punishes him, and that he should also have the best assistance and the best opinion expressed upon his case. Now, here an incalculable amount of mischief might be done by a magistrate passing a sentence of imprisonment of one month or imposing a fine of R25. I think that a provision of this kind would have the effect of introducing a considerable amount of laxity in the work of our inferior courts. If it be known that a judgment can be passed by a judicial officer without any prospect of his decision being reviewed by, or brought before, a higher court he may, perhaps, not use that amount of care and attention which, perhaps under other circumstances, he would do. I am not mentioning any individual, but I am making a general statement, and it is a statement which will, I believe, be borne out by those who have had experience in these matters. I have heard it stated that even now, where Police Magistrates have the power of inflicting a punishment of three months' imprisonment, they inflict the lesser

punishment of two months, because it has been communicated to them that the gaol discipline is such that a man really undergoes greater hardship during a period of two months' imprisonment than of three. I do not know whether it be the case or not, but it is generally stated to be the case. Perhaps in a case where a magistrate knows that his judgment cannot be appealed from, he will be less careful. However, it is not on the question of want of attention on the part of judicial officers, or the incompetency of judicial officers, that I base my opposition to this section. My opposition is founded upon much higher ground. I take the stand that no man can be deprived of his liberty—no man can be punished—unless he has had his case brought in review before the highest Court and that Court has pronounced an opinion upon his case. We have, unfortunately, in the provision which we felt bound to make, increased the work of the Supreme Court so very much that the Supreme Court is overburdened with work. True it is that the work of the Supreme Court has considerably increased. But we should not be doing right, if, simply keeping in view the fact of the Supreme Court being overburdened with work, we legislate to the detriment of the subject. It is our duty, while doing all we can to check the evils which exist in the administration of justice—evils such as were alleged to exist in the previous discussion—to keep in view what really should be our prime object: that is, to see that innocent men are not punished. It is a trite saying that it is better that 9 guilty men should go unpunished rather than that one innocent man should suffer. But here the liberty of the subject is affected by this section, which gives a magistrate the power of imprisoning a person for one month without the right being accorded to that person of appealing to the Supreme Court. We know of numbers of cases in which the judgments and sentences of Police Courts have been set aside by the Supreme Court. We have known of instances in which the Supreme Court has felt it its duty to strongly animadvert upon the course of procedure adopted by the magistrate, and to set aside or vary the sentence, and sometimes also to condemn the lax manner in which business has been conducted in the court below. These are the matters which can only be brought before the Supreme Court by means of an appeal, and, when an appeal is taken upon any matter which affects a man's liberty, no time that is spent in the consideration of his case should be considered as time lost. As I have already mentioned, this appellate work is work imposed upon the Supreme Court by law. If it is possible to devise any other system by which the work of the Supreme Court can be lightened, we might do so. But so long as the present system continues, and so long as the constitution of the Supreme Court is what it is, the appellate work must be done by that Court and by that Court only. It is one of the incidents of the system that all the appellate work of the country should be done by the Supreme Court. The Supreme Court must be prepared to do it. As I said before, I do not know upon what foundation this provision rests, but certainly I am sure it cannot be urged that it is done out of regard to the heavy work of the Supreme Court, but there must be other considerations which induced the Government to bring in this provision. I, for my part, feel strongly upon this question, and I consider that in no case should the right hitherto enjoyed be denied to a party aggrieved. We have had Police Courts at work from 1843 up to 1874, and the decisions of Police Magistrates upon questions of fact were considered as final. No party had a right, except upon a question of law, to appeal to the Supreme Court, and it was only in 1874 that the right of appeal on questions of fact was given, and the Supreme Court was also given the power of punishing persons who brought appeals upon frivolous and vexatious grounds. Though there was the right of appeal on questions of fact given in 1874, the power of punishment was given to the Supreme Court to meet the evil which we are now trying to guard against. While the evil may be said to have been admitted—at all events it was suggested that the Supreme Court should have the power of punishing parties who bring frivolous appeals—yet the Legislature thought it necessary that the right of appeal should be given on questions of fact as well to aggrieved parties. Now, that right has been exercised from 1874 up to the present day, and the policy of the Legislature has therefore been a progressive one. We are now going back to 1874 by denying in a certain class of cases the right of appeal to an aggrieved party—a right which he acquired by the legislation of 1874, when, after an interesting debate in the Council, it was considered necessary that there should be such a provision as is now sought to be taken away by this section of the Code. I would only refer to the observations made by Mr. Ferdinands, who then occupied the seat which I have now the honor of occupying, but who is at present the Deputy Queen's Advocate for the island, in which he says:—"I am glad to see in this Ordinance (an Ordinance to amend the administration of Justice Ordinance, 1868) the clause allowing appeals on questions of fact. How the anomaly was introduced, or allowed so long to exist, of a difference between civil and criminal cases is a marvel to me. A man might appeal before he pays a sixpence, but when his liberty is curtailed or his body is to be lacerated he should not have this right. The thing has only to be mentioned and the Council will see the injustice in all its hideousness." Now, sir, are we in a better position in the present day than we were in 1874? Is there any reason why, in a case where a man is sentenced to be imprisoned at hard labor for a month, and his liberty, as my learned friend said on that occasion in 1874, curtailed, he should be deprived of the right of appealing to the Supreme Court for redress? In the case of a fine, perhaps, it may be different, because there is always an appeal to the exercise of the Governor's prerogative; but where the punishment is imprisonment the mischief might be done before any redress could be sought at all. There was a case, which may, perhaps, be within the recollection of hon. members of this Council, where a person in Kurunegala was imprisoned for a period of one week. I believe this case occurred just about the time this ordinance came into operation. The man made an appeal to the Supreme Court, but unfortunately at that time there was no provision that a sentence of imprisonment should be suspended until the appeal was heard and decided, and the man was put to work at hard labor outside the walls of the jail. He was degraded to a very great extent by the punishment that was imposed upon him, and it afterwards transpired that the whole of those proceedings, which resulted in the man's imprisonment, were actually considered to be due to a strong feeling on the part of some Government official. The matter was the subject of an enquiry, and it is much to be regretted that such a case should have occurred. But it *did* occur—and it must be remembered that we are providing for every possible case—that a man was degraded before anything could be done. The judicial officer concerned in that matter, and who brought about that man's disgrace, of course received the punishment which he deserved at the hands of the Governor. But what satisfaction is that to the party punished? Very little satisfaction indeed. We should endeavour when legislating to guard against such mischief as this being done. We are not legislating for the men of to-day—we are not guarding ourselves against evils which may be committed by officers who occupy positions in the present day—but our legislation is intended to be operative, perhaps for years and years. We do not know who the officers may be who will be called upon to administer justice under this Code, and who will be required to follow the provisions of this Code, and therefore we must be careful how we commit ourselves by giving powers which ultimately may be found to be productive of great

mischief. This simple ground upon which I rest my opposition to the clause is this: that, unless it be made very clear that it is absolutely necessary to do so, no man should be deprived of the advantage of having his case thoroughly and fully investigated before a degrading punishment is passed upon him. Those are the grounds, sir, upon which I say that this clause should be deleted.

The Hon. the QUEEN'S ADVOCATE: Sir,—I quite admit that the question which we are now discussing is one of very considerable importance, because by this clause it is proposed to effect a change in the law of this colony, which has existed for a considerable time past. As has been observed by the hon. and learned member who just spoke (Hon. J. VL.) appeals have been allowed for several years from the decisions of Police Courts, and for a still further period appeals have been allowed from the decisions of District Courts. In fact, since the Charter of 1833 became law, appeals have been allowed from the decisions of the District Courts, and since the year 1874 from the decisions of Police Courts. But because a system has been in existence for a considerable time past, that does not in itself constitute a sufficient reason why that system should be continued, if we can see good reasons against its continuance. Now if it were shown that, in other countries, whenever a man is sentenced to a day's imprisonment, he has the right to appeal to the highest judicial tribunal in the country before that imprisonment can take effect, I admit such might be a very strong ground for carrying out such a principle here. But I believe, if the laws of other countries are looked into there will be scarcely found a country in the world where appeals are allowed upon mere matters of fact, unless the punishment to be inflicted is a fine of a certain amount or the imprisonment, imprisonment for a certain time. I believe there are few countries in the world where such facilities of appeal exist as here and therefore it is a question for us to consider whether the circumstances of this colony are such as to warrant a continuance of a system which certainly does not seem to exist elsewhere. It appears to me that there can be but two reasons in favor of the argument for giving the right of appealing from the decisions of inferior tribunals. One of those reasons is that the inferior tribunal has decided wrongly on a question of law; the other reason is that the inferior tribunal has decided wrongly on a question of fact. So far as the question of law is concerned, we know that it is most expedient that such a question should be decided by those who are best able to give a judgment upon it, and those who preside over superior courts in all places are presumed to have greater knowledge and better knowledge of the law than those who preside over inferior courts, and therefore it is more satisfactory to the parties concerned, and it is the means of obtaining a more definite decision on the question involved, to have a case in which legal points are concerned decided by the highest legal tribunal in any country. Well, this 406th clause especially provides that there shall be still appeals on all questions of law. But is it expedient to allow appeals from inferior tribunals as regards decisions on mere matters of fact? I think it is generally admitted that so far as a mere matter of fact is concerned, the court of first instance is far better able to decide upon a matter of fact than a higher court. The court of first instance has the evidence before it, it sees the demeanour of the witnesses produced, and it is better able to form an opinion, not only from what is said, but also from the manner in which the evidence has been given than the superior court; and the superior court, as my hon. and learned friend has very truly said, seldom interferes with the decisions that have been given on pure matters of fact by inferior courts, because the superior Court feels that the inferior court had before it many more opportunities for forming a right decision upon a pure matter of fact, than the Appellate Court. If this be admitted as regards decisions on matters of fact, then the only reason why appeals should be had recourse to from decisions on matters of fact must be that the decision was given either on account of the judicial officer's incapacity to perform his duty or because the decision was come to on some improper or illegitimate ground. Now, a single instance has been quoted of an improper decision come to in this colony, but we know that all over the world there are exceptional cases where decisions are arrived at on improper grounds. I remember only a few days ago reading of a case in England, in which the complainant brought an action for damages against a railway company for injuries which she received during a journey. The jury, to the surprize of many, found her entitled, I think to the full amount of damages claimed by her. A new trial was moved for on the ground that the jury were influenced by the pretty face of the complainant and by the pretty face of her sister, and a new trial was granted. Well, sir, that is a solitary instance of a jury coming to a verdict on what one may call improper grounds; and we have had one solitary instance quoted here regarding a magistrate in this colony. But we are not here to legislate for exceptional circumstances. We are here to legislate for the good of the many, and we know it is utterly impossible to provide against certain miscarriages of justice, whatever laws we may pass or whatever country we may be in. Then I would submit that, unless there is reason to believe, on a pure matter of fact, that a decision has been arrived at on the ground of incompetency on the part of him who delivered it, or because he was influenced by corrupt or improper motives—that that decision is far more likely to be a good one which is delivered by a court of first instance than by a superior court, which had not before it such opportunities of forming a judgment as the court below. I do not think it can be said of those who preside over the inferior tribunals of this colony that they would do otherwise than their best to come to right conclusions with regard to the cases which come before them. A very eminent writer on Jurisprudence has said that it is more necessary that the administration of justice should be believed to be pure than that it should be actually so; and the great thing for a community to believe is that there is, whether justice be administered by inferior tribunals or whether by superior tribunals, a desire to do right; and that those who administer justice administer it with every desire to do this right to the parties concerned. That feeling is, I can[illegible]ink-ing, to a very considerable extent shaken [illegible]ow appeals on matters of fact to be taken on ev[illegible] decision. Sir, it appears to me that there are reasons, and very strong reasons, for not allowing appeals on matters of fact. In the first place, it is frequently taken advantage of merely for the purpose of what has been alluded to a few minutes ago—the desire to put off the carrying out of the decision come to, and it I think encourages litigation. A person may know perfectly well, when convicted by a Police Magistrate, that the conviction was founded upon the merits of the case and that he was justly convicted and that a just sentence was passed upon him. But he knows perfectly well that by saying he appeals he can prevent his sentence—at all events for a considerable time—from being carried out; and without feeling for one moment that there has been an erroneous decision he can give notice of appeal and for some months that appeal may remain undecided. But, sir, there is another reason to which I have incidentally alluded, and that is, I cannot help thinking that a wholesale system of liberty of appeal does create a certain amount of distrust and want of confidence in those who administer justice in inferior courts. If a person knows that an appeal can be taken from an inferior court in every little matter, he will not have the same confidence in that court as if that court could definitely decide the matter that came before it. I differ altogether from the argument that has been made use of by the hon. and learned member who spoke last (Hon.

J. V. L.) that the liberty of appealing makes a magistrate or a judicial officer take more care in deciding a case. I think myself that, if a magistrate knows that there will be no appeal against his decision, and that his decision will be a final one and that it really depends upon his decision whether a man's liberty is to be curtailed for a certain period of time, that magistrate will—if he is a conscientious magistrate—take more care in deciding such a case than if he knows that, as soon as ever his decision is given, the party will turn round and say: "I don't care for your decision, I appeal to the higher court." Therefore, sir, I think that by doing away with the liberty of appealing, we shall be far more likely to make magistrates more careful by making them feel that there is a greater responsibility resting upon them. There is another reason against too great a liberty of appealing, and that is that the punishment as a rule does not follow quickly upon the offence. Now, I believe that those who have written on the theory of punishment have often declared that it is not so much the severity of the punishment that ought to be looked to, as the fact that the punishment whatever it may be, should follow quickly upon the offence committed, and that both the offence and the punishment inflicted in consequence of the offence should be before the eyes of the many when the punishment is carried out. If we look to the severity of the punishment only, it will be regarding punishment in the way of retaliation or revenge. But we know that the great object of punishment is to deter others, and, if an offence is committed today and the punishment follows within an hour or a few hours after its commission, the public know very well that that punishment is inflicted in consequence of the offence committed, and both facts are presented much more strongly before them than if the punishment followed a month, or it may be a year, after. Therefore it appears to me that an unlicensed liberty of appealing against criminal decisions is detrimental, in so far as it prevents the punishment from following quickly upon the offence. Sir, I think those are the chief grounds which I need now refer to in favour of the clause as it stands. As I have already stated, there can be but two reasons for allowing the right of appeal: one is that the Court has gone wrong on a matter of law (in which case by all means allow the appeal), and the other is that the court has gone wrong on a matter of fact, and, unless we believe that sufficient grounds exist for thinking that the court has gone wrong on a matter of fact, because influenced by motives which should have influenced it, the probabilities are that decision on a matter of fact was correct. Some reference has been made to the enormous amount of appeals. Well, I am not surprised, if appeals can be taken from every little decision, that the Supreme Court has a great many appeals before it, and I believe that the number of appeals before the Supreme Court during the course of the year exceeds an average of 2,000. I believe there is scarcely any other country in the world where so many appeals have to be taken up and have to be disposed of by the judges of the Supreme Court bench. The Supreme Court exists in order that it may hear cases where a considerable amount of money is involved in the civil side, and in order that it may determine cases where serious crimes have been committed. The Supreme Court does not exist in order that every person who is convicted before a magistrate, should turn round upon that magistrate, and, whether he believes the magistrate's decision to be right or wrong, say:—"There is a Supreme Court existing in this country, and I have a right, as a British subject, to go before that Supreme Court." If it can be satisfactorily shown that the case has been decided from improper motives, then strictly speaking the party should have a right to appeal. But we cannot legislate for exceptional cases: we must legislate as well as we can for the good of the many. I believe myself that, so far as inferior tribunals are concerned, if those who preside over them only take care to give attention to the cases which come before them, if it it is the endeavour of the judge or Magistrate to decide those cases according to the evidence given, and to do what he really considers right to all parties, there is very little fear, either in this country or in any other country, that injustice will be done to anybody.

His Excellency the LIEUT.-GOVERNOR:—If I say a few words on this important subject, I wish it to be understood that I do so only because it is my desire that the Council should be placed in the possession of all the information that it is in my power, at any rate, to give to it. I think, before the year 1874, there was no appeal from Police Courts on matters of fact, and the reason why there was no appeal was because the Chief Justice of the day, Sir Edward Creasy, was most strongly opposed to giving any such right of appeal. The question was several times under the consideration of Government, and Sir Edward Creasy was consulted on the subject, and I think I have in my drawer a confidential minute of his, dealing very exhaustively with the whole question. I will now state his reasons, as far as I can remember them, and the reasons which actuated the Government of the day in deferring to the opinion of the Chief Justice of the day. The learned Queen's Advocate has put the case very clearly on one point, as it struck me, and that is that, if our desire is that justice should be done in the best manner possible we should endeavour to secure it by allowing the decisions of the cases to be pronounced by the Court which is best fitted to pronounce a decision on the particular case before it: and it is for that reason that on matters of law there is an appeal allowed to the Supreme Court. It is no dobut, for the reasons stated by the learned Queen's Advocate, that the practice in most civilized countries is that there shall be no appear from the court of first instance on matters of fact, because matters of law involve questions of learning and reference, whereas matters of fact are mere questions of evidence, which depend very much upon the demeanour of witnesses in Court; and this with Sir Edward Creasy was the crucial point of the whole question. He said: "The practice elsewhere is not to allow appeals on matters of fact. Then is there any reason why we in Ceylon should differ from that practice? No, very much to the contrary," he said As a general rule, in civilized countries you can form a tolerable opinion of what the merits of a case are from a mere perusal of the evidence, but unfortunately in Ceylon a great mass of the evidence that comes before every court upon questions of fact is untrue. and, if you merely form your judgment from a perusal of the evidence, without observing the demeanour of the witnesses, you are as likely as not to come to a wrong conclusion. The only person who can form any real opinion as to the value of the conflicting evidence produced on one side or the other is the person who sits there and watches the witnesses as they give their evidence; and for another court to come in a month or two afterwards having never heard those witnesses, and having never watched them and never been able to observe whether one man is credible or not and to reverse a decision on a matter of fact when it had no possible grounds for forming a judgment on a matter of fact, would be very undesirable and would not conduce to the due administration of justice. This was Sir Edward Creasy's view. I remember in 1874, after Sir Edward Creasy had left the island, his successor took a different view, and thought that it would be well to give a trial to allowing appeals on matters of fact. He thought that the decisions of magistrates were not always to be relied upon, and that it would be well to try whether, of the two evils, one was the greater or the less. It was felt at the time that allowing appeals on matters of fact would hamper the Supreme Court very much, and I believe I may say that it does hamper the

Supreme Court very much: that they have an enormous number of appeals brought before them which they believe they are incapable of dealing with. Most of the appeals state, as a ground for appealing, that the witnesses on the opposite side are telling lies. Now, how on earth is the Supreme Court to decide in such a case? It has not heard the witnesses; it has not observed their demeanour; it has no means of judging upon the facts. Possibly the weight of evidence, as recorded by the magistrate, may be against the magistrate's conviction, while on the other hand the magistrate no doubt had very good reason for giving credence to one side as against the other. It is not indeed uncommon in cases in our courts—I say so on the authority of some of our best District Judges—for the whole evidence on both sides to be untrue. That is not at all an uncommon thing, and a magistrate has to make up his mind from the demeanour of the parties and judge accordingly. Now, how is the Supreme Court to decide upon such a question? I quite admit that there is great force in what the hon. the Burgher member urged: that every British subject should have a right of appeal to the highest court of the colony, if he feels himself aggrieved. I quoted the opinion of Sir Edward Creasy, because the case in favor of allowing appeals in matters of fact has been stated with such force by the hon. member who opposed this clause, that I thought it well that the Council should have before it the reasons why (until the year 1874) Sir Edward Creasy strenuously opposed and succeeded in preventing any appeals being allowed on matters of fact, and I know the same difficulty is felt by the present Chief Justice. The Supreme Court itself feels a difficulty in deciding upon matters of fact, feeling that the magistrate is often the person—and indeed the only person—who is competent to decide upon the weight of evidence before him. The hon. member who represents the Tamil interest referred to the question of appeals given in Gansabawa cases; but in the case of these appeals the Governor and Executive Council never dream of reversing the decisions of village councils on a question of fact. Where a question of fact is involved, we simply say that the President of the Council is the best judge of what weight should be attached to the evidence that came before him. As to hearing appeals against Gansabawas on questions of fact, that is a thing which the Governor and Executive Council refrain entirely from doing, because we feel we cannot do so. I have thought it well that the Council should be possessed of this information as regards Sir Edward Creasy's views, and I have therefore stated them as far as I can, in order that the Council might have the whole case before it.

The Hon. the GOVERNMENT AGENT, W. P.: I have only a few words to say, sir, on this important subject. It seems to me that there is a little information wanting, which, if we could obtain, would guide each member of the Council as to how he should vote upon this point. It seems to me that it is admitted that this is merely a question of the least of two evils. The question is whether we should allow these appeals to be taken to the Supreme Court in all cases, and thereby flood the Supreme Court with appeals, or whether we should be doing better by not allowing appeals to be taken on questions of fact. Now, we have been told that, up to 1874, there was no appeal allowed from a Police Court decision on a question of fact. We have also been told that it was then brought forward because several applications had been made for this privilege, though it had been resisted by the then Chief Justice, Sir Edward Creasy. We have also heard read the opinion of the present Deputy Queen's Advocate, Mr. Ferdinands, when he held a seat in this Council, and he spoke very strongly on the opposition side. But we have not heard the views of the opposite side, and I have before me the report of the Sub-Committee which sat upon that bill, and this is the way in which they dealt with this clause:—

"*Clause* 6.—The Sub-Committee view this provision with some apprehension, believing that it [illegible] Court [illegible] the Judges of the Supreme Court an amount of work with which their Lordships, at their present numerical strength, will scarcely be able to keep pace, and which will be disproportionate to the amount of relief to parties. The Sub-Committee are, on the whole, in favour of retaining this provision, but they recommend the addition of a clause declaratory of the right of the Judges of the Supreme Court to fine appellants, presenting false, frivolous, or vexatious appeals." I will also point out that they thought it would be convenient if the Supreme Court were empowered to correct and alter sentences.

"The Sub-Committee also think it will be convenient if the Supreme Court be empowered to correct and alter sentences imposed by the Police Courts." So it will be seen that up to 1874 the Supreme Court had neither the power to interfere with decisions of Police Courts on questions of fact, nor had it the power to alter the sentences of Police Courts. Now, sir, the question is—Have the judges of the Supreme Court represented that this power, which has been in force since 1874, has had the effect which it was apprehended it would have, when the clause was passed? If the Supreme Court Judges, who, I think, in this matter, should be the best judges of what is good and what is bad, have come to the conclusion, that the relief that they are able to give to the parties by having this power invested, is disproportionate to the amount of work which it entails upon them and the attention which they are able to give to other more important work, then I think we should endeavour to bow to the decision of their lordships and carry out some provision which would prevent this accumulation of work. I shall be prepared, after the vote as to the deletion of this clause has been taken, if the clause is retained, to move the insertion of the words: "or unless with the leave of the Court," because I think there are some cases where judges and magistrates would like very much that an appeal should be taken. The judge would set out the principal reasons why he forwards the appeal, and the Supreme Court judges would then be able to give consideration to the appeal, though ordinarily it would not come under their notice. I may say that, in speaking to judges and magistrates on this point, there has been almost a consensus of opinion that appeals should be allowed, if the judges and magistrates wish to send the cases on. I think myself that it will be very unadvisable to [illegible] it away altogether, and make an appeal [illegible] absolutely impossible, unless we have it on the [illegible] authority of the Chief Justice and the other [illegible] the Supreme Court that, from their experience [illegible] years, they are perfectly convinced that it does not give any relief to the parties at all proportionate to the amount of work that it entails on the judges.

The Hon. J. VANLANGENBERG:—I have only a few words more to say, sir. The importance of this question has been acknowledged, but I regret that the importance of it should be gauged by the measure of work which it would entail upon the Supreme Court. That is not the question. The question is not whether the Supreme Court will be overburdened with work, but whether the right of appeal should be accorded to a party aggrieved. That really is the question, and we should not stray from it. If what has been urged in support of the retention of this clause be a really good ground, then it is ground which would apply to all cases. It has been said that it is not in the power of a judge of the Appellate Court to sit in judgment upon the decisions of inferior courts, because the inferior court is better able to judge on a question of fact than the Supreme Court, in that the inferior court has before it all the witnesses, and their demeanour is supposed to be very good data for determining the credit to be attached to them. It has also been stated that by taking away the right of appeal from the inferior courts, confidence in the inferior court would be established. These are the two main and substantial grounds which have been submitted for the retention of this clause. As regards the first, we have often [illegible] stated—and this is not the first time that I

have heard that argument advanced—that the Supreme Court is not in a position to determine upon a question of fact; and yet we can refer to a number of instances, where the Supreme Court, sensible of the duty cast upon it by law, did interefere in the decisions of judges of inferior courts in questions of fact and set aside their decisions and yet without seeing witnesses. If there be any force in that argument, then the right of appeal should be taken away altogether. It is not contemplated by this section to take the right of appeal away altogether. What this section provides is that there shall be no appeal from a District Court in cases in which such court passes a sentence of imprisonment not exceeding three months, or a fine not exceeding one hundred rupees, nor from a Police Court in cases in which such court passes a sentence of imprisonment not exceeding one month or a fine not exceeding twenty-five rupees." If a Police Magistrate were to pass sentence on a man of more than a month, say a month and a day, then the Supreme Court has the means of determining whether the decision of the Police Magistrate shall be set aside. And so if a District Court passes a sentence of more than 3 months imprisonment. I do not see where the principle is. It may be that considerations of economy are concerned, but I do not see, as a matter of law or principle, why, if the Supreme Court is incompetent to decide on a question of fact in the one case, it is not equally incompetent to decide upon the question of fact in the other. Nevertheless, we draw some distinction, which appears to me to have no principle whatever. Having regard in certain cases to the position of the men, a month's imprisonment may be a very serious matter to the man concerned. But it is asserted, because it is a sentence of a month, therefore the Supreme Court cannot judge of the case; but, if the Police Court had made the sentence higher, then the Supreme Court might look at it. submit that this is a fallacious ground. I really cannot understand the grounds upon which this provision is based. We must consider, in legislating, what the circumstances and conditions of the colony are. We cannot introduce rules which prevail in other colonies. We have a Supreme Court, a District Court and a Police Court. There is but one court of appeal, and the party agrieved has but one court to go to. The ground upon which an appeal will rest is not because there is any want of [illegible] why should it be said that, if the [illegible] be for one month there is confidence, [illegible] for a month and a day, there is no confi-[illegible]. The Judge pronounces judgment and the question is whether we, who are legislating for the good of the many, should have the position of the many in any way imperilled by their being asked to accept that decision as a final decision. It will be far more satisfactory indeed to the officer who is to decide the question to know there will be somebody else who will agree with him or differ from him. It frequently happens that a conscientious magistrate is placed in such a position that he is not quite certain about his decision, and he would be only too glad if an appeal be taken to have his view confirmed. I do not see that there is the slightest reflection upon the court of first instance by an appeal being taken. It might just as well be said that a party who appeals from the Supreme Court to the Privy Council has no confidence in the Supreme Court. To any man one month's imprisonment is as degrading a punishment as three, and yet in the one case he has a right of appeal and in the other he has not. It has been stated by Your Excellency that in 1874, Sir Edward Creasy was opposed to appeals being allowed upon questions of fact: nevertheless the Legislature in 1874 thought fit to accord that right. The Hon. and learned Queen's Advocate has said that, because it is a practice, it is no reason why we should adhere to it. I say, if the practice has not been found to be a bad one, why should we not continue it? In matters of reform, it is for the reformer to show that there is any necessity for a change. It must be shown that the system has worked improperly, but nothing has been brought forward to show that. Here we have the Supreme Court doing what is actually necessary by setting aside cases—

H. E. the LIEUT. GOVERNOR: I should like to ask the hon. member if the Supreme Court frequently finds any reason for interfering in matters of fact. If so, of course that will be a very strong reason for not putting in this clause. But if it be shown that the Supreme Court finds it impossible to interfere in matters of fact—

The Hon. J. VANLANGENBERG: That, of course, I must concede. There are a few cases in which the Supreme Court does interfere.

H. E. the LIEUT.-GOVERNOR: That appears to me to be an important point.

The Hon. J. VANLANGENBERG: It is so in District Court cases also. If the decision appealed against involves a matter of fact, very often the judges of the Supreme Court say: "We are not in a position to say whether the District Judge is right or not." It depends upon what view the judge takes and the impression which the evidence makes upon his mind; or there may be a very serious point which the court below had not properly considered. But as a rule, it may be stated that, whether it be a civil or a criminal case, the Supreme Court very rarely interferes in a question of fact.

H. E. the LIEUT.-GOVERNOR: That appears to me a very important point, because it is very important that the punishment should be immediate, and undoubtedly if the effect of the appeal is to defer the punishment and it be found that appeals are resorted to for that purpose, then the clause must be retained. But if the power of the Supreme Court to deal with questions of fact is often put in motion, then we shall be very slow to take away that power but if it is a power very seldom used, then it does not much matter whether the Supreme Court has that power, which I am speaking of or not. The balance of convenience must then decide the question.

The Hon J. VANLANGENBERG: That depends very much upon the temper of the judge more than upon anything else. I may mention that, when Sir John Phear was here, *he* interfered with questions of fact. It depends entirely on what view the judge takes of his duties. Sir John Phear was so keenly sensitive of what his duty was, that he thought it necessary to interfere in all these matters. I may say that in about one-third of the cases he interfered and set aside the convictions. Other judges, however, take a different view. I believe there has been recently a desire shown on the part of some of the judges—but to what extent I am not prepared to say—to interfere in questions of fact, and there are a number of cases in which decisions have been set aside.

The Hon. P. RAMA NATHAN: I have just one word more to say before the Council divides. I have listened to the speeches which were made, and I am quite prepared to admit generally that a court of first instance is the best judge of the truth or falsehood of the evidence given by the witnesses. But, sir, as I stated in my opening speech—rather hazily, I admit—the people of Ceylon have not always the best reasons for placing absolute confidence in the judgments pronounced by Police Magistrates, and this sentiment was clothed in different words by the learned Queen's Advocate when he quoted a learned author as expressing the opinion that it is better that the administration of justice should be believed to be pure than that it should be actually so. This question is involved in the question of the purity or impurity of judgments. But then the question of the purity of judgments is also associated with the means and opportunities which a Magistrate has of arriving at proper judgments. Now, sir, I take it that every hon. member around this table would concede the fact that when a person is implicated in a transaction, he would wish ra-

ther to be judged by Your Excellency than by any Police Magistrate. He knows that Your Excellency would bring to bear upon the subject-matter of his grievances a lengthened experience, a calm judgment, a wide knowledge of human nature, and a variety of other qualities and he will say to himself: "If His Excellency judges my cause, I am quite content to abide by that judgment, but certainly I shall not abide by the judgment of a young police magistrate, who is new to the country, and who has never perhaps gone into the house of a native. Just the same may be said of the Supreme Court. A man naturally says to himself: "Well, if my case is judged by the Supreme Court, I am quite content to abide by that judgment, but I shall not abide by the judgment of a young magistrate." So that the question resolves itself into this: that, when the people of the country have reasons for having absolute confidence in the decisions of the Police Magistrates, then it is that the Legislature ought to interfere and take away from them the right of appeal, which they had before. Let us look into the circumstances of a magistrate being drafted into the service. He is generally a foreigner, coming from England, quite new to the ways of Ceylon. He comes and takes up the duty at once in our Courts. He knows nothing about the ways of the inhabitants of Ceylon, nor anything of the country itself. The magistrate is called upon to take evidence and record his judgment upon the evidence adduced in the case in question. Well, he attributes this motive to one witness and that to another, which may not very likely be the true motives. He then passes his judgment upon this incorrect assignment of motives—a judgment which, in the opinion of another person of greater experience, would be undoubtedly wrong. Well, then, in such a case, I ask, would you take upon ourselves—could this Council conscientiously take upon itself—the responsibility of taking away the right of appeal which the people of the country now possess? I think sir, in this discussion, proper weight has not been given to the opinion of Mr. Ferdinands upon one point. He points out the incongruity of appeals being granted in the case of a person who comes before the court complaining he has been deprived of a sixpenny piece or of some small debt which has not been paid. In that case, he has a right of appeal; but in the other more important case he has no right of appeal. Nor has sufficient weight been given to the argument brought forward by my hon. and learned friend opposite (the Hon. J. Van Langenberg) as regards the incongruity of allowing appeals in cases which involve a punishment of three months and not allowing appeals in cases of punishment of one months' imprisonment only. We should not blow hot and cold at the same time. The law knowsno trumpery things. To one man a thousand pounds may be trumpery. Ten pounds may be a fortune to another. Surely these are all considerations of principles. I am the last person to advocate changes simply for the purpose of realizing ideal reforms. But here we have a substantial incongruity in allowing appeals in civil cases, and from Police Court decisions in case the punishment is nine month's imprisonment, and not allowing appeals in cases of one months' imprisonment. Surely some explanation is due to the men who ask the rhyme and the reason of this. I appeal to Your Excellency to view the circumstances in which Ceylon is situated and to view the means by which the machinery of justice is administered, and I feel it my duty to implore Your Excellency not to take away from the inhabitants of Ceylon the right which they have possessed for so many years and which they keenly appreciate. Sir, I move that this clause be deleted, and ask hon. members to do the people of this country justice by voting with me.

The Hon. the QUEEN'S ADVOCATE:—Sir,—There are one or two remarks which I should like to make in conclusion, with reference to this question. I would refer to the incongruity which has been pointed out, in making sentences of three months' imprisonment appealable, and sentences of one month's imprisonment not appealable. All I can say is that it is necessary in every thing in this life to draw the line at some point. What we have to legislate for, is for the convenience of the public. We cannot in every instance carry out theoretical principles to their fullest extent. No doubt when a man has been sentenced to pay a fine of one penny or to undergo one day's imprisonment, it may happen that he is unjustly adjudged to pay such fine or to undergo such imprisonment. But at the same time, in legislating, we must look to the circumstances of each particular place, and we must take care that the Supreme Court of this Colony, which has to deal with these appeals, should not have its time taken up to such an extent that the work of the Colony cannot be properly and efficiently carried out. If we were actually to carry out the principle which has been alluded to, to its fullest extent, a person would have just as much a right to appeal to the Privy Council with regard to a judgment of £1 as of £500. A man might just as well say that he has a right to sit on the jury at 20 years and 11 months as at 21. But the law presumes that at a certain age a man is sufficiently intelligent, to perform a certain duty—in fact it has to draw the line somewhere, though there may be many who are capable of performing the particular duty in question at an earlier age. In these matters theoretical principles cannot be always carried out. What we have to legislate for is for what appears to us to be for the good of the many. It has been stated that when this question was on a previous occasion brought before the Council, Mr. Ferdinands pointed out the incongruity of a man being allowed an appeal in the case of a sixpenny fine and not being allowed to appeal when his liberty was at stake. Well, it may be, perhaps, a matter for doubt whether a man in a civil case should be allowed to appeal when such small sums of money are involved. But it does not follow that because an appeal is allowed in the one case it should necessarily be allowed in the other. I think, sir, these are the two principal reasons that have been urged against restricting the liberty of appeal. With regard to the last few words of this clause, as it originally stood, I may state that I was not here when they were deleted, and I do not therefore know what reasons the Executive Council had for striking them out of the [illegible] that these words should be inserted. I think it might happen that a judge in deciding a question may find some particular reason for wishing the decision to be reviewed by a higher tribunal, and there might be exceptional circumstances when the discretion given by these words would be usefully availed of.

This having closed the debate, the Council divided on the motion of the Hon. P. Rama Nathan, that clause 406 be deleted, with the following result:—

Ayes.	*Noes.*
Hon. P. Rama Nathan	Hon. Acting Surveyor-Genl.
„ J. Van Langenberg	„ „ Govt. Agent C.P.
„ Govt. Agent W. P.	„ Treasurer
H. E. the Lieut.-Governor	„ Auditor General
	„ Queen's Advocate
	„ Acting Col Secretary
	„ Acting Com. Officer of Troops

Ayes 4. Noes 7. Motion lost, and clause 406 retained.

The Hon. the GOVERNMENT AGENT C. P. said he had some experience of Police Courts and District Courts and of the criminal work connected with them, and he felt great reluctance in restricting the liberty of appealing. He was satisfied, however, from the arguments of His Excellency and the learned Queen's Advocate, that in some cases it was desirable to restrict the liberty of appealing; therefore it was unnecessary to argue further about that. He should be very glad, however, by the addition of these words, "or unless with the leave of the court," to provide for appeals being allowed, not merely on matters of law,

but also on matters of fact, with the leave of the court. He himself had had experience of cases where the amount of punishment was small, and in which there was a difficulty connected with facts, and on which he was very glad to know that there was an appeal. Therefore, speaking from the feelings which he himself shared in common with the majority of the members of the service, he would say there was a general unwillingness to restrict appeals. He moved that the words, "or unless with the leave of the court" be added to the clause.

The motion was put and carried unanimously.

Sec. 404.

"WHEN AN ACCUSED PERSON HAS PLEADED GUILTY, AND BEEN CONVICTED BY A DISTRICT OR POLICE COURT ON SUCH PLEA, THERE SHALL BE NO APPEAL."

H. E. the LIEUT.-GOVERNUR said that the clause will have to be understood with this proviso that an appeal may lie to the Supreme Court on a question of law.

The Hon. the GOVERNMENT AGENT, W. P. said that the question was whether a man could appeal against an excessive sentence which had been passed consequent on his own plea of guilty.

The clause was passed.

Sec. 405.

SHOULD ACQUITTALS IN POLICE COURT CASES BE SUBJECT TO APPEAL?

In this clause the Hon. J. VANLANGENBERG proposed that the words "or police" should be deleted, and the clause made to read thus: "When an accused person has been acquitted by a District Court there shall be no appeal, except at the instance of the Queen's Advocate." There was less chance, he said, of a wrongful acquittal by a District Judge than by a Police Magistrate.

The Hon. the QUEEN'S ADVOCATE objected, and a division was taken with the following result:—

Ayes.	*Noes.*
The Hon. J. Van Langenberg.	The Hon. P. Rama-Nathan.
„ Govt. Agent W. P.	„ Actg. Surv. General.
„ Treasurer.	„ Actg. Govt. Agent C.P.
„ Auditor General.	„ Queen's Advocate.
	„ Actg. Col. Secretary.
	„ Officer Commanding.
	H. E. the Lieut.-Governor.

Ayes 4, Noes 7.—Motion lost.

OUGHT THE APPELLANT HIMSELF TO BE PRE- [illegible] HEARING OF THE APPEAL?

[illegible] the appellant does not appear [in person or by pleader] to support his appeal, it shall be dismissed."

Hon. J. VAN LANGENBERG:—That is rather severe on the appellant.

His Excellency the LIEUT.-GOVERNOR. Is that not the usual course?

The Hon. J. VAN LANGENBERG:—Suppose the appellant were in Jaffna. It will be rather hard to require him to come down from Jaffna to Colombo to be present at the trial. I remember however many instances in which, through the appellant not appearing, the case was dismissed.

The Hon. the GOVERNMENT AGENT W. P.:—If a stamp of R5 has been affixed already by the appellant to his petition, he has a right at all events to have his petition read, even though he were absent.

Hon. J. VAN LANGENBERG:—But here there is a provision which seems to be rather hard, that the respondent also should be present. The presence of both parties seems to be required.

The Hon. the GOVERNMENT AGENT W. P.:—The respondent is noticed to come. He is not obliged to come. (The clause was passed.)

SEC. 416. WHAT IS MEANT BY A COURT OF FIRST INSTANCE?

The Hon. the GOVERNMENT AGENT W. P. inquired which court would be considered the court of first instance in the following case: Suppose a charge is preferred before a Police Magistrate, he investigates the case, and it turning out to be a serious offence he continues the investigation in his capacity as J. P. and finally by order of the Queen's Advocate commits the case for trial before the District Court. The trial is held in the District Court, the man found guilty and sentenced accordingly, and an appeal is taken from this sentence. Now which court is the Supreme Court to look upon as the court of first instance—the Police Court or the District Court—for both have had a hand in it?

Hon. J. VAN LANGENBERG:—The Court which tried the case will be the Court of first instance.

SEC. 417. THE APPEAL COURT CAN ORDER FURTHER EVIDENCE TO BE TAKEN.

The Hon. the GOVERNMENT AGENT W. P. remarked that this was a totally new power which the Appeal Court had now received.

Hon. J. VAN LANGENBERG said it was not a new power as it has been exercised in civil cases where there was a conflict of evidence.

Sec. 419 the folowing words were inserted into the clause after the word "passed" in line 1—

"In accordance with the opinion of the presiding Judge, or if more than one Judge."

Sec. 427. the following words were inserted after the words "Supreme Court":—

"Consisting of two or more Judges thereof," and the word "Judge" in line 3 was altered to "court."

SEC. 428. MAY DISTRICT COURT REFER QUESTIONS OF LAW FOR OPINION OF SUPREME COURT.

Some conversation took place on this clause, and as it was thought that there would be great objection to calling upon the Supreme Court to decide a case in appeal in which it had previously expressed an opinion (and this clause would give the Suprsme Court the power to do so if referred to) this clause was laid over for consideration, in order to enable the Queen's Advocate to consult the Chief Justice.

The Council then adjourned for Monday next 16th September.

MONDAY, SEPTEMBER 10.

Present:—His Excellency the Lieutenant-Governor (President), the Hons. the Colonel Commanding, the Acting Colonial Secretary, the Queen's Advocate, the Acting Auditor-General, the Treasurer, the Government Agent, W. P., and the Hon. J. Van Langenberg.

Absentees:—The Hons. the Acting Government Agent C.P., P. Rama Nathan, W. W. Mitchell, A. L. de Alwis and J. L. Shand.

The Council resumed consideration in Committee of the Criminal Procedure Code.

The Hon. the QUEEN'S ADVOCATE asked leave to move certain amendments in clauses 426 and 427. He moved that in 425 the following words be substituted for "a court consisting of two or more judges of the Supreme Court"—"the Supreme Court consisting of two or more judges thereof." The word "judge" was altered into "court," as before "gaol" into "prison." In 427 the words the "Supreme Court" were deleted and "two or more judges of the Supreme Court" inserted.

§ 447. "The Supreme Court may charge a person for any offence referred to in section 149, and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail, and try such person upon its own charge.

The Hon. J. VAN LANGENBERG asked who should frame the indictment?

The Hon. the Queen's Advocate said that it was intended hereafter that all indictments should be drawn up by the Registrar as in 282. The indictments would hereafter be drawn by the Registrar, but not necessarily in elaborate legal phraseology, but the charge would be drawn up by the Attorney-General. The indictment would simply state what the charge is.

H. E. the LIEUT.-GOVERNOR:—The Supreme Court has the power of itself charging any person committing the offences mentioned in section 149. In any other case the Attorney-General it is who does so.

The Hon. the QUEEN'S ADVOCATE referred to a recent case in which Mr. Justice Clarence committed a woman to prison not for perjury itself, but for perjury as a contempt of Court.

The Hon. J. VAN LANGENBERG :—What I am not clear about is as to the charge? What form is it to be in?

The Hon. the QUEEN'S ADVOCATE :—As near as I understand it the words will be after this fashion "that he assaulted so and so on such a day."

The Hon. J. VAN LANGENBERG :—And there will be nothing more in the indictment than there was in the charge?

The Hon. the QUEEN'S ADVOCATE said it would be so undoubtedly. We shall find, he said, that certain offences will be dealt with summarily by the Supreme Court.

It was finally agreed to let the clause stand over for consideration.

In Chap. XXXV. The term "Supreme Court" was deleted and the words "the Chief Justice and any judge of the Supreme Court" substituted.

CHAPTER XXXVI OF BAIL.

The Hon. the TREASURER drew attention to the fact that section 33 of the Procedure Code was laid over for consideration until the Council had come to this chapter.

H. E. the LIEUT.-GOVERNOR said that the Chief Justice who had been consulted on the subject of this chapter had suggested that this power of bailing should be largely extended to the court, and that the court should have the power given to it of exercising its discretion as regards every offence brought before it except murder.

The Hon. J. VAN LANGENBERG remarked that "murder and treason" were bailable under section 204 of 11 of 1868, "with the consent of the Queen's Advocate' previously obtained.

H. E. the LIEUTENANT-GOVERNOR said that the Magistrates ought to exercise a wise discretion in such things. For instance in the case of the gang robberies that took place on the Negombo road in which the offenders were subsequently punished with 20 years' imprisonment, it appeared that these men were enlarged on bail. The result was that they went down to their villages and terrorised over the witnesses.

The Hon. the GOVERNMENT AGENT, W. P.. remarked that the proper time to consider the subject would be when the Council came to the consideration of Schedule II.

The Hon. J. VAN LANGENBERG : In § 33 who are included under the term "Police Officer"?

H. E. the LIEUT.-GOVERNOR : The Inspector-General down to ordinary constables, Fiscals, Fiscal's officers, all village headmen, Peace Officers.

All the clauses were duly passed.

CHAP XXXVII.

The Hon. J. VAN LANGENBERG said that clauses 464-466 contemplate the taking of evidence in the absence of the accused party. The 467th section says that a Magistrate may forward any interrogatories in writing and the Police Magistrate shall examine the witness upon such interrogatories. These sections evidently contemplated the taking of evidence in the absence of the accused party. In criminal cases especially it was very important that the accused should have an opportunity of cross-examining the witnesses, and that a witness should not be examined behind the back of the accused party. The least that might be done would be to give the accused party notice that such and such a witness would be examined.

H. E. the LIEUTENANT-GOVERNOR thought that it was nothing but fair that this should be done.

The clause was finally left unpassed in order that the Queen's Advocate might have time to insert some words to meet the case.

CHAP XXXVIII.

Section 472 :—CAN THE DEPOSITION OF A MEDICAL OFFICER BE RECEIVED IN EVIDENCE THOUGH HE IS HIMSELF NOT CALLED AS A WITNESS?

The Hon. J. VAN LANGENBERG said that according to this clause if a Medical Officer made a report before a Police Court, that would be received in evidence before the Supreme Court even in cases of murder, although he himself may not be present at the trial. It might be most important to the interests of the defence that such Medical Officer should himself be present and be cross-examined. The defence might turn upon the report of the doctor, and for his report to be put in evidence, while he himself was away, would be, he thought, very unfair. Such a thing could not be done under the present rules of evidence, and really had nothing to recommend it, beyond saving the time of the medical man.

The Hon. THE QUEEN'S ADVOCATE thought that, as a rule, the evidence of the medical man would be unchallenged, and that his deposition before a Magistrate might be received as evidence given at the trial before the Supreme Court. There might be cases however where it would be very material to cross-examine a medical witness. The clause was no doubt taken over from the Indian Code, and the reason of its introduction into that Code was doubtless on account of the great inconvenience which might arise in taking a medical man from one place to another. He thought that the second paragraph of the clause would be likely to prevent any injustice from resulting to the accused, as by it if the judge thinks fit that the medical man should be present he can summon him to attend.

His Excellency the LIEUT.-GOVERNOR said that the reason for introducing the clause was to avoid the great inconvenience at present caused by medical officers being removed from their districts in order to attend trials in the criminal courts. The change of medical officers from their stations, to admit of the medical man going down to the court was a source of much inconvenience.

The Hon. J. VAN LANGENBERG thought that an exception should be made in cases where the accused party desired the attendance of the medical man. It is true as the Hon. the Queen's Advocate had remarked that the evidence of the medical man is seldom challenged. But it does occur some times, and in such cases it would be advisable to have the medical man present. In murder cases for instance, whether the crime was of the first degree or second degree could be found out only by the careful examination of the medical witness. The accused he thought should have the power of seeing the medical witness.

His Excellency the LIEUT.-GOVERNOR said that over and beyond the question of the expense of getting the medical man's evidence, there [illegible] might be absent from his station for a fortn[illegible] weeks at a time to the great inconvenience of his p[illegible] and, after all, his evidence may not be called. [illegible] was not a question of expense but one of convenience.

This clause as well as the next were finally left for the consideration of the Queen's Advocate.

In clause 473 the word "examiner" in line eight was altered into "analyst." In clause 474 the words "in addition to any other mode provided by any law for the time being in force" were moved from their present position and inserted in a sub-section under the heading (c).

In regard to warrants of commitments" referred to in section 474 a.

The Hon. the GOVERNMENT AGENT W. P., remarked that now all such warrants are kept at the head gaol, and copies of such warrants are alone sent with the prisoners to other gaols. He remembered there was some discussion on the subject when he was officiating as Inspector-General of Prisons. Formerly they were in the habit of including in one warrant the names if all persons who were convicted together, whereas now they have a warrant of commitment for each prisoner.

CHAPTER XLI. SECTION 489.

This section was amended as follows (the italics show the alterations):—

Whenever *it appears* to the Supreme Court.—

(a) That a fair and impartial inquiry or trial cannot be had in any Court;

(*b*) That some question of law of unusual difficulty is likely to arise, or

(*c*) That a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into, or trial of, the same; or

(*d*) *That it is expedient on any other ground, or*

(*e*) That an order under this section will tend to the general convenience of the parties or witnesses. It may order

(1) That *an* offence be *enquired into, heard, tried and determined* by any Court, *whether such Court be or be not* empowered under §§ 137 to 146 to inquire into or try such offence *if such Court in other respects be competent to* inquire into or try such offence.

(2) That any particular criminal case be transferred to and tried, *or be transferred from itself to and be heard tried and determined before any other Court.*

If an application for the exercise of the power conferred by this section be made by motion. *to it, it* shall, except when the applicant is the *Attorney General* be supported by affidavit or affirmation.

If an accused person makes an application under this section, the Supreme Court may direct him to execute a bond, with or without sureties, conditioned that he will if convicted pay the costs of the prosecution.

The Hon. J. VAN LANGENBERG referring back to § 469 asked whether the ordinary procedure on the case of what are known as "dying declarations" were not intended to meet the case contemplated in § 469.

H. E. the LIEUT.-GOVERNOR said that in going over the clauses the same thought occurred to him, but the procedure in 470 he thought was utterly impossible in the case of "dying declarations"

The Hon. the QUEEN'S ADVOCATE: In the case of a "dying declaration" the person who makes the declarations must himself be of opinion that he is on the point of death. Here it is the medical officer who thinks that the person is "not likely to recover."

CHAPTER XLII. SECTION 491.

TENDERING A PARDON WHEN NOT EMPOWERED TO DO SO.

The Hon. J. VAN LANGENBERG inquired whether if a police magistrate offered a pardon to a man, in good faith, though not empowered by law to do so, such pardon would be set aside.

The Hon. the GOVERNMENT AGENT, W. P., said that as the police magistrate would be bound in any such case to act only after due consultation with the Queen's Advocate he scarcely thought that such a case would occur.

SECTION 492.

The Hon. the GOVERNMENT AGENT W. P. said he thought that sub-section (h) should stand over, as it had reference to municipal mattters, and the clauses th[illegible] possible conflict between the j[illegible] police magistrate and the bench of [illegible]s had been reserved for consideration.

SECTION 503.

The Hon. the GOVERNMENT AGENT, W. P., wished to know why the words "or any accused person" which occurs in the Indian Code after "witness" in line 1, were omitted.

H. E. the LIEUT.-GOVERNOR said he thought the omission was advisedly made, as due provision had already been made for examination of such a person.

SECTION 504:—PAYMENT BY GOVERNMENT OF EXPENSES OF COMPLAINANT'S WITNESSES.

The Hon. J. VAN LANGENBERG said that he believed complaints were numerous that parties frequently attend before the District Court to give their evidence for the prosecution and are not paid their reasonable expenses. There is no doubt that the people should perform their part in the administration of justice. At the same time, he thought, that if they are put to a certain amount of inconvenience or expense, some provision must be made.

His Excellency the LIEUT.-GOVERNOR said that he once made an order giving batta in District Court cases, but he had to recall it as the expenses became so enormous. Sir Richard Cayley—and he was a man of a very fair mind as all would admit—when Queen's Advocate gave a very strong opinion that all persons are bound to assist in the administration of justice. He (the Lieutenant-Governor) admitted that this was an anomaly, but one could not help the existence of anomalies in all large systems.

In section 507 the proviso was altered thus:—"With such terms as to charges as the Governor in Executive Council may appoint."

SEC. 510.—POWER OF THE SUPREME COURT TO MAKE RULES FOR INSPECTION OF RECORDS OF SUBORDINATE COURTS, &c.

The Hon. the QUEEN'S ADVOCATE said that in reading that clause it seemed to him very doubtful whether the sanction of the Governor in Executive Council would have to be obtained before the Supreme Court made such rules.

The Hon. J. VAN LANGENBERG said that he doubted himself whether this sanction was necessary. Such rules as the Supreme Court made would have to come under the operation of the Ordinance 8 of 1846, except in matters of mere detail like these.

The Hon. the QUEEN'S ADVOCATE said that he did not see the object of the previous sanction of the Governor in Executive Council.

His Excellency the LIEUT.-GOVERNOR said that he thought that any such rules framed by the Supreme Court should be placed on the table of the Legislative Council to shew that they have been conceived in the spirit of existing legislation.

The Hon. the QUEEN'S ADVOCATE said that in some colonies the Supreme Court judges have the power to make rules, such rules being laid before the Legislature and if the rules were not objected to by the Legislature within a certain time, they continued to have the force of law.

H. E. the LIEUT.-GOVERNOR said that it was the practice in two British Colonies. to his knowledge, that when the Supreme Court made rules of this kind, such rules were placed on the table of the Legislative Council, and if they were not disapproved of within three weeks of their placing, they *ipso facto* had the force of law. He knew of his own personal knowledge that in Singapore such rules are laid on the table and become tacitly approved of by lapse of time. He thought that the Judges of the Supreme Court ought to have such a power given them of making departmental rules.

The clause was ultimately laid over for consideration.

After the remaining 3 clauses, 511-513, were read over and passed.

(ADJOURNMENT.)

The Hon. the COLONIAL SECRETARY proposed that the Council do adjourn until Thursday, the 13th instant, after which he proposed to allow an interval of one fortnight before the next meeting, in order to give time to Hon. members to consider two or three points of considerable importance that remained over for further consideration, and also to secure the opinions of the Planters' Association on the question of special legislation for the protection of prædial products.

The Hon. J. VAN LANGENBERG said that he thought the following points should also be considered during the interval, viz.—(1): How the place of the Justices of the Peace was to be supplied in case the office was entirely abolished. (2): The stamping of processes. (3): The conflict between the powers of Police Magistrates and the Municipality.

The Council adjourned to Thursday, 13th inst.

THURSDAY, SEPTEMBER 13.

Present:—His Excellency the Lieut.-Governor, the Hon. the Officer Commanding, the Hon. the Acting Colonial Secretary, the Hon. the Queen's Advocate, the Hon. the Treasurer, the Hon. the Auditor-General, the Hon. the Government Agent, W. P., the Hon. the Government Agent, C. P., the Hon. J. Van Langenberg, the Hon. P. Rama Nathan and the Hon. W. W. Mitchell.

Absentees:—The Hon. J. L. Shand and the Hon. A. de Alwis.

A DEPARTMENTAL QUESTION OF IMPORTANCE.

The Hon. W. W. MITCHELL asked if, when a vote of the Legislative Council has been taken for any public work on a particular set of plans, is it possible for these plans and the vote to be separated in passing through the Executive Department, and for the money to be spent on a different set of plans entirely—as appears to have been done in the case of the new Lunatic Asylum—without the Audit Office discovering and checking the illegality.

The Hon. the Acting COLONIAL SECRETARY said:—As a matter of strict law, there is nothing to prevent an alteration being made in a plan at any time, and it frequently happens that in the course of a work, it is found that a deviation from the plan is necessary or desirable. Whether such deviation can or cannot be made without previous reference to the Legislature depends upon the terms and conditions under which the money has been voted. The Audit Department deals with the sums voted and the sanctioned estimates, and exercises a full control in regard to these. Plans are not furnished to the Audit Department nor is the staff of the Audit Office in a position to deal with plans in any way, nor does the Audit Department inspect works during construction or on completion. It is therefore not possible for the Audit Department to discover a deviation from a plan, unless such deviation necessitates an alteration in the estimate, in which case, unless an amended estimate is furnished and approved, a surcharge is made.

The Hon. W. W. MITCHELL said he did not wish to make any remarks further than to say that his question did not refer to the deviation from the plans but to the fact that different plans entirely had been substituted and therefore the answer was not an answer to his question.

His Excellency the LIEUT.-GOVERNOR said that the answer given was certainly an answer to the question. The Audit office had nothing to do with the plans and had no control over them.

The Hon. W. W. MITCHELL said this was an answer to only one part of his question.

His Excellency the LIEUT.-GOVERNOR said the hon. member had put a question as to which it was impossible to say whether it was one question or two questions. It was very ambiguous, and if the hon. member wanted a plain answer he should ask a plain question.

CIVIL PROCEDURE CODE.

The Hon. W. W. MITCHELL asked if it is the intention of the Government during the present or next session of Council to proceed with the Code of Civil Procedure, twice already introduced into the Council, in order to bring it into operation at the same time as the Criminal Code, and more particularly in view of the great necessity which has arisen for removing the uncertainty as to the law on mortgages of real property.

The Hon. the ACTING COLONIAL SECRETARY said :—There is every wish on the part of Government to codify the whole of the law, civil as well as criminal, but it can only be done by degrees, and during the present year, Government has made such very large calls on the time of hon. members, that it is not the intention of Government to proceed during the present session with the Code of Civil Procedure. With regard to the next session, I am unable to give any pledge on the part of Government, as the question will have to come under the consideration of Sir Arthur Gordon after his arrival in the colony.

LAND SALES STOPPED.

Hon. W. W. MITCHELL asked if Government would state the reason for the withdrawal from public sale of the lots of land recently advertized for sale in the Kegalla district; also, if Government would indicate what policy it intends to pursue with regard to land sales generally, and more especially with respect to those adopted for the growth of new products, and to move for papers. He said a short time ago about 2000 acres of land were advertized for sale in the Kegalla district and were withdrawn from sale. At a time like this when many were looking forward to the planting and production of tea as the staple it was a matter of great interest to know if it was the intention of the Government, on the recommendations of Mr. Vincent who had recently reported on the forests here, to discontinue the sale of land altogether or if it was only intended to be done for a short time, and therefore he asked for this information.

The Hon. J. VAN LANGENBERG seconded the motion.

The Hon. the COLONIAL SECRETARY said the lots of land in question are situated near the banks of the Kelani river and in view of the recommendations made by Mr. Vincent in his report on the Forests of Ceylon lately laid before Council, in which he strongly urges the necessity for maintaining Government reservations on the banks of the principal rivers. the Kelani and the Kalu-ganga in particular, it has been considered advisable to defer the sale of the land in question on account of its situation. It is the policy, and it is the wish of Government to offer every reasonable facility for the sale of waste lands generally, and more especially to encourage the sale of land suitable for the growth of tea and other so-called new products, but as at present professionally advised it is necessary to reserve the lands referred to by the hon. members. For papers I would refer the hon. member to Mr. Vincent's report on the forests of Ceylon.

THE LUNATIC ASYLUM.

The Hon. W. W. MITCHELL moved that the despatches received in 1877, 1878, and 1879 from the Secretary of State (with enclosures) on Sir Wm. Gregory's proposed plan of Lunatic Asylum, after the model adopted in India, be published, so as to make the history of this question complete, and to put the Council in possession of all the facts of the case. He said he felt it necessary to put the question after reading a despatch of Sir James Longden to the Secretary of State recently laid on the title in which he went into the history of the asylum, but the despatches referred to in his motion had been dealt with in a very brief manner. He should very much like to see these despatches; they had never been to his knowledge placed upon the table of the Council.

His Excellency the LIEUT.-GOVERNOR said there was no objection on the part of the Government to the despatch being published if they had the sanction of the Secretary of State.

The Hon. the COLONIAL SECRETARY said [illegible] papers referred to by the hon. member there [illegible] I think the hon. member is aware a draft of a despatch from the Secretary of State to Sir William Gregory, this cannot be laid on the table without the previous sanction of the Secretary of State. Application will be made for leave to lay the despatches asked for on the table, together with the draft despatch referred to, without which the history of the case would not be complete.

His EXCELLENCY said he knew the particular paper the hon. member referred to; it was not a despatch as a matter of fact but only a draft of a despatch which had never been signed. He thought the hon. member had seen the papers.

The Hon. Mr. MITCHELL said he had not seen that paper, but he had heard of it.

H. E. the LIEUT.-GOVERNOR said there was no objection to the hon. gentleman reading it. It was a most important paper, but it was not a despatch. If it had been a despatch the hon. member could have it at once. It was a paper addressed to a former Governor of Ceylon, if it was a despatch addressed to this Government, they would have published it, but it was not a despatch addressed to this Government.

The Hon. Mr. RAMA NATHAN :—There is a despatch which may serve, Your Excellency. In 1881 your excellency kindly allowed me the perusal of it, and I gave a summary of it in my speech to this Council.

His Excellency the LIEUT.-GOVERNOR: I shall not trust the hon. members with papers of that sort in future. (Laughter.)

The Hon. Mr. RAMA NATHAN:—Your Excellency did not object to my using it then.

The Hon. Mr. MITCHELL: Then I understand that permission of the Secretary of State to print these papers will be asked for?

The Hon. the COLONIAL SECRETARY:—Yes.

CRIMINAL PROCEDURE CODE.

The Hon. the QUEEN'S ADVOCATE:—Sir, we completed the Criminal Procedure Code at the last meeting so far as the clauses themselves are concerned, but before we come to the consideration of the schedules it may be better to refer back to those clauses which have remained unpassed, and the consideration of which has been reserved. The hon. gentleman went on to say that he thought the first clause was No. 6. He was under the impression that that clause passed eventually but when it was first under discussion the question arose whether the place at which the Criminal Court was to be held should be a place appointed by the Governor or whether it should be the place where the Police Magistrate happened to be. He had conferred with the Chief Justice as regarded this point and the Chief Justice told him he though it was competent for the Criminal Court to be held at the place where the Police Magistrate should deem it necessary and it need not necessarily be held in any particular place specified by the Government. He thought the clause would do as it stood but he thought it was only right to explain this to the Council. He understood the clause was not opposed and therefore he moved that it stand part of the Code.

His Excellency the LIEUT.-GOVERNOR that this was not a change of the system; there was no intention to do away with the present practice of having the Courts in certain places, which was a great convenience.

Clause 6 was ordered to stand part of the bill.

CRIMINAL JURISDICTION OF THE COURTS.

The hon. the QUEEN'S ADVOCATE asked leave to recommit clause 7 which referred to the criminal jurisdiction of the Supreme Court in order to strike out the words "and every Judge thereof."

The hon. gentleman said there were certain questions raised during the consideration of clause 9 and also clause 10 with regard to the present Municipal Council laws and he proposed at the end of clause 9 to move an amendment. He would endeavour to have the amendment in order that it might be printed and circulated before the next meeting. The amendment would be to the following effect: that a police magistrate shall not have jurisdiction in respect of any offence over which any Municipal Council has jurisdiction to deal with, as being on offence under any bye-law. He took it that would do away with interference with bye-laws by police magistrates.

The Hon. Mr. VAN LANGENBERG suggested that the amendment might be proposed and discussed now.

The Hon. the QUEEN'S ADVOCATE said it would be better to leave it for consideration, as an amendment would have to be drafted. They would proceed with the other clauses today with regard to which no further postponement would be necessary.

POWER TO SEARCH.

The Hon. the GOVERNMENT AGENT C. P. claimed the indulgence of the Council for a few remarks. This clause gave power to magistrates to search or cause to be searched all places wherein any stolen goods, or any goods, articles, or things, which, or in respect of which any offence has been committed, are alleged to be kept or concealed, and to require persons to furnish security for the peace, or for their good behaviour according to law." Now that applied to two classes of places; either the place where stolen property was kept which was the subject of investigation, or where some articles or property were supposed to be either with which or in respect of which a crime had been committed, such, for instance, as a blood-stained garment which a man accused of murder might have concealed in his house, or the mould which might have been used for coining purposes, or a gun or any other weapon with which a serious assault might have been committed. Now if he was right in stating that these were the two classes that were intended by that fourth paragraph, be ventured to say that the clause as it stood did not clearly and distinctly express it. It did not express that it gave power to a magistrate to search a place in which were kept concealed things with which an offence had been committed. This certainly was a clause which required great care and he had taken the advice of counsel upon it, and he ventured to suggest that the words "which, or" be omitted altogether and to insert the words "by which, or," which would then read "to search or cause to be searched all places wherein any stolen goods, articles or things by which, or in respect of which any offence has been committed" &c.

H. E. the LIEUT.-GOVERNOR said he had already once directed the attention of the Chief Justice to this and he was perfectly satisfied that the words should stand as they were. He did not know whether hon. members were of that opinion? After a pause, his Excellency continued, that as they would have again to go back to this clause they might consult the Chief Justice. He confessed he did not understand it.

The hon. the QUEEN'S ADVOCATE:—That clause, then, will stand over.

WHEN A PERSON IS CHARGED WITH ONE OFFENCE HE CAN BE CONVICTED OF ANOTHER.

The Hon. the QUEEN'S ADVOCATE:—The next clause I think is 212 in which some question arose as to whether this clause was not very similar to clause 70 of the Penal Code which the Council resolved should be struck out of the code. But I think if we compare the two clauses we shall find that there is a very material difference between them. In clause 70 of the Penal Code it was proposed that if a person was charged with two offences and the court could not make up its mind which offence he had committed it could convict him without stating which offence he was convicted of. The Council thought it was objectionable to convict in that uncertain way and the clause was struck out. But with regard to clause 212, hon. members will see that what we provide for is that a prisoner may be convicted of a different offence from that actually specified in the charge against him and, as I told the Council when that matter was discussed last time, the object is to carry out the law which to some extent exists at the present day; that is to say, if a person is charged with committing an offence the jury can find that he only attempted to commit the offence. If a prisoner is charged with theft, and the evidence shows that it was not a theft but a criminal breach of trust he may be convicted of a criminal breach of trust although the charge against him was one of theft. I think this clause is one which is not likely to act unjustly against a prisoner, and it is a clause which may be very useful in the administration of justice. I may say that the Chief Justice agrees with me on this point. Under these circumstances I move that the clause stand part of the bill.

This was agreed to.

ACCUSED MAY MAKE HIS DEFENCE.

The Hon. the QUEEN'S ADVOCATE:—The next clause to be considered today is 213. When this clause was under discussion, the hon. member representing the Tamil interest proposed that a prisoner should have the same opportunity of summing up his case under this clause as he has under clause 302. I think myself after considering over the matter that it is only a reasonable privelege to give him. He opens his case and then he calls his witnesses and under this clause he would have no oppportunity of addressing the Court on the evidence adduced Under clause 302 power is given him to sum up his case and I do not see why it should not be given

him under clause 273. I think the words the hon. member proposed were "and the accused person, or his pleader may then sum up his case." If the hon. member will move that. I have no objection to it.

Hon. P. RAMA NATHAN: I move to insert the words "an accused person, or his pleader may then sum up his case."

This addition to the clause was agreed to.

TRIAL WITH ASSESSORS.

The Hon. the QUEEN'S ADVOCATE:—The next clause is 275. A discussion arose in connection with this clause as to whether it was necessary that the Court should sum up the evidence of the prosecution and defence where there were assessors to aid the Court. I mentioned this clause to the Chief Justice and he seems to think it might be expedient for the Court to sum up the evidence even though assessors were present. Under those circumstances I move to amend the clause as follows: "When the case for the defence and the prosecutor's reply (if any) are concluded, the Court in its discretion may sum up the evidence, and in cases tried with the aid of assessors shall do so, and shall require each of the assessors to state his opinion orally." That will make it compulsory in a case where there are assessors and discretionary where there are none.

The clause as amended was ordered to stand part of the bill,

INDICTMENT TO BE DRAWN BY THE ATTORNEY-GENERAL.

The Hon. the QUEEN'S ADVOCATE:—The next clause is 282, and some observations were made about this clause in reference to the Registrar of the Court drawing up the indictment. If the code is examined it will be seen as a matter of fact the indictment will be a very simple thing indeed, because it will simply be a copy of the charges which have already been framed by the Attorney General, but at the same time, if the Council think that the drawing up of the indictment by the Registrar would be likely to complicate proceedings, the Chief Justice says he does not think it will do any harm to put in the words "Attorney-General" instead of "Registrar of the Court."

H. E. the LIEUT.-GOVERNOR:—I agree entirely with the hon. member who represents the Tamil interests in what he says about this: that it is most undesirable that the Registrar of the Court shall draw up the indictment based on the charges drawn by the Attorney General. If an objection is made to the form of an indictment, the Attorney-General will say it is the fault of the Registrar who drew the indictment, and the Registrar will say it is the fault of the Attorney-General who drew the charge. Well, the policy of the Council is to saddle the responsibility as much as possible on one person, and I think he should be responsible throughout. It seems to me much preferable that the Attorney-General should be responsible for the way in which the case comes before the Supreme Court.

The Hon. J. VAN LANGENBERG:—I take that view, that the Attorney-General should be the person who should be responsible.

The Hon. P. RAMA NATHAN:—I move that the words "Attorney-General" be substituted for the words "Registrar of the Court."

Agreed to.

POWER TO POSTPONE PROCEEDINGS.

The Hon. the QUEEN'S ADVOCATE:—The next clause I think, is clause 355 and I propose to move an amendment to that clause, but perhaps it will be better to allow the clause to stand over till the next meeting. I may mention that the object of it is to give the Governor in Council the power to determine to what Police Court a man should be remanded. The amendment I propose is, after the words "provided that no police magistrate shall remand an accused person to custody under this section for a term exceeding seven days at a time" to add "save and except such police courts as the Governor with the advice of the Executive Council shall from time to time direct, when it shall be lawful for an accused person to be remanded for 21 days."

This amendment was put and agreed to and clause 355 was ordered to stand part of the bill.

EVIDENCE TO BE TAKEN DOWN AND SIGNED.

The Hon. the QUEEN'S ADVOCATE:—The next clauses are 362 and 363. These clauses refer to the necessity of the evidence being taken down in open court and read over to the witnesses and signed by them. I must say when the clauses were under our consideration some few days ago, I felt very much the force of the arguments made use of against them, but I did not like to interfere with the clauses without mentioning them to the Chief Justice. This I have done and the Chief Justice is still of opinion—and a very strong opinion I may say—that these clauses should be retained in the bill. He states that, though appeals have to a certain extent been done away with by not allowing appeals from matters of fact, at the same time it is very likely there will still be a great number of appeals before the Supreme Court, and he thinks it is necessary that where appeal cases are sent up to the Supreme Court, the Court should have some evidence before it on which to decide. He tells me that a great many cases which come up for consideration in the Supreme Court as a matter of fact, contain very little information indeed, and give the Supreme Court very slight foundation upon which to form a judgment. On these grounds I think it would be expedient to retain the clauses, and further I think it expedient to retain the clauses in consequence of certain observations which have been made in connection with the subject of appeals. When the question of appeal was under discussion it was stated by some hon. members that there was not that confidence in the judges and magistrates of the inferior courts of this colony as should undoubtedly exist, and that a large proportion of people were not satisfied with the way in which such judges and magistrates performed their work. I was sorry to hear that such was the case and all I can say, is, if such be the case, that it is necessary to make such Legislative enactments as will guarantee the work being better done than it is done. On these two grounds, then, I feel that that though there will be a great deal of work [illegible] courts by their having to go [illegible] proposed by these clauses, still I think it [illegible] necessary that confidence should exist as to the [illegible] in which the inferior courts carry on their work, if they do not take all that care they ought to, of course it is necessary to legislate in such a way as to make them, and which will cause fuller information to be given to the Supreme Court than is apparently furnished now. Though I feel what was said against these clauses yet on further considering the matter I think they should be retained and form part of the bill.

H. E. the LIEUT.-GOVERNOR:—It is moved that clauses 362-3 form part of the bill.

The Hon. the GOVERNMENT AGENT C. P.:—I beg to move, with Your Excellency's permission, that section 362-363 be entirely expunged, and that the arrangement with regard to taking down evidence be left as it is. If it may be deemed necessary to alter or change it hereafter it may be done by such rules as may be drawn up hereafter in connection with this code. I must say that I do not think with the hon. and learned gentleman who has just spoken on this point and I must, boldly assert that the judiciary of Ceylon does command the confidence of the people, and I take this opportunity of saying in Council that so far as I have ever heard there is universal confidence in the judiciary of Ceylon. To tell me that the recording of evidence by the magistrate should not be sufficient, is, Your Excellency, I think, making a very bold, and I venture to say, wide assertion. But it is on the ground, first, that there is no neces-

sity for anything of the kind that I make this motion. You may safely intrust any magistrate or judge with taking down the evidence so far as necessary for the purposes of the case. If you have perfect confidence in the magistrate or judge. It is not merely for that I move to expunge these two clauses, but because if you retain them I believe you will block the business of all the courts and I believe you will have not only to double but to treble your commission. I have communicated with several magistrates and officials of the courts and they all agree in thinking that if everything is to be dealt with in this complicated and difficult manner, then the business of all the courts will be very seriously delayed, and the Police Courts will be entirely blocked. I therefore beg to move that Clauses 362-363 be entirely deleted from the present bill, and that the evidence be taken down as it has been hitherto, till such alterations have been made as may after due consideration be considered necessary, with the sanction of the Governor in Council.

The Hon. J. VAN LANGENBERG said the principle involved in the consideration of this question certainly would be one which he should feel it his duty to support, in that they would secure what the section contemplates: a proper record of the proceedings of the Court. When this matter was mentioned before the Council he thought it would be to some extent unnecessary that the evidence should be recorded by the magistrate and then read over and signed by the party, on account of the great inconvenience it would entail and also because of the time that would be occupied in carrying out this provision. But since this matter came before the Council they had had a very important discussion which resulted in the abridgment of the rights of the people so far as appeal is concerned, and therefore it was extremely desirable that they should retain these clauses now. If in all cases parties had the right of appeal to the Supreme Court they might have had some sort of guarantee that the record would contain all that was necessary in order that the higher courts might determine whether the magistrates were right or not, but now that the right of appeal is taken away, the magistrate who has tried the case is himself the judge and he has to decide whether his decision shall be revised at all. Now, under these circu[illegible] the provision was a very good o[illegible] should be retained. They had in [illegible]ny matters yielded to the Chief Justice and [illegible]nest desire he had shown that the administration of justice should be efficient and have the confidence of the people, and the Chief Justice has declared that it is absolutely necessary and he given it as his experience that the provision should be retained in order to obtain that efficiency which is absolutely necessary, and in that view be supported the retention of the two clauses.

DISCUSSION ON WHETHER MAGISTRATES SHOULD TAKE DOWN EVIDENCE IN FULL.

Hon. P. RAMA NATHAN:—I too, Sir, must feel it my duty to raise my voice against the deletion of those two clauses. I do think that it is absolutely necessary as we have now made the law that the duty of recording the evidence by Police Magistrates should be made clear to them, and that the evidence recorded by them should be full and fair and not taken down in a bald and slip-shod manner. The pages, Sir, of the *Supreme Court Circular* teem with cases in which Judges of the Supreme Court have thought it necessary in the interests of justice to record their opinion of the manner in which magistrates record their evidence. Often and often they have characterized the mode of their taking evidence as "bald and slip-shod," not revealing the true facts of case and not enabling the appeal court to arrive at a correct judgment. Now, Sir, as I stated last time, if a man of mature years, well used to the ways of the country, is called upon to try cases in Ceylon, I do not think the people of Ceylon would insist that he should take down the evidence in writing. If a person like my hon. friend, the Queen's Advocate, or any other member round this board, was called upon to decide a case, whether civil or criminal, I do not think the people of Ceylon would expect them to, or think it necessary that they should take the evidence down in writing. They would be quite content to receive their judgment, because I say, they have confidence in men of that kind. But in Ceylon we have young men imported into the service of tender years and called upon to administer justice without any experience of the country, and it is unnatural, sir, to expect the people of Ceylon to have confidence in their judgments. In India, it has been said, there is no appeal from the convictions of a justice of the peace in certain classes of cases, but the justices of the peace there, Sir, are men of mature years and not young men new to the country. They may or may not record evidence, but their judgments are respected and indeed are most generally received as correct judgments; but in Ceylon the case is different. One of the arguments urged by my friend who represents the Burgher community the other day struck me most forcibly: that if the right of appeal were taken away,—as it has been taken away,—magistrates in Ceylon—especially the younger magistrates—would gradually get into slip-shod ways of recording evidence. Of course my hon. friend the Queen's Advocate with his high sense of duty, has stated that the very fact of appeal being taken away would induce magistrates to think twice before they convicted persons brought before them. I take it that would be so with men who were thoroughly alive to their responsibilities. I admit, Sir, that in the lower grades of our service there are many men who are thoroughly able and who have done useful service, but cases have come up before the appeal court displaying such utter disregard of their plain duties that really persons outside the Supreme Court cannot conceive what magistrates do. I do not want to mention names, but the other day a case from Galle came up. That was a case in which a cart contractor was implicated, and the magistrate, for reasons best known to himself, sentenced him to 14 days' imprisonment on a charge of theft. He appealed, but the magistrate would not admit him to bail. He was a thoroughly respectable man, and he at once telegraphed to counsel here to apply to the Supreme Court and procure an order of the Supreme Court to admit him to bail. Learned counsel applied to the Supreme Court, the Chief Justice was not there, and application was made to another judge who said "the case will come on in three days' time, there is no use therefore in sending an order at once to Galle to release the prisoner." The case came on before the learned Chief Justice and the learned Chief Justice took a view of the case quite adverse to the view taken by the police magistrate. He said there was no case against him and immediately ordered the release of the prisoner. A telegram was sent from Colombo and the man was released. I have not gone into the details of the case, but I have simply stated the bare facts. This case which is not 14 days old, will simply illustrate to you how these cases come up before the Supreme Court deserving of interference on the part of the Supreme Court. Now, Sir, appeal has been taken away and the only redress left in the hands of the public of Ceylon is to appeal to His Excellency the Governor, the only recourse left to the people of Ceylon is that in cases which carry one months' imprisonment in the police court and three months' imprisonment in the district court, they will have to appeal to Your Excellency. Ofcourse Your Excellency will call for the record of the proceedings and all that is recorded there is that "so-and-so assaulted me on such-and-such a day" and Your Excellency will of course say "this does not admit of any interference" and Your Excellency will not be able to exercise your right of interference. I therefore submit, Sir, that as we at present stand it would be very unsafe for us to assent to the deletion of clauses 362-363.

The Hon. the GOVERNMENT AGENT W. P. :—Sir, I rise to support the amendment made by my hon. friend the Government Agent for the Central Province, that these clauses be deleted. The question was argued at great length when the clause was first read in committee and it then appeared to be the opinion of nearly every member who spoke that to carry out the provision of this clause was really impracticable, that it would so delay the work in the justices' courts that instead of being a benefit to the people, it would be decidedly the reverse. Well, sir, I have heard nothing today from any hon. member who has spoken to lead me to change my view or the view which I think the majority of members came to on the last occasion. The hon. and learned Queen's Advocate tells us that the learned Chief Justice especially wishes this clause to be retained because in his opinion it would be excessively useful to the Appelate Court. He says there will be fewer appeals under this Code, but still there will be a great many and therefore he wishes this clause retained. The hon. member on my left (Mr. Van Langenberg) wishes it retained because, he says, we have taken away the right of appeal in so many cases and there will b so few appeals and he wishes it retained therefore on this ground. I do not see how both these reasons can be correct, and I may say as regards the reasons put forward by the learned Chief Justice it seems to me this Code is an effort to lessen in every possible way the work of the appelate court no matter at what trouble, and I might almost say, inconvenience, to judges and magistrates. My hon. friend the Government Agent for the Central Province has stated—and I cordially agree with him—that as a general rule there is the utmost confidence felt by the people of this country in the judiciary of Ceylon. I do not think that any class of public servants in Ceylon has so fully the confidence of the people as the judiciary. It is quite true there may be cases of young and inexperienced magistrates who occssionally are not sufficiently trained to thoroughly understand their work, that is very different from not truly and faithfully recording the evidence given before them, and I must say I have never heard of a case of a charge brought against a judge or a magistrate that he has wilfully, unfairly or not fully recorded the evidence given before him. I will say, Sir, if this clause is passed, so far from being a benefit to persons accused it will work injuriously. The time of the court will be so greatly taken up that there must be at least double, if not treble, the time taken up in hearing an ordinary case, not only has the evidence to be taken down, but it has then to be read over to the witness in open court. Now, if anyone has had any experience of police courts, and has seen the time it takes to dispose of a case under the present system they would understand the time this new procedure will take. Fancy the long evidence of a witness in a District Court case being handed down after it has been taken and read through by the witness or, as is more generally the case, by an interpreter to the witness, while the Judge has to sit on the Bench doing nothing! Well, then it may be necessary to correct it ; "if the witness deny the correctness of any part of the evidence when read over to him, the judge or magistrate may, instead of correcting the evidence make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary." I ask you to think of the District Judge at Kandy or the District Judge at Colombo making a memorandum of objections, and adding to such remarks as he may think necessary. It is really reducing the thing to an absurdity. I do hope before hon. members agree to this clause they will see if something else which will meet their views cannot be substituted. I would suggest to my hon. friend that it may be possible to say "except in the Supreme Court, as the evidence of each witness is completed and taken down in writing it shall be signed by the magistrate, and, *if required by the witness*, it shall be read over to him in the language in which it is at present. Now are we prepared to double all those impossible things it is desired to make absolutely imperative might follow. If you leave it to the witnesses there would be not one out in 10 who would require or who would not be perfectly satisfied that the magistrate had taken his evidence down correctly and truly. He would not require that it should be read over to him translated corrected, and commented upon but would go out of the witness-box in the confidence that the magistrate had recorded the whole of his evidence even if he had not got the actual words used by him. I beg to support the amendment.

The Hon. the QUEEN'S ADVOCATE pointed out that if these clauses were deleted entirely, no provision would be made for taking down and reading the evidence in preliminary inquiries, because this chapter referred to preliminary inquiries as well as other cases, and if they did not require magistrates to take down the evidence and have it read over to the accused in cases of murder it would be a very serious thing.

The Hon. the ACTING COLONIAL SECRETARY :—It appears to me that this clause goes a great deal further than is absolutely necessary. I cannot help agreeing with what fell from the hon. members, the Government Agent for the Central Province and the Government Agent for the Western Province with regard to the opinion held by the people towards the judiciary of Ceylon. I believe I am correct in saying that when this question came up before, it was adjourned with a view to make it applicable only to police cases which would have to go before a higher Court.

The Hon. the QUEEN'S ADVOCATE said until a case was heard it was impossible to tell whether it would go before a higher Court or not; until sentence was passed it was impossibe to say whether there would be an appeal or not. If the sentence was over one month in a police Court or over 3 months in a District Court, it might be appealed against, therefore until the sentence was passed they could not tell whether it would go to the higher Court, or not.

H. E. the LIEUT.-GOVERNOR:—I think the hon. and learned member misunderstands. The suggestion was that only in cases that were going to be committed for trial should the evidence be read over.

The Hon. the QUEEN'S ADVOCATE :—The evidence is taken down for a considerable time before it is decided whether the case will go for trial or not, and it is for the Police Magistrate [illegible] to determine whether it shall go [illegible] or not. If it is a case that might be adjudicated by the Magistrate he will ask the accused if he will be punished by him and if he says "yes," then it can be dealt with it, but if he says "no" it must go before the higher Court. I don't know how you are to find the exact period when to determine that it is a case for taking down the evidence.

The Hon. the TREASURER :—It seems to me that it shouldb be as soon as the magistrate has determined that the case must go to a higher Court.

The Hon. the GOVERNMENT AGENT W. P.:—As soon as the magistrate is satisfied that it will have to go to a higher Court then the evidence may be read over to the witness.

The Hon. the GOVERNMENT AGENT C. P. :—In the act there are provisions for that because the right is reserved to recall every witness, and every witness would be necessarily recalled in order to sign his evidence.

H. E. the LIEUT.-GOVERNOR :—I must say it appears to me that we must make up our minds to one of two things. If we are going to double the work of our Police Courts deliberately, are we prepared to double the staff of magistrates? that is the point. It is perfectly well known that the Police Courts have already more than they can do, I have heard complaints of the evidence taken in the Police Courts not being taken so fully as the appellate Court would wish, but the reason of that is, not from any slip-shod practice on the part of the magistrate, but that it is absolutely impossible in the time to get through the work, as

that work? That is the real point; if we are going to double the work we must double the magistrates. Are we prepared to do that, are we prepared to have four magistrates in Colombo, two in Galle, two in Kandy, and give additional magisterial strength all round? I understood distinctly from hon. members that they were not prepared for that, and certainly I am not prepared for it, the Colony cannot afford it. If that be so we must deal fairly with our magistrates and not put upon them a burden which we know perfectly well they cannot bear. Everybody in the Council who knows about the courts knows they cannot possibly undertake more work; we must not double the work and put upon them work we know they cannot do, and this is really the point that influences me in voting upon this question. I do not follow quite the argument of the hon. and learned member who said because we had taken away to a large extent the right of appeal as to facts, that upon that ground we are bound to make our police magistrates take down a larger amount of evidence as to facts. If there was an appeal on facts in every case then it would be reasonable to say that the evidence shall be taken down as to facts in a more lengthy way, but when there is no appeal as to facts it seems to me unnecessary to take down the evidence at any length. The right of appeal is a right of which the people of Ceylon are only too prone to take advantage. I suppose there are five or six thousand petitions a year appealing to the executive against judgments of our courts come to the secretariat and there is really nothing in them. As a rule they contain no reason whatever why they should have been written, and they are consigned to the waste-paper basket because on the face of them they bear no sense or reason. But there is a certain number which do merit investigation; and and in these cases reference is made to the magistrates' courts and the case is called for. During my experience of 13 years here I have seen a very large number of these cases and in have never found any difficulty from the manner I which the cases are recorded in arriving at a judgment. I have once or twice told a magistrate that his writing is illegible and sent back to ask what his signature was, and I have occasionally drawn attention to little points of carelessness; but I am bound to say that I never found a police, court case wanting in [illegible] which to come to a judgment. [illegible] may say that this provision is utterly [illegible] and if we are not prepared to augment our [illegible]ry, shall we place upon that judiciary a still [illegible]er burden of work than they can bear? What will be the result? The day being only 24 hours, and the week containing only six working days, they will have to take the evidence in a more shortened manner still. You cannot make a man do more work than he can possibly get through during the time the court is sitting, and therefore you cannot be surprised if he does the work in a clumsy way. I do not see what the case referred to by the hon. member who represents the Tamil interest has to do with this. I do not see that it would have benefitted the cart-contractor anything if his evidence had been read over and he had been asked if he had any objection to make to it. Would he have been better off then? I do not think this provision of the Code would have done the cart contractor any good.

The Hon P. RAMA NATHAN:—You have taken away his right of appeal.

H. E. the LIEUT.-GOVERNOR:—Of course. What I understand was the desire of the honourable member who proposed the deletion of these clauses was not in any way to take away from the magistrates the duty of recording the evidence in any case which came before them in the full and proper way that their evidence is recorded now. I understand that the procedure would be as follows: a police magistrate holding an enquiry would take down the evidence in the form now done, and sign it. When he makes up his mind to send the case to a higher Court he sends for the witnesses, reads over their evidence to them and asks them if they have anything to say to it, and if they have nothing to say they sign it. That is what is done now and if this is the policy which the hon. member wishes to inculcate, then I am quite willing to accept it, but I do not wish to place upon the police courts a burden they cannot possibly bear. You cannot make bricks without straw, and you cannot make a man do more than he can do, and on this account I feel bound to support the amendment.

The Hon. MR. RAMA NATHAN:—If the clauses are deleted will other provisions be made?

H. E. the LIEUT.-GOVERNOR: They can only be deleted on that understanding.

The Hon. P. RAMA NATHAN:—Because, I think, from the Administration Reports of 1881 there were 7600 cases which were actually heard and disposed of by justices of the peace, and in all these cases the evidence was taken down and read over to the parties and their signatures taken.

H. E. the LIEUT.-GOVERNOR:—And it will have to be done in future; they can do that.

The Hon. the GOVERNMENT AGENT C. P.:—I care not whether it is deleted or amended. That is a matter of detail the arrangement of which I will leave to the hon. the Queen's Advocate.

The Hon. the QUEEN'S ADVOCATE:—I do not see clearly my way to amend the clause in the way suggested. I do not see how we can tell the particular time at which a police magistrate is to say that the case shall go for trial. Many clauses we have passed will be useless if so soon as the magistrate decides that the case is to go to a higher he has to take all the evidence over again because he will have to go all over the work as it is done now. It is proposed that these provisions shall take the place of the present law, therefore we are taking away the present law and shall only be left with the provisions of this code.

H. E. the LIEUTENANT GOVERNOR:—I do not see any difficulty myself in providing that when a police magistrate is holding an inquiry for the purpose of sending the case before a higher tribunal he shall endeavour to do what is mentioned here.

The Hon. the GOVERNMENT AGENT C. P.:—We may say that in cases under the 171st section when a magistrate finds, he will have to send the accused for trial the evidence as taken down shall be read over to each witness in open court in the presence of the accused person and, if necessary, corrected. Under the 171st section when a magistrate finds that he has sufficient grounds for committing the accused for trial he shall frame a charge under his hand declaring with what offence the accused is charged. Now, as nine-tenths of the cases are summarily disposed of and very many drop out through the absence of parties, it would be only in a few cases that the additional formula of reading over the evidence would be required.

H. E. the LIEUT.-GOVERNOR:—I think we may do something even simpler. I think it will meet the case if we simply say instead of "except in the Supreme Court," "in all cases under chapter 16th." That will cover the whole case. I think the most convenient thing will be for the hon. member who moved the deletion of these clauses to move to substitute those words.

The Hon. the GOVERNMENT AGENT, C. P. expressed his willingness to accede to this course.

H. E. the LIEUT.-GOVERNOR:—The question before the Council is: the hon. member the Government Agent C. P. moves to insert the words "in every inquiry under chapter 16" and to delete the words "except in the Supreme Court."

The Council then divided with the following result:—

Ayes.	*Noes.*
H. E. the Lieut.-Governor	The Hon. Queen's Advocate
The Hon. Officer Commanding	„ J. Van Langenberg
„ Colonial Secretary	„ P. Rama Nathan
„ Auditor General	
„ Govt. Agent C. P.	
„ Govt. Agent W. P.	
„ Treasurer	
„ W. W. Mitchell	

His Excellency the LIEUT.-GOVERNOR :—Clauses 362-3 as amended stand part of the bill.

ALTERNATIVE JUDGMENT.

The Hon the QUEEN'S ADVOCATE :—The next clause is 373 and the question is whether the third paragraph of that clause should not come out. I think it is quite clear that that paragraph refers to paragraph 70 of the penal code which has already been deleted, and therefore I move that this paragraph be also deleted.

His Excellency the LIEUT.-GOVERNOR :—It is following the principle of clause 70 of the Penal Code which has been deleted.

The clause was accordingly struck out.

EXECUTIONS.

The Hon. the QUEEN'S ADVOCATE :—The next is clause 375 which has reference to sentence of death being carried out. Since the clause was under discussion, I have referred to the Instructions of the Governor to which Your Excellency made reference when discussing the clause, and I find there is really nothing in the clause which is in any way contradictory to the instructions. This clause authorises the Governor to respite the execution if necessary, therefore if the Governor thinks there is not sufficient time between the time a person is convicted and sentence of death passed and the day fixed by the Judge for the execution, in which to examine the case he has always the power to respite the criminal for a further term. When the Judge fixes the day, he does not so much fix a day as respite the sentence until a certain time, and I will suggest to amend the clause by inserting the word "further" before the word "respite," in the 11th line and I think that this will make the clause perfectly clear. I therefore move that amendment.

H. E. the LIEUT.-GOVERNOR : I myself rather objected to the clause, but on consulting the Instructions I see that with this amendment the Instructions can be carried out.

The hon. the GOVT. AGENT, W. P. : Is it clearly understood that the Fiscal is bound to carry out the sentence if he does not receive a further respite from the Governor, and that this will cancel the Ordinance which declares that he is not to carry it out?

H. E. the LIEUT.-GOVERNOR: I have power to further respite the sentence.

The amendment was then agreed to.

WHO SHALL TAKE CHARGE OF THE PRISONER.

The Hon. the QUEEN'S ADVOCATE : The next clause is 378 and the only point is who shall take charge of the prisoner. I saw the Chief Justice this morning with reference to this clause, and he states that the word "Fiscal" was advisedly put in. In clause 81 of Ordinance 367 it is provided that the warrants shall be addressed to the Fiscal who shall take the prisoner in charge to the jailer, and therefore clause 378 simply follows out the existing law.

This clause was ordered to stand part of the bill.

TIME FOR LODGING APPEAL.

The Hon. the QUEEN'S ADVOCATE : I think sir, a question arose in clauses 407-8 with reference to the time for lodging appeal. In clause 407 it states that when notice of appeal has been given a petition has to be lodged within 10 days, and clause 408 says that a petition of appeal has to be lodged within 5 days. The Chief Justice says that in the case when a person is not present at the time the decision is given it might be some little time before the decision comes to his knowledge, and therefore it was only fair that he should have a longer time in which to lodge his petition than if he was actually in Court and heard the decision. If a person is in Court and the decision being pronounced he gives notice of appeal I thought that 5 days would be quite sufficient for the petition.

The Hon. J. VAN LANGENBERG : I do not think that makes any difference. A party may give notice of appeal and perhaps have to communicate with his advisers before he files a petition. It was thought last time that when a party was present he should have a longer time—15 days instead of 5.

His Excellency the LIEUT.-GOVERNOR :—I think it may be convenient to make it the same time in both cases.

The Hon. the GOVT. AGENT, W. P. :—Clause 407 says that a party may prefer an appeal by lodging it within 10 days, and says clause 408 that "when a wish to appeal has been asserted as provided for by section 407 if a petition of appeal shall not be lodged within five days in the court from which the appeal has been preferred, the appeal shall be considered abandoned." But to lodge an appeal is to prefer an appeal and therefore clause 408 cannot be read with clause 407. If we agree that ten days shall be the limit in all cases there is no necessity for clause 408 at all and I move to delete clause 408 altogether.

His Excellency the LIEUT.-GOVERNOR :—There is no occasion for it if the time is made the same.

Thh Hon. J. VAN LANGENBERG :—If we delete the clause the effect will be this : that if any person declares in open court that he wishes to appeal it will be sufficient. It is sufficient now, if a person declares in court that he wants to appeal the case is sent up for appeal. If we delete clause 408 we dispense with the petition of a person who declares in open court that he wishes to lodge an appeal. We may omit the last four lines in clause 407 beginning "or instead thereof."

His Excellency the LIEUT.-GOVERNOR :—I think if a man wants to appeal to the Supreme Court he ought to prefer a petition. I understand it is moved to delete from the word "or" in clause 407 and the whole of clause 408.

The Hon. the GOVERNMENT AGENT C. P.:—So that a petition of appeal will be necessary in all cases.

This was agreed to.

BAIL.

The Hon. the QUEEN'S ADVOCATE :—The next clause is 409, and I think that had better stand over for the present, because there is an amendment which I intend to submit. With regard to clause 410, it seems to me that it would be well for the court to have some discretion as to releasing a person on bail. As the clause now stands it is as follows :—"When an appeal has been preferred under section 407 the court from which or order the appeal has been preferred shall release the appellant if in custody to be released on bail etc. Well, the Deputy Queen's Advocate pointed to me that he thought some discretion should be given to the court as to releasing a man on bail, and I move that after the word "shall" the words "in its discretion" be inserted, and after the word "bail," "or shall refuse in its discretion to accept bail."

The Hon. J. VAN LANGENBERG :—I do not see what is the object in giving a police magistrate a discretion in this matter ; if a person can give satisfactory bail he should be released. In some instances we have magistrates who invariably allow parties bail when a case is sent up for appeal, and others are so strong in their opinions that they will never allow bail. I know cases when I have heard it said "I make it a rule never to allow bail, and I do not want to depart from that rule."

His Excellency the LIEUT.-GOVERNOR :—It is not the case of a magistrate only, but a district judge also, but the judge has the discretion of fixing bail as high as he likes according to the gravity of the sentence.

The Hon. J. VAN LANGENBERG :—He can fix proper bail, and if a man is in a position to give satisfactory bail I do not see why it should be refused. If he cannot give satisfactory bail then under this section he is to be kept in custody.

His Excellency the LIEUT.-GOVERNOR :—It was considered that an appeal might be lodged merely for

the purpose of gaining time, and in that case the court should have the discretion of refusing bail. I can imagine a case in which the court would not give bail if it had the discretion where a man could give substantial bail.

The Hon. the QUEEN'S ADVOCATE intimated that he would not press his amendment.

The Hon. the GOVERNMENT AGENT W. P. said he could not help thinking that there might be a case where it was advisable to leave the magistrate power to refuse bail after a conviction. It is the present law, and there are cases when after a man has been tried and sentenced it is very desirable that he should not go out. I think unless there is some very strong reason for altering the present law, or unless the present law can be shown to have acted injuriously it should not be altered. I am inclined to think the suggestion thrown out is a good one and to vote for the insertion of the words "in its discretion."

The Hon. J. VAN LANGENBERG:—I do not think it is any argument that the existing law shall be continued, because we are at present engaged in repealing the present law. If a discretion is offered there are judges who are so strongly wedded to their opinions when they convict a man as to think it is not likely the Supreme Court will reverse their decision, and they will not release a prisoner on bail. When a man seeks to appeal from the decision of a judge he should be assisted in having his appeal carried to the higher court and the judge should show no feeling at all against a party appealing from his decision. All that is wanted is when the sentence is passed upon a man he should have bail given him as a right, because the question is not so far decided as to require that the man shall be punished, for it is punishment to be kept in gaol, and why should he be placed in that degrading position when the case has ultimately to be decided whether he shall be punished or not.

H. E. the LIEUT.-GOVERNOR:—How long does it stand over.

The Hon. J. VAN LANGENBERG:—It depends upon the day the case is sent up, the rule is 7 days. There is sometimes a delay in transmitting the record to the higher court and that is a delay for which the accused is not responsible.

The Hon. the GOVERNMENT AGENT, W. P.:—I quite agree with a good deal that has fallen from the hon. member, but [illegible] already provided that in cases of [illegible] where the man is arrested before his [illegible] be discretionary with the court to take bail [illegible] Now surely if there are good reasons for detaining [illegible] in custody before he is tried there may be good reasons for detaining him after and before the final decision of the Appellate Court has been passed upon him. Although the hon. member has stated that he has known instances of bail being systematically refused, I think one or two instances of that kind should not be taken as being a sufficiently strong reason for depriving a judge of that discretion which in the interests of the public he may have to exercise, and I certainly think that discretion should be continued till a final decision is arrived at.

The Hon. J. VAN LANGENBERG said there was a different reason for not admitting a person to bail till the magistrate had come to his decision and that was that the party accused might tamper with the witnesses. As the clause now stands a Justice of the Peace may refuse to admit a party to bail, but as soon as the proceedings are concluded and the party is committed for trial then he has a perfect right to demand bail and be released on bail, provided the charge against him is not murder or treason, then the Justice of the Peace has no discretion at all. Now here the case is concluded, and the question is whether the Judge should then have any further interest in the case. He becomes, as it were, one of the parties to the case; he is the party against whose judgment the appeal is taken and it may be said that he has an interest in the verdict

The Hon. the TREASURER:—I quite agree with my learned friend that the argument of the Hon. the Government Agent does not apply to the case under consideration. It is perfectly intelligible why bail should be refused to an accused person so long as the enquiry is pending, but afterwards I say, give him every right to demand to be let out on bail. I would not allow it to rest with the discretion of the magistrate. I think that is the common sense view of the matter and that the clause should stand.

The Hon. the QUEEN'S ADVOCATE:—I do not press the amendment I suggested.

The Hon. the GOVERNMENT AGENT W. P.:—My learned friend assures me that the practice at present is that the Justice must take bail. My idea was that it was at his discretion to do so.

The clause was then ordered to stand part of the bill.

CERTIFICATE OF PROCEEDINGS.

The Hon. the QUEEN'S ADVOCATE:—Clause 411 stood over because some members wanted to know what the certificate mentioned in this clause refers to. The Chief Justice explained to me that a certificate of the proceedings was perfectly regular; it was merely a certificate from the Judge or Magistrate certifying to the correctness of the record. However there can be no harm in inserting the words "together with a certificate of the correctness of the record."

His Excellency the LIEUT.-GOVERNOR:—I think it is a good thing that the magistrate before he sends the appeal up shall go through the form of looking up the case and seeing that it is all right, and this clause will insure his doing so.

SHALL AN APPELLANT BE PRESENT TO SUPPORT HIS APPEAL.

The Hon. the QUEEN'S ADVOCATE:—The next clause left over is 413-4. It was suggested that the words "if the appellant does not appear to support his appeal it shall be dismissed" should be struck out. Well, the Chief Justice, with whom I have spoken about this matter, states that he thinks the words should be retained. He is of opinion that if appellants are not present to support their appeals, the appeals ought to be dismissed. As a matter of fact the superior Courts very often do dismiss appeals if the parties do not appear, though there is no law specially authorizing such to be done. It would appear to be a power inherent in a Court to strike out a case if no parties appear, I should be inclined to retain the words. I think myself that when a party appeals he ought to be present to support his appeal.

The Hon. Mr. VAN LANGENBERG was of opinion that it was a hardship to force a man to appear at Colombo from a distant part to support an appeal, otherwise his appeal would be dismissed, It appeared to him that this would be a great hardship.

H. E. the LIEUT.-GOVERNOR:—It seems to me a very hard clause, and almost harder on the respondent to have to be present to support his case. Take a case of this sort: where a rich man is fined one rupee at Jaffna. He appeals to the superior court, and obliges the respondent to come from Jaffna to support his case. I think it may be used very vexatiously indeed. It seems harder to oblige the respondent to appear than to oblige the appellant because it places the respondent at the mercy of the person who appeals.

The Hon. the QUEEN'S ADVOCATE pointed ut that the clause did not oblige the respondent to be present.

The Hon. J. VAN LANGENBERG:—The appellant is obliged to attend, but the respondent is not obliged to attend, because if the respondent is not present then notice will have to be given to him and no order can be made adverse to him unless he has had that notice.

His Excellency the LIEUT.-GOVERNOR:—The only point is whether the appellant should be obliged to come up.

The Hon. the GOVERNMENT AGENT C. P. thought that if the evidence before the magistrate was properly taken down and a petition of appeal lodged that ought to be sufficient to entitle any one to the

benefit of the Court of Appeal. He therefore moved that the words be deleted "if the appellant does not appear to support his appeal it shall be dismissed.'

The Hon. P. RAMA NATHAN :—I suppose he may appear by his pleader ?

The Hon. the GOVERNMENT AGENT, W. P. :—As I said when the clause was last discussed this is perfectly sure to lead to a denial of justice in a great many cases. We have a great number of clauses in this bill restricting appeals and making the work of the Supreme Court as light as possible ; I think we might take out these two lines.

His Excellency the LIEUT.-GOVERNOR :—It is moved to delete the words "if the appellant does not appear to support his appeal it should be dismissed."

The Hon. the QUEEN'S ADVOCATE :—My own feeling is that it will not, after all, make very much difference because I do not think there is any law, unless a special law is passed, to compel a Court of Justice to hear a case when the parties are absent when the case is called ; there is no law which obliges a court to take up and consider that case. I know in other countries if a person appeals and at the time the case is called the appellant is not there the court does not take up the record of the case and say "Oh, yes, the appellant is right, the decision must be reversed."

His Excellency the LIEUT.-GOVERNOR :—At present if the appellant is not there the court can dismiss the case if it likes, but this clause would make it obligatory on the court to dismiss it whether it likes or not. As the law now stands the court may, if it thinks there is anything in the case, go into the case even if the appellant is not there, but by this clause we are going to change the system and make it obligatory on the court to dismiss an appeal because the appellant is not there. I think it would be better to leave it to the discretion of the court. If the court likes to dismiss the appeal it can do so, but do not make it obligatory on them. For that reason I support the deletion of those words.

The Hon. the GOVERNMENT AGENT, W. P. :—Frequently appeals are gone on with when neither party is present.

The Hon. the QUEEN'S ADVOCATE :—I believe in one day there were 23 appeals before the Supreme Court and out of that 23 there were 14 in which there were no appellants present, and I am informed that that is so in a large proportion of cases. I do not, of course wish to divide the Council if I am—and I am apparently—the only one who thinks these words should be retained. It was one of those matters I mentioned to the Chief Justice and he said the words were advisedly put in and he thought they should be retained. He says a great many cases come before the Supreme Court in which no appearance is put in and he thinks when parties appeal they ought to be present for themselves or through their pleaders, to state to the Supreme Court their case.

The Hon. J. VAN LANGENBERG suggested the addition of the words "if present" after "usually the appellant." He said they had provided for the case where the appellant does not appear and they must provide now for the case where he does appear.

H. E. the LIEUTENANT-GOVERNOR :—Supposing that we, instead of making it obligatory on the court to dismiss the case, say "the court may either dismiss the case or make some order thereon" ?

The Hon. the GOVERNMENT AGENT, C. P. :—I do not think we ought to suggest dismissal. The insertion of that word may touch the conscience of the Supreme Court.

H. E. the LIEUTENANT-GOVERNOR :—I think as a rule if the appellant does not come up the case should be dismissed.

The Hon. J. VANLANGENBERG :—I wish to move that the clause be amended as follows :—"If the appellant does not appear to support his appeal the court may either dismiss the appeal or make any other order thereon, as it may think fit."

H. E. the LIEUT.-GOVERNOR :—It is moved to insert after "support his appeal" the words "the court may either dismiss the appeal or make some other order thereon as it may deem fit."

The Hon. the GOVERNMENT-AGENT C. P. :—I dissent.

The amendment was carried and the clause as amended ordered to stand part of the bill.

POWER OF THE SUPREME COURT TO REVIEW A SENTENCE.

The Hon. the QEEEN'S ADVOCATE :—The next clause, I think which stood over was clause 427. The hon. and learned member on my left had some doubt about it, but the Chief Justice states that the "sentence" referred to here is the sentence that is passed by the court in the first instance. Under clause 426 the court may reserve a point of law but that would not prevent the court passing sentence in the meantime, and when the case comes before the Supreme Court under clause 427, the Supreme Court under that clause will have the power to alter the sentence previously passed by the judge if it thinks right to do so.

The Hon. J. VANLANGENBERG :—I would suggest a slight alteration there. As it stands now it will read as if it was to alter its own sentence.

The Hon. the QUEEN'S ADVOCATE intimated that this should be clearly expressed, and the clause was ordered to stand part of the bill.

REFERENCE TO THE SUPREME COURT ON A QUESTION OF LAW.

The Hon. the QUEEN'S ADVOCATE :—The next clause is 428 and I would move the deletion of the clause altogether. The clause gives power to the District Judge to refer a case at any time to the Supreme Court on a question of law. I am very much afraid that a great number of cases would be referred to the Supreme Court. No doubt it is very desirable at times that the Supreme Court should decide questions of law but I think this clause is unnecessary.

The clause was accordingly struck out.

The Hon. the QUEEN'S ADVOCATE :—The next clause is 447 and the doubt that arose about it was as regards the words "upon its own charge." Under section 448 the court has power to order proceedings to be taken for an offence committed before it and the words "on its own charge" means that the court may try a person charged under its own directions.

Clause ordered to stand part of the bill.

WHEN BAIL MAY BE TAKEN IN [illegible]

The Hon. the QUEEN'S ADVOCATE : [illegible] to clause 458. I think it was proposed [illegible] clause was under discussion to strike out the few lines of the first paragraph of it. It was also suggested that it might be well to reserve certain cases from being admitted to bail, and I would therefore propose in place of the words " he shall not be so released " to insert the words " may or may not be released on bail at the discretion of the Court." This part will read then " when any person accused of any non-bailable offence is arrested or detained without warrant, or appears, or is brought before a court he may or may not be released on bail at the discretion of the Court " I will further move that another clause be added as follows : " provided that no person charged under sections 114, 191 or 294 of the Penal Code shall be admitted to bail except by the authority of the Supreme Court and by the sanction of the Attorney General."

This was agreed to, and clause 458 as amended was ordered to stand part of the bill.

OTHER CLAUSES NOT DISPOSED OF.

The Hon. the QUEEN'S ADVOCATE :—Clause 464. In this clause I move to insert the words " after notice to parties " after the word " may " in the last paragraph. The Chief Justice says he does not see any objection to these words. The clause will then read, " the magistrate of the police court may, after notice to parties, proceed to the place where witness is, to take such evidence. "

This was agreed to.

The Hon. the QUEEN'S ADVOCATE :—The next are clauses 472-473 with reference to the accused having the right to call a witness. I think we were all agreed to the principle of that.

The Hon. J. VAN LANGENBERG :—I believe it was understood that the party accused, if he produces a certificate of counsel will then be entitled to address the magistrate.

The Hon. the QUEEN'S ADVOCATE :—In clause 477 I move that the words "or officer" be deleted. There is no doubt that when a person is required to execute a bond that it would be advisable for the court to allow that person to deposit a sum of money instead of executing such bond but I think it may be a very dangerous power to leave with every officer of police who may assert the authority and who may be more anxious to get the deposit than he would be for the bond to be entered into.

His Excellency the LIEUT-GOVERNOR :—I think it is dangerous to give this power to a police officer.

The motion was agreed to.

The Hon. the QUEEN'S ADVOCATE :—The next is 501 and this had better perhaps be held over as there is the question involved of Justices of the Peace which will have to be dealt with in another amendment, and I think it would be as well not to interfere with this clause at present. The next clause is 510, and I propose between this and the next meeting of Council to draw up an amendment to this clause giving the Supreme Court power to make rules and frame rules but to have those rules laid before the Legislative Council and give the Council an opportunity of disagreeing with them if they think proper to do so. I may perhaps mention to the Council that the rule in England is that the rules made by the Judges are laid before the Houses of Parliament. They are allowed to lie on the table for forty days and if any member objects to them during that time, the Queen has power by an order in Council to annul such as are objected to, otherwise they remain law.

His Excellency the LIEUT.-GOVERNOR :—I think it would be better here, to say that the rules shall not come into force until the Legislature has assented to them. I think they should be laid on the table for one month during the session of the Council and t[illegible]

[illegible] P. RAMA NATHAN :—At present the law [illegible] they have to be confirmed by an Ordinance.

[illegible]s Excellency the LIEUT.-GOVERNOR :—The practice is not to require an Ordinance but to lay them on the table of the Legislature, give them time to be examined, and then if the Legislature does not object to them they have the force of law.

The Hon. P. RAMA NATHAN :—How is a member to object if he wishes to?

His Excellency the LIEUT.-GOVERNOR :—He makes a motion in Council—that is what is done in Parliament. A motion to that effect was submitted to Parliament the other day.

The Hon. the QUEEN'S ADVOCATE :—These are I think all the clauses standing over.

His Excellency the LIEUT.-GOVERNOR :—We can now get on with the schedules.

The Hon. P. RAMA NATHAN :—Why cannot these be referred to a sub-Committee?

His Excellency the LIEUT.-GOVERNOR :—I don't think that is any use, we must read them in a committee of the whole House.

The Hon. P. RAMA NATHAN :—I wish to know what authority these schedules carry with themselves.

His Excellency the LIEUT.-GOVERNOR :—They have the authority of law.

On the motion of the Hon. the Acting COLONIAL SECRETARY, the Council then adjourned until Wednesday, the 26th instant.

WEDNESDAY, SEPTEMBER 26.

Present :—His Excellency the Lieutenant-Governor (President), the Hons. the Acting Colonial Secretary, the Officer Commanding, the Queen's Advocate, the Acting Auditor General, the Treasurer, the Acting Surveyor General, the Government Agent W. P., the Acting Government Agent C. P., P. Rama Nathan, and J. Van Langenberg.

Absentees :—The Hons. J. L. Shand, A. L. de Alwis and W. W. Mitchell.

PRÆDIAL PRODUCTS.

The Hon. the ACTING COLONIAL SECRETARY said :—"I beg to lay on the table resolutions forwarded by the Planters' Association containing the recommendations of the Association with regard to clauses of the Penal Code referring to the theft of prædial products and the possession and use of false weights and measures. I will ask the indulgence of the Council if I say a word or two on the subject. Resolutions No. 1, 2, 4, 5 and 6 refer to matters requiring special legislation, and that cannot properly be included in the Penal Code. The questions will receive the careful consideration of the Government with a view to such action being taken as it may be deemed advisable to take when, as it is expected will be the case, the question of the extension of the Coffee Stealing Ordinance is brought before Council by the member representing the planters in the next Session of the Council. With regard to resolution No. 3, I will propose that it be referred to the Sub-Committee that is now sitting to prepare the schedule No. I. to the Code of Criminal Procedure, for consideration and for any recommendation they may see fit to make. Clause 11 of Ordinance 8 of 1876 contains very similar provisions to those recommended by the resolution, and Government has no wish to interfere with the very useful provisions therein contained.

The following are the resolutions of the Planters' Association referred to :—

Kandy, 24th Sept. 1883.

From the Secretary, Planters' Association Kandy,

To the Hon. the Colonial Secretary.

SIR,—Referring to my letter of the 4th instant, I have now the honour to annex for the consideration of Government the recommendations of the Planters's Association, unanimously passed at a general meeting of the Association on the 21st instant, on those clauses of the Penal Code that refer to thefts of prædial products, and to the possession and use of false weights and measures.

As the subject is one of vital importance to agricultural interests, I beg to commend this representation to the earnest attention of His Excellency the Governor and the Legislative Council.—I am etc., (Signed) A, PHILIP, *Secy.*

Resolutions referred to.

1. That the purchase of coffee, cinchona, cocoa, cardamoms, plants or other agricultural produce, from estate labourers should be an offence.
2. That any person in possession of any of these articles under suspicious circumstances may be required to prove such possession to be lawful.
3. That the possession of false weights or measures by any shopman, forwarding agent or storekeeper, should constitute an offence.
4. That the principle of Clause III of the coffee-stealing ordinance be extended to other products.
5. That the principle of Clause V of the coffee-stealing ordinance be extended to cardamoms and cocoa.
6. That the principle of Clause VIII of the coffee-stealing ordinance be extended to other products.

His Excellency the Lieut.-Governor then read the following minute :—

WIDOWS' AND ORPHANS' PENSION FUND.

I desire to consult the Legislative Council in reference to a subject in which they have taken much interest,—the establishment of a Widows' and Orphans' Fund for the Public Service of this Colony.

Various circumstances to which it is not now necessary to allude have delayed the preparation of a scheme, amended as was desired, when the subject was mentioned to you in 187[illegible] I am at length, however, in a position to lay upon the table a despatch from the Secretary of State giving

cover to a complete scheme, as settled by the Actuary to whom the question was referred, upon the lines then indicated. The requisite tables for the calculation of the pensions are attached to the Actuary's report.

I have considered these papers with the assistance of the Executive Council, and it appears, as pointed out by the Earl of Derby, that there is one question, and that an important one, upon which a decision must be arrived at before any further action can be taken in the matter, viz., in what manner the cost of the scheme should be met.

It has been understood, I believe, from the outset that the Legislature would not object to providing from general revenue for the clerical labour necessary for administering the Pension Fund, the supervision being done gratuitously by a body of Trustees; the cost of this clerical assistance should not exceed R1,500 per annum. A more serious point, however, remains for consideration in the fact that the calculations of the Actuary have been based upon the supposition that six per cent interest would be allowed by Government upon the capital of the fund.

In the original project drafted by myself nine years ago, I had calculated upon Government allowing interest at five per cent. upon the capital of the fund, this being the rate at which a local loan had a short time previously been raised under Ordinace No. 2 of 1872, and being moreover the rate quoted at the time for the Breakwater loan issuable under Ordinance No. 5 of 1874, though, as a matter of fact, the first instalment of that loan was issued at four-and-a-half per cent only.

The scheme drawn up by the Actuary, Mr. Pattison, in 1877, was accordingly based upon a rate of interest of five per cent. on invested capital; but it will be seen by a reference to Sessional Paper 20 of 1877, that one objection taken by the Queen's Advocate (Mr. Cayley) to Mr. Pattison's scheme, was that Government might well follow the example of the Colony of British Guiana, and allow six instead of five per cent upon the capital of the fund. This explains the deviation in this respect, in the scheme nowlaid bef ore you by Mr. Hardy, from that originally submitted by Mr. Pattison.

I am aware, however, that Her Majesty's Government would not assent to the investment of the capital of the proposed fund otherwise than in Government securities, the most advantageous being those of Government of India from which a rate of interest of four percent can usually be secured. The questions, therefore, which I wish to submit for a decision of the Legislative Council are:—

1st.—Shall Mr. Hardy's scheme be sent back for a revision of the tables upon the basis of the capital of the fund producing four instead of six per cent interest? or

2nd.—Will the Council undertake to allow six per cent interest on the capital for a limited term of ten years? The position of the fund would necessarily come under revision at the end of ten years, and the question of interest upon capital might conveniently be reconsidered upon that occasion.

For the purpose of affording the Council some data to assist them in coming to a decision between the above alternatives, I have drawn up a table giving such an approximate estimate of the position of the fund during the first ten years of its existence, as will afford some idea of the annual cost to the colony of allowing six per cent upon the capital of the fund. That cost is estimated to commence at R415 in the first year, rising gradually to R7,200 in the tenth year I have assumed that at the outset one-third, and at the end of ten years one half of the salaries of Government servants would be contributing to the fund; should the proportion prove larger, the contribution by general revenue would be larger in that proportion; if smaller, smaller.

For example, in the event of one-half instead of one-third of the salaries contributing to the fund at the outset, the loss to general revenue would have to be increased by one-sixth of the amount shown in the last column of the table.

In inviting an early decision of the Council upon the points now submitted to you, it may perhaps be of interest that I should mention that the principles upon which Mr. Hardy's scheme is based harmonise with those of my own project drawn up in 1874 in all practical respects except, as above mentioned, in the matter of interest upon capital.

Year.	Contributions by Subscribers	Interest on Capital at 6 per cent.	Total Income of Fund.	Pensions payable therefrom.	Capital of Fund.	Interest thereon 2 per cent.
1st	44·000	1·170*	45·170	5·000	40·170	·402*
2nd	46·000	2·410†	48·410	10·000	78·580	1·570†
3rd	48·000	4·715	52·715	15·000	116·295	2·324
4th	50·000	6·977	56·977	20·000	153·272	3·065
5th	52·000	9·196	61·196	25·000	189·468	3·788
6th	54·000	11·368	65·368	30·000	224·836	4·496
7th	56·000	13·489	69·489	35·000	259·325	5·186
8th	58·000	15·559	73·559	40·000	292·884	5·857
9th	60·000	17·572	77·572	45·000	325·456	6·509
10th	62·000	19·527	81·527	50·000	356·983	7·129

* For half a year.
† For the whole year henceforward.

It is assumed that, as originally intended, Government will bear the cost of administering the fund—say R1,500 a year for two clerks—and that the capital will be invested at par in Indian Government four per cent securities. The above calculations do not attempt actuarial accuracy, but are an approxmiate estimate of the probable position of the fund from year to year.—J. Douglas.

Downing-street, 24th July, 1883.

Ceylon, No. 247.

Sir,—With reference to my predecessor's despatch No. 310 of the 8th September, 1882 and to previous correspondence on the subject of the proposed Widows' and Orphans' Pension Fund for Ceylon, I have the honour to transmit to you twenty-two copies of the scheme prepared by Mr. Pattison and Mr. Hardy, as finally revised and completed, of which Mr. Hardy has marked two copies with his initials.

2. Lord Kimberley's despatch above referred to will have explained to you the cause of the very regrettable delay which had arisen in the preparation of Mr. Hardy's scheme up to that date; I am still awaiting that gentleman's explanations of the further delay which has since occurred; but you will observe from the correspondence, of which copies are enclosed, that every effort was made to obtain the papers from Mr. Hardy at an earlier date.

3. I have now to authorize you to submit this scheme, which has been prepared with the greatest care, to your Legislative Council, with a view to legislation on the basis there laid down and in doing so, I need not point out to you that one of the most important questions for the consideration of your Government will be to determine in what manner the cost of the scheme should be met.—I have, &c., Derby.

DEFINITION OF "FINE."

The Hon. the Queen's Advocate:—Before proposing the amendment which appears in my name on the order of the day, I would ask leave of the Committee in the first place to refer to one or two minor points in connection with the Criminal Procedure Code. During the discussions we h[illegible] was suggested on one occasion by som[illegible] ber that the word "fine" should be defined that it might be seen what the word "fine" frequently occurs in the Code is intended to in[illegible] I would therefore move that between *o* and *p* in the definition clause the following be inserted: "'Fine' includes any fine, pecuniary forfeiture, or compensation adjudged upon conviction of any crime or offence, or for the breach of any ordinance, by any Court in this colony." I think those are the same words as are included in a former ordinance which was referred to, and they will define what the word "fine" means. There is no definition of the word "fine" in the Code at present.

His Excellency the Lieut.-Governor:—It is moved to insert in sub section 12 of clause 3 the following:—"'Fine' includes any fine, pecuniary forfeiture, or compensation adjudged upon conviction of any crime or offence or for the breach of any ordinance, by any Court in this colony." Clause 3 as amended stands part of the bills.

FURTHER MINOR AMENDMENTS.

The Hon. the Queen's Advocate:—There is also another clause that I would ask the Council to reconsider, and that is clause 7. Hon. members will remember that at the last meeting of the Council I proposed to strike out the words "and every judge" from clause 7. Since then I have mentioned the amendment to the Chief Justice, and he is rather of opinion that the words "and every judge" should still be allowed to remain in that clause. The clause runs

"the Supreme Court and every judge thereof shall as heretofore," therefore the clause not only relates to the future but also to the past. The clauses if the words which I now propose to re-insert, were omitted might possibly be held to relate to the future only and not to the past, and therefore the Chief Justice thinks it would be better that we should re-insert the words "and every judge." I therefore move that these words be re-inserted.

His Excellency the LIEUT.-GOVERNOR :—It is moved to be re-inserted in the first line of clause 7, after the words "Supreme Court," "and every judge thereof." Clause 7 as amended stands part of the bill.

The Hon. the QUEEN'S ADVOCATE :—The next clause, Sir, to which I would refer is clause 9, as some question was asked with reference to the fourth paragraph of this clause by the hon. member, the Government Agent C. P. He did not exactly understand the meaning of the words "or which," and I find that the word "which" is meant for "with." If the word "with" is inserted it makes the clause quite clear. As a matter of fact, it is taken from the Ordinance of 1868; and if the hon. member will refer to section 107 of that Ordinance, which is the same clause in substance, the word "with" there appears. I would therefore move that the word "with" be substituted for "which." I have another amendment to make at the commencement of the clause. Hon. members will see that the clause begins "every Police Court" shall do a certain thing, and then it goes on to say "shall search or cause to be searched." It is scarcely correct to say that a Police Court searches or causes to be searched although a Police Magistrate might do so, but what the Court does is to issue a warrant for a search to be made. I would therefore propose to move that the words "to issue warrants to search or cause to be searched" be inserted after the word "and."

His Excellency the LIEUT.-GOVERNOR :—It is moved in the fourth paragraph of the clause 9 to insert after the first word the words "to issue warrants," and in lieu of the word "which" in the third line to insert the word "with." This paragraph as amended stands part of the bill.

THE JURISDICTION OF MUNICIPAL COUNCILS.

The Hon. the QUEEN'S ADVOCATE :—The next motion with reference to this clause is the first [illegible] ars on the order of the [illegible] was some discussion at a former meeting [illegible] Committee with reference to this Code as [illegible]her it did or did not interfere with the [illegible]t powers of the Municipal Council. I may state that I am of opinion after reading over the Code that the Code as it now stands would be sufficient to do away with the ordinary powers which the Municipal Council possess with regard to taking matters in the ordinary nature of police questions. But it appears that some doubts did exist among certain members as to whether that power was or was not done away with, or whether the Code as it now stands would in fact in any way change the powers which at the present day are possessed by the Municipal Council. Now, Sir, I think it is the intention of the Government that the Municipal Council should have power to entertain cases which come under their bye-laws, but it is a matter for the Council to consider whether they should also continue to exercise the jurisdiction they possess which is concurrent with the jurisdiction of the Police Court. Therefore, Sir, in order to make the matter perfectly clear, I have drafted an amendment which brings the point at issue before the Council, and that is as to whether or not a Municipal Council shall have jurisdiction over ordinary matters of a police nature. It is proposed in this amendment that they shall continue to exercise their powers with regard to offences coming under their bye-laws, but at the same time it is proposed that the ordinary jurisdiction of a Municipal Council shall be done away with in regard to other offences. The question of course is one of much importance, and therefore in the way I have put it in this amendment it will be for the Council to consider and state whether in the opinion of the Council the ordinary jurisdiction of Municipal Councils in Police matters should or should not be abolished. My own opinion with regard to jurisdiction of this nature is that it is unwise to have a concurrent jurisdiction if such can be avoided; at the same time there are no doubt countries in which concurrent jurisdictions with regard to trying offences, do exist and there are different courts which do exercise in certain matters a concurrent jurisdiction. Whether it is advisable to retain this concurrent jurisdiction is a question to be decided, but so far as my own feelings are concerned I certainly think the less concurrent jurisdiction which may exist the better. I simply state that the reason why the amendment has been put in this form, is to do away with a difficulty which may arise in the interpretation of the Code with regard to Municipal Councils and their powers, and so far as I am able to judge this amendment will define the position of Municipal Councils. It proposes that Councils shall continue to exercise their jurisdiction in cases with regard to offences coming under their byelaws, but it is not proposed by this amendment that they shall continue to exercise in other matters the jurisdiction they now have.

The Hon. the GOVERNMENT AGENT W. P. :—I rise to propose that the discussion of this clause shall stand over until an opportunity has been afforded for referring the matter to the several Municipal Councils and ascertaining from them their opinion of the legislation which is now proposed. The hon. and learned member, the Queen's Advocate, has pointed out that the intention of this clause is to declare that the Penal Code virtually dispenses altogether with the Bench of Magistrates, and that, unless we introduce this clause, the Bench of Magistrates will have no jurisdiction whatsoever; but it is proposed by introducing this clause to give them a limited jurisdiction, a jurisdiction inferior to that at present held by Police Magistrates. Now, Sir, the powers which are granted to the people by the Municipal Council Ordinance of 1865 are of such a peculiar nature that I think it would be extremely unwise that this Council should ever interfere with that Ordinance without consulting people whom it affects, and that this view has been generally held is evidenced by this; when the question of the Bench of Magistrates came up before this Council in 1873 and it was proposed then to pass an ordinance relieving the Municipality of the work of the Municipal Bench, an hon. member since deceased, Mr. Wilson, proposed that the Municipal Bench should be abolished provided that a mere majority of the Municipal Council asked for the abolition, but this was indignantly declined, and the then Queen's Advocate, Sir Richard Morgan, stated "The honor of acting as Magistrates in Municipal cases had been conferred on them could only be taken away at their request and with their concurrence," and he was of opinion that that concurrence should require a majority of three-fourths, and it was so enacted. I think, therefore, Sir, when we are going to deal with the question of the jurisdiction of the Bench of Magistrates we should before doing so place our intentions before the several Municipalities and ascertain from them what their views on the subject are. I understand that the Government wish in no way to deprive the Municipal Bench of the dignity of being magistrates within municipal limits, but that it rather wishes to proportion the work between the Bench and the legal Magistrate. I am afraid, however, that if we were to confine the jurisdiction of the Bench of Magistrates merely to offences under the bye-laws, they would find very few offences left to try. A great deal of magisterial work is given to the Bench in the Ordinance itself, and when that Ordinance was being discussed in 1865 the clauses which then gave powers to the Police Magistrate

were cut out, and the powers were expressly given to the Bench of Magistrates, because it was considered not advisable that those powers should be given to a Police Magistrate, but should rather rest in a Municipal Court. At present there is what is called "concurrent jurisdiction," but I think, as a general rule, the Magistrate and the Bench have decided between them what work one shall take and what shall be taken by the other, and there are very few cases in which there has ever been a conflict of authority between the two. I will not now discuss the merits of the proposed amendment, but simply propose that before considering it time may be given for it to be referred to the several Municipalities in order that their opinion may be asked on it.

The Hon. the QUEEN'S ADVOCATE :—Before the question that is submitted by the hon. member shall be further discussed, I may state that it is only fair that they should have some idea of the procedure they will have eventually to follow, because, if their present jurisdiction exists, they will have to follow the procedure laid down on the Criminal Code as the old procedure will be done away with.

The Hon. the GOVERNMENT AGENT W. P. desired to say only one word more. This matter was anticipated by Sir John Phear, when the subject was under discussion, and he provided for it by a small clause which he inserted in section 36 of his draft Code. Sir John Phear did not propose to abolish the Bench of Magistrates: the only thing he did was to omit the Bench of Magistrates from the list of ordinary tribunals, and provide for them by a small clause. The report states :—"Municipal Magistrates.—Although this chapter is silent as to these, the change proposed is only nominal: for section 36 provides that Municipal Councillors authorized by law to sit as a Bench of Magistrates in open Court for the trial of crimes and offences shall, whilst so sitting, constitute a Police Court in and for the Municipality, vested with such jurisdiction and powers within the limits of the Municipality." Such a clause might be inserted in the present Code.

The Hon. P. RAMA NATHAN :—I am one of those Sir, who think that the clauses in the Code do not abolish the present jurisdiction of Municipal benches. The words in the clause are: "the Courts for the ordinary administration of criminal justice within this Colony shall continue as heretofore to be as follows :—The Supreme Court, District Courts and Police Courts." Those words are taken over bodily from the "Administration of Justice Ordinance," No. 11 of 1868, and that Ordinance was passed long after the Municipal Council Ordinance, that is to say, it was long after 1865, yet the Ordinance No. 11 of 1868 did not abrogate the powers of Municipal benches, and in fact, conserved those powers which the benches possessed. But apart from that question, Sir, if whether the present Code abrogates the jurisdiction which the benches possess, I would like also to endorse the request which my hon. friend, the Government Agent, W. P., made just now, namely that the consideration of the amendment should be postponed to some future date. When the Ordinance was introduced into this Council in 1881 for the purpose of amending the Municipal Councils Ordinance of 1865, I stated that the qualification of voters and also the qualifications of candidates eligible to sit as members of a Municipal Council, required revision, and I also stated to His Excellency, Sir James Longden, that those qualifications must be raised so as to limit of real useful members in the Municipal Councils. His Excellency then held out to me a promise that a fresh Ordinance would be introduced and that when such a thing took place, my proposals would meet with proper consideration, and I therefore withdrew my suggestions. I submit, Sir, that the giving of judiciary powers to the benches of Municipalities would be very desirable indeed, and in fact, the possession of that power of itself would be an inducement to good men to come forward and accept a seat [illegible] under circumstances of this kind. I do not speak of existing conditions. I look to the future, and I say that if the qualifications of voters and candidates themselves are raised, you would undoubtedly draw to Municipal Councils very good and worthy men and the judiciary power now attempted to be taken away if retained in the future would be an additional inducement for good and worthy men joining Municipal Councils. Being of that view, sir, I think the amendment of the hon. and learned Queen's Advocate may well be postponed for future consideration when the Council will be better able to deal with the subject.

The Hon. J. VAN LANGENBERG :—The question involved in this amendment is of great importance, and I agree with my hon. and learned friend, the Government Agent, W. P., that it should not be determined without the fullest consideration and every opportunity being afforded to Municipal Councils of giving an opinion. If the Government are with us on the question that the matter shall be deferred, I would suggest that in the meantime a return be asked for from the Municipal Councils showing the cases heard by them, other than cases for breach of bye-laws. That would assist us very much in coming to a decision. I would simply ask them to furnish returns for the last two years; I suppose that would not involve much labour.

The Hon. the QUEEN'S ADVOCATE :—I have no objection to the amendment being postponed and such a return furnished.

His Excellency the LIEUT.-GOVERNOR :—I wish to say a few words with reference to a remark which fell, no doubt unintentionally, from the hon. the Government Agent, W. P. I think there is no objection on the part of Government to allow this clause to stand over for a definite time. I will propose this day fortnight, I think no longer than that, because we shall be keeping up the consideration of the Code too long, and in the meantime let the Municipal Councils make any representation they like on the subject, and we will also ask them for the return the hon. member suggests. I may state there is no intention on the part of Government in bringing in the Code in any way, except in one, to alter the position of Municipal Councils. I gathered from what has already passed in the debate that some hon. members were of opinion that the Code as it stood would not take away [illegible] jurisdiction of the Bench of Magis[illegible]al affairs, that is to say, in matters [illegible] bye-laws under the Municipal Ordinance, [illegible] the intention of the Government that the conc[illegible] risdiction in respect to trivial Police Court cases [illegible] be abolished, and for one very good reason: I believe that Colombo is the only city in the civilized world, so far as I know where there is such concurrent jurisdiction. In the City of London the Municipal Court possesses sole jurisdiction, and you have the same jurisdiction in large centres like York and Bristol, but in small, municipal towns the local magisterial courts deal with petty offences and there is no concurrent jurisdiction. For the exercise of their duties, the Corporations of London and York are of course responsible to the citizens. In all other towns and the municipalities I have any knowledge of, municipalities have jurisdiction over municipal affairs only and no concurrent jurisdiction over Police Court cases. The responsibility for dealing with Police Court cases lies with the Police Magistrate who is responsible to Government. It is very undesirable in my opinion that in Colombo we should allow such an anomaly to go on, as that there should be different Courts, responsible to two different classes of authorities, for dealing with one small class of petty crime. I may say, not very long ago, a case occurred in which a man charged another man with assault in the Police Court of Colombo. The Police Magistrate dismissed the case and the man went straight away to the Municipal Court. Now, this is not right. One Court or another ought to be responsible for dealing with petty crime. I do not know what the Municipal Court did with the case, I only know that the man having been turned out

of one Court went straight away to another, and that ought not to be. If we were prepared to make the Municipal Court of Colombo like the Court of the City of London, and give it sole jurisdiction over Court of Request cases and over Police Court cases, then I could understand it. But I do not think we are prepared to do that yet, certainly I should not be prepared to abolish the Police Court myself, and as the Police Court is in existence, that should be the Court responsible for dealing with petty crime. The hon. member, the Government Agent W. P. used one expression.—I have no doubt unintentionally—and it was that expression I wished to take up. He said we gave the Municipality inferior jurisdiction to the Police Courts. Now that expression would lead to the opinion that we were going to place a slight on the Municipal Council, which is not the intention of the Government. We have no intention whatever of taking away from them jurisdiction over municipal matters; but we do intend to take away from them that concurrent jurisdiction, which I believe is very seldom exercised, and which, in my humble opinion, they ought never to exercise, in dealing with petty Police Court cases. There ought to be one Police Court in Colombo, Kandy and Galle to which people ought to go for redress in cases of petty assault, and it is obvious that if we have two courts both exercising at the same time jurisdiction in cases of petty crime, you will have people charging each other first in one Court and then in the other, and one Court will know what had taken place in the other. The thing is obvious and so obvious that in no part of the civilized world is such a thing permitted, and that is the reason why we wish to remove from Colombo, Kandy and Galle the anomaly, and the serious anomaly, which exists nowhere else. In doing that we wish in no way to place a slight upon the Municipal Council, we merely wish to take away their power of dealing with Police Court cases. I cannot think it would redound to the honour of Municipal Councils that there should be this anomaly. I think they have no wish to exercise this jurisdiction, and certainly they should not. I do not see why in Kandy, for example, where the Police Court and the Mayor's Court are close to each other, why they should be sitting within 100 yards of each other hearing cases of the same description. I have said this because I wish Municipal Councils to know what the Government is, and I do not wish the unintentional expression of the Government Agent W. P. to pass unchallenged. I wanted to disclaim the idea that we wished to give Municipal Councils an inferior jurisdiction or pass any slight upon them. Then it is understood that the consideration of this clause be deferred for a fortnight, while we send the clause to the Municipal Councils of Colombo, Kandy and Galle, and ask for a return of Police Court cases which they have heard for the past two years, say from the 1st July 1881 to the 1st July 1883.

The Hon. J. VAN LANGENBERG :—Only the cases other than cases of breach of bye-laws. We don't want all the bye-law cases.

H. E. the LIEUT.-GOVERNOR :—Yes.

The Hon the GOVERNMENT AGENT W. P. :—I wish to say a word or two with reference to that unfortunate expression "inferior jurisdiction." I said I felt sure the Government had no desire to cast any slight whatever on the Municipal Bench, but that the proposed amendment would give Municipal Councils a jurisdiction inferior to that of Police Courts. Now, sir, it was because this amendment confines the jurisdiction to breaches of bye-laws that I raised this objection. Under the Municipal Councils Ordinance, the bye-laws can only impose a fine of £1 for each offence, and, if the Municipal Council were restricted to punishing breaches of the bye-laws, they could only impose a fine of £1; clearly, therefore, the jurisdiction in that case would be inferior to Police Courts. Now, Your Excellency has mentioned that it is the intention of the Government to give Municipal Councils jurisdiction over offences committed under the Ordinance, and that is a very different thing for it gives them a Police Court jurisdiction; but to try offences against the bye-laws only would confer a very limited jurisdiction indeed.

POLICE MAGISTRATES AND JUSTICES OF THE PEACE.

The Hon. the QUEEN'S ADVOCATE :—The next amendment on the order paper of the day has reference to this same clause, clause 9 of the Procedure Code. I may mention that the object of the amendment is to give the Governor the power to appoint any Justice of the Peace to be what is termed in the amendment an unofficial Police Magistrate. It was mentioned, during the debates we have had in connection with the Code, that as the present powers of the Justice of the Peace are done away with it might be found that the number of Police Magistrates in the Colony would not be sufficient to effectually carry out the work imposed upon them under the Penal Code and the Criminal Procedure Code; and, therefore, in order to guard against any possibility of a danger of that kind this amendment proposes that the Governor may from time to time appoint any Justice of the Peace to be an unofficial Police Magistrate. Hon. members will see on reading this amendment that it is not proposed to give unofficial Police Magistrates jurisdiction to deal in any way with summary offences. Offences which will have to be summarily dealt with will necessarily have to go before and be dealt with by a Police Magistrate, but the powers given by this amendment are similar powers to a great extent as are now possessed by Justices of the Peace, that is to say, an unofficial Police Magistrate will have power to inquire into matters which will have eventually to go before a higher Court. With regard to such matters, he may take proceedings; but so soon as an unofficial Police Magistrate finds, under this amendment, that any case he may have entertained is a case that a Police Magistrate could deal with summarily, then his jurisdiction comes to an end. The object is to give unofficial Police Magistrates many of the same powers which Justices of the Peace possess today, with regard to inquiring into matters which will have to go before a Supreme Court. With regard to those matters, the powers which a Justice of Peace now possesses will be conferred upon the unofficial Police Magistrates; but so soon as he finds that the case is one to be dealt with as a summary case then his powers come to an end and the case will have to be dealt with by a Police Magistrate. I think with these few observations I may submit the amendment for the consideration of the Committee. Its object is to guard against the danger that the whole of the work which is now done by Justices of the Peace and the Police Court would possibly be too great to be efficiently carried out by the Police Magistrates, and if such is discovered to be the case then this amendment proposes to give the Governor power to appoint unofficial Police Magistrates who will have jurisdiction to exercise such powers as are referred to in this amendment.

The Hon. P. RAMA NATHAN :—To enable me, Sir, to make some observations upon the amendment, I wish to state that this amendment recognizes three classes of officials: first, the Justice of the Peace; second, the unofficial Police Magistrate; and, third, the Police Magistrate. Now, I should like to know what powers the Government intend to give the Justice of the Peace? I know, now, what powers are intended to be given to the unofficial Police Magistrates and to the Police Magistrates, but I do not know what powers are intended to be given to the Justice of the Peace.

The Hon. the GOVERNMENT AGENT C. P. :—The same objection occurred to me on reading the amendment. It seems to me if this amendment be adopted in the form it is on the paper, that it gives to a Justice of the Peace whom the Governor may appoint to be an unofficial Police Magistrate all the powers of preliminary inquiry and everything except summary disposition of cases which may be tried by a Police Court. But, if it gives these powers to such

Justices of the Peace as the Governor may appoint unofficial Police Magistrates; does it not by inference necessarily take away from all other Justices of the Peace the power of holding preliminary inquiries, I fear that is the result. If that is the course decided on, it is all right. Then, in that case, if it be desirable to have the power of holding preliminary inquiries exercised in any districts, the Governor will be obliged to appoint some such Justices of the Peace to be unofficial Police Magistrates.

His Excellency the LIEUT.-GOVERNOR :—The intention of the clause is clear enough. There are, for instance, in Colombo certain justices of the peace who have an honorary title and who are very useful in the way of attesting documents ; for instance, there are certificates required for drawing pensions in England which have to be attested by a Justice of Peace It very often happens that papers to be sent to England require verification by a justice of the peace, and for that work the office of the justice of the peace pure and simple will be retained. But there is something more than that. Outside the limits of such a large town as Colombo, it is a matter of deliberate policy for the Government to enlist on the side of order and to retain the services of eminent and prominent citizens who can be entrusted with certain powers. I make a point of this because our object is two-fold ; not merely to assist the Police Magistrates—that, of course, is one object—but there is another important object, and that is in almost any small town in the island and in almost every district of the island, you will find that the most prominent citizen, be he a native or a European, planter, is an unofficial Justice of the Peace, the person to whom the people are told to go when any sudden crime breaks out. We look upon them as an important element of security in the country and a great element in the preservation of order and contentment in the district ; and all these people who are now unofficial Justices of the Peace would, under this new system, become unofficial Police Magistrates. They would have precisely the same powers as Justices of the Peace except in summary cases, and except in one most important matter on which we have a deliberate policy, and that is they will not have the power of issuing warrants for the apprehension of deserting coolies. We are very strongly of opinion that that power should be confided only to Police Magistrates. The question is extremely well argued in one of the appendices to Sir John Phear's report on his Code, and it is there put that the desertion of coolies from their masters is an artificial crime : that is to say, it is not a crime in itself, but it is made an artificial crime, because there is nothing to recover from a cooly except his body ; therefore, what is really a matter of civil remedy you create an artificial crime. In that appendix, it was strongly urged that the jurisdiction in such cases ought to be left to the responsibility of the Police Court only. That is a sentiment with which we entirely agree, and I think it is very desirable in the interests of the planters themselves that they as a body should not issue warrants for dealing with an artificial crime made for their benefit. It is much better that the jurisdiction in these cases should, in the interest of the planters themselves, be limited to Police Magistrates who are responsible to Government. It is quite a different thing a Magistrate issuing a warrant in such a case as a cooly deserting from a neighbouring estate, but we think it is a power which planters ought not to have. There have been very few such warrants sent in for some time past; the power is very seldom used, and the withdrawal of it would not be felt. That is one distinction between the new power of an unofficial Police Magistrate and the old power of a Justice of the Peace.

JUSTICES OF THE PEACE.

The Hon. P. RAMA NATHAN :—I wish also to be enlightened on another matter. In clause 139 of the ordinance 11 of 1868 certain public officers are *ex-officio* Justices of the Peace. The list contains these officers: Judges of the Supreme Court, Members of the Legislative Council, members of the Executive Council, Government Agents for the various provinces, the Deputy Queen's Advocate, the clerk of the Executive and Legislative Councils, etc. These are all *ex-officio* justices of the peace for the island. I should like to know what the Government intend to do with these persons.

His Excellency the LIEUT.-GOVERNOR :—I cannot say at once, the subject has not received full consideration, but, as at present advised, the Government Agents would always be unofficial Police Magistrates.

The Hon. Mr. RAMA NATHAN :—For the sole purpose of administering the law ?

H. E. the LIEUT. GOVERNOR :—They would be unofficial Police Magistrates. I can't say with reference to the Inspector-General of Police.

The Hon. P. RAMA NATHAN :—The Solicitor-General ?

His Excellency the LIEUT.-GOVERNOR : Probably, I am not sure.

The Hon. P. RAMA NATHAN : The Members of the Executive Council and Legislative Council ?

His Excellency the LIEUT.-GOVERNOR :—I don't know, I do not know whether the hon. member wishes to be one (Laughter).

The Hon. P. RAMA NATHAN :—I am just asking for information, because I wish to have a firm grasp of the subject before wasting the time of the Council by speaking on it.

His Excellency the LIEUT. GOVERNOR :—It is a matter of future policy; I think not as a rule, but there would be exceptions, and it is a matter in which we shall be guided by the opinion of the Council. I think, probably, they would very much prefer being without these powers.

The Hon. P. RAMA NATHAN :—Personally I would. As I have now got that information I may make a few observations. Your Excellency has very properly stated that the reason why these higher officials are appointed Justices of the Peace is not because their appointment gives them a special honour, but because they are useful to the administration of justice. I do not think that Members of the Executive and Legislative Councils, the Solicitor-General, or the Inspector-General of Police would feel any additional honour by being a Justice of the Peace or [illegible] being an unofficial Police Magistrate. [illegible] bears it simply for the pur[illegible] the administration of justice. I take [illegible] who is at present an *ex-officio* Justice of [illegible] considers it solely and purely an honor becau[illegible] happens to be a Justice of the Peace. Well, [illegible] the question arises, if the reason of their appointment is as stated by Your Excellency, is it advisable to take away that power from them? That is one point I should like the Government to consider. At present these higher officials, and also many others are Justices of the Peace for portions or for the whole island, and published in the *Ceylon Civil List* I see 31 gentlemen are appointed as Justices of the Peace for the island who are not officials, and then for portions of the island I see a large number; in all I see something like 150 gentlemen all round the island appointed for portions of the island, and also for the whole island. Well, then, the question is whether—it being admitted that the reason for their appointment is that they are useful officers in the administration of justice—whether the powers they at present have may legitimately be taken away from them. With reference to Your Excellency's suggestion that certain Justices of the Peace in towns shall be required hereafter only to administer oaths, I do not think this would be the legitimate duty of a Justice of the Peace, but of what might be called a Commissioner of Oaths. A Justice of the Peace must be a person interested in keeping the peace, and it is a misnomer to call a Commissioner of Oaths a Justice of the Peace. It is a vain and empty honour if it is inteneded by the

Government to keep that name for the purpose of its being held as an honour. I say it is a vain and empty honour, and in the next place it has the additional disadvantage of creating a misapprehension in the minds of people both inside and outside of Ceylon. I therefore thought I would move an amendment such as this: I would give to all unofficial J. P's, or *ex-officio* J. P's, the powers which the Queen's Advocate wants to give to the unofficial Police Magistrates; I should not want them to exercise any further power than is intended to be given to unofficial Police Magistrates. I may mention, before I move my amendment, that it was only the other day a riot took place in Colombo and the presence of Mr. Justice Clarence put a stop to the rioters playing out their game. And so it is just possible that any official may be passing when a disturbance is going on and he undoubtedly should have the power to put down a riot. I should like to move, "that the Governor and officers"—I take this from the Administration of Justice Ordinance and accommodate myself to the amendment of the learned Queen's Advocate—"that the Governor and officers enumerated in the schedule hereto annexed shall be *ex-officio* Justices of the Peace for the Island. It shall further be lawful for the Gorvernor from time to time to appoint by notice in the Government *Gazette* such persons as shall be named therein to act as Justices of the Peace for the Island or within such districts or portions thereof as to the Governor shall seem expedient, and every such Justice of the Peace shall thereupon have all the powers and authority by this Code vested in Police Courts, save and except the power and authority to take proceedings with regard to, or to hear, try, or determine any offence which by this Code or by any law of this Colony is summarily triable before a Police Court." Now, Sir, my suggestion has the merit of not creating a false impression; it has the merit of uniformity, and it will also be useful in a variety of other ways, whereas the amendment which is put forward by the hon. and learned Queen's Advocate does not recommend itself to me. I think this is a subject worthy the Council's consideration.

H. E. the LIEUTENANT GOVERNOR:—I would remind the hon. member that there are a good many things the Justice of the Peace does as a Justice of the Peace. I myself do not at all wish to be an un[illegible]e. On one occasion, a good [illegible]go, it did happen that I had only to exer[illegible]owers of taking evidence as a Justice of the [illegible] but it is a very common thing for me to act a sa[illegible]ce of the Peace in attes'ing documents. There are certain documents which require to be attested by the signature of a Justice of the Peace, and the signature of a Justice of the Peace has very considerable weight. That is one reason why foreign consuls are Justices of the Peace, it gives them authority to attest documents; and for the same reason there are a number of Justices of the Peace in Colombo who certainly never aid in the suppression of crime and whom we do not intend to aid in the suppression of crime. They perfectly understand their functions. In Colombo the Police Magistrate suppresses crime, but Justices of the Peace are not intended to be running about all over Colombo suppressing crime, And that is the reason I think it is much better this anomaly which now exists should be done away with. Certainly the judges of the Supreme Court should have the power, and if it is thought desirable that members of the Legislative Council should have the power by all means let them have it, but do not let us have a multiplicity of persons who by law are invested with the power of inquiring into crime, but as to whom there is no intention that they should inquire into crime. I have no intention of inquiring into crime myself, and I am sure my friend the Officer Commanding the troops has no such intention. He is a Justice of the Peace for the purpose of attesting documents, verifying signatures, and so forth, but he does not exercise the power of inquiring into murders, arsons and other crimes. It appears to me for these reasons that what we propose to do is a step in the right direction. We have a large number of persons who are invested with powers which we certainly do not intend them to use; on the other hand where it is necessary that people should use these powers we give them powers and they thoroughly understand what they have to do. At present they do not understand what they have to do.

The Hon. the GOVERNMENT AGENT, C. P.:—I see, then Sir, that all Justices of the Peace who may have been appointed by the Governor unofficial Police Magistrates shall have, and be free to exercise, all the functions and powers of an official Police Magistrate, save and except that of dealing with summary cases. That is to say that these unofficial magistrates will have the power, for instance, of issuing warrants.

H. E. the LIEUT.-GOVERNOR:—Unofficial Magistrates will have the power to issue warrants for all cases coming before a superior tribunal but not for cases coming before the Police Court.

The Hon. P. RAMA-NATHAN:—I quite agree with Your Excellency that unofficial magistrates shall be appointed, but I do not see the use of the independent existence of Justices of the Peace, purely and simply for administering oaths. The expression Justice of the Peace in that case would be a misnomer.

His Excellency the LIEUT.-GOVERNOR:—The object of calling him Justice of the Peace is this: if he was not he would not be able to administer oaths, attest documents &c. He would not be recognised if he were not a Justice of the Peace.

The Hon. P. RAMA NATHAN:—That is outside of this Colony.

His Excellency the LIEUT.-GOVERNOR:—Outside this Colony. I speak with knowledge because it is a power I am constantly exercising. I am able to attest documents as a Justice of the Peace and I am constantly doing it.

The Hon. the GOVERNMENT AGENT C. P.:—But the power of holding a preliminary inquiry into crime would still remain. He would still be able to take proceedings with regard to any offence such as could not be tried summarily; that would go before a Police Magistrate, but a Justice of the Peace would be able to take proceedings in other cases?

His Excellency the LIEUT.-GOVERNOR:—That power is taken away from him by the Code.

The Hon. the GOVT. AGENT C. P.:—That is to say, by saying that unofficial Police Magistrates shall hold preliminary inquiries we have taken away that power from the Justices of the Peace?

H. E the LIEUT.-GOVERNOR:—There is no doubt it is taken away, not the slightest. We have done a certain thing by the Code, and this clause is simply corrective in a certain respect of what we have done.

The Hon. the GOVT. AGENT C. P.:—You have not taken away the power of the Justice of the Peace to inquire into crime by this Code?

His Excellency the LIEUT.-GOVERNOR:—Most certainly we have. The point has been disscussed in Council several times.

The Hon the GOVT. AGENT W. P.:—I think, Sir, there may be some doubt about those words which say: "to take proceedings with regard to" &c.

His Excellency the LIEUT.-GOVERNOR:—I should like the hon. member to remember that we have something before the Council at present. An hon. member has moved an amendment and we must dispose of that first.

The Hon. J. VANLANGENBERG:—I understand it is not the intention of the Government to abolish the office of Justice of the Peace. That is to be retained, but only with limited powers. The powers of Justice of the Peace are simply to be confined to administering oaths and in the performance of other duties which have been cast upon them by legislation out of the Colony.

His Excellency the LIEUT.-GOVERNOR:—It is certainly intended to make use of the powers of unofficial Police Magistrates to a very large extent.

The Hon. J. VAN LANGENBERG :—With regard to this particular amendment, I think the practical application of it is to enable the Governor to appoint unofficial Police Magistrates. Now, by the Code, Police Magistrates have limited jurisdiction and those limits are defined by the Code. Is it intended that the Government Agents shall be unofficial Police Magistrates for any particular Court or for all Courts, because by this amendment it will be competent for the Governor to appoint any Justice of the Peace an unofficial Police Magistrate and unless he be a Magistrate for all the Courts he will be practically useless for the preservation of order in the province.

His Excellency the LIEUT.-GOVERNOR :—I imagine he will be a magistrate for the whole of the Province, and the Assistant Government Agent a magistrate for the place where he is stationed.

The Hon. J. VAN LANGENBERG :—Because the jurisdiction of the Police Court is territorially limited and it may be a question whether the Government Agent can be appointed Police Magistrate of several courts. It is a matter for consideration; it occurred to me, and I thought it would be just as well perhaps, if we discussed the matter.

His Excellency the LIEUT.-GOVERNOR :—I will consider the matter. It may be necessary to amend the clause, but in the meantime we can pass the clause subject to reconsideration if necessary, at present the question before the Council is to insert in the clause the provisions of clause 139 of the Administration of Justice Ordinance "that the Governor and officers, enumerated in the schedule hereto annexed, shall be *ex-officio* Justices of the Peace for the island."

The Hon. P. RAMA NATHAN :—That is not all. The justices are to possess the powers which at present are intended to be given to unofficial Police Magistrates.

His Excellency the LIEUT.-GOVERNOR read the remainder of the hon. Mr. Rama Nathan's amendment.

The Hon. the TREASURER : Is it necessary to provide for giving the Governor power to appoint Justices of the Peace?

His Excellency the LIEUT.-GOVERNOR :—It is not necessary as we shall not repeal that portion of the law.

The Hon. J. VAN LANGENBERG :—As I understand it, the object of this amendment is to continue the powers of Justices of the Peace now exercised by them under the designation of unofficial Police Magistrates.

His Excellency the LIEUT.-GOVERNOR :—Quite so.

The Hon. J. VAN LANGENBERG :—It is simply that, Justices of the Peace may retain the same powers they now have, only that they will be called unofficial Police Magistrates. The object of the amendment, is not to take away the powers but to give them to unofficial Police Magistrates.

The Hon. P. RAMA NATHAN :—Not all the powers.

The Hon. the QUEEN'S ADVOCATE :—When the discussion took place as to whether the powers of Justices of the Peace should be continued that was really the point at issue. Of course the whole object of this Code is to do away with the present powers of Justices of the Peace and replace them by Police Magistrates, and what is now proposed is simply to give the power to the Governor, if he considers such necessary, to appoint Justices of the Peace to be unofficial Police Magistrates, and to give them certain jurisdiction, that jurisdiction being very much the same jurisdiction as is now exercised by Justices of the Peace. If we say at once that all Justices of the Peace are to become unofficial Police Magistrates, we shall be doing very much more than is proposed.

The Hon. the GOVERNMENT AGENT W. P. :—I should like to ask whether I understand the amendment rightly. The motion as I understand it is to give the Governor power to appoint certain persons to be called unofficial Police Magistrates who will have the powers at present exercised by Justices of the Peace?

His Excellency the LIEUT.-GOVERNOR:—Practically so.

The Hon. the GOVERNMENT AGENT W. P. :—To appoint certain persons under the title of unofficial Police Magistrates and give them practically the powers exercised by Justices of the Peace. The object of the hon. member's amendment is that, instead of merely giving the Governor the power of from time to time appointing them, we shall now declare that all the officers holding the appointments mentioned in the schedule shall have, under the title of unofficial Police Magistrates, practically the same powers which as Justices of the Peace they at present have.

The Hon. P. RAMA NATHAN :—Just to explain myself and make myself thoroughly intelligble, the effect of my amendment as it now stands is this :— The Queen's Advocate wishes a certain class of persons to be called unofficial Police Magistrates, and I say continue to call them Justices of the Peace.

His Excellency the LIEUT.-GOVERNOR :—No, because the intention of the Government is that there shall be certain Justices of the Peace who shall not be Police Magistrates. As I explained, we do not want to make all the Justices of the Peace in Colombo Police Magistrates.

The Hon. P. RAMA NATHAN :—Of course if he does possess those powers he need not exercise them.

His Excellency the LIEUT.-GOVERNOR :—I say that is very objectionable to confer those powers on a person if he is not intended to exercise them.

The Hon. P. RAMA NATHAN :—If that is the opinion of the Government, I have nothing more to say. They have had these powers for more than half-a-century and no inconvenience has arisen from it, no complaint has arisen; on the contrary it is felt by the people to be an honour; yet it is intended to take these powers and privileges away, though the possession of those powers and privileges has created no inconvenience whatever.

His Excellency the LIEUT.-GOVERNOR:—The Government have been compelled once or twice to give a hint to a Justice of the Peace that he was not intended to be an unofficial Police Magistrate. I say we have no business to confer powers on a certain class of gentlemen if we do not intend them to exercise those powers.

Hon. P. RAMA NATHAN :—I was not aware that there had been any such assumption of powers.

His Excellency the LIEUT.-GOVERNOR :—It is proposed, in lieu of the words "the Governor may from time to time appoint" to insert the words "the Governor and the officers enumerated in the schedule hereto annexed shall be *ex-officio* Justices of the Peace, and thereupon," etc.

The Hon. P. RAMA NATHAN :—Those words in lieu of the first two-and-a-half lines of the Queen's Advocate's motion, "The Governor and officers enumerated in the schedule hereto annexed shall be *ex-officio* Justices of the Peace, and thereupon," etc.

His Excellency the LIEUT.-GOVERNOR :—I do not understand this amendment; it first of all creates Justices of the Peace and then requires the Governor to create them over again.

The Hon. P. RAMA NATHAN :—The amendment says that certain officers shall be *ex-officio* Justices of the Peace; they do not want any appointment. Then the next clause is that all others require to be appointed: and all such others who are appointed shall have only these powers.

The amendment of the Hon. P. Rama Nathan having been reduced to writing and read by His Excellency the Lieut.-Governor, the Council divided with the following result :—

Ayes.	*Noes.*
The Hon. P. Rama Nathan	The Hon. Actg. Government Agent, C. P.
„ J. VanLangenberg	„ Treasurer
„ Actg. Surveyor General	„ Actg. Auditor Genl.
„ Govt. Agent, W. P.	„ Queen's Advocate
	„ Actg. Colonial Secretary
	„ Actg. Commander of Forces
	H. E. the Lieut.-Governor

Ayes 4, noes 7. The amendment was accordingly lost.

The Hon. the QUEEN'S ADVOCATE :—Some reference has been made to the unofficial Police Magistrates, whether their powers will extend over any particular district, or be confined to one court. I think it will therefore be better to insert "for any district" after the words "Police Magistrate."

The Hon. J. VAN LANGENBERG :—Can one person be a Police Magistrate for more than one district ?

His Excellency the LIEUT.-GOVERNOR :—Yes, certainly.

The Hon. J. VAN LANGENGERG :—Then it must be "district or districts."

His Excellency the LIEUT.-GOVERNOR :—The motion now reads :—"The Governor may from time to time appoint any Justice of the Peace to be an unofficial Police Magistrate, for any district or districts, such Justice of the Peace so appointed shall, thereupon, have all the powers and authority by this Code vested in Police Courts, save and except the power and authority to take proceedings with regard to, or to hear, try or determine, any offence which by this Code or by any law of this colony is summarily triable before a Police Court."

The Hon. the GOVERNMENT AGENT W. P. :—I would just wish to ask a question about this clause. It gives to the unofficial Police Magistrates authority to do certain things, save and except power and authority to take proceedings with regard to, or to hear, try or determine, any offence which by this Code or by any law of this colony is summarily triable by a Police Court. Now, it is necessary, before a Magistrate can decide whether he is acting as a Police Magistrate or as a Justice of the Peace, that he should take certain proceedings; and I want it to be very clearly laid down that an unofficial Police Magistrate has authority to take those proceedings when an offence is laid before him, which will enable him to decide whether he can go on hearing the case as one not summarily triable before a Police Court; and it is only after he has taken these proceedings, that if he finds the case is triable by a Police Court, and he then states his opinion that his powers are at an end. It may be meant by these words, but it is not so clearly expressed as I should wish it.

The Hon. the QUEEN'S ADVOCATE :—The object is not at all what the hon. member seems to think. If the unofficial Police Magistrate does not see that the [illegible] dealt with by a Police Court, [illegible] at all. It is only so long as he [illegible] that the matter cannot be summarily dealt [illegible] he has power to go into it. If he has no [illegible] to begin it he cannot go on.

His Excellency the LIEUT.-GOVERNOR :—Suppose there is a charge of aggravated assault for investigation, and, after the matter has been gone into, he finds it is only a case of common assault; he then says, "I have no authority to go on with the case."

The GOVERNMENT AGENT W. P. :—There are several cases in which it may be necessary for an unofficial Police Magistrate to take proceedings until he is satisfied whether these offences can be dealt with summarily at the Police Court.

The Hon. the QUEEN'S ADVOCATE :—If he had a complaint of aggravated assault, he could go on with it, but if he found on the face of it it was an assault which would be dealt with by a Police Magistrate, his jurisdiction would be at once ousted.

His Excellency the LIEUT.-GOVERNOR :—The addition to clause 9 stands part of the bill.

FRIVOLOUS COMPLAINTS.

The Hon. the QUEEN'S ADVOCATE :—The next clause is 237. This clause stood over in regard to a question of Crown costs, and by the amendment as drafted it will be seen that when a case comes before the Police Magistrate and the complainant does not proceed with it within such time as the Magistrate may deem reasonable, or if it be withdrawn without leave of the Court or if the complaint is declared by the Police Magistrate to have been frivolous, it shall be lawful for such Police Magistrate to order the complainant to pay by way of Crown costs a sum not exceeding R5, to be recovered as if it were a fine. I think the principle of this amendment was generally agreed to by the Committee on a previous occasion, and the amendment simply has been drafted in order to meet what I understood was the feeling of the Committee on the matter. I may say that the sum mentioned is very small—R5—and that sum was no doubt fixed on after the matter had received due consideration.

The Hon. the GOVERNMENT AGENT C. P. said he did not know whether this proposal was intended to supersede the stamp clause. He thought that ought to be considered in connection with this one.

His Excellency the LIEUT.-GOVERNOR said it had been considered.

The GOVERNMENT AGENT C. P. thought they would have great difficulty in recovering these Crown costs. He thought the amendment ought certainly to have included the imposition of a small stamp duty to discourage frivolous and absurd cases. He believed that 73 per cent of ordinary Police Court cases dropped out in consequence of the absence of parties, and he could not see what practical difficulty there would be, when a Magistrate formulated the charge and found that it was triable by a Police Court he could order the charge to be entered as soon as the stamp was affixed.

H. E. the LIEUT.-GOVERNOR :—The stamp would not be forthcoming; that is the difficulty.

The Hon. the GOVERNMENT AGENT W. P. :—If a complainant absents himself, surely he will be liable to costs because he does not then proceed within such time as the Magistrate may seem reasonable. I understood that this clause was introduced to meet the case in lieu of stamps, and it would affect the case where stamps are at present levied.

H. E. the LIEUT. GOVERNOR :—It would affect the majority of cases. We make a man pay, now, for a stamp if his case is a really *bona fide* one. Our aim is that the man who brings a *bona fide* case should not have to pay, but the man who brings a frivolous case should be made to pay something, and this would be much fairer than the present act.

The Hon. the GOVERNMENT AGENT C. P. :—Then the effect of this clause, as I understand it would, be that in the few cases which the Magistrate had good cause to believe were a frivolous case and declared it to be so, the fine would be imposed, and it isonly intended to occasionally exercise that power.

H. E. the LIEUT.-GOVERNOR :—Not at all. The hon. member thoroughly misunderstands the clause. As the hon'ble member himself said, the vast majority of cases which come before the Court are minor cases which are not proceeded with, and in all these cases that are not proceeded with this fine will be imposed. The hon. member put it that there were 72 per cent of the cases which came before the Court which were not proceeded with, and it is this 72 per cent we want to deal with.

The Hon. J. VAN LANGENBERG said he should like to know whether a case could be withdrawn without leave of the Court or whether it could be not proceeded with. He believed as it now stood, no case could be withdrawn without leave of the Court. It did not quite meet the case of a person who did not appear.

H. E. the LIEUT.-GOVERNOR :—The real sting of the clause is in the last part of it, if the case is not proceeded with within a reasonable time.

The Hon. the GOVERNMENT AGENT W.P. :—The Code says, "If the case is not proceeded with, the accused may be discharged." I don't know whether that is equivalent to the case being struck off under our present procedure.

H. E. the LIEUT.-GOVERNOR :—I think those words may very well be left out.

The Hon J. VAN LANGENBERG :—These words appear to me to be objectionable—"or one which should not in his opinion have been entered." This is too indefinite, and gives a very large power to a

Police Magistrate. You can quite understand that a Police Magistrate would hold a case frivolous, and a man who brings a frivolous case is punished by way of crown costs, but in some cases a Police Magistrate may say merely "In my opinion this is a case which should not have been entered." The object is to punish frivolous complaints, we have that expressly stated in the section.

The Hon. the QUEEN'S ADVOCATE made no objection to the omission of the words "or one which should not, in his opinion, have been entered," and they were accordingly struck out.

The Hon. the GOVT. AGENT C. P.:—If you strike out the words "or be withdrawn without leave of the Court," you make the whole clause nugatory. Supposing a case of assault is entered and at the trial neither party appears, what will the Magistrate do? Will he say "it is a case which should not have been entered?"

H. E. the LIEUT.-GOVERNOR:—No, he then says, "This case has not been proceeded with within a reasonable time; I shall fine the parties."

The Hon. the GOVT. AGENT C. P.:—Will he find that the case is frivolous?

H.E. the LIEUT.-GOVERNOR:—He will say, "The case has not been proceeded with within a reasonable time, therefore, I fine you with costs."

The Hon. the GOVT. AGENT C. P.:—Then that is understood in all such cases?

The Hon. the GOVT. AGENT W. P.:—The order would be "accused discharged, complainant to pay crown costs."

H. E. the LIEUT.-GOVERNOR:—It is proposed as an addition to clause 237 to insert the words:—"If in any case inquired into or tried before a Police Magistrate, the complaint be not proceeded with within such time as the Police Magistrate may deem reasonable, or if the complaint is declared by the Police Magistrate to have been frivolous, it shall be lawful for such Police Magistrate to make an order for the complainant to pay, by way of crown costs, a sum not exceeding R5, such sum to be recovered as if it were a fine; and against such order there shall be no appeal." The addition to clause 237 stands part of the bill.

PAYMENT OF STAMP FEE TO BE DEFERRED PENDING APPEAL.

The Hon. the GOVENMENT AGENT W. P.:—I rise to move the amendment which stands in my name. The principle of the amendment was admitted by the Council, but the actual wording was postponed in order to enable the learned Queen's Advocate to draw it up in correct legal form. I beg to move that to clause 409 be added the following proviso:—

Provided the court from whose jugdment, sentence or order an appeal is preferred shall, if it see fit, allow the payment of the stamp fee to stand over until judgment on the appeal shall have been given. If the appeal be given in whole, or in part, in favour of the appellant, the amount of the stamp fee, when such has been paid, shall be returned to him. If the appeal be given against him, such stamp fee, when such has not been paid, shall be paid by him or recovered from him in the way of fine, unless the Supreme Court shall deem fit to remit all or any part of such stamp fee, in which case only such part as shall not be so remitted shall be recovered.

His Excellency the LIEUT.-GOVERNOR:—It is moved that the proviso to clause 409 stand part of the bill.

This was agreed to.

RULES OF THE SUPREME COURT.

The Hon. the QUEEN'S ADVOCATE:—The next clause is 510, with reference to the rules made by the Chief Justice of the Supreme Court. I beg to move that, instead of the clause as it now stands, the following be inserted:—

It shall be lawful for the Chief Justice and any Judge of the Supreme Court to make and from time to time to alter, amend, or revoke rules and forms for any of the following purposes:—(*a b c d*). Provided, &c.

All rules and forms when so made, altered, amended, or revoked shall be laid before the Legislative Council, and if within forty days after their being so laid before the Legislative Council an address be presented to the Governor, by the Legislative Council praying that any of such rules or forms be annulled, it shall be lawful for the Governor, by order in Executive Council, to annul the same.

Should no such address be presented within the said forty days, such rules and forms shall be published in the *Gazette* and shall come into force upon the publication thereof, or on such other day as may be specified in such publication; if any such address be so presented, and any rule or form be in consequence annulled, then such rules and forms as shall not be so annulled by reason of any such address shall come into force in like manner as any rules or forms would have come into force had no address been presented and no rules or forms annulled.

In addition to the amendment as appearing on the order paper I think it may be well to state that it should be laid before the Legislature at a certain time, and it would be well, therefore, to insert, after the words "Legislative Council," the words "if then in session, or if not in session, then as soon as possible after the commencement of the next session."

The Hon. J. VAN LANGENBERG:—I do not think this amendment quite carries out the intention of the Council. As I understood the discussion the feeling of the Council was that the Rules when made by the Judges of the Supreme Court should be laid on the table of the Council, and if no motion was made, then the Rules were to be considered as passed; but this amendment has introduced quite a different mode of proceeding. This provides for an address to to be presented by the Legislative Council to the Governor praying that any of such rules or forms be annulled and it shall be lawful for the Governor, by order in Executive Council, to annul the same. It takes away from the Legislative Council the power of deciding whether those rules should be passed or not and places it in the hands of the Executive. We should have a discussion upon those rules in Council, but that discussion would be profitless, because all we can do is to move an address to the Governor, and then it will rest with the Governor to allow or disallow. No doubt that is following the procedure in England, where the rules are laid upon the table of the House of Commons and any member may move an address to Her Majesty praying that the rules be anulled. But we have here a distinct legislative provision which requires the sanction of the Legislative Council before the Rules of the Judges of the Supreme Court shall have legal operation. We have relaxed [illegible] Ordinance to the extent that the [illegible] before the Council and the members of [illegible] cil shall have an opportunity of considering discussing those rules and to move their rejection adoption, as the case may be; but now it is proposed that it shall rest with the Executive Council to determine whether they shall be passed or not, which is a very different thing. I think it is very much better that these matters should be openly and publicly discussed in the Legislative Council, and that it should be left to the Council to decide whether they shall be passed or not.

H. E. the LIEUT.-GOVERNOR:—Undoubtedly that is the practice in the English Parliament, but then the Government of England is a responsible Government, and a resolution of Parliament practically binds the Crown; that is to say an address to the Crown by Parliament would decide the matter, but an address to the Governor of a Council like this would not necessarily decide the matter; it would probably do so, but not necessarily. I think it would be better for the Legislative Council and not the Executive Council to decide whether these rules shall pass. I am very much averse to the Executive interfering with the Judiciary, if it can possibly be avoided. I think that ought to be done by the Legislature. I think myself that the contention of the hon. member is a very fair one, that these rules should be passed by the Legislative Council.

The Hon. the QUEEN'S ADVOCATE:—I have no objection to following what the hon. and learned member has proposed. I drafted this clause from the

system now existing in England and in some other colonies. It is I think, generally provided, when similar rules have been made and are laid before the Legislature, that if they are objected to an address shall be presented to the Governor and it is for the Governor in Council to decide whether any rule shall be annulled or not. Of course if there is reason for not following the same system here, I shall be very glad to change the form of the amendment and fall in with the hon. member's wish.

H. E. the LIEUT.-GOVERNOR :—In the last colony I had the honour of serving, the decision was left to the Legislature.

The Hon. J. VAN LANGENBERG :—Your Excellency has drawn a very important distinction between the House of Commons in England and the constitution of our House. The Ordinance of 1846 requires that these rules shall receive the sanction of the Legislative Council.

The Hon. the QUEEN'S ADVOCATE :—I am quite willing the amendment should be altered and I will endeavour before the next meeting to revise the draft of the amendment accordingly, if it be allowed to stand over today.

His Excellency the LIEUT.-GOVERNOR :—I think it had better stand over. It is always possible for the Governor to make his authority felt in the Legislative Council as well as in the Executive Council. He can make it a Government measure to pass the rules. My own felling is that this is the place where the decision should be and not in the Executive Council.

PERSONAL ATTENDANCE OF MEDICAL WITNESSES.

The Hon. J. VAN LANGENBERG :—There is another amendment, to clause 473. The Council will remember we had a discussion as to whether it would not be desirable in certain cases to have the personal attendance of a medical witness or the medical examiner at a trial. I gathered that the feeling of the Council was with regard to this clause that there should be some provision to have the attendance of these witnesses in certain cases, and I have, with the concurrence of the Queen's Advocate, prepared this proviso to be added to clause 473 : "provided that in any case in which the Police Magistrate or any Advocate of the Supreme Court engaged in such case shall certify in his opinion it would be necessary or expedient [illegible] dical Officer or other medical [illegible] to in the last preceding section, or [illegible] Government Analyst referred to in this section, [illegible] be present to give evidence at any particular enquiry or trial to which the deposition or report may refer, such Government medical officer or other medical witness or such Government analyst as the case may be, shall be summoned as a witness for the purpose of giving evidence in the same manner as other witnesses for the prosecution."

The proviso was agreed to *nem con.*

THE SCHEDULES.

H. E. the LIEUT.-GOVERNOR :—We will now proceed with the schedules.

The Clerk of the Council then proceeded to read schedule II.

Referring to cases where the schedule orders a warrant to issue in the first instance, the Hon. P. RAMANATHAN said :—In all these cases I believe the magistrate has no discretion to issue a summons, he must issue a warrant. Is it not desirable that some discretion should be given to a magistrate to issue a summons if he so pleased?

H. E. the LIEUT.-GOVERNOR :—I think not, in cases of serious crimes it is always a warrant.

The Hon. P. RAMA NATHAN :—For instance in this case : negligently suffering a prisoner of State or war to escape.

H. E. the LIEUT.-GOVERNOR :—Certainly it ought to be a warrant, because a summons is merely a hint to run away in such a case.

The Hon. J. VAN LANGENBERG :—In clauses 117 to 129 the Court before whom the offence is to be heard is not mentioned. Is it the Supreme Court?

H. E. the LIEUT.-GOVERNOR :—Clause 10 provides that.

The Hon. P. RAMA NATHAN :—Column 3 is whether the police may arrest without a warrant or not. I think it is advisable to point out that that column is based upon clause 3 *j* and *k*, and again, column 5 is based upon clause 3 *l*, and column 7 is based upon clause 10.

Referring to cases triable both by District Court and Police Court, the hon. the GOVERNMENT AGENT W. P. said an unofficial Magistrate might inquire into the case if it was to go before the District Court, but he could not inquire into it if it was one for the Police Court. How was he supposed to know, unless he made some inquiry, whether the case was one triable by the Police Court or the District Court? There were certain cases in which it was perfectly impossible to say to which Court the case would have to go, until some inquiry had been made, and it will not be known into which court the case will go unless there was some power to be given to begin inquiry to the unofficial magistrate.

The Hon. the QUEEN'S ADVOCATE said if it appeared on the face of the proceedings that it was a case for the Police Court an unofficial Police Magistrate could not take it.

The Hon. the GOVERNMENT AGENT, W. P.:—A person is arrested and there is a charge made, it is one triable by either a Police Court or a District Court according to the gravity of the case or its surrounding facts, but how can a Magistrate decide whether it is a case for Police Court or District Court without inquiry?

H. E. the LIEUT.-GOVERNOR :—If a magistrate considers that it ought to go into the District Court and begins to hear the case and then finds that it is a Police Court case then he does not go into it.

The Hon. the GOVERNMENT AGENT, W. P. :—My hon. and learned friend tells me that if I should issue a warrant and it turns out that the case ought to have gone into the Police Court, I should be liable in damages. (Laughter.)

Clause 368 having been reached,

His Excellency the LIEUT.-GOVERNOR :—I think we may stop here.

The Hon. the Acting COLONIAL SECRETARY :—I beg to lay on the table the Bluebook for 1882 and Sessional paper No. 43 of 1881. I move that the Council now adjourn till Wednesday week, the 11th October.

The Council then adjourned.

WEDNESDAY, OCTOBER 10.

Present :—His Excellency the Lieut.-Governor, the Hon. the Acting Colonial Secretary, the Hon. the Queen's Advocate, the Hon. the Officer Commanding, the Hon. the Acting Auditor-General, the Hon. the Treasurer, the Hon. the Government Agent W. P., the Hon. the Acting Government Agent C. P., and the Hon. J. Van Langenberg.

Absentees :—The Hons. J. de Alwis, W. W. Mitchell, P. Rama Nathan and J. L. Shand.

AN ORDINANCE TO AMEND THE LAW RELATING TO MUNICIPAL COUNCILS IN THIS ISLAND.

The Hon. the Acting COLONIAL SECRETARY :—I rise, Sir, to move the first reading of an Ordinance entitled "an ordinance to amend the law relating to Municipal Councils in this island." The main object of this Ordinance is to relieve the Government Agent of the Western Province of the office of Chairman of the Municipal Council of Colombo, it having been found that so much of the time of that officer is necessarily occupied by his duties as Chairman of the Municipal Council as seriously to interfere with the

administration of the large and important Province in his charge. Provision is made in this Ordinance for the appointment of an officer other than the Government Agent of the Province, to be Chairman of a Municipal Council. It has been deemed advisable to make this provision in view any future necessity that may arise of relieving, the Government Agents of the office of Chairmen of a Municipal Council, though there is no immediate prospect, of the necessity for such action, except in the case of the Government Agent of the Western Province. In conclusion I would say, should this Ordinance be passed, it is the intention of the Government to confer the office of Chairman of the Municipal Council of Colombo on the officer who at present holds the post of Treasurer of the Colony.

The Hon. the QUEEN'S ADVOCATE :—I beg, Sir, to second the first reading of this Ordinance.

His Excellency the LIEUT.-GOVERNOR :—It is moved and seconded that an "ordinance to amend the law relating to Municipal Councils in this island" be read a first time.

OPINIONS OF THE MUNICIPAL COUNCILS ON THE CRIMINAL PROCEDURE CODE.

The Hon. the Acting COLONIAL SECRETARY :—I lay on the table three papers, setting forth the opinions of the Municipal Councils of Kandy, Colombo and Galle on the proposal to restrict the jurisdiction of the Municipal Bench of Magistrates.

CRIMINAL PROCEDURE CODE—SCHEDULES.

The Hon. the Acting COLONIAL SECRETARY :—I move that the House go into Committee on the schedules of the Criminal Procedure Code.

The Council then went into Committee, and the reading of the schedules was continued at clause 370.

During the reading of the forms of proclamation, the Hon. the GOVERNMENT AGENT C. P. asked if it was necessary that the word "description" should be inserted as well as the name of the party to whom the proclamation referred. Would the description of "John Smith" be "Mr. John Smith," or John Smith, Esq?"

The Hon. the QUEEN'S ADVOCATE said a person would have to be described either by his name or employment. He should think, if his name was sufficiently well-known, it might be unnecessary to describe his employment. He understood the description of a person to mean that he should be described by his employment or profession, not whether the person was short or tall, fat or lean.

The Hon. the GOVERNMENT AGENT W. P. asked whether in all these cases after the word "signature" there should not be inserted the word "office." Some of the forms had to be signed by the Police Magistrate, some by the Registrar, and some by the Fiscal. The mere signature without the office seemed vague. He asked who would sign form No. 29, and who No. 30? Was No. 29 to be signed by the Registrar or by the Judge?

The Hon. the QUEEN'S ADVOCATE said it would not be advisable to put in the name of any particular officer, because sometimes he might be away, and a deputy might be obliged to sign for him.

The Hon. the GOVERNMENT AGENT W. P. said all the forms at present were printed so as to require the signature and the office of the person signing.

On the form referring to Executions being reached, the Hon. the GOVERNMENT AGENT C. P. said under the 375th clause of the Criminal Procedure Code, he took it, the place and day of execution would be sufficient to meet requirements, there need be nothing about hours or anything of that sort. It used formerly to be fixed between the hour of so-and-so and so-and-so.

The Hon. the QUEEN'S ADVOCATE said if they were to fix any particular hour and the execution was not carried out during that hour it might be very questionable whether it could be done afterwards.

The Hon. the GOVERNMENT AGENT C. P. said that was the reason he asked.

ORDINANCES REPEALED : REPORT OF THE SUB-COMMITTEE.

The Hon. the Acting COLONIAL SECRETARY :—I bring up the report of the Sub-Committee appointed to consider what Ordinances should be placed in Schedule I. of the Criminal Procedure Code. I move that it be read.

The report of the Sub-Committee was then read by the clerk as follows :—

The Sub-Committee appointed to consider what ordinances should be placed in Schedule I of the Criminal Procedure Code have the honour to submit a list of ordinances and rules of Court which might form Schedule I.

They recommend that clause 2 of the Criminal Procedure Code should be amended by the insertion after the word "Ordinances" of the words "and Rules of Court."

With regard to weights and measures, the Sub-Committee observe that the Penal Code does not go so far as the local ordinances, but if the Code be amended by inserting the word "false" in clause 262 before the words "instrument," "weight" and "measure," respectively, and by omitting the word "fraudulently" in line 1 of clause 260, in lines 1 and 2 of clause 261, and in line 3 of clause 262, as well as the words "which he knows to be false and" in clause 262, the Sub-Committee consider that section 7 of ordinance No. 14 of 1878 might be repealed.

W. H. Ravenscroft,	J. Van Langenberg,
F. Fleming,	P. Rama Nathan,
F. R. Saunders,	W. W. Mitchell.

Legislative Council Chamber,
Colombo, 8th October, 1883.

For the schedule to the report see Sessional Paper No. X. of 1883.

The following notes were made by the Sub-Committee :—

(*a*). The Sub-Committee are in doubt whether chapters X. and XI. of the Criminal Procedure Code are intended to supersede the actions of a Board of Health in preventing nuisances, or whether they are to be enforced concurrently with Boards of Health.

(*b*.) Certain members of the Sub-Committee entertain a doubt as to the effect upon the jurisdiction of the Municipal Council Bench of Magistrates of Chapter II. of the Criminal Procedure Code and its consequent effect upon sections 32, 33 and 34 of Ordinance 17 of 1865.

In mentioning the former note, the Hon. the Acting COLONIAL SECRETARY said he thought it would be advisable to leave the Boards of Health alone and take out of this schedule sections 1 to 4 of Ordinance 15 of 1862. He did not anticipate that any inconvenience would arise from doing so.

The Hon. the Acting COLONIAL SECRETARY :—I move thatin the second clause of the Penal Code, after the words "Ordinance" in the second line, the words "and Rules of Court" be inserted.

His Excellency the LIEUT.-GOVERNOR :—It is moved to insert the words "and Rules of Court" after the word "Ordinance" in the second line of the second clause of the Penal Code.—Carried.

The Hon. the Acting COLONIAL SECRETARY :—I move in the 260th clause of the Penal Code that the word "fradulently" in the first line be omitted, and that in clause 261 the word "fraudulently" in the first and second lines be omitted, and that in clause 262 the word "false" be inserted before the words "instrument" "weight" and "measure" respectively and that the words "which he knows to be false and" and the word "fraudulently" be omitted. The reason for making these alterations is to provide in the Code what is already provided by clause 7 of Ordinance 14 of 1878 and if this be done I would propose to repeal clause 7 of Ordinance 14 of 1878.

His Excellency the LIEUT.-GOVERNOR :—The schedule as amended stands part of the bill.

JUSTICES OF THE PEACE AND POLICE MAGISTRATES.

All and every the powers, whether of a judicial or executive nature, which by any law of this colony are now vested in a justice of the peace, are hereby conferred upon and shall hereafter be exercised by a police magistrate within his local jurisdiction.

The Hon. the QUEEN'S ADVOCATE :—I move the insertion of the amendment which appears in my name on the order paper of the day. The reason, Sir, for the insertion of this amendment is that by repealing clause 140 of Ordinance 11 of 1868 we do away to a very considerable extent with the powers of Justices of the Peace, as hon. members will see by referring to this clause, and therefore it is necessary to provide that the Executive and Judicial powers of Justices of the Peace should be conferred upon Police Magistrates under this Code. Of course, if the Police Magistrate had all the powers which the Justice of the Peace has hitherto possessed it may be unnecessary to make any special provision. I believe the question has arisen as to whether if that clause stands repealed, it necessarily follows that Police Magistrates under the Criminal Procedure Code would, as a matter of fact, possess all the judicial and executive powers which are now possessed and exercised by Justices of the Peace. Under these circumstances I move that the amendment which stands in my name be inserted as clause 10.

H. E. the LIEUT.-GOVERNOR :—Clause 10 will stand part of the bill.

The Hon. the QUEEN'S ADVOCATE—(after a conversation between one or two hon. members) :—It is suggested that the word "exercised" would be a better word than "discharged," therefore in lieu of the word "discharged" I move to insert the word "exercised," in the amendment.

THE SUPREME COURT RULES.

It shall be lawful for the Chief Justice and any Judge of the Supreme Court to make and from time to time to alter, amend, or revoke rules and forms for any of the following purposes :—(*a b c d*). Provided, &c.

All rules and forms when so made, altered, amended, or revoked shall be laid before the Legislative Council if then in session, and if not then in session, then so soon as possible after the commencement of the next ensuing session, and if within forty days after their being so laid before the Legislative Council any of such rules or forms be objected to by the Legislative Council, it shall be lawful for the Legislative Council by resolution to annul any such rules or forms.

Should no such rules or forms be so annulled by the Legislative Council within the said forty days, the rules and forms as laid before the Legislative Council shall be published in the *Government Gazette*, and shall come into force upon the publication thereof, or on such other day as may be specified in such publication; if any rule or form be annulled in manner as aforesaid, [illegible] such rules and forms as shall not be so annulled shall come [illegible] in like manner as any rules or forms would have come [illegible] forms been annulled.

The Hon. the QUEEN'S ADVOCATE :—The next amendment, Sir, which stands on the order paper is with reference to clause 510 of the Criminal Procedure Code. Hon. members will recollect that the principle of this clause was agreed to by the Committee on the last occasion. What was then suggested was that the rules and forms when drawn up should be approved of by the Governor, or rather the Governor and the Executive Council, who should have power to annul these rules and forms after having been laid before the Legislative Council for a certain time. The hon. and learned gentleman who represents the Burgher interest thought it would be better that those rules should be either approved of or annulled by the Legislative Council themselves, and that it should not necessarily devolve upon the Governor and Executive Council to either approve or disapprove of them. The present amendment is drafted in order to carry out those views. It will be seen that, as it now stands, the rules are to be laid before the Legislative Council if then in session, and, if not then in session, then so soon as possible after the commencement of the next ensuing session, and, if within 40 days of their being so laid before the Legislative Council any of such rules or forms be objected to by the Legislative Council it shall be lawful for the Legislative Council by resolution to annul any such rules or forms. That will leave the matter entirely with the Council, and it will be doing away with the necessity of introducing a separate Ordinance in order to make those rules and forms lawful. I therefore move the insertion of the amendment as it now stands.

After a conversation with the Hon. J. Van Langenberg, the Hon. the QUEEN'S ADVOCATE said :—A slight alteration has just been suggested, which I think is perhaps better than the wording of the amendment as it now stands—instead of the words "it shall be lawful for the Legislative Council" to insert the words "the Legislative Council by resolution may "—because it is as a rule lawful for the Legislative Council to do anything, therefore it may be better to word the amendment in the manner just proposed.

The amendment as altered was agreed to.

A SLIGHT ALTERATION.

The Hon. the QUEEN'S ADVOCATE :—The next amendment I have to move, Sir, with regard to the Criminal Procedure Code, is not on the order paper of the day. It is a very slight one in clause 504. The Council will see that before the word "Council" the word "Executive" is left out, and as "Executive Council" appears all through the Code where such is intended, I think it would be better to insert the word here, and it would then read "made by the Governor in Executive Council." In the marginal note to this clause it ought to be "expenses of complainant and his witnesses" instead of "complainant's witnesses."

This was agreed to *nem. con.*

READING OVER EVIDENCE TO THE WITNESSES.

The Hon. the QUEEN'S ADVOCATE :—There is one other clause which was left in a somewhat undecided state, and that is clause 362 ; it was with reference to the District Court or Police Court taking down the evidence of the witnesses, and having that evidence read over to them afterwards and signed by them. This clause was discussed at some length, and it was proposed that the clause should run as follows :—"In every inquiry under Chapter 16, as the evidence of each witness is completed and taken down, it shall be read over to the witness in open Court," &c. On examining the Code, I think hon. members will agree with me that it would be very desirable to have the evidence taken down and read over to the witnesses in other cases besides those coming under chapter 16. Take for example chapter 43, "the Fugitive Offenders Act." It is not very likely there will be many cases under that Act, and I think it would be far more satisfactory that the evidence in cases under that Act should not only be taken down but read over to the witness and signed by them. There is also chapter 17 ; under that chapter I think it would be advisable that the evidence should be taken down, and read over to the deponent. I think the real object of the Council was that this process of reading over the evidence to the witnesses should not be gone through in ordinary Police Court cases, but in cases which would not be decided by the Police Magistrates. It was urged that it would be unnecessary and very difficult for a Magistrate to go through that process in every police case. I think the objection to that being gone through would be met by the following words instead of the clause as it now stands. I would insert the words "except in the Supreme Court, and except during the actual trial of the case that is being heard as one within the summary jurisdiction of the Court," &c. That would necessitate the evidence being read over in all cases, except those of summary jurisdiction which were being heard to be actually determined.

The Hon. the GOVT. AGENT C.P. :—That means except in case of final trial by the Court which finally determines upon it.

H. E. the LIEUT.-GOVERNOR :—No, it means in cases that are summarily dealt with.

The Hon. the GOVT. AGENT C. P. :—I am speaking of summary jurisdiction. Will the words of the hon. the Queen's Advocate be general enough to include that the evidence in cases to be determined is not to be taken down in that way?

The Hon. the QUEEN'S ADVOCATE :—The evidence is not to be taken down if the case is being actually disposed of. If it is a case which is required to be taken to a superior court, or if it is a case under the Fugitive Offenders Act, or a case coming under

chapter 16, then in those cases the evidence should be taken down and read over to the deponent. In such cases as have to be determined by the magistrate, the evidence would not have to be taken down and read over. If, before coming to any conclusion on this point, the hon. member wishes to see the amendment in writing, I am quite willing that this portion should stand over till tomorrow.

The Hon. the GOVERNMENT AGENT C. P :—As the section stands amended at present it is quite clear we have made a distinction, and that, all evidence in cases which are not tried in a summary way, or which have to go to a superior court, must for that very reason, be read over and signed by the witnesses.

The Hon. the QUEEN'S ADVOCATE :—That does not necessarily follow, because a case coming under the Fugitive Offender's Act might have to go before the Supreme Court. It is very essential that in all offences coming under the two sections of this chapter, the evidence should be read over to the witnesses. It may be very desirable and necessary for the magistrate to take the evidence and get the signature of the witnesses to it.

The Hon. the GOVERNMENT AGENT C. P :—Do I understand the hon. and learned Queen's Advocate that he desires to add to the amendment of the 362nd clause the words and "in every inquiry under chapter 17 and chapter 43"—that he wants to add 43 and 17 to the inquiries in which the evidence shall be read over to the witnesses? I see the reason of the hon. and learned gentleman as regards chapter 43, the Fugitive Offenders Act ; that is a most important matter, but as regards chapter 17, I am inclined to disagree with him, because it seems to me that if all this form has to be gone through it will be more or less of the nature of a farce. There must be a further inquiry by the magistrate himself, and that would be a preliminary inquiry under chapter 16. I do not think it is necessary to include chapter 17, but I think chapter 43 may be added if the hon. and learned gentleman will be satisfied with that.

The Hon. the QUEEN'S ADVOCATE :—I should not be at all satisfied with doing that : in fact, I want to add a great deal more than those two chapters. There are cases in which it is very important that magistrates should read the evidence over, cases of various descriptions. He may have to take down a drying deposition, or the evidence of a witness who was sick, and there are several other instances which might be mentioned in which I think it would be incumbent on the magistrate to take down the evidence and in which it might be very expedient that it should be read over and signed. What I want to avoid is limiting the necessity of reading over the evidence to particular cases. As regards coroners' inquests I am rather inclined to think that if they are farce to a certain extent, the evidence should be taken down in order to prevent their being so. Coroners' inquests are very important indeed, and it very often depends on that inquiry whether a person is rightly found guilty, because it is held before the witnesses have been got hold of. Coroners' inquiries are held before there is time to get hold of the witnesses and before there is time for bribery ; therefore, these inquiries are very important, and a great deal depends on them. My real wish is to do more than include those two chapters. What I want is that magistrates should be bound to take down and read over the evidence in all cases of preliminary inquiry certainly, and, I think, there may be several other cases than those mentioned in these two chapters in which it would be very expedient to have the evidence read over and signed. My impression was that the Council was simply desirous to do away with the necessity of having the evidence read over in cases which were virtually being tried before the Police Magistrate or District Court. To that extent I was prepared to go by the terms of the amendment, but certainly further than that I am very much disinclined to go. My only difficulty now is to frame an amendment to carry out that idea. The objection taken to the amendment as drafted was that it contained the word "summary," and that word is not applicable to a District Court, and as it is not the intention of the Council that the District Court should take down and read over the evidence ; therefore, I am inclined to think that the word "summary" should come out, but to go further than that I am very much disinclined to.

The Hon. the GOVERNMENT AGENT C. P. :—I certainly do wish to go further than that. I am perfectly satisfied that it should be unnecessary to go through this form of requiring to have the evidence read over a second time, formally interpreted to the witness, criticized by him, and then signed by him or objected to by him. What I want is not that the evidence of particular witnesses should be signed by them, but that all evidence taken in the Police Court, District Court or Supreme Court should be an unimpeachable record. Where it is only a preliminary inquiry and is going before a superior court, I entirely agree with the hon. and learned member that it should be signed by the witness, but in summary cases I see no reason in the world why this form should be gone through.

The Hon. the QUEEN'S ADVOCATE :—This amendment I meant to move does go a little further than the Council intended. When I drew the amendment I drew it under the impression that the Council had agreed to the evidence being taken down and read over to the witnesses in all cases except in cases which were actually being tried : that was, if the District Court or Police Court was trying a case so as to actually dispose of it. If that is the opinion of the Council I will endeavour before the next meeting to draft the amendment in that form. The amendment I have drafted today would be correct as far as the Police Court is concerned, but as it has been said that the word "summary" cannot apply to the District Court, because the District Court cannot be supposed to hear cases in a summary way. The Police Court has the power to summarily try a case under Chapter 19. I think it would carry out the view of the Council if the amendment ran :—"Except in the Supreme Court, District Court, and except when the Police Court is trying summarily under chapter, 19, the evidence would have to be taken down and read over to the witnesses."

The Hon. the GOVERNMENT AGENT C. P :—My objection to that is that the formally signing by the witness of the evidence would have to be gone through in every case in which the magistrate has not decided that it would be a summary one. He hears a case up to a certain point and then decides it must go before a superior court : then I should like that the evidence as already taken down should be read over to the witnesses. In all preliminary investigations as soon as it has been ascertained that it must go to a higher court, and in prosecutions, if you like, under chapter 43, then what I wish to provide for is that the evidence as already completed should be read over and the witnesses called upon to sign it. But I want to guard, in the first place, against any necessity for the court which hears and determines the case finally being obliged to go through that form ; and secondly, that the time of the Police Court may be saved in preliminary cases by having the signatures of the witnesses taken only as soon as the character of the case has been disclosed.

The Hon. the QUEEN'S ADVOCATE :—It would be very difficult to frame an amendment to carry out all those suggestions. To say that the evidence is not to be taken down till it has been decided to send the case to a superior court might be I mentioned at the time the matter was previously going to far as under discussion. It is really a very difficult thing under this Procedure Code to know at what particular time the case will or will not be decided by a certain judicial officer and, I think, that up to that time it would be necessary that the evidence should be taken down and read over to the deponent, after that time

it might not be so necessary for the evidence to be read over if the case is being actually tried. I think that was the view of the Council.

His Excellency the LIEUT.-GOVERNOR :—The view of the Council, I think, was that the evidence should be taken down, and signed by the Magistrate as at present and, when the magistrate thinks the case must go to a superior court, he would read over the evidence to the witnesses.

The Hon. the QUEEN'S ADVOCATE :—It would be a very difficult thing indeed to frame an amendment to carry out that view. It is almost impossible to draft a provision that up to a certain time the evidence shall not be taken down and read over, but subsequent to that time it shall be taken down and read over to the witnesses. I must say I do not exactly see my way out of the difficulty. I should like to have the Council's view as to what is exactly desired.

His Excellency the LIEUT.-GOVERNOR :—I think the Council's view is that it is necessary in certain cases only that all the evidence should be taken down, and I think the view of the Hon. the Queen's Advocate is that it is necessary that in all cases, except in certain cases, the evidence should be taken down.

The Hon. the QUEEN'S ADVOCATE :—I think there are many cases not mentioned in the Code in which it might be necessary that the evidence should be taken down, and, if we distinctly state in certain cases only such shall be necessary, we exclude all other cases however serious they may be.

H. E. the LIEUT.-GOVERNOR :—We do not say in certain cases only, we say in certain cases.

The Hon. the QUEEN'S ADVOCATE :—If we say in certain cases only we exclude other cases.

H. E. the LIEUT.-GOVERNOR :—I think the best plan will be to allow this to lie over till next meeting on that point and the learned Queen's Advocate will draft an amendment stating the cases in which the evidence should be read over.

The subject then dropped.

DESCRIPTION OF IMPRISONMENT.

The Hon. the QUEEN'S ADVOCATE :—I believe the Committee have referred to clauses 427 and 428 of the Penal Code. It was remarked while those clauses were under discussion that the word "imprisonment" was included, and that in the other clauses it "imprisonment of either description." I mentioned [illegible] clauses to the Chief Justice, and he says it was only intended that the words should be inserted in both clauses. I would therefore move that the words "of either description" be added in clauses 427 and 428.

THE END IN SIGHT.

The Hon. the QUEEN'S ADVOCATE :—Sir, before the Council adjourns today, I would mention that the only two points in connection with these Codes which now remaining undecided are the points relating to the Municipal Councils, and the taking down of the evidence and having it read over to the witnesses. There is an amendment before the Council now with reference to the Municipal Councils question. The amendment, I believe, as it appears on the order of the day does not go to the extent the Government would wish. With regard to Municipal Councils it is not now proposed to restrict their jurisdiction to cases coming under their byelaws only and I believe in the amendment as drafted only the word "byelaws" is mentioned. When I drafted the amendment I was under the impression it was the intention of the Government to give them jurisdiction only in cases coming under their byelaws and not in cases under the Ordinance relating to Municipal Councils Of course, if the sections of the Municipal Councils Ordinance are repealed which question the Sub-Committee have left for the consideration of the Council that will make a considerable difference in the jurisdiction of the Municipal Council because it will take from the Councils what may be called their ordinary jurisdiction. The question is whether the Bench of Magistrates shall continue to exercise that jurisdiction, and, if they continue to do so, whether it shall be limited in any way. I think those are the only observations I need make with reference to the Penal Code and the Code of Criminal Procedure. There is another bill referring to a change of titles of the law officers of the Crown, and in that bill I will propose a slight amendment before it goes out of Committee. I hope at the next sitting of Council—I believe it is proposed to have a sitting tomorrow—we shall be able to get through with the amendments, and, if we do, we shall be able to report on the bills and refer them to the law officers of the Crown.

The Hon. J. VAN LANGENBERG thought it would be desirable that the sitting should be fixed for next Wednesday instead of tomorrow, and then, if necessary, they might sit again on the Thursday. He should like to study this question of the Municipal Councils. There was also another important matter he wished to bring before the Council, if the sitting could he fixed for Wednesday. He hoped to be in a better position then than he should be tomorrow if those questions were taken up.

After some conversation between the Lieut.-Governor and some of the members, it was decided to fix the next sitting for next Wednesday.

The Hon. the COLONIAL SECRETARY :—I beg to lay on the table Sessional Paper No. XI, being the Revised Code of Public Instruction. I move that the Council adjourn till Wednesday next at 2 o'clock.

The Council then adjourned.

WEDNESDAY, OCTOBER 17.

Present :—His Excellency the Lieut.-Governor, the Hon. the Acting Colonial Secretary, the Hon. the Queen's Advocate, the Hon. the Officer Commanding, the Hon. the Treasurer, the Hon. the Auditor-General, the Hon. the Government Agent W. P., the Hon. the Government Agent C. P., the Hon. the Acting Surveyor-General, the Hon. J. Van Langenberg, the Hon. P. Rama Nathan, and the Hon. J. L. Shand.

Absentees :—The Hon. A. L. de Alwis and the Hon. W. W. Mitchell.

THE GILCHRIST SCHOLARSHIP.

The Hon. the Acting COLONIAL SECRETARY :—I beg to lay on the table a dispatch from the Secretary of State with reference to the Gilchrist Scholarship. It is suggested, that in the event of the Gilchrist Scholarship being gained by a candidate living in Ceylon, the cost of the passage to England of such successful candidate shall be defrayed from the public revenues. There is no immediate necessity for making provision for this expenditure, nor is it certain that it will ever be necessary; but, should the scholarship be gained by a Ceylon candidate, His Excellency the Governor will be prepared, with the concurrence of the Legislative Council, to make the necessary provision in the annual estimates.

His Excellency the LIEUT.-GOVERNOR added that he had taken the responsibility of assuring the Secretary of State that, in the event of the Gilchrist scholarship being gained by a native of Ceylon, the passage money will be defrayed by this Government. It was not, of course, possible to take a vote for the money, because it might never be required, but His Excellency felt sure that he had rightly interpreted the wishes of the Council in promising that this small sum of money would be forthcoming in the event of Ceylon producing a successful candidate.

THE WIDOWS' PENSION FUND.

The Hon. J. VAN LANGENBERG :—Sir, I rise to make the motion which stands opposite my name on the paper today. Your Excellency has rightly observed in the minute that was placed before this Council that this question is one in which the Council have taken much interest. Speaking for myself, I may

say that I have taken a most anxious interest in the consideration of this question in view of the great benefit which it would confer upon a large body of public servants in the lower grades of the service, who are drawn mainly from the community which I have the honor to represent. The scheme in itself will not be confined only to the particular class of servants, but it is calculated to confer an immense benefit upon the Public Service generally. The question is one which has for many years occupied the attention of this Council, but, in view of the particular point upon which the Council is called upon to express its opinion today, I think it would be extremely desirable, and also in view of the fact that there are many new hon. members, who may not, perhaps, be acquainted with all the details of the subject, to give a history of this whole question. In 1875 this matter was first brought before the notice of the Council by Sir Wm. Gregory in his opening speech, in which he referred to the Widows' Fund in these terms :—"No one but members of the Executive Council could form an idea of the state of things which perpetually came before them of widows of praiseworthy and deserving public servants, who have, by their husbands' death, been left on the verge of destitution. Sad, too, is the position of the Government that is obliged to meet their appeals for assistance by refusal. A donation on the part of the Government to form the basis of a widows' fund will be necessary, if the scheme which is being prepared by the Auditor-General meets with the approval of the Legislative Council and of the Home Government and I have no misgiving as to your desire to sanction a liberal appropriation towards its establishment." The reply which the Council made to the speech stated that they would be quite prepared—in fact, that the Governor had anticipated the wishes of the Council in that respect—"that they would be quite prepared to accede to the proposal which His Excellency had submitted. The decision of the Secretary of State and the Council will, I trust, enable Your Excellency to apply for the grant to be considered necessary in the interests of all classes of the Public Service." The subject is again referred to when Sir Wm. Gregory laid down the reins of Government, and he addressed the Council in his last speech and referred to the sanction of the Secretary of State given to the measures of the Council. In reply, the Council said the case was one in which they had taken the greatest concern, and they would readily consent to the grant which would be required. It must be remembered that, when this scheme was started, it was stated that it was the intention of the Government, in the words of Sir William Gregory, to lay, as it were, a foundation-stone of the structure by granting a certain sum. It was expected that the sum to be so granted would be liberal and generous, and that the Council would receive the scheme as one calculated to benefit a deserving class, and they would be prepared to sanction such a grant. But in 1877, when Sir James Longden assumed the administration of this colony, when he referred to the widows' scheme, he referred to it as an accomplished fact. He said :—"The establishment of a Widows' Fund is, as you have been made aware by my predecessor, been sanctioned by the Secretary of State for the Colonies. A bill to establish the Fund shall be prepared, but there are some details not quite clear which require consideration before the bill is passed. I trust however, that will not long delay the operation of the scheme." That was in 1877, when the scheme was supposed to be sufficiently matured, waiting only the consideration of some minor details. Five anxious years have gone by, and various circumstances have interposed to prevent the inauguration of the scheme, but we have got over these details now and we have only to consider the scheme which Your Excellency has submitted for the consideration of the Council. We find now that there is a scheme well digested and well matured, and we have now to consider simply whether that scheme is to be given effect to. The question has passed, I may say, the stage for discussion, and the question must be recognized as one that has been sufficiently ventilated and considered, and all we have now to do is to determine whether this scheme which is laid before the Council is one to be given effect to. So far as I have been able to consider the question myself, I must say that there is much in it that would commend itself to any person who has studied the question. The scheme has been exceedingly well prepared, and the only difficulty, apparently, which now is in the way of its introduction is the fact which Your Excellency has referred to. It is a question whether the Council are prepared or not to pay interest on the capital at the rate of 6 per cent. It is not very much, sir, considering the table Your Excellency has submitted to us, that is demanded of this Council, and the amounts vary from year to year. In the past half-year there was a sum of R402, and that sum gradually increased, which was to be paid annually until in the 10th year it attains the amount of R7,125. I submit, sir, that if this is to be the only difficulty, which can hardly be considered a difficulty when we consider, I may say, all the pledges given by the Council to see the scheme carried out. The original intention—I refer to it because it is an important element in the question to be determined today—the original intention was that the Government should make a grant, but now there is no grant to be given, it is assumed by the actuary that if the Government would undertake to pay interest on the capital at the rate of 6 per cent instead of 4 per cent, the scheme will be self-supporting. In 1877, the then Queen's Advocate of the day prepared an ordinance on the lines of one passed in British Guiana and he pointed, out certain disadvantages of the Ceylon scheme when compared with the scheme of the other colony, and those disadvantages were embodied in a letter and published in Sessional Paper No. 20 of 1877. These difficulties have all now been overcome, and we are now met together simply to consider this important question, whether we shall allow such a small consideration of a few hundred rupees annually to be in the way of carrying out what is acknowledged to be an absolutely necessary scheme. I have no hesitation whatever in expressing my own opinion on the question I am sure, in the first place, it would be a redemption as it were of the pledge the Council has previously given, and it would be an act of justice only to public servants not to allow any consideration of this kind to weigh with them against this scheme. The Government have acknowledged their difficulty in dealing with a great many cases of persons who are left destitute by public servants who died while in active service, and it is to some extent to provide against such applications that this measure, I may say, of relief, has been introduced, and it is a measure which is entitled to the fullest consideration of this Council. I cannot close my observations without specially referring to the great active and personal interest which Your Excellency has taken in the consideration, I may say, the preparation and the eleboration of this scheme. (Applause.) Your Excellency I believe it was who first originated the scheme ; it was Your Excellency who first submitted this measure of relief, in aid of those who were left destitute, dependant upon the public servants of the colony; it is Your Excellency who has seen the scheme advance step by step, and the thanks of those servants are due to Your Excellency for the mature scheme which we are called upon to consider today. Let not the anxious time and labour and the great attention which have been devoted to the scheme be thrown away simply by such a consideration as I have stated—a few hundred rupees. There are two alternatives which Your Excellency has pointed out. The first is that the scheme shall be sent back for re-consideration that the tables might be prepared at a reduced rate of interest. To do so

would be, if not to absolutely shelve the question, certainly to delay it for an interminable period. With the experience we have gained, I think it would be in the highest degree undesirable that this scheme should be sent back for revision ; rather let the Government be generous, let the Government be just to its servants, and adopt the second alternative and give the higher rate of interest. The difference is but 2 °/₀, and probably it will not be absolutely necessary—I am not prepared to say whether it is so or not—to give even the higher sum, but we may assume that the sum mentioned in the table is more likely to be asked from Government. I say, speaking on behalf of those public servants, that it is but generous and right that we should adopt the second alternative, and give the higher interest rather than allow this scheme to fall through. I beg to move, sir, in referring to His Excellency the Lieut-Governor's Minute on the Pension Fund scheme, that this Council approve of 6 °/₀ being allowed as interest on the capital for the term of 10 years, subject to reconsideration of the rate of interest at the end of that term."

The Hon. P. RAMA NATHAN :—After the very forcible observations which have been made by my hon. and learned friend, sir, it is not necessary on my part to offer any observations myself. I most cordially support his motion.

The Hon. the Acting GOVERNMENT AGENT C. P. :—It is unnecessary to add anything to the arguments of the graceful and eloquent speech, in what the honorable and learned gentleman moved the resolution, but I beg leave to add a few words on behalf of the Service of our grateful acknowledgments to Your Excellency in this matter. It is interesting to recall some other facts in its history besides those already mentioned. The idea of a widows' pension fund for the present Service originated with that great man—Sir Henry Ward—who seems to have touched every matter which affected the interest of any important class in the Island. He entrusted to the late Mr. Lee then Auditor General and Mr. John Bailey the Assistant Colonial Secretary, the duty of working out a scheme which they submitted in a report. That report would have been commended to this Council by Sir Henry Ward but for his sudden promotion to the Government of Madras. In the season of financ[illegible]ression and gloom which ensued that report [illegible]away and forgotten in the pigeonholes of [illegible]onial Office, until the subject was again revived [illegible] subsequent Auditor General with the approval [illegible] Hercules Robinson, and was eventually sub[illegible]d to Sir William Gregory and by him com[illegible]ended to the Council, as we have heard, in his last official utterance. References to the Colonial Office at home, and thence to London Actuaries, caused considerable delay, but its distinguished author kept the subject before the authorities. We may imagine his feelings when after all his anxious care and labor he one day in London received a telegram from an eminent colleague—whom he was expecting that very day to confer with him, and to give the finishing touches to the report—that the papers had been all irretrievably lost by him in a Railway carriage on the Metropolitan Line. When we heard of it in Ceylon we felt that the fates seemed against us. But its distinguished author undaunted by the calamity sat down at once and spent the long weary hours of his last night in London—having arranged to start for Ceylon next day—in committing from memory to writing all that he could of the history and details of the scheme. How well and successfully he did so may be gathered from the fact that his report was soon in shape to be laid before the authorities in Downing Street and after many unavoidable delays it did seem to me a signal instance of poetic justice to find devolved upon him—in his position as Lieutenant Governor—the duty of commending the now matured and developed scheme to this Council in the gracious minute which Your Excellency read us the other day. It is to tender our sincere acknowledgments and congratulations on the successful issue of such unwearied, persistant and sympathizing toil on behalf of the Service of which you are the chief.

H. E. the LIEUT.-GOVERNOR :—In putting before the Council the motion which has been brought forward by the hon. and learned member, I can only say, I will endeavour to see that there is no public delay in bringing forward this scheme, which has certainly been subjected to the ordinary vicissitudes of official life, and in those vicissitudes I have had a large share, and it is a matter of great self-congratulation to me that I am at last enabled to launch this scheme out of its infant life into what I hope may be a life of mature, of prosperous and of useful work. I am much obliged to the hon. member for the kind expressions towards myself for the part I have taken in this matter. It is moved and seconded that "referring to His Excellency the Lieut. Governor's Minute on the Pension Fund scheme, this Council approve of six per cent being allowed as interest on the capital for the term of 10 years, subject to reconsideration of the rate of interest at the end of that term."

This was carried *nem. con.*

THE MUNICIPAL COUNCILS ORDINANCE AMENDMENT BIIL.

The Hon the ACTING COLONIAL SECRETARY :—I rise to move the second reading of "an ordinance to amend the law relating to Municipal Councils in this island."

The Hon. the QUEEN'S ADVOCATE :—I second the reading of this bill.

The Hon. J. VAN LANGENBERG :—I rise, sir, to say a few words on this ordinance. In the introduction of this bill by the hon. the Colonial Secretary, it was stated that the main and principal object of the bill was to enable the Governor to relieve the Government Agent of the Western Province of his duties as Chairman of the Municipal Council of Colombo, and to appoint the Treasurer of the Island to that office. I need not disclaim any intention whatever in discussing this question of introducing anything like personal considerations. I shall discuss the question simply as one involving certain principles, and ask the decision of the Council on those questions. In 1865, Municipal Councils were established in this colony. The then Governor, Sir Hercules Robinson, aided by the members of the Executive Council, men of large experience in matters connected with the social condition of the people, introduced this ordinance for the purpose of instructing and teaching the people self-government. It was to enable the people thoroughly to understand what their rights and their privileges are, and to enable them in a measure to administer their own affairs. The Municipal Council is not entirely elective, as hon. members are aware : some of the members are elected, but one-half the members is appointed by the Government, with the Government Agent of the Province as head or chairman of the Municipal Council. These Councils have, so far as we know, satisfactorily worked from 1865 to the present day. There has been, so far as I am aware, no cause whatever of complaint, and it was always felt that if there should be Government supervision the proper officer as head of the Council was the Government Agent of the Province. This bill will, no doubt, enable the Governor to appoint a person as chairman of the Municipal Council even if he be unconnected with the service. I do not profess to say we have at the present moment arrived at that stage when the Government would be prepared to allow the Council to elect one of their own body as chairman. But I consider that, as has been intimated to the Council that it is the intention of the Government simply to substitute the Treasurer for the Government Agent W. P. as chairman. Such a change is extremely undesirable. The Government Agent was selected in 1865 as the medium between the Government and the people.

He was an officer who, in view of his peculiar position, may be said to be best acquainted with the administration of that part of his Province which was included in the Municipality; he was in his official relations with the people best acquainted with the wants of the people, for, as Government Agent, many matters came under his consideration which could not possibly come under the cognizance of the surer of the Colony. The Government Agent was in view of these facts selected as the best officer who would be able to carry on the working of the Municipality. He was there in a way to represent the Government and would exercise some sort of control over the elected members and would see that the Municipal Councils Ordinance was properly carried out. The trust which was reposed on the Government Agent has been successfully discharged, and I do not see what possible benefit there will be by a change. It is indeed very unfortunate that we have frequently in discussions of very great and important questions affecting the social and moral condition of the people to be reminded that we are in days of depression, and that it is absolutely necessary that there should be retrenchment in some form or other. But I submit that considerations of retrenchment should yield to weightier and far more important considerations, and when those considerations are for the good of the people. The retrenchment policy may be in certain cases deemed desirable, but I think it is a policy which ought to give way if public and popular institutions are to suffer by the change. There is nothing to commend itself in the change, except that the Government Agent ought to be relieved of certain duties. The Government Agent of the Western Province has performed those duties for the last 18 years, and, if it be necessary that the Government Agent should have assistance in the performance of his duties as Chairman of the Municipal Council as well as Government Agent for the Province, this assistance should be given him, but it should not be at the expense of any public institution or by the probable sacrifice of the efficiency of such institution. The Government Agent, so far as I know, has done his part of the duty, and, if he only receives assistance of some kind, he will be able to carry on his work. The question involved is a question of principle—should the Government Agent be the proper person to discharge the duties of Chairman of the Municipal Council. There are a great many matters referred to in the Municipal Councils Ordinance. There are duties cast upon the Government Agent which might probably come into conflict with the Chairman of the Municipal Council, if he happened to be other than the Government Agent himself. There are powers which he exercises under that ordinance, and I think they are powers properly vested in him as one who is interested in the Government, not of a particular section of the Province, but throughout the whole Province. The Government is in a way, not, I say, entirely, but so far as municipal matters are concerned, independent of Government. The bylaws which the Municipal Council introduces, in order to take effect, must be sanctioned by the Governor and the Executive Council. These rules formed by the Council with the Government Agent as chairman are sure to be in accordance with the wishes of the Government Agent, but, if the Chairman was a member of the Executive Council, and he did not agree with all the by laws and was defeated by the Council in the matter, he would take his place as a member of the Executive Council to consider the rules, and he might get them altered to suit his views. It is an anomaly to have an officer who is a member of the Executive Council to be chairman of the Municipal Council. That officer, I submit, should be one who is perfectly untrammelled, who should not occupy any Executive position as the Treasurer does, and he should be the medium between the Government and the people. Such a person is to be found in the Government Agent—has been found, has been tried and found to be the proper person to discharge such a duty—and for no reason whatever, so far as I can see, we have this change sought to be introduced, and certainly with no advantage whatever that I can see to the Municipal Council itself. I said at the very commencement of the few observations I had to make that my objection was not at all a personal one. The Treasurer of the colony, I believe, so far as the duties of Chairman were concerned, would discharge them as satisfactorily as any officer, but my objection is entirely founded on principle. The Government Agent of the Western Province might be Treasurer a few years hence. It is not the person who fills the office I object to, but my objection is founded on the severance of the connection between the Government Agent and the Chairman of the Municipal Council: it does not matter who the person is in this position, so that he is the Government Agent. I consider he is the person who properly ought to be between the people and the Government and who should fill the Chair of the Municipal Council. From these observations, the Council will see that I oppose the second reading of this bill.

THE MUNICIPAL COUNCIL ORDINANCE AMENDMENT BILL.

The Hon. the ACTG. COLONIAL SECRETARY:—As I stated when the bill was introduced it has been shown to the Government that the time of the Government Agent of Colombo is occupied to an undesirable extent by the supervision of details in his capacity as Chairman of the Municipality, which interfers very considerably with the due administration of the Province under his charge. When Municipal Councils were first introduced the Government Agents were selected as the officers to fill the position of Chairmen, because they were considered to be the officers who had the greatest knowledge of the wants of the people in their respective provinces and, in so far, I agree with what the hon. and learned member has just said, that the Government Agents, generally speaking, are the officers best fitted to fill that position. But, in the particular case of Colombo, as I have already said, it has been shown that the Government Agent has work to do in administering his district with which his duties as chairman of the Municipal Council considerably interfere and it has, therefore been deemed advisable to make provision for another officer to fill that post. The objection which the hon. and learned member made to the appointment of a member of the Executive Council as Chairman of the Municipal Council, I think, is hardly an objection that has very much weight as so far from weakening the position of the Chairman of the Municipal Council I think it ought to strengthen it. The Government Agent is a member of the Legislative Council, and the proposed Chairman is a member of the Executive Council and the Legislative Council, and that would give him more weight, even than the present Chairman has. I think the action that has been takenis certainly that best suited to the wants of the case.

The Hon. P. RAMA NATHAN:—I take it, sir, that the reason why this bill was proposed was that just mentioned by the Hon. the Acting Colonial Secretary, and that is that the present Government Agent of the Western Province finds his duties as Agent and Chairman of the Municipal Council to be too many for him, and that either the Municipal work is being neglected, or, if that work is not neglected, his provincial work is neglected. I don't know, sir, on what authority a statement of that kind is made; whether this imputation of neglect of work on the part of the Government Agent has been admitted by himself, or whether this imputation has been made for the first time by the Government of Ceylon. If I remember matters properly, I understood the Government Agent of the Western Province to say that the details of the Municipal Office might very well be attended to by a stipendary officer, and were therefore needlessly thrown on his time and attention. To remedy this state of things I understood the Hon. the Government Agent to say

that if one of his office assistants was told off to help him in his Municipal work, he would find matters going on very smoothly indeed. When the proposition came before the Retrenchment Committee, the unofficial side of the Retrenchment Committee asked the question what position this office-assistant was to occupy with reference to the Municipal Council: whether it was the intention of the Government to make him a vice-chairman, or, if not a vice-chairman, in what other capacity this office-assistant was to serve the Municipal Council to help the Government Agent in his duties? From difficulties connected with the solution of this question, the suggestion of the Hon. the Government Agent was dropped, and after that I do not know what has transpired till I now find introduced to the Council this bill. I submit, Sir, there are various other ways of meeting an emergency of this kind without taking away from the Government Agent the powers which he possesses and which he, undoubtedly, should continue to possesss. If the Government Agent complained only of having to do things which it was not necessary for a man of his capacity and talents to do, the remedy consists, not in removing the Government Agent from his present duties, but in finding out some other way of coping with the difficulty. Why should not, Sir, I ask, if the Government Agent's complaint is simply that instead of having to do with the administration of large financial questions he at present has to do a large amount of detail work, why should not one of the members of the Municipal Council, other than the chairman, why should not such an officer be deputed to do work of that kind? In the absence of the Government Agent during circuit, the senior officer of the Municipal Council might perform the duties which he at present is performing. If that course is not advisable, why not call upon the Municipal Council to elect a vice-chairman for itself; or if that is not necessary a stipendary officer or an assistant secretary might be allowed to deal with these questions in detail and obtain the sanction of the Government Agent or the Committee of the Municipal Council for work that he had already done. While there are so many alternative proposals which may be considered, I wish to know the reason why the Government Agent should not do the work he has hitherto done. I submit, before the Council commit [illegible] to an important scheme like this, it is their [illegible] convince the public either that the Government Agent had admitted his inability to cope with [illegible] these works, or, if he has not made that admission, they distinctly make that imputation on the [illegible] Government Agent and want to turn him out of the [illegible]. To my mind, there is only one of these alternative conclusions to arrive at. As I understand my hon. friend, the Government Agent, he simply said he had all that minor work to do which might very well be done by an inferior officer, and all he wanted was an assistant to help him, but the Government were not prepared to give him that help. I say the proper course to pursue is to appoint a stipendiary, whether from amongst the Government officials or from the unofficial side of the Municipal Council, or from any independent circle, and call upon such officer to perform the work. I have also suggested other alternative proposals, and, while those proposals might any of them do, I do not think it is right to remove the Government Agent from the work he is doing. Sir, as far as the Municipal Council is concerned, I have not heard one word against the Government Agent. I have spoken to many members of the Municipal Council, and I must repeat today in Council, as I have heard it elsewhere, that the hon. the Government Agent has performed his work very satisfactorily and has given every satisfaction to the Municipal Council, and I see no reason why he should be removed from this office. I should like to know today what is the reason which induced the Government to deny to the Municipal Council the ability and talents it has hitherto had in its deliberations.

The Hon. J. VAN LANGENBERG :—I had intended, Sir, to refer to the recommendation of the Select Committee on Retrenchment, but I omitted to do so; and I shall now by the leave of Council draw attention to the fact that the matter was referred to by the Select Committee on Retrenchment, who in their *ad interim* report stated "that it is undesirable to sever the connection between the Government Agency of the Western Province and the Municipality, which is regarded by the Committee as being beneficial to both institutions." It was a matter which after due consideration was deemed undesirable by the members of the large Committee which sat then, and, not only was it referred to in the *ad interim* report, but it was afterwards referred to in the report itself in these terms:—"It has not escaped the consideration of the Committee that the time of the Government Agent is occupied to an undesirable extent by the supervision of details in the working of the Municipal system to the possible detriment of the administration of the Province. It was with a view of remedying this state of things that the Committee recommended in their *ad interim* report the suppression of the Assistant Agency of Negombo, and that an officer of the same class as the Assistant Agent be attached to the Colombo Kachcheri for the purpose of giving general assistance to the Government Agent in the work of the Province as well as that of the Municipality." Well, in November last, we decided—or rather a large majority of those who composed the Select Committee decided—that it was undesirable that the connection between the two offices should be severed, and now we are called upon to determine today that it is considered desirable. That means that I should have to stultify myself to give assent to this bill, after the matter has been considered in all its details. I have not been made acquainted with the facts—

His Excellency the LIEUT.-GOVERNOR :—I do not like to stop the hon. member, but he cannot speak twice. I have allowed the hon. member to read extracts from the report of the Committee, although he was out of order in doing so, but he clearly cannot make another speech.

The Hon. J. VAN LANGENBERG :—When I made my observations, I ought to have moved that the bill be read this day six months.

His Excellency the LIEUT.-GOVERNOR :—I cannot allow the hon. member to go on with his speech.

The Hon. J. VAN LANGENBERG :—I do not intend to do more than point out—

His Excellency the LIEUT.-GOVERNOR :—I have allowed the hon. member to read the extracts, although he was not in order in doing so.

The Hon. J. VAN LANGENBERG :—I shall now move that the bill be read this day six months, and in doing so I am entitled to speak to the motion.

His Excellency the LIEUT.-GOVERNOR :—The hon. member cannot speak twice. He cannot make two motions on one subject. The question before the House is, shall the bill be read a second time? The hon. member has a right to move an amendment and to speak to it once, but not to speak twice.

The Hon. J. VAN LANGENBERG :—I surely have a right to reply.

His Excellency the LIEUT.-GOVERNOR :—The mover of the motion has a right to reply, but I doubt whether the mover of an amendment has.

The Hon. J. VAN LANGENBERG :—Of course I must accept Your Excellency's ruling.

His Excellency the LIEUT.-GOVERNOR :—That is the Parliamentary practice but it is not the point at present at issue as the Hon. Member is not speaking in reply.

The Hon. J. VAN LANGENBERG :—If Your Excellency does not wish the question to be further discussed, I shall not——

His Excellency the LIEUT.-GOVERNOR :—I must call attention to that; it is not that I wish the question to be no further discussed. I allowed the hon. member to speak when he was really out of order because I did not wish to appear to be stopping

discussion on the question. The hon. member was anxious to bring before the Council certain things which he had mitted to mention, and so long as the hon. member confined himself to the reading of those proceedings I did not stop thim, though he was out of order, but when he began to make a second speech I stopped him. In regard to this question I must say it is one of very considerable difficulty and it is one which has been engaging the attention of the local Government and the Imperial Government for the last three years. There have been a number of communications going on upon the subject, and the present bill is the outcome of the decision which has been come to by Her Majesty's Government upon the whole question, after the most careful consideration of it. It is admitted on all sides that under the present system the Government Agent is overweighted by his double duties. The hon. member who spoke second in opposing this motion used a somewhat ugly word, which wants taking up, because he referred to neglect. Now there has been no neglect. I wish on the part of the Government to disclaim any idea of our supporting the imputation which the hon. member threw out. On our part there has been no imputation of neglect, for it is a very different thing neglecting one's duties and finding that those duties are such that one has to come to Government and ask for relief in some shape or form. That is what the Government Agent of the Western Province has very properly done. The hon. and learned member has referred to what took place in 1865, when the Municipal Councils where inaugurated. It was undoubtedly essential when the Municipalities were cut out from the respective provincial systems that the Government Agents should be the first to cut them out and start them on their course, and had it been possible to preserve the Government Agents as Chairmen of the Municipalities still, the Government would have not interfered; but on the one hand Colombo has grown immensely and the duties and responsibilities of the Municipality have grown immensely since 1865, and on the other hand the Western Province has grown vastly in population, wealth and importance within the last 18 years, and it is demanded that proper machinery should be given for the due administration both of the Municipality and of the Province. Now the hon. and learned member spoke of the Government Agent being the proper official for bringing forward the complaints of the people of Colombo. That is all very well, but the people of Colombo are at the door of our House, they live amongst gentlemen like the hon. and learned gentleman himself, they live amongst the heads of departments who can look after their interests, and they have every chance of making their voice heard and getting their grievances attended to; but it is a very different thing with the people in the outlying districts of the Western Province. They seldom see a white face; they know nothing hardly of the existence of a Government except through the Government Agent, and we look upon it as the most essential thing of all that the Government Agent should be able to devote a proper and full proportion of his time to the work of the Province. Undoubtedly the work in Colombo is important, but if that work is neglected we shall know of it immediately from the hundreds of people who will start up and complain to us; but in the outlying districts of the Kukulu, or the Four Korales, or some more distant parts of the Western Province, if anything goes wrong how are we to know it? Who is there to bring forward a grievance, or redress it? It is for that reason we look upon it as the one paramount and essential duty of the Government Agent that he should be constantly, as it is called, beating the bounds of his Province and looking into the things that are going on in the Province. Now, Her Majesty's Government and this Government have come to the conclusion that if the Municipal work is being done properly by its Chairman, that Chairman cannot at the same time be visiting his Province, travelling about in the way in which he ought to be, and that is the head and fountain of this bill. We feel that in Colombo we can promise the Municipal Council assistance as able and experienced as it already has. It is not as if we were doing any harm in making this change on the contrary we are giving them as their Chairman an officer up to his duties and thoroughly capable, resident in Colombo, as such an officer ought to be. On the other hand the Government Agent W. P., if he visits his Province as he should, ought to be a great deal out of Colombo and out of it for a protracted time, and during that time how is Municipal work to go on? That is our policy in introducing this measure. It has been most fully considered by Her Majesty's Government and it has been a matter of communication between this and the Home Government; confidential communications have passed for the last two years, and this bill is the outcome of those communications. Of course in a matter of this sort, distribution of work amongst its officials, I may say, that Government must be responsible for its measures. So long as the Municipal Council cannot come before us and say; "You are giving us a less efficient officer, you are degrading us by giving us an officer of less efficiency and less rank," then we must be responsible for the distribution of work amongst our higher officials, and if we find it necessary that one of our higher officials should devote the whole of his time to his own particular post then we are responsible for making arrangements to enable him to do so. I may say that this, of course, is a Government measure as it is a matter which has been finally decided upon by Her Majesty's Government. It is moved and seconded that "An Ordinance to amend the laws relating to Municipal Councils in this Island" be read a second time, and there is an amendment that it be read this day six months.

The Council then divided on the amendment with the following result :—

Ayes.	*Noes.*
The Hon. P. Rama Nathan.	The Hon. J. L. Shand.
The Hon. J. Van Langenberg.	The Hon. the Acting Sur. General.
	The Hon. the Acting Government Agent C. P.
	The Hon. the Government Agent W. P.
	The Hon. the Treasurer.
	The Hon. the Auditor.
	The Hon. the Queen's Advocate.
	The Hon. the Actg. Colonial Secretary.
	The Hon. the Officer Commanding.
	H. E. the Lieut.-Governor.

Ayes 2, noes 10.—Amendment lost.

The original motion was then put and carried, and the bill was read a second time.

A POINT OF ORDER.

The Hon. the Acting Colonial Secretary :—I move that the House go into Committee.—

The Hon. P. Rama Nathan :—Before the Council goes into Committee I rise to a point of order. When my hon. and learned friend moved that this bill be read this day six months, Your Excellency said that he had no right of reply.

H. E. the Lieut.-Governor :—I did not say so in words. I only said there was no reply because he was replying to the original motion; he was making a speech in order to make his motion, and I said he could not speak twice.

The Hon P. Rama Nathan :—I understood him to claim a right of reply.

His Excellency the Lieut.-Governor :—He was speaking in order to move that the bill be read this day 6 months.

The Hon. P. Rama Nathan :—I am simply anxious about the privileges of this Council.

His Excellency the LIEUT.-GOVERNOR :—What I pointed out to the hon. and learned member was that he was making his motion and his reply must come after he has made his motion. The hon. member had not yet made his motion, therefore he had no reply.

The Hon. P. RAMA NATHAN :—It was to clear up this misunderstanding that I rose. Of course I shall not now speak on the point of order.

His Excellency the LIEUT.-GOVERNOR :—The Council now goes into committee on the bill.

COMMITTEE ON THE MUNICIPAL COUNCILS BILL.

On clause 3 being reached, the Hon. P. RAMA NATHAN said :—In this clause there are two things I wish to have cleared up and they are these : the clause speaks of the Governor appointing from time to time a fit and proper person to be Chairman of the Municipal Council ; the appointment may be upon a salary, there is nothing in the Ordinance to show that the Governor has no power to give a salary; neither does it appear that the Municipal Council of Colombo shall always hereafter have the Treasurer as its Chairman. The bill says "a fit and proper person." He may not be an official at all. We who are acquainted with the circumstances of the case when this bill was introduced do know what the present intention of the Government is, but in the future there is nothing to prevent a Governor appointing an outsider as Chairman of the Municipality and paying him £1,000 a year.

The Hon. the GOVERNMENT AGENT W. P. :—I think the chairman cannot receive pay under the Municipal Councils' Ordinance.

H. E. the LIEUTENANT-GOVERNOR :—Unless this Ordinance gives power to give the Chairman a salary, I do not see how the Governor could exercise that power; as this Ordinance gives no power to attach a salary, he has not that power.

The Hon. P. RAMA NATHAN :—Then, what about a fit and proper person? There is no mention made of the Treasurer. If it is the intention of the Government that the Treasurer should be Chairman why is it not stated here?

H. E. the LIEUT.-GOVERNOR replied, that no salary could be attached to the office without a vote of Council.

The Hon. J. VAN LANGENBERG :—There is one point in which revision should be made. I believe it has been mentioned that it is the intention of the Government to appoint the Treasurer as Chairman. Suppose he ceases to be Treasurer, would he cease to be Chairman? If he becomes Chairman of the Council, *ex officio*, as Treasurer, then he would cease to be Chairman on ceasing to hold the office of Treasurer. Now a person, Mr. So-and-So, is appointed, is it not necessary that there should be some power of removal, otherwise he would be a life chairman. The appointing does not always carry the right of removal; the Governor may appoint, but he cannot always depose.

H. E. the LIEUT.-GOVERNOR :—You do not raise that as an objection?

The Hon. J. VAN LANGENBERG :—No, I do not.

H. E. the LIEUT. GOVERNOR :—I think that is merely an administrative difficulty which might be met. It is a question whether it should be made a personal matter, or by office. I imagine it would be made personal.

The Hon. J. VAN LANGENBERG :—It is personal. The Governor may appoint the Assistant Government Agent tomorrow, to be Chairman of the Municipal Council: there is nothing in this Ordinance to prevent. I should like to draw your Excellency's attention to this point : there is no provision to remove the officer.

The GOVERNMENT AGENT W. P. :—The Governor appoints other officers, he appoints the Surveyor-General, and others, and this appointment would be in the same way.

H. E. the LIEUT.-GOVERNOR :—The appointment will be in precisely the same way as other appointments.

The Hon. the QUEEN'S ADVOCATE :—There would be no harm in inserting a few words, that the Governor should have power from time to time to remove any person so appointed.

The Hon. J. VAN LANGENBERG :—We might have some officer who would not perhaps be in his place.

H. E. the LIEUT.-GOVERNOR :—I think that would be our business.

The Hon. the GOVERNMENT AGENT W. P. :—There are other Ordinances which do not expressly relate to Municipal Councils but which give certain powers to the Government Agent ;—for instance, the Carriage Ordinance. I presume those powers are still reserved to the Chairman, under this Ordinance?

The Hon. the QUEEN'S ADVOCATE remarked that he did not see what powers the Chairman of the Municipal Council would have that were not contained in the bylaws.

The Hon. the GOVERNMENT AGENT W. P. thought all municipal powers vested in the Government Agent should be vested in the Chairman of the Municipal Council.

The Hon. J. VAN LANGENBERG :—With reference to the election lists, we have the preparation of the lists, and the lie are to lie in the Kachcheri for some time. Is it intended that those lists are to be prepared by the Chairman and that he should keep them in the Kachcheri? Shall we have the Treasurer, if he is appointed, preparing the lists and keeping them in the Kachcheri for inspection?

The Hon. the GOVERNMENT AGENT W. P. :—At present the Council prepares the lists and sends them to the Government Agent and he keeps them for a certain time and he holds the election.

The Hon. J. VAN LANGENBERG :—Then 'the Chairman of the Municipal Council' will have to be substituted for 'the Government Agent,' wherever the expression 'Government Agent' occurs. I don't know what is the intention of the Government, whether the Chairman of the Council shall hold the elections or whether they shall be held by the Government Agent.

The Hon. the QUEEN'S ADVOCATE :—This clause says anything that has been done by the Government Agent as Chairman will be done by the Chairman appointed by the Governor, and anything that would be done by the Government Agent as Government Agent would continue to be done by the Government Agent. If there is anything which the Government Agent has done as Government Agent which it would be expedient should be done by the Chairman that would have to be included in the Ordinance.

The Hon. P. RAMA NATHAN :—It says "unless the contrary shall appear from the context" the expression Government Agent shall mean Chairman of Municipal Council.

The Hon. J. VAN LANGENBERG :—I do not see where the contrary appears from the context. I should like my hon. and learned friend to enlighten me upon that point.

The Hon. the GOVERNMENT AGENT C. P.—It seems to me that the second chapter of the Ordinance of 1865 should be, if possible, excluded, either implicitly or expressed, from the operation of this clause. It refers to the preliminary matters in coonnection with holding the elections, and there the Government Agent is acting as the Government Agent and not at all as the Chairman of the Council. If the second chapter were excluded, in all the rest, it seems to me, the Government Agent and the Chairman are one and the same person.

The Hon. the GOVERNMENT AGENT W. P. :—I think that wherever the Government Agent is mentioned in the Ordinance it means the Government Agent and not the Chairman, and where the Chairman is intended the word Chairman is used.

The GOVERNMENT AGENT C. P. :—That does not follow, because it says in the 24th clause that the

Government Agent's office shall be the office for the transaction of business, and the Government Agent is also to act as Treasurer. It seems to me that, except in chapter 2 and chapter 10, in all the rest the Chairman will take the place of the Government Agent, and in those two chapters the Government Agent will act as Government Agent still.

The Hon. the QUEEN'S ADVOCATE observed that in the ordinance of 1865 the expression Government Agent was made use of all through whether it referred to the Chairman or Government Agent. What they had to do was to make only such duties as were performed by the Government Agent as Chairman of the Municipal Council applicable to the Chairman.

The Hon. J. VAN LANGENBERG :—Is it intended that the Government Agent shall hold the elections?

H. E. the LIEUT.-GOVERNOR :—Yes, I think so.

The Hon. the Acting COLONIAL SECRETARY :—It is intended that the new Chairman shall have the same powers as the present Chairman has.

The Hon. J. VAN LANGENBERG :—Who is considered to hold the elections now, the Government Agent or the Chairman?

The Hon. the Acting COLONIAL SECRETARY :—The Government Agent holds the elections now.

The Hon. J. VAN LANGENBERG :—Is it not desirable that the Chairman should be the person to hold the elections?

H. E. the LIEUT.-GOVERNOR :—I think it is very desirable that the Government Agent should hold the elections, because the question of qualification can be better decided outside the Council.

The Hon. J. VAN LANGENBERG :—These questions have been decided hitherto by the Chairman.

H. E. the LIEUT.-GOVERNOR :—No, not by the Chairman, by the Government Agent.

The Hon. J. VAN LANGENBERG:—By the same person.

H. E. the LIEUT.-GOVERNOR :—Yes, but in a different capacity. It can be best illustrated by the well known story of an official putting on his hat to act in one capacity and taking it off to act in another.

The Hon. the GOVERNMENT AGENT W.P. :—I may mention that considerable inconvenience has been occasioned by the same person having to exercise both these offices. There is the fact of the Returning Officer returning to himself. The officer has to make a return of the election to himself. I have asked the Government to amend the ordinance in that particular respect.

The Hon. the Acting SURVEYOR-GENERAL :—I see a little difficulty in this matter. With regard to the Crown property in the city, how are the Chairman and the Government Agent to agree as to the conservancy of such property. ? At present it is easily managed: the Chairman of the Municipality writes a letter to the Government Agent, and his mind being the same he is sure to agree, but there might be a little difference of opinion between the Government Agent and the Chairman who is to be appointed.

H. E. the LIEUT.-GOVERNOR :—These officers would submit their differences to the Government to decide.

The Hon. the Acting COLONIAL SECRETARY :—That is a case where two heads may be better than one.

The Hon. J. VAN LANGENBERG asked what it was intended to do with reference to Kandy and Galle. if it was intended that the Government Agents of those Provinces should continue to act as chairmen of the Municipal Councils.

H. E. LIEUT.-GOVERNOR said if they could find an officer in Kandy who was fit to replace the Government Agent they should be very glad to do so. The only difficulty about Kandy was finding a person who would be able to act as chairman. If there was any other officer in Kandy than the Government Agent, they should be glad to appoint him as the Government Agent of that province was also much overworked.

The words "as referring to the chairmen of Municipal Councils" we inserted after the words "Municipal Councils," in clause 5, and the clause was ordered to stand part of the bill.

Clauses 6 and 7 were also agreed to.

The Hon. the Acting COLONIAL SECRETARY :—I propose that we take the third reading at the next meeting. —Agreed to.

COMMITTEE ON THE CODES.

The Hon. the Acting COLONIAL SECRETARY :—I propose that the Council now go into Committee on the Criminal Procedure Code.

The Council accordingly went into Committee, and several small alterations in various clauses were proposed by the Hon. the Queen's Advocate, and agreed to without discussion.

On the motion of the Hon. the QUEEN'S ADVOCATE, Committee on the Penal Code was resumed and small alterations disposed of, before going into matters in the Procedure Code which would give rise to discussion.

THE QUESTION OF READING OVER EVIDENCE.

The Hon. the QUEEN'S ADVOCATE :—The next clause is clause 362 of the Procedure Code, and it has reference to the old question of reading over the evidence to the witnesses. The Council know what is my opinion on the matter, and I have endeavoured to draft an amendment which will perhaps satisfy the Council's views. I may, perhaps, before reading the amendment, refer to chapter 19. The object of chapter 19 is of course to allow magistrates to deal summarily with certain cases. By a clause in chapter 19, they have to make a certain amount of preliminary inquiry, and then they make up their minds what charge is to be framed against the accused. There is one question for the Council to determine, and that is, whether that preliminary evidence as taken down shall be read over to the witnesses, or not. My first impression was that the evidence should not be read over to the witnesses when the case was being actually tried, but except during the actual trial of a case, the evidence should be read over. The Hon. the Government Agent C. P. rather wished the evidence not to be read over to the witnesses with regard to some of the clauses of the Procedure Code, though he agreed that in those relating to the Fugitive Offenders' Act it might be well to read over the evidence. The amendment I have drafted is as follows :—"Except in the Supreme Court, District Court, or except in a Police Court, the Police Magistrate is trying a case summarily under chapter 19 of this Ordinance." Of course, that would necessitate the evidence being read over except at times when the case was being actually tried, and therefore in any preliminary investigation a magistrate was making in connection with a charge, the evidence would have to be taken down and read over. If the Committee think that is requiring too much the amendment may be worded in a different way, and it might be said "when the evidence is being taken down under chapter 19," but certainly I should be very much disinclined to go further than that because, as I stated when this matter was last under discussion, I think it is very advisable in inquiries relating to deaths that the evidence should be taken down and read over. I would also mention to the Committee that as regards these inquiries it is not as if the Magistrate was sitting in Court and had several cases to get through, but he would have to inquire specially into these cases, and the probabilities are that no serious inconvenience would result by having the evidence read over to the witnesses. Of course, these inquiries would be such as would come under chapter 17. This chapter, as a matter of fact, contains very few provisions; it relates to inquiries in cases of suicide, sudden death, or death by violence. When we were discussing this matter at the last meeting of the Committee, the Hon. the Government Agent for the Central Province seemed to think that it was unnecessary that evidence should be read over to the witnesses under this chapter, but I think myself that it is very expedient that the evidence should be read over,

and also under the chapter relating to Fugitive Offenders. The only other chapter with which we have to deal is chapter 19, and the question with regard to that chapter is whether the evidence should not be read over to the witnesses from the time the Magistrate determines to hear the case summarily, or from the very beginning of the proceedings. If the Council will not agree to the amendment as now worded it might be worded as follows, "except in the Supreme Court, or in a District Court, or except in Police Courts when the Police Magistrate is taking down evidence under chapter 19 of this Ordinance."

The Hon. the GOVERNMENT AGENT C. P. :—So far I quite agree now with the reasons the hon. the Queen's Advocate has stated, that chapter 17 and chapter 43, and any other chapter that he may discover relating to preliminary inquiries which must go for trial, might be added to the amendment we have already made. All I object to is, that it is not clea from the wording of the clause that the evidence is inquiries only to be read over in preliminary inquiries, that is, which are not to be finished and adjudicated upon. In these cases it is desirable that it should be read over, but in all other cases it is not required the amendment of the hon. the Queen's Advocate, now seems to be to the effect that in all cases except the actual trial of cases in all the Courts ; whereas it seems to me that the words of the section as it now stands are much more simple, that is, "in every inquiry under chapter 16, chapter 17." and, I am quite willing to add, "chapter 43," which is certainly very desirable. I entirely agree with the Queen's Advocate with regard to such inquiries. I think we are of the same opinion that it is very desirable, and in preliminary inquiries there is certainly strong reason for having the evidence read over, but where the case is being adjudicated upon there is no necessity for anything of the kind.

The Hon. the QUEEN'S ADVOCATE :—Chapter 19 is, as it were, divided into two portions. Under certain sections of this chapter a kind of investigation has to be made with reference to the complaint, and after that investigation is gone through then a particular charge is stated by the Magistrate, and the accused is asked to plead upon that charge. The question about which I have some doubt is whether the evidence under this chapter should be read over to the accused until we have arrived at that stage of the proceedings when the Magistrate decides to try the case summarily, or whether it would be unnecessary to have any of the evidence referred to in this chapter read over to the deponents. Perhaps, the hon. member will tell me what he thinks on that particular point, and I might be willing to change the amendment. If the hon. member thinks it is unnecessary that the evidence should be read over previous to the time when the magistrates decides to try the case summarily, then the amendment as now worded must be slightly altered.

The Hon. the GOVERNMENT AGENT, W. P. :—I certainly do not agree with the hon. the Queen's Advocate that chapter 19 is divided into two portions, so far as the power to try summarily is concerned. There is a preliminary inquiry by which the Police Magistrate has to decide whether he will enter into the investigation of the case as a case to go before a higher court, or whether he will try it summarily. Directly he concludes to try it summarily, then chapter 19 comes in force and all proceedings under chapter 19 are provided for as when a police court has power to try summarily. There are certainly two pleadings by the accused. When the evidence for the prosecution is closed the Magistrate formulates the charge and then asks the defendant whether he pleads guilty or not, but the proceedings which have been taken for the prosecution are still pending, and, in that case I think the Magistrate has power to try summarily, I am perfectly sure my hon. friend, the Government Agent C. P., is at one with me when I say that we should require that all proceedings under chapter 19 should be dealt with as summary proceedings and not be subjected to this long and tedious process which cases of preliminary examination are to go through.

H. E. the LIEUT.-GOVERNOR :—I think the time has come when we have discussed this question thoroughly. We have one principle to decide. As I stated the other day, the difference of opinion is this : the Hon. the Queen's Advocate wishes that in all cases, except in a few specified cases, the evidence should be taken down and read over, while the Hon. the Government Agent C. P. wishes that in certain specified cases only the evidence should be read over. In one case it is to remain inclusive, and in the other case exclusive. After the amendment proposed by the Queen's Advocate, we can take a decision on this point. I think the only point is, shall we add chapters 17 and 43 to this amendment?

The Hon. the QUEEN'S ADVOCATE :—As I have already stated, that is a point to consider, but I do not wish to divide the Council on it. What I want to do is to frame this amendment in such terms as will be agreeable to the Council. I think, however, that the hon. member, the Government Agent C. P., said his desire was that in cases under chap. 19 it shall not be necessary for the Magistrate to take down the evidence at all, but in all other cases it should be necessary. Without taking two divisions on what would be really the same question, I will move "that, except in the Supreme Court, the District Court, or except in the Police Court, when the Police Magistrate is taking down evidence under chapter 19, the evidence shall be taken down and read over to the witnesses."

The Hon. the GOVERNMENT AGENT C. P. :—I would again appeal to the hon. and learned gentleman to know whether the addition of chapters 17 and 44 will not meet his wishes and satisfy us all.

The Hon. the QUEEN'S ADVOCATE :—I think not. As I stated the other day, there are investigations which Magistrates from time to time may be called upon to make where it is very essential indeed that the evidence should not only be taken down, but read over to the witness. I think it would be dangerous to exclude the necessity of taking down the evidence in a case of this description. These cases are likely to occur very seldom, and I think we should be throwing very little labour upon a Magistrate in compelling him to take down and read over the evidence in cases of this kind.

H. E. the LIEUT.-GOVERNOR :—It is moved to amend clause 362, by inserting, after the words "Supreme Court," "or in the District Court, or in the Police Court, except when a magistrate is taking down evidence under chapter 17 of this Ordinance."

This was agreed to *nem. dis.*

THE JURISDICTION OF MUNICIPAL COUNCILS.

The Hon. the QUEEN'S ADVOCATE :—The next question is the question respecting the Municipal Bench and their jurisdiction. I already have an amendment on the order paper, and I do not exactly see how I can move an amendment to my own amendment. The amendment I have on the paper, I know, does not go to the full extent of what is intended by the Government, but at the time I drafted it I was under the impression that it was only intended to give the Municipal Bench jurisdiction in cases under their byelaws.

H. E. the LIEUT.-GOVERNOR :—By leave of Council, I think the hon. and learned member may withdraw his first amendment and substitute his other amendment for it. It will be merely carrying out the wishes of the Council.

The Hon. the QUEEN'S ADVOCATE :—Well, Sir, the amendment I propose to substitute in the place of the one now standing in my name is a somewhat lengthy one, and perhaps a somewhat cumbersome one, but it is rather difficult to draw up an amendment which contains all the requisites of the amendment suggested. So far as I understand the case now, it is intended that Municipal Councils shall have

jurisdiction to deal with all matters coming under their byelaws, and also that they should have jurisdiction to deal with certain matters which more or less relate to municipal matters coming under different Ordinances. But it is not the intention of the Government that they should continue to exercise jurisdiction with regard to matters which may be said not to affect the Municipality; for example, assaults, or thefts, or registration of servants, or matters of that description; and therefore, in drawing up this amendment, I have endeavoured to carry out the views I have just mentioned. I have before me a list of cases which has been given to me by my hon. and learned friend the Government Agent for the Western Province, which shows the cases decided by the Municipal Council of Colombo, and the Ordinances under which those cases have been decided. Now the Ordinances are somewhat numerous, but I have endeavoured to include them all in the amendment that I am about to propose, with the exception of two or three. There is Ordinance No. 14 of 1878, the Weights and Measures Ordinance; under that Ordinance there have been a certain number of cases heard, but that Ordinance will be repealed by the Criminal Code, which contains new provisions with regard to weights and measures. Then there is Ordinance No. 6 of 1846, the Malicious Injury to Property Ordinance: this Ordinance will also be repealed *in toto* by the provisions of the Procedure Code. Then there is Ordinance No. 11 of 1865 which relates to servants, and Ordinance No. 28 of 1871 which relates to the registration of servants; and then there are a certain number of cases of assault and theft. With regard to some of those Ordinances, I have not mentioned them in the amendment I am about to propose to the Committee, because some of them have been repealed *in toto*, and some of the others it has not been considered necessary that the Municipal Council should continue to have jurisdiction under. With regard to the other Ordinances, I would point out to the Committee the few changes that have been made, or rather will be made, by the schedule to the Procedure Code which is won before us. There is the Ordinance No. 4 of 1841; there have been a certain number of cases decided nuder that Ordinance. That Ordinance will still remain to be dealt with by the Municipal Council, and it has been affected very slightly indeed by the Procedure Code: the Procedure Code has repealed subsections 5, 6 and 7 of section 4 of that Ordinance. There is the Ordinance No. 17 of 1873, and, under this Ordinance, I see the Municipal Council have also decided some cases; sub-section 17 of that Ordinance is also repealed by the Procedure Code. Then there is Ordinance 10 of 1861: the last eight lines of section 43 of this Ordinance are repealed by the Procedure Code, but it will not interfere with the powers of the Municipal Council. Then there is also Ordinance No. 7 of 1873, under which the Municipal Council has decided some cases: sub-sections 3 and 26 have been repealed by the Procedure Code of that Ordinance. I think those are the only Ordinances that have been affected. What I propose by the amendment is to allow the Municipal Council to continue their jurisdiction with regard to the Ordinances mentioned in this list not being affected by the Codes, and also jurisdiction under their byelaws. I should mention that it is proposed to repeal section 32 of the Municipal Councils Ordinance of 1865, and by this amendment to re-constitute the Bench of Magistrates. The amendment I propose is as follows:—"And provided that notwithstanding the repeal by this Code of section 32 of the Municipal Councils Ordinance of 1865, any two or more Municipal Councillors shall continue as heretofore to form a Bench of Magistrates to sit in open Court for the trial of certain offences committed within the municipality, and shall, while so sitting, constitute and sit as a Police Court to try and determine any offence committed within the municipality coming under any byelaw duly enacted by a Municipal Council and approved by the Governor with the advice of the Executive Council, or any offence coming under any of the following Ordinances:—Ordinance No. 4 of 1841; 14 of 1859; 10 of 1861; 7 of 1862; 15 of 1862; 9 of 1863; 13 of 1864; 14 of 1865; 16 of 1865; 17 of 1865; 20 of 1865; 8 of 1866; 14 of 1867; 6 of 1868; 7 of 1873; 17 of 1873; 8 of 1876; 4 of 1878; 8 of 1878. Provided that the provisions of sections 33 and 34 of the said Municipal Councils Ordinance of 1865 shall apply to the Municipal Councillors sitting as a Bench of Magistrates under this proviso."

The Hon. J. VAN LANGENBERG:—This, Sir, is no doubt a very difficult question to deal with, because in matters affecting Municipal Councils, which have been properly stated to be schools for representative institutions, I think we ought to be very careful how we legislate. Since 1865, Municipal Councils have been established, and powers were given to a Bench constituted at that time of three Councillors, but subsequently reduced to two, and they had jurisdiction equal to that of a Police Magistrate. It was considered necessary that Municipal Councils should have the power of dealing with questions of sanitation, and the power also to deal with all such arrangements as affected the conservancy of the town; and they were also vested with authority to deal with a certain class of offences on which their jurisdiction should be limited to such jurisdiction as Police Magistrates exercised. Indeed, the report of the Committee on the Municipal Councils Ordinance of 1865, signed by Sir Richard Morgan and others, contains this paragraph as regards nuisances:—"The Committee consider the proviso at the end of of the 174th section to be not only unnecessary but objectionable, and recommend its omission. The only reason on which its retention can be insisted on is that it affords relief against neglect of duty on the part of the Councillors. But, as some of the Councillors will be appointed by the Government, and, in all probability, will be chosen from among public officers, and as the Government Agents of the Provinces are declared to be *ex-officio* Councillors, they will be answerable to the Government for any neglect of duty; on the other hand, if power be given, as this proviso purports to do, to the Police Magistrate to abate a nuisance, it virtually transfers to that functionary the duties of Municipal Councillors—men who from their number and position are more likely to afford redress." Where Municipalities are created powers given by the Procedure Code to Police Magistrates to suppress nuisances; but I believe that matter is under consideration, and I understand from the Hon. the Government Agent W. P. that suggestions were made to add to chapter 10 a proviso providing that where there are no Municipalities, the Police Magistrate shall exercise jurisdiction, but where a Municipality is established that no Police Magistrate shall be allowed jurisdiction in this matter. That is a very simple and easy mode of dealing with the question, so far as nuisances are concerned. When we come to the matter of jurisdiction, but that jurisdiction I may say is exercised not by the Bench but by the Municipal Councillors as distinguished from the Bench, and it would be extremely undesirable that there should be a conflict of jurisdiction between the Police Magistrate and the Councillors. When we come to deal with the question of the jurisdiction of the Bench, I must say I feel some difficulty myself. I do not approve of the amendment which the Queen's Advocate has prepared. It reserves no doubt to the Municipal Councils the power of trying offences against their own byelaws, and also certain offences which come under particular Ordinances. Before determining upon this particular question, we applied to the several Municipal Councils for information, and we have returns from Colombo, Kandy and Galle, showing that, practically, except in a very few instances, the Municipal Bench appear to have been dealing only with such cases as come immediately within their jurisdiction as members of the Council, for out of a very large number of cases tried by the Municipal Bench in Colombo, we find there were very few

cases indeed of theft or assault, over which the Government apparently are not disposed to give jurisdiction to Municipal Councils; but all the other cases, and there were several thousands of them, are cases which properly concern the Municipal Council. There is a concensus of opinion on the part of the several Councils that jurisdiction should not be taken away from them in respect to any particular matter. Now this is a question upon which I thought it was right for the Council, before coming to any conclusion, to consult the feelings of the representatives of the people, who, in the interests of their constituents, give their time, their labour and their talents and work for the people; and they may perhaps be excused for any little over-sensitiveness in regard to what they consider to be their powers, their priviledges and their status. It is thought and felt by the Municipal Councils, as we gather from the reports which have been sent in, that to take away any jurisdiction which they have hitherto exercised will be, perhaps, to take away from them something of their position. I am not aware that there has been any ground of complaint against the Municipal Councils in the exercise of the jurisdiction which they have hitherto had. They appear to have done their duty well, and to have done their duty fairly, and I see, therefore, no particular reason why their jurisdiction should, be in the least degree abridged. Instead of accepting the amendment proposed by the learned Queen's Advocate, I would suggest, in deference to the views which have been expressed by the Municipal Councils to be seen by the letters which lie on the table of this Council, that the Municipal Councils should, as hitherto, exercise the jurisdiction they have had. There have been no evils arising from what is supposed to be a concurrent jurisdiction; there has been no case mentioned of any abuse of power. All that the Government fears is that where there are two Courts of concurrent jurisdiction in existence, people who are prone to litigation may take advantage of it to go from one Court to the other. As has been well pointed out, in the letters received from the [illegible] Municipal Councils, if there is any reason to fear that the remedy is within the reach of the party against whom the action is taken: he will unhesitatingly inform the Court at once that proceedings are being taken against him in the other Court, and the Court will dismiss the case, and the Court would perhaps deal with the man as an offender for attempting to impose upon the Court in that way. That is only one of the far greater indeed will be the evil that would be done if the jurisdiction were taken away and the impression left on the minds of the electors that there is any intention whatever on the part of the Government, or on the part of this Council, to do anything in the slightest degree calculated to lower the status of the Municipal Bench. Such, I am sure, is not the intention of the Government; but, if people do entertain such apprehensions, I am afraid we shall probably find Municipal Councils reduced in public estimation. In order to retain this jurisdiction, the amendment I would propose is—

His Excellency the LIEUT.-GOVERNOR:—We have an amendment before the Council already.

The Hon. J. VAN LANGENBERG:—I do not intend to propose this as an amendment but to give the Council an idea of what I wish, rather than putting it in the form of an amendment:—"Provided further that Municipal Councillors authorized by law to sit as a Bench of Magistrates in open Court for the trial of crimes and offences shall, while so sitting, constitute a Police Court in and for the Muncipality, vested with the jurisdiction and power of a Police Court, to try and determine cases which a Police Court has power to try summarily under chapter 19 of this Code." If it is feared that there would be concurrent jurisdiction, it might be added:—"And shall have sole and exclusive jurisdiction to try all offences for breach of any byelaws of the Municipal Council sanctioned and approved of by the Governor-in-Council." I find there was an objection made some years ago to cases against the byelaws of the Municipal Council being tried by the Police Magistrate, and the Government declined to interfere, and in answer to the Municipal Council stated that the party aggrieved should be allowed to choose his own Court and refused to give the Municipal Council sole jurisdiction. I will simply add that this is all that I have to submit, and that I think they are the views expressed by the several Municipal Councils.

The Hon. P. RAMA NATHAN:—If I understand the Hon. the Queen's Advocate, Sir, he says it is intended to give jurisdiction to the Municipal Benches in all cases falling under the Ordinances mentioned by him?

His Excellency the LIEUT.-GOVERNOR:—Certainly.

The Hon. P. RAMA NATHAN:—And while the jurisdiction of the Police Court will extend to a sentence of six months' imprisonment and the infliction of a fine of R100, the Municipal Councils will continue to exercise the jurisdiction which they have hitherto exercised, namely, a sentence of 3 three months' imprisonment or 50 rupees' fine. In that respect, I understand, Municipal Benches will be inferior to Police Courts.

The Hon. the QUEEN'S ADVOCATE:—I intended to mention that to the Council before they agreed to this amendment, because in the Municipal Councils' Ordinance it states in section 34 that the Municipal Council shall be subject to the same rules and regulations as the Police Court, and I presume that when the new Procedure Code comes into force that section will apply to the new procedure, in which case the jurisdiction of the Municipal Benches, as far as the amount of punishment is concerned, will be increased,—they would have the same powers as the Police Court. Section 34 says:—"The acts and orders of such Bench of Magistrates shall be subject to appeal, and to all the rules and proceedings prescribed in respect of Police Courts, and all these proceedings and appeals therefrom shall be subject to the like rules and regulations." With reference to the remarks made by the hon. and learned gentleman who represents the Burgher community, I may state I do not think it is so much a question for this Council to determine how far the proposed change will affect the status of Municipal Councillors, as how far it will affect public interests. Supposing, for the sake of argument—though I am by no means prepared to admit it—that the status of Municipal Councillors is lowered by this change being made in their jurisdiction, surely the status of any public body, or of any Court of Justice, simply exists for the public good, and if the public good requires that from time to time this status should be changed or even lowered if you like, surely it is for the Legislature to make that change. It has been said by the Municipal Councils in the various letters that have been received on the subject that the concurrent jurisdiction which they have hitherto exercised has not given rise to conflicts of decisions, that it has not given rise to abuse, nor is it likely to give rise to abuse, and that as a matter of fact, for the last 17 or 18 years Municipal Councils have performed their duties satisfactorily to the public. I am certainly not in a position to offer an opinion on this point. Probably every member of this Council knows far better than I do whether there have been conflicts of opinion between Police Magistrates and the Bench, whether the judicial powers of Municipal Councillors has given rise to abuse or not, and whether as a matter of fact the Municipal Councils have for the last 17 or 18 years worked to the entire satisfaction of the community at large. Those are points on which it would be impossible for me to offer an opinion. There has been one objection raised to any change—I think it was mentioned in the letter written by the Municipal Council of Colombo—it was mentioned that so far back as the year 1865 an attempt was made by the Government to limit certain cases to certain tribunals, one class of cases to one tribunal and

another class to another tribunal. I may say that I entirely agree with the views which were expressed by the then Queen's Advocate with regard to this point. I think as long as you have concurrent jurisdiction and you allow it to go on, you ought not to interfere with the liberty of the individual as to which Court he will have recourse to. It may be more convenient for him to go to one Court than to another, and with regard to that discretion I think it is unsafe to interfere. But there is no doubt that to have concurrent jurisdiction is objectionable; whether it has or has not hitherto given use to inconvenience and abuse, there is no telling when a case may not turn up in which very serious inconvenience might arise, and during this discussion a case was mentioned by Your Excellency where a man went from the Police Court which he thought had not given him satisfaction to the Municipal Court. I can scarcely believe, myself, that this is a single instance of such a thing occuring during the last 17 or 18 years ; however, that is a matter on which I cannot speak from experience. A statement was made by one of the Municipal Councils to the effect that interfering with Municipal Councils would be acting contrary to the policy of the English Government. If such is the case I can only say that the English Government must have a very different sort of policy as regards the city of Colombo to what it has with regard to the city of London, because we know that there has for some time past been a scheme before the consideration of Her Majesty's Government by which it is proposed to interfere very considerably with certain rights and privileges of the city of London, which have not only existed since 1865 but the origin of which may be said to be lost in the twilight of history. The only question for us to determine is whether the jurisdiction of Municipal Councils shall or shall not be altered. We must not consider so much what difference it will make in their position, as how far it is expedient for the community at large that things over which they have hitherto exercised jurisdiction they shall not do so in the future. I think, so far from lowering the dignity of the Municipal Councils it will, on the contrary, place them in a position to look better after matters which are more germane to their duties as Municipal Councillors, and that we by charge should only be taking away from them what none of them perhaps wish to render up get few of them care to keep.

The Hon. the GOVERNMENT AGENT W. P. :—I must say that the amendment proposed by the Queen's Advocate, although it does not altogether carry out what was asked for by the Municipal Councils, is one I am prepared to agree to, simply because I understood him to say that there is no other way of giving effect to the wishes of the Government and at the same time meeting the wishes of the Municipal Councils. I think the Queen's Advocate very correctly puts the matter when he says we should consider not what the effect is to be on the status of the Municipal Bench, but whether it is for the good of the public. But what the Municipal Councils contend is, that the Government have not shown that it is necessary for the good of the public that they should reduce the status of the Municipal Bench. The hon. and learned gentleman says it is to do away with concurrent jurisdiction, and he points out very forcibly some of the evils of concurrent jurisdiction; but the proposed amendment does not do anything of the kind. It does not do away with the concurrent jurisdiction of the Police Court: it restricts the jurisdiction of the Municipal Bench, but it leaves the concurrent jurisdiction of the Police Court precisely the same. As I said before, the Municipal Councils have no desire whatever to interfere with the Police Court. There are certain Ordinances in this amendment under which the Municipal Councils will exercise the same jurisdiction as they have hitherto done, and these Ordinances seem to include practically every offence they have tried within the last two years. Practically it will make no difference to them and I do not fancy they will object. I must point out that the question has not been argued by them solely as a question of status, but they contend that no difficulty has actually occurred, and there seems no reason why they should be interfered with. If, however, the Government thinks otherwise, I think the proposed amendment will meet the case.

His Excellency the LIEUT.-GOVERNOR :—My opinion on this subject is that it is not a matter which can affect the status of Municipal Councils. The Municipal Councils here were intended to be on the model of Municipal Councils in England. Now, in no single one of those Municipal Councils in England would anybody dream of finding concurrent jurisdiction ; in every single case you will find that within certain limits there is one Court for the trial of petty offences, and one Court only. The Municipal Court of London is the one Court for the city, and the moment you get outside the city of London you come into the jurisdiction of Bow Street Police Court, or some other suburban Court. In such large cities as Glasgow, Liverpool, or Manchester you would go to the Magistrate's Court and not to the Municipal Court in cases of theft, assault &c.; and, surely, we are not lowering the status of the Municipal Councils when we place them on the same footing as Liverpool or Manchester. What we are endeavouring to do now is to place our criminal system upon a satisfactory basis, and when we find that an anomaly exists, which does not exist in any other civilized town in the world, is it not proper that we should remove that anomaly? and in removing that anomaly we do not for one moment reflect upon the Municipality of Colombo. But it cannot affect the Municipality; if such a thing can be said to affect the dignity of the Council, the sooner it is done away with the better. What would affect the dignity of the Council is that they should endeavour to exercise jurisdiction over such cases, and they would consult their own dignity best by not doing so. When we are endeavouring to place our criminal system on a proper basis, should we not affirm that? That is the point : shall we allow in our Criminal Procedure a practice which no civilized city in the world allows? That is the point I wish to put before hon. members. I myself feel very strongly that we ought to give the Municipal Councils power to deal, as they do now, with everything that concerns them ; we give them certain duties to perform, we ought to give them proper powers to carry out those duties, but not to deal with cases of assault and theft which do not affect them at all ; and, therefore without touching their dignity, without lowering their status in any way, we correct an anomaly which has existed in our criminal system. It is for these reasons I shall certainly support the amendment of the Queen's Advocate, which has been drawn up after careful consideration, and in order to carry out those principles which I have endeavoured to enunciate, that to fit them for their responsibilities the Municipality should have the power of enforcing their rules. That is the object of this amendment.

The Council divided on the Queen's Advocate's amendment with the following result :—

Ayes.	*No.*
The Hon. J. L. Shand	The Hon. J. Van Langenberg
,, P. Rama Nathan	
,, Actg Govt. Agent, C. P.	
,, Govt. Agent, W. P.	
,, Treasurer	
,, Auditor-General	
,, Queen's Advocate	
,, Acting Colonial Secretary	
,, Officer Commanding Troops	
H. E. the Lieut-Governor	

Ayes 10. Noes 1.—Amendment carried.

ABATEMENT OF NUISANCES.

The Committee resumed consideration of chap. 10.

The Hon. the GOVERNMENT AGENT W. P. said this chapter which dealt with nuisances was kept back for furthe

consideration. At present the Municipal Council had power to abate nuisances, but it was now proposed to give the Police Court power. The question was whether it was desirable to give concurrent jurisdiction to a Police Court in such matters, or to provide that where a Municipality exists the powers of the Municipality should continue and not be given to a Police Court. It seemed to him in introducing this new system it would be desirable to retain this power with the Municipality and not to have a conflicting jurisdiction. Here was concurrent jurisdiction of a very serious nature, which is liable to clash very often. For this reason he proposed that same provision should be made for reserving the right to Municipal Benches to abate nuisances.

His Excellency the LIEUT.-GOVERNOR said he thought in this case it was more a matter of convenience. The Government had not the slightest desire that Magistrates' powers should conflict with the Municipal powers with regard to the suppression of nuisances. The only question was whether it would be more convenient to preserve the powers of the Police Magistrates in case of any legal decisions which would make it difficult for the Municipality to become judges of their own case. There had been a recent decision of the Supreme Court which tended very much to upset the decision of the Council in these cases, and it was just possible that further decisions might upset their powers altogether, and in that case, it would then be possible to fall back upon the Police Magistrates. The Government did not wish the Police Magistrates to exercise this power of the Municipality, and Magistrates would have instructions to refrain from interfering in such cases. The question was whether it would not be better to retain these powers, so that the Municipality might have the magistrates to fall back upon. As it is now, the Municipal Council does occasionally prosecute before the Police Court where a person refuses to remove a nuisance, which shows that in some cases it is an advantage to the Municipality to go to the Police Court. That is the only point; he put it before the Council, because he quite agreed that there should be no conflict of jurisdiction, and the only question was whether they should leave it to the Executive to restrain the magistrates from with these cases, or whether they should take away the power altogether.

The Hon. J. VAN LANGENBERG said if the Government could provide against any conflict of jurisdiction he thought it necessary that there should be any alteration of the Ordinance.

The Hon. P. RAMA NATHAN remarked that it was a statutory privilege which the Municipality enjoyed, and how could the Supreme Court set aside a provision of the Legislature?

The Hon. the GOVERNMENT AGENT W. P. said as regarded the Municipal Council trying their own cases, he did not see how the Supreme Court could affect that, as the Municipal Ordinance gave them power to try cases under their own byelaws. Surely the Supreme Court would not set aside a decision of the Municipal Bench on the ground that they were interested in the case?

The Hon. the QUEEN'S ADVOCATE said under clause 52 of the Municipal Councils Ordinance they were the actual trustees of the Municipal Council fund and they actually supported that fund with the fines they inflicted as magistrates.

The subject then dropped, it being understood that the Government would instruct police magistrates not to exercise their jurisdiction in the matter of suppressing nuisances.

The Codes were reported to the Council as amended, and on the motion of the Hon. the QUEEN'S ADVOCATE, they were referred to the law officers of the Crown.

THE LAW OFFICERS' TITLES ORDINANCE.

The Hon. the QUEEN'S ADVOCATE:—With reference to the bill for altering the titles of the law officers of the Crown and the Deputy Queen's Advocates, one or two amendments I will propose to the Committee. I regret to see that the Hon. the respectative of the Tamil community (Mr. Rama Nathan) has gone, as I believe this is an Ordinance in which he takes considerable interest, and perhaps if he heard the amendments I am about to propose, he will not feel so strongly against the bill as he apparently does. I will move that after the words "Solicitor-General," in clause 1, all the subsequent words be deleted. [The words to be deleted gave to the Attorney-General and Solicitor-General all the powers and privileges which those officers possess in England.] I think I explained to the Council when I introduced the bill that these words were put into the bill as it was considered desirable that the Attorney-General should have those powers, but if the Committee will refer to the Criminal Procedure Code they will find that those powers are fully mentioned there. I would therefore propose to leave out those words. It is rather difficult to tell what the privileges and rights of the Attorney General and Solicitor-General in England are.

The motion to delete these words was agreed for

The Hon. the QUEEN'S ADVOCATE—There is another slight amendment, Sir, in clause 4. After the words "Queen's Advocate" in the 5th line, and also in the last line but 2, are the words "within the limits of his province." I move that those words be deleted, because the Attorney General and Solicitor-General really are not confined to any particular province. There are only two districts in which Deputies to the Queen's Advocate now actually reside.

The Hon. J. VAN LANGENBERG suggested that a date should be fixed for this bill coming into operation.

The Hon. the QUEEN'S ADVOCATE moved "that this Ordinance shall come into operation on the 1st January 1884.

This was carried unanimously.

The Hon. the QUEEN'S ADVOCATE reported the bill as amended to the Council, and moved that it be referred to the Law Officers of the Crown.—Agreed to.

H. E. the LIEUT.-GOVERNOR announced that the third readings of all the bills before the Council would be taken next week.

The Council then adjourned till Wednesday, the 24th October.

WEDNESDAY, OCTOBER 24.

Present:—His Excellency the Lieut.-Governor, the Hon. the Acting Colonial Secretary, the Hon. the Officer Commanding (Sir John McLeod), the Hon. the Queen's Advocate, the Hon. the Auditor-General, the Hon. the Treasurer, the Hon. the Acting Surveyor-General, the Hon. J. Van Langenberg, and the Hon. A. L. de Alwis.

Absentees:—The Hon. the Government Agent W. P., the Hon. the Government Agent C.P., the Hon. P. Rama Nathan, the Hon W. W. Mitchell, and the Hon. J. L. Shand.

AN ORDINANCE TO AMEND THE LAW RELATING TO MUNICIPAL COUNCILS IN THIS ISLAND.

The Hon. the Acting COLONIAL SECRETARY:—I bring up the report of the law officers of the Crown on "an Ordinance to amend the law relating to Municipal Councils in this island."

The report was read by the Clerk the Council.

The Hon. the Acting COLONIAL SECRETARY:—I rise to move the third reading of this Ordinance.

The Hon. the QUEEN'S ADVOCATE:—I beg to second the third reading of this Ordinance.

H. E. the LIEUT.-GOVERNOR:—It is moved and seconded that "an Ordinance to amend the law relating to Municipal Councils in this island" be read a third time. The bill is passed.

AN ORDINANCE RELATING TO THE LAW OFFICERS OF THE CROWN, AND TO DEPUTIES TO THE QUEEN'S ADVOCATE.

The Hon. the QUEEN'S ADVOCATE:—I beg to bring up the report of the Law Officers of the Crown on

a bill entitled : "An Ordinance relating to the Law Officers of the Crown and to Deputies to the Queen's Advocate."

The report was read by the clerk of the Council.

The Hon. the QUEEN'S ADVOCATE :—I move, Sir, the third reading of the bill and after what I stated when I introduced the bill, I think it is unnecessary now that I should make any further remarks in connection with it. Its object is to change the present designation of the law officers of the Crown and of the Deputies to the Queen's Advocate.

H. E. the LIEUT.-GOVERNOR :—It is moved and seconded that "An Ordinance relating to the Law Officers of the Crown and to the Deputies to the Queen's Advocate" be read a third time. The bill is passed.

AN ORDINANCE TO PROVIDE A GENERAL PENAL CODE FOR THIS COLONY."

The Hon. the QUEEN'S ADVOCATE :—I beg to bring up and to have read the report of the Law Officers of the Crown on a bill entitled "An Ordinance to provide a General Penal Code for this Colony."

The report was read by the Clerk of the Council.

The Hon. the QUEEN'S ADVOCATE :—Before moving the third reading of the bill, I have to move that it be recommitted in order that a few verbal alterations may be made in it. The alterations are in themselves merely formal alterations and such as can give rise to no discussion on the principles of the bill, I therefore ask that the bill be recommitted that those alterations may be made.

The bill was accordingly recommitted.

The Hon. the QUEEN'S ADVOCATE :—I move that in section 288 in lieu of the words "Queen's Advocate" the words "Attorney General" be inserted.—Agreed to.

The Hon. the QUEEN'S ADVOCATE :—I move that in clause 396 (as printed) the word "the" be deleted, which would then read "of which criminal breach of trust" and not "of which the offence &c."—Agreed to.

The Hon. the QUEEN'S ADVOCATE :—Sir, I rise to move the third reading of a bill to provide a General Penal Code for this Colony. Perhaps, though somewhat unusual on the third reading of a bill, the Council will allow me to make a few remarks which will not only bear upon this measure but also upon the one which we have been considering together along with it—the Criminal Procedure Code. I think, Sir, the Council in having passed these measures may be congratulated on having accomplished a no light nor unimportant task. I cannot help expressing my regret that during our discussions I have not been able to render greater assistance or to enlighten the Council more on many points which have arisen, but I can only hope that hon. members have been good enough to bear in mind that my want of local knowledge and local experience has been rather my misfortune than my fault. It has been my endeavour, Sir, during these debates not to make any statement about matters of which I did not know, and so not to fall into mistakes which it would be difficult afterwards to rectify. But I candidly admit there was one mistake I did make, but which I am glad to say the better judgment of this Council rendered of no avail,—I allude, sir, to the mistake I made when I voted at the commencement of these proceedings that these bills should be referred to a sub-committee. I did so, Sir, because I then thought that if they had been so referred I should have had more opportunity of asking questions on matters of detail and of becoming more thoroughly acquainted with our legal laws and enactments, than I could possibly have had in a committee of the whole House. But, Sir, as was then stated, had the bills been referred to a sub-committee, Your Excellency could not have been present at its sittings, and I am quite sure every member of this Council—I may say, every member of this community—has felt with me how important and how valuable has been the assistance and information which Your Excellency has rendered to the Council with reference to these matters —information and assistance without which I venture to say we should very often have been very much at sea. I, Sir, have also to thank the Chief Justice who drew these bills, the Deputy Queen's Advocate for the Island, and every member of this Council,—more particularly may I refer to the hon. and learned representative of the Burgher community—for the assistance they have offered me. And, Sir, there is yet another whose services in connection with these measures it would be ungrateful on my part to let pass unnoticed. Hon. members who sat on the sub-committee to inquire what laws should be repealed cannot but have seen and cannot but have felt how valuable have been the services which have been rendered by the office assistant in the Queen's Advocate's department. Mr. Templer, Sir, has done good work in connection with these measures, and it would be ungrateful to allow that work to pass unacknowledged. Some observations were made during the time we were considering these measures to the effect that we were hurrying through them too quickly, and it was even stated that there was a feeling among the public outside that we were not giving them all that care and all that attention which they deserved. Sir, had these measures been of an altogether novel character, had their contents been of an altogether original description, I too, should have felt inclined to think that in the way we were passing them and in the time we were passing them, we were going ahead just a little too quickly. But, Sir, it must be borne in mind that the greater portion of these Codes has been taken from similar laws in India, and I believe that for a period of more than twenty years the Indian Criminal Codes have worked with satisfaction in that Great Empire. But, Sir, these Codes were not laid before us in any hasty nor unprepared manner. Their principles, if I mistake not, were approved of by former Chief Justices of this colony, they themselves were drafted with great care by the present Chief Justice, they were carefully gone through and examined by the Secretary of State in England, and they were further examined and corrected by the Executive Council here. Then, Sir, and then only they laid before us for our consideration. But, Sir, supposing they had not gone through this ordeal, can it be said that hon. members have failed to give them that care and attention which they undoubtedly merit? Oftentimes during our debates have questions been asked with regard to some little word apparently unimportant in itself, but the bearing of which on others was not altogether understood; and so far as the more important questions were concerned, they assuredly, Sir, they have been discussed with all earnestness and with all that care of which they were deserving. I think, Sir, that the Council may not only be congratulated on having passed these Codes, but that it may be also congratulated on the zeal with which it has done that work, and on the determination which it has shown to complete it. There have been few big works, which have been passed in this world, Sir, which have not met with opposition in proportion, I may say, to their importance, not so much because by many these works were considered objectionable in themselves, nor because the principles they contained were objectionable, but because there always has been, and always will be, a feeling among many not to risk what they think the good of today for a probable better of tomorrow. We need only look to the mother-country to see how true this is. It was not without long struggles that the Corn Laws were repealed, it was not without much opposition that the Reform Bills were passed, and it has not been without many delays and long opposition that the recent law reforms have been enacted, which we hope will prove beneficial to the people of England. Sir, in bidding farewell to many a law, or rather a system of laws, which has for many years past existed in this colony, and which has to a considerable extent been taken from the laws and legal procedure of England, we may not do so without something like regret. We all of us know, Sir, how contented, as a rule, has

the English nation been under the protection of the laws which it possesses, and we may perchance feel, that we are scattering to the winds today what has long been valued and prized by others. But if, Sir, we were to look into this question a little deeper, we should, I think, see that it is not after all England's laws which have been so much the object of admiration as the manner in which those laws have been administered. The "glorious uncertainty of the law" has been a by-word in England for many ages past. England's laws have been, and not always unjustly so, severely criticized and abused, and even the Poet Laureate of the present day when referring to the law has called it

"A lawless science,
A myriad of precedents,
A wilderness of single instances."

No, Sir, it is not England's laws which have been so much the object of esteem and confidence of Englishmen, and which, as it were, have been the envy of other nations, but it has been the manner in which those laws—save during some exceptional times when the bright sun of their history has been clouded over by the doings of a Jeffries or the policy of a Bacon—have been administered; they have been administered with zeal, they have been administered with care, they have been administered with impartiality, they have been administered without suspicion, they have been administered in the presence of many valuable principles which have stood out like beacons to guide and direct decisions. Sir, I have referred at some little length to these matters because they appear to me closely allied to one or two questions about which we heard not a little during the discussions we have had here. One, Sir, is the alleged defects which have existed in trial by jury in this Colony, the other, Sir, has reference to the alleged want of confidence in our inferior tribunals. Sir, with regard to trial by jury, we have in these Codes decreased the number of jurymen we have increased their qualifications. Let us hope that if there have been any shortcomings with regard to trial by jury in the past these may be cured in the future, and [illegible] every juror who is summoned to try a fellow [illegible]ture charged with crime may feel the responsibility [illegible] solemn and all-important duty that is cast [illegible] So far as our inferior tribunals are con[illegible] has been stated that that confidence in them [illegible] should exist does not exist, and that those who [illegible]e over them have not the same encouragement [illegible]rk, or the same prizes to look forward to, as [illegible] have in other countries. But, Sir, have these [illegible]gations been supported by facts? When Your Ex[illegible]ency asked whether it was not true that the de[illegible]isions of the inferior tribunals on mere matters of fact were very seldom disturbed by the superior courts, the answer was "yes.' So far as encouragement to work is concerned, does not one belonging to this Colony sit on its Supreme Court Bench today? and was there not another belonging to this Civil Service appointed not long since to be a Pusine Judge in the important Colony of Natal? Allowing, however, for the sake of argument that there may be some little truth in what has been said, still I venture to think there is a prize more worth wining than any judicial appointment which can be conferred, or any official honour which can be gained. That prize, sir, is a feeling that, whatever work we have had to do, we have performed that work conscientiously and to the best of our power. We are not all of us responsible for the positions we may fill in this life, we are not all of us responsible if the work we are called upon to do is not done in as perfect a manner as it might be done; but we are, Sir, responsible if we have not done that work as best we could, and conscientiously to the best of our ability. Sir, if whatever position we may hold in this life, we work with zeal, we work with care, particularly if we be judicial officers we try to sift the merits of every case and try to do right to all, I venture to say there are very few who will really suffer injustice, if only, as Shakespeare says, "we to ourselves are true, it must follow, as night the day, we can not then be false to any man." Sir, during the last few months we have been, as it were, overhauling two ships which were carefully constructed by another; we have made them sound, and we are about to launch them forth. Let us, Sir, hope that the time which will elapse between now and the day when, so to speak, they will sail away on their voyage, that their ropes may be studied and their machinery learnt, and let us hope that the freight which they will bear may prove as beneficial, as useful, as valuable, and, I may say, as conducive to the interests of the many classes of this community as, I am sure, is the earnest wish of one and all of us. Sir, in conclusion, I beg to move the third reading of a bill entitled "an Ordinance to provide a General Penal Code for this Colony."

The Hon. the Acting COLONIAL SECRETARY:—I beg to second the third reading of the bill.

H. E. the LIEUT.-GOVERNOR:—The "Ordinance to provide a General Penal Code for this colony" is passed.

AN ORDINANCE FOR REGULATING THE PROCEDURE OF COURTS OF CRIMINAL JURISDICTION.

The Hon. the QUEEN'S ADVOCATE:—I move, Sir, to bring up the report of the law officers of the Crown on a bill entitled "An Ordinance for regulating the Procedure of the Courts of Criminal Judicature."

The report was read as follows:—"We have the honour to report that with reference to that portion of clause 9 which refers to Municipal Councils sitting as a Bench of Magistrates we are of opinion that it may be doubtful how far Municipal Councillors, more particularly in presence of a recent judgment delivered by the Supreme Court—a copy of which we enclose,—can legally exercise the Magisterial functions conferred upon them, that is, if it is intended that the fines they inflict shall be paid into the Municipal funds, inasmuch as under section 52 of the Municipal Councils Ordinance of 1865 they are trustees of such fund, and might therefore be considered as interested to a certain extent in the cases coming before them for adjudication. We consider that the best means to guard against this difficulty would be to have stipendary magistrates appointed, if necessary, to hear and determine such cases as affect the Municipalities. But we are of opinion that as this Section 32 of the Municipal Councils Ordinance is repealed *in toto* by the proviso to which we have referred fines levied under this proviso can secarcely be said to be fines levied or penalties recovered under the authority of the Municipal Council's Ordinance, and, if so, they would not form part of the Municipal fund under the Ordinance, but would, we presume, be payable into the general revenue. In other respects there is no objection to the passing of this Ordinance."

The Hon the QUEEN'S ADVOCATE:—Before moving the third reading of this bill, I would also ask leave of the Council to re-commit it for one or two verbal alterations.

The bill was accordingly re-committed.

The Hon. the QUEEN'S ADVOCATE:—In section 393, the word "gaol" is still used: I move that the word "prison" be inserted instead.—Agreed to.

The Hon. the QUEEN'S ADVOCATE:—At the commencement of schedule 1, instead of the word, "Ordinances" repealed, it should be "Laws, Ordinances, and Rules of Court" repealed.—Agreed to.

The Hon. the QUEEN'S ADVOCATE:—I now move, Sir, the third reading of the bill entitled "an Ordinance for regulating the Procedure of the Courts of Criminal Judicature." Perhaps, Sir, in so doing the Council will expect me to make reference to the report which has been sent in in connection with this measure by the Law Officers of the Crown. The Law Officers of the Crown felt that they could not in duty omit to refer to

the recent judgment of the Supreme Court which they considered might affect the provisions of the amendment we have put to clause 9, with reference to Municipal Councils. At the same time, as is mentioned in the report, as clause 32 of the Municipal Councils Ordinance is altogether repealed it can scarcely be said that under clause 52 of that Ordinance fines which will be in future inflicted under the Procedure Code, can be called fines inflicted under the provisions of the Municipal Councils Ordinance. The law officers of the Crown have also felt that in conformity with the rules in virtue of which bills are referred to them, that they were bound to make a suggestion which might guard against possible difficulty, and the suggestion which they have made is that a stipendary Magistrate should be appointed to decide Municipal cases. I believe, Sir, that suggestion has not been made now for the first time. For the reasons I have mentioned the law officers felt it their duty to make these observations. I think, sir, those are the only remarks I need make with regard to this bill. As I said when I introduced these measures, the bill which is now before us is even a more important measure than the one we have just passed. It has been criticized more severely and some of its provisions have been more strongly objected to than any of those of the Penal Code. However it is impossible, as I before stated, to dive into the future, it is not possible now to tell what the effect of this bill will be, we can only hope for the best bearing in mind that it is always in the power of the Legislature to change or to amend. I, sir, would not for a moment advocate the passing of a measure today which I thought would require change or amendment tomorrow, but there is no doubt that if in the future it is brought to the notice of the Legislature that a measure which was previously passed is working hardship or injustice, the Legislature will never turn a deaf ear to the voice which brings such notice. I can only say for myself, that, however strongly I feel with regard to certain provisions contained in this Code, and however much I may have spoken upon them in their favour, still, if on a subsequent day it is proved to me that those provisions are working hardships or injustice, I for one shall never shirk what I should consider my duty in listening to suggestions that might be offered. I beg, sir, to move the third reading of the bill entitled "an Ordinance to regulate the procedure of the Courts of Criminal judicature."

The Hon. the Acting COLONIAL SECRETARY :—I beg to second the 3rd reading of this Ordinance.

His Excellency the LIEUT.-GOVERNOR :—It is moved and seconded that "an Ordinance to regulate the procedure of the Courts of criminal judicature be read a third time. The bill is passed.

HIS EXCELLENCY'S CONSENT.

The Hon. the Acting COLONIAL SECRETARY :—I beg to bring up for the consent of His Excellency the following bills :—

"An Ordinance to amend the Law relating to Municipal Councils in this Island."

"An Ordinance relating to the Law Officers of the Crown and to Deputies to the Queen's Advocate."

"An Ordinance to provide a General Penal Code for this Colony."

"An Ordinance for regulating the procedure of the Courts of Criminal Judicature."

His Excellency then signed the Ordinances.

The Hon. the Acting COLONIAL SECRETARY :—I announce the assent of His Excellency the Governor to the following Orpinances :—"An Ordinance to amend the Law relating to Municipal Councils in this Island." "An Ordinance relating to the Law Officers of the Crown and to Deputies to the Queen's Advocate." "An Ordinance to provide a General Penal Code for this Colony." "An Ordinance for regulating the procedure of the Courts of Criminal Judicature."

CLOSING OF THE SESSION.

H. E. the LIEUT.-GOVERNOR said :—Honourable Gentlemen of the Legislative Council,—I cannot close this Extraordinary Session of the Legislature without expressing to the hon. members my thanks for the patient attention which they have devoted to the important measures of legislative reform which have been under our consideration. The Session has been unusually protracted as regards both the number and the duration of the sittings. I trust that your labours will meet with their befitting reward in having achieved the placing of our criminal law upon a sure and satisfactory basis, thus putting an end to a most serious defect which has hitherto been acknowledged in the administration of the

The Council then rose.