

1945

Present: Dias, Commissioner of Assize.

THE KING *v.* WALIMUNIGE AMARIS.

24—*M. C. Avissawella, 30,875.*

*Juror—non-British subject summoned to the jury—Liability to take the oath—
Modified form of oath taken—Criminal Procedure Code, s. 227, ss. (3).*

A non-British subject who is summoned to serve on the jury, may be required to take a modified form of the oath usually administered to jurors.

THIS was a case tried by the Commissioner of Assize and a jury before the Western Circuit.

Dodwell Goonewardene (with him *Izadeen Ismail*) for the accused.

P. S. Abayawardene, C.C., for the Crown.

May 30, 1945—DIAS, COMMISSIONER OF ASSIZE.

This is an entirely new point. The foreman of the jury is a subject of Her Majesty, the Queen of Holland, residing in Ceylon. He is, therefore, enjoying the protection of our Sovereign Lord the King, and as such he is qualified for jury service under section 227 of the Criminal Procedure Code. Under section 227, sub-section (3) "after the foreman has been appointed the jurors shall be sworn". But the Criminal Procedure Code does not prescribe the formula of the jurors' oath. Turning to the Oaths Ordinance, Chapter 14, section 4, sub-section (1) (c) provides that "subject to the next following section the oath shall be taken by the following classes of persons" and one of those classes of persons are jurors. Section 5 allows a juror instead of being sworn to make an affirmation, if he is not a Christian, and is a Buddhist, a Hindu, a Muslim or belongs to some other religion according to which oaths are not taken or owing to some conscientious objection. But the Oaths Ordinance does not provide the formula for the jurors' oath.

The present formula which has come down from the earliest times apparently is an adaptation from the English Courts. But so far as I can see, and as at present advised, it is of no binding force, and I think it is, therefore, open to me in the peculiar circumstances of the case to adapt the oath to meet the circumstances of this case. I, therefore, direct that in the case of this particular juror the oath shall read:—"I swear that I shall well and truly try and true deliverance make between the Sovereign Lord the King and the prisoner at the bar.
