1914.

Present : Pereira J.

THE KING *v.* MAJID.

10—D. C. (Crim.) Kalutara, 2,667.

Hearsay evidence—Corroboration of direct evidence by means of statements made by witness out of Court—Witness giving direct evidence should be first called.

Hearsay should not be elicited in the course of a trial in anticipation of corroborating a witness to be called later in the case. When it is sought to corroborate a witness in terms of section 157 of the Evidence Ordinance by means of an extra-judicial statement made by him, the witness should be called first, and the person to whom the statement was made called or (if he has given evidence already) recalled thereafter, and in no case should the order be reversed.

THE facts appear from the judgment.

Abdul Cader, for second accused, appellant.

De Saram, C.C., for respondent.

Cur. adv. vult.

February 19, 1914. PEREIRA J.—

As against the appellant (the second accused) there is a mass of hearsay recorded in the case. The statements that I refer to should never have been elicited by the Crown Proctor, and should never have been recorded. Police Constable Nayar is allowed to say that Aron told him that the second accused had sold him a shirt, that Adris told him that he had bought a sarong from the second and third accused, and that Constable Deen told him that he had bought two shirts from the second and third accused. This is hearsay of a bad type. Such facts are sometimes elicited in non-summary inquiries to ascertain what evidence is available in support of a charge, but they are entirely out of place in a trial, especially a trial on an indictment. It is said that such evidence is led in anticipation of evidence to be given by the informants named. If so, it is a vicious practice, and one that has been condemned by this Court more than once. Statements made by witnesses to police constables and others may, no doubt, be admissible as corroborative evidence under section 157 of the Evidence Ordinance, but the very designation " corroborative evidence " implies that it is evidence led to corroborate the testimony of witnesses already called. The practice of anticipating evidence in criminal cases cannot be too strongly condemned. In the present case Aron, Adris, and Deen should have been called first, and then the witness Nayar should have been called or recalled (if he had already been called) to corroborate their testimony, if that were possible. Aron, Adris,

and Deen have not given the expected evidence, and the hearsay that I have referred to stands on the record as a target for vehement, though perfectly legitimate, denunciation by counsel. The evidence of Deen, as a whole, does not implicate the second accused. What he says in cross-examination is: "It was from the bundle of the third accused that the shirts were given, but I bought from both the accused. I mean that both the accused were there. I gave the money to the third accused. In the second accused's bundle there were no shirts, but only sarongs and other things."

Aron says that he did not buy anything from any of the accused. Adris (or Agris) also gives no evidence against the second accused. Had these witnesses been called at the right time, Police Constable Nayar's evidence would have been altogether inadmissible for the prosecution. Then there is the witness Muttu. The District Judge very properly says that there is a strong suspicion that he is an accomplice, whose evidence must be received with caution. As regards the second accused, there is really no corroboration of the evidence of Muttu, and I cannot therefore see my way to uphold the conviction of the second accused, and I set it aside and acquit him.

Set aside.