

SECOND LEGISLATIVE COUNCIL

(Constituted under the British Guiana (Constitution) (Temporary Provisions)
Orders in Council, 1953 and 1956)

Friday, 6th February, 1959

The Council met at 2 p.m.

PRESENT :

Speaker, His Honour Sir Donald Jackson

Chief Secretary, Hon. M. S. Porcher (acting)

Attorney-General, Hon. A. M. I. Austin, Q.C.

Financial Secretary, Hon. F. W. Essex.

The Hon. **Dr. C. B. Jagan**

" **B. H. Benn**

" **E. B. Beharry**

" **Janet Jagan**

Ram Karran

Mr. **W. O. R. Kendall**

" **R. C. Tello**

" **F. Bowman**

" **L. F. S. Burnham**

" **S. Campbell**

" **A. L. Jackson**

" **B. S. Rai**

" **S. M. Saffee**

" **Ajodha Singh**

" **J. N. Singh**

" **R. E. Davis**

Mr. I. Crum Ewing—Clerk of the Legislature

Mr. E. V. Viapree — Assistant Clerk of the Legislature.

ABSENT :

Mr. R. B. Gajraj

Mr. H. J. M. Hubbard

Mr. A. G. Tasker, O.B.E.—on leave.

Mr. A. M. Fredericks.

Clerk read prayers.

MINUTES

The Minutes of the meeting of the Council held on Thursday, 8th January, 1959, as printed and circulated, were taken as read and confirmed.

ANNOUNCEMENTS

THE LATE SENATOR T. A. MARRYSHOW

Mr. Speaker : I have received a letter from the acting Clerk of the Senate of the Federal Government of The West Indies with respect to the Resolution which was passed by this Council expressing sympathy in the death of Senator Marryshow. The letter reads :

"Federal House
Port-of-Spain,
7th January, 1959.

Sir,

Further to my letter of 19th November, I have the honour to inform you that the Resolution of the Legislative Council of British Guiana expressing sympathy on the occasion of the death of Senator Marryshow was read in the Senate during its December sitting.

I am directed to state that the kind sentiments of the British Guiana Legislature have been greatly appreciated by the Senate and the bereaved relatives.

I have the honour to be,
Sir,

Your obedient servant,

(Sgd.) J. F. Mayers,
Ag. Clerk of the Senate.

The Clerk of the Legislature,
Public Buildings,
British Guiana."

APPOINTMENT OF SESSIONAL COMMITTEES

I have also to announce the appointment of Sessional Committees for the duration of the present Session, as follows :

(a) The Public Accounts Committee

Mr. W. O. R. Kendall
Mr. F. Bowman
Mr. A. L. Jackson
Mr. R. B. Gajraj
Mr. A. G. Tasker, O.B.E.

(b) The Public Petitions Committee

Mr. L. F. S. Burnham
Mr. R. C. Tello
Mr. B. S. Rai
Mr. Ajodha Singh
Mr. Jai Narine Singh

(c) The House Committee

Mr. R. E. Davis
Mr. Ram Karran
Mr. B. S. Rai

LEAVE TO MEMBER

I have also to announce that the hon. Nominated Member, Mr. Tasker, has asked and been granted leave of absence from the Legislative Council as from the 5th of February for approximately 10 days.

PAPERS LAID

The Financial Secretary (Mr. Essex): I beg to lay on the Table:

Certificate and Report of the Director General of the Overseas Audit Service on the Accounts of British Guiana for the year ended the 31st of December, 1955, together with the comments thereon of the Governor.

Report of the Director of Audit, British Guiana, on the Annual Statements of the Post Office Savings Bank for the year ended 31st December, 1957.

Comments of the Financial Secretary on the Reports of the Public Accounts Committee on the following:—

- (a) The Colony's Accounts, 1955.
- (b) The Transport and Harbours Department Accounts, 1955.
- (c) The Transport and Harbours Department Accounts, 1956.

The Minister of Trade and Industry (Dr. Jagan): I beg to lay on the Table the

Report of the Director of Audit, British Guiana, on the Accounts of the Controller of Supplies and Prices for the year ended 31st December, 1957.

The Minister of Labour, Health and Housing (Mrs. Jagan): I beg to lay on the Table the

Report of the Sugar Industry Labour Welfare Fund Committee for the year 1957.

The Minister of Communications and Works (Mr. Ram Karran): I beg to lay on the Table the

Report of the Director of Civil Aviation for the year 1957.

Annual Report of the Public Works Department for the year 1957.

ORAL ASKING AND ANSWERING OF QUESTIONS

GOVERNMENT PRINTING ARRANGEMENTS

Mr. Bowman: I beg to ask the hon. the Chief Secretary the Questions listed in my name on the Order Paper:

(i) Will the Honourable the Chief Secretary explain why the contract with the Argosy Company, Limited for printing Government publications and other matter, which expired on December, 1958, has not been renewed?

(ii) Will the Honourable the Chief Secretary state what arrangements have been made for carrying out the Government printing requirements in 1959?

(iii) Is the Honourable the Chief Secretary aware that the change in arrangements for executing public printing requirements is likely to result in large-scale unemployment in the printing industry?

The Chief Secretary (Mr. Porcher, acting): For many years the bulk of the public printing requirements have been undertaken by the Argosy Company, Limited, although latterly part of the work had been sub-contracted to the Daily Chronicle, Limited. Since the war, the cost of public printing has risen steadily, and in 1958 was approximately \$400,000: This has caused increasing concern to successive Governments, and in consequence it was decided to establish a post of Controller of Government Printing and Stationery. An officer experienced in the printing trade was

appointed to the post in October, 1957, and has since carried out a systematic examination of the Government printing requirements with a view to achieving the maximum economy both in the requirements and in the cost of their execution.

In April, 1958, the Government published a call for tenders for the execution of part of the public printing requirements with a view to entering into a new contract commencing on 1st January, 1959. The controller estimated that the actual cost of all the printing requirements for 1959 was substantially less than the amount paid in 1958. Tenders were received for parts of the work from the Argosy Company, Limited, and the Daily Chronicle, Limited, but they exceeded the estimate of actual cost in the aggregate by a very wide margin. In these circumstances the Government felt that the tenders could not be accepted.

The answer to the hon. Member's second Question is as follows: The Government have entered into an agreement with the B.G. Lithographic Company, Limited for the execution of all the public printing requirements for a period of three years from the 1st January, 1959.

The B.G. Lithographic Company, Limited were not in a position to make a tender for the contract when these were called for in April, 1958, because of certain prior commitments. In the meantime, however, developments which the Company had in hand, which included the transfer of their box and cartoon manufacturing business to another factory, had taken shape, and they are now in a position to undertake Government's printing requirements. In September, 1958, the Company offered to carry out all printing requirements at a cost of \$375,000 a year over a three-year period. In view of the fact that this figure is lower by some 47% than the cost to Government of carrying out its printing requirements would have been if the tenders of the Argosy Company, Limited and the Daily Chronicle, Limited had been accepted, the Government considered that the B.G. Lithographic Com-

pany's offer should be accepted on the score of economy of public funds. In subsequent negotiations the Company have agreed that if at the conclusion of the first year of the contract the Government are not satisfied that their printing requirements are being executed in the most efficient and economic way by the Company, the Government have the right to terminate the contract at any time thereafter; in such event the Company will continue to undertake the public printing requirements at the contract rate until the Government can set up its own printery and go into production.

The answer to the hon. Member's third Question is: The B.G. Lithographic Company have given an assurance that all Government's printing requirements will be undertaken in British Guiana. The change in printing arrangements should not cause any substantial unemployment in the printing industry.

Mr. Bowman: As a supplementary question I would like to know if Government proposes to acquire its own printery, and if so, whether those workers who have lost their jobs as a result of the contract not being renewed would be given priority of employment?

The Chief Secretary: At the end of the first year of the present contract, Government will review the question whether to establish its own printery in the light of its experience with the contract with the B.G. Lithographic Company. The hon. Member's second question will not arise until a decision on the first has been taken.

Mr. Burnham: As a further supplementary question, is the Chief Secretary aware of the fact that as a result of this change of arrangements over 150 workers are now out of work.

The Chief Secretary: I have been given no official figures but I have been informed that the "Daily Argosy" and the "Daily Chronicle" have between them laid off something in the region of 150 men. My information is that not all of

those men were solely engaged on the Government printing contract. In addition I am informed that the B.G. Lithographic Company has taken on about 50 men.

Mr. Burnham: Does Government propose to make provision for the employment of those men who have joined the ranks of the unemployed in a situation where the percentage of unemployment is already very high?

The Chief Secretary: The amount of Government printing work has not been reduced. Government is not, therefore, responsible for any additional unemployment, and cannot make such arrangements.

Mr. Burnham: May I inquire by what margin did the tenders exceed the cost? In answer to the hon. Member's first question the Chief Secretary said that the tenders exceeded the estimates of actual cost of printing by a very wide margin. May I inquire what was that wide margin in actual figures?

The Chief Secretary: The total quotation under the tenders was \$470,000, and the estimated cost approximately \$230,000. Tenders were of course called for part of the printing requirements.

Mr. Tello: As a further supplementary question, may I inquire whether it is Government's new policy to award contracts without inviting tenders?

The Chief Secretary: Government has not changed its policy. The Government invited tenders, but they were not accepted.

Mr. Burnham: As a further supplementary question, may I ask why Government did not re-advertise for tenders when Government found that a new firm was in a position to tender?

The Chief Secretary: Everybody had an opportunity to tender. At the time when the first tenders were rejected, there was no time left to go through the process of re-advertising all over again.

Mr. Burnham: As a further supplementary question, on what date was it found that the first tenders were unacceptable and, therefore, it was not expedient to re-advertise?

The Chief Secretary: I think I have answered enough questions on this subject. I do not propose to answer any more.

Mr. Burnham: Sir, it is not for the Chief Secretary to say whether he has answered enough questions. It is for the Speaker to rule whether or not it is an appropriate supplementary question.

Mr. Speaker: I cannot make the Chief Secretary reply.

Mr. Burnham: Then it must be assumed that the Chief Secretary has a lot to hide and his last answer is inaccurate.

INTRODUCTION OF BILLS

The Attorney-General (Mr. Austin): I beg to give notice of the introduction of the following Bills intituled:

- (i) Land Registry Bill, 1959.
- (ii) Summary Jurisdiction (Procedure) (Amendment) Bill, 1959.

Mrs. Jagan: I beg to give notice of the introduction of a Bill intituled:

Labour (Amendment) Bill, 1959.

ORDER OF THE DAY

BILLS—FIRST READING.

The following Bills were read the First time:

- (i) A Bill intituled: "An Ordinance to provide for the registration of land and for matters connected therewith."
- (ii) A Bill intituled: "An Ordinance to amend the Summary Jurisdiction (Procedure) Ordinance."
- (iii) A Bill intituled: "An Ordinance to amend the Labour Ordinance."

BILLS—SECOND READING.

LOCAL GOVERNMENT (VALUATION OF PROPERTY) BILL

The Minister of Community Development and Education (Mr. Benn): As a result of a considerable number of requests made to me for the deferment of this Bill, I now ask permission to defer it for some time.

Question put, and agreed to.

Bill deferred.

MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL

Mr. Speaker: When we adjourned on the last occasion we were dealing with a Bill intituled:

"An Ordinance to amend the Motor Vehicles And Road Traffic Ordinance."

The Bill was moved and seconded.

Mr. Ram Karran: On the last occasion I had completed my remarks on the Second Reading. The hon. Member for Georgetown South had indicated that he needed more time to consider the Bill and it was deferred.

Mr. Burnham: I hold no brief for the hon. Member for Georgetown South, but there is a possibility that he anticipated like most of us, that the Local Government (Valuation of Property) Bill would have been discussed today.

Mr. Speaker: I cannot read the mind of the hon. Member for Georgetown South. I think that if the hon. Member desired to speak on this Bill, and found that he would not have been present today, he would have been courteous enough to indicate that to this Council. I cannot imagine that the hon. Member for Georgetown South, as I know him, would have treated us or acted in such a manner that anyone here would think that he was treating this hon. Council with scant courtesy.

Mr. Tello: In his absence I should like to point out that there is the possibility of his anticipating that we would be dealing with item No. 5

Mr. Speaker: Are you able to divine his intention, or are you guessing?

Mr. Tello: I see that you are attempting to divine it, and I was trying to help you.

Mr. Speaker: I was not attempting to divine it.

Question put, and agreed to.

Bill read a Second time.

COUNCIL IN COMMITTEE

Council resolved itself into Committee to consider the Bill clause by clause.

Clause 1.—*Short Title.*

The figures "1959" were substituted for the figures "1958".

Question put, and agreed to.

Clauses 2 and 3 — passed as printed.

Clause 4.—*Amendment of Section 8 of Chapter 280.*

The Attorney-General: I have no particular Amendment to offer at this stage, but I would like the assistance of hon. Members in considering whether the Amendment, as it reads at the moment, is intelligible. Subsection 2 of Clause 4 is supposed to add a proviso to subsection 5 of Section 23. Section 23 deals with using an unlicensed motor vehicle, and the first section states:

"If any person uses on a road or keeps for use or permits to be kept for use on a road any motor vehicle in respect of which a licence is not in force he shall be guilty of an offence...."

Subsection (3) states:

"Where any person has been convicted of such an offence the magistrate shall, if such person has not at the time taken out a licence, order such person to pay, in addition to any fine, the sum required to be paid for the licence for that portion in respect of that quarter of the year."

That means to say that when a magistrate fines a motorist who has been driving without a licence, he also calls upon him

to pay the licence fee for the quarter—\$15 or something like that.

Subsection (5) states:

"Upon the payment of the aforesaid penalty and cost, the licensing officer shall issue the appropriate licence in respect of the vehicle."

The Bill before us seeks to add a proviso to the effect that, although ordinarily the licensing officer can issue the licence, nevertheless, if there is some good reason why he should not do so, he is not bound to issue the licence.

The proviso reads:

"Provided that no such licence shall be issued by the licensing officer if he would not otherwise have been obliged to issue that licence by virtue only of the payment of the said amount."

That does not seem to me to be very clear. I do not know whether it reads clearly other Members, but it does not seem very very clear to me.

After a pause.

The Attorney-General: As nobody seems to feel the same way, I withdraw my remarks.

Question put, and agreed to.

Clause 4 passed as printed.

Clause 5.—*Amendment of Section 24 of Chapter 280.*

Mr. Burnham: I think this provision of a new subsection sought in this Clause really trespasses on the right of the citizen. At the moment he is under obligation to produce his licence at a specified Police Station. But now, as this new enacting clause goes on to say, he must give his correct address if he has a different one from that on the licence, and if he fails to do so, he is guilty of an offence under this Ordinance, which carries a maximum fine of \$100, unless specified to the contrary. I cannot see how you can make a man pay \$100 if he fails to give his new address.

Your Honour knows that may rule out the possibility of *mens rea*, and if the element of *mens rea* is ruled out, it would mean that if a man inadvertently does not give his new address he is liable to be charged, convicted and fined a maximum of \$100; so I am not in favour of it at all.

I would rather see subsection (3) of Section 24, as proposed in Clause 5 of this Bill completely deleted.

Mr. Davis: I support the hon. Member for Georgetown Central in his arguments in this matter. If one refers to the Objects and Reasons of this Bill, one sees that, "Clause 5 seeks to require persons producing drivers' licences to the police to notify any changes of address." I would urge that this is really a trespass on the liberty of drivers.

A man may change his address, and if inadvertently he fails to report that change of address to the Police, this makes him liable to fine. I would support strongly the deletion of this subsection.

The Attorney-General: I think the answer is that this new subsection (3) is in support of subsection (2) of the same Section 24 of the Ordinance, which reads:

"Any person driving a motor vehicle on a road shall, on being so required by a police constable produce his licence for examination, so as to enable the Police constable to ascertain the name and address of the holder of the licence, the date of issue, and the authority by which it was issued, and if he fails so to do, he shall be guilty of an offence."

The new subsection merely says that any person producing licence who does not declare his correct address will be guilty of an offence. The police constable seeks after all to ascertain the name and address of the holder, the date, and so on, of the person he stops.

The Financial Secretary: I think if the word knowingly were used, it may make a difference.

The Attorney-General: If a police constable says to a man, "is this your correct address?" and the man says, "yes", then it is taken as correct.

Mr. Burnham: Perhaps we can include the word 'wilfully' or 'knowingly'. If a person is stopped by a police constable and is requested by him to give his name and address, he had to give him the correct information, if not under Chapter 280, then at least under Chapter 14, Section 198, which I think deals with giving false information to public officers.

I cannot see that if the person who is requested to turn in his licence is the holder of the licence how his turning in the licence to the Police Station will enable him to turn in a correct name and address of the owner of the vehicle. It is not with respect to the vehicle, but with respect to the person.

What really I thought was the object of subsection (2) of the original Ordinance was the giving of the Police or the Traffic Department an opportunity of finding out whether the person found driving was the holder of a valid licence, not to find out his name and address; that seems to be the *rais on d'être* of subsection (2).

The Attorney-General: I think the police constable, when he stops a driver at an accident or whatever the occasion is, does so to take the opportunity for checking up to see if his documents are in order, and that the driver or the licence holder's name and address are correct. I think I am right in saying that a driver's licence contains not only the holder's name but also his address, so that if a person changes his address, it should be notified.

The name and address of the licence holder are registered so that if the Police wish to trace him, they can do so, and in this operation the Police are entitled to do so. I now have a driver's licence in front of me in which the name and address of the licence holder are given.

Mr. Burnham: I did not say that the licence does not normally carry the name and address of the holder. I am saying that the purpose, as I see it when I read Section 24, for asking the driver stopped by a policeman taking his licence is really to check as to whether or not that person is the holder of a valid licence; that is the chief purpose, not to find out his name and address.

A man goes all in a hurry to the police station and says, "I am supposed to turn in my licence; here it is." He forgets that when the licence was issued to him he was living at a different address. It may happen to me. You may get your licence in December and you move in January. As far as your mind is concerned, you may well believe you got your licence in January..

I may yield if it is proposed by the Government to add in the word "wilfully", but even then, I doubt that any purpose would be served in this subsection (3) at all, unless you want to get nearer and nearer to a police state. If you change your address and you have to go to a police station—

The Financial Secretary: You have to notify the Licensing Authority—it happens in England.

Mr. Burnham: Yes, but I have been talking about licensing with respect to the person. You are talking about licensing with respect to the vehicle.

The Financial Secretary: There is not such an important difference between the two. The purpose is to enable the vehicle or the driver to be traced.

Mr. Burnham: Unless the Financial Secretary is saying that the holder of a driver's licence has to report his change of address as a matter of practice in London, England, I am still left to be convinced by his analogy. They are two different things: there is a licence with respect to the vehicle and there is a licence with respect to the holder, and

the penalty and everything else are different.

The Attorney-General: That is done so that the driver can be traced or the vehicle can be traced.

Mr. Burnham: A driver's licence is general, but a vehicle is a vehicle and can be traced. Is the Financial Secretary aware that you can drive a vehicle without a licence authorising you to drive it? I can drive any private car with my driver's licence. If I own a car, why should I have to notify the Police if I move from Subryanville to Campbellville or Bel Air Park, or from Campbellville to Georgetown, unless I am living in a police state. In England it does not exist — it is the address of the registered owner of the vehicle that is notified.

The Attorney-General: A person may be driving a car which does not belong to him; an accident occurs and the driver runs away. The address of the owner of the car is no help—at least the Police would want to know the address of the person driving. Therefore they want to know the name and proper addresses of all people who are licensed to drive cars, so as to be able to trace them. That, I suggest, cannot be adequately taken care of under subsection (2). This further Section is designed to achieve the object of placing on the driver of a motor vehicle the responsibility of informing the Police of his present address if it is different from that which is shown on his licence. The purpose is to make subsection (2) effective, which it is not at the moment. My friend says that there is a general obligation on the part of people to give their addresses to the Police, but that is not the point.

Mr. Burnham: The hon. the Attorney-General's example is most unfortunate. How do you discover the name of the driver of a car if he runs away? You cannot get it now because you do not know his identity. I am prepared to go half-way with the Attorney-General, and I hope he goes half-way with me. I suggest the insertion of the word "wilfully" before the word "fails" in subsection (3).

The Attorney-General: I was about to suggest that the Amendment might read:

“Any person producing his licence shall on being requested to do so at the time of production give his correct address, and if he refuses to do so he shall be guilty of an offence.”

The refusal is only if he fails.

Mr. Burnham: We are coming closer. I would not make the refusal an offence. A would-be offender might give a wrong address, in which case there would not be a refusal.

The Attorney-General: If you give false information to the Police you are guilty of an offence.

Mr. Burnham: If the hon. the Attorney-General wants that Amendment I will agree, but it would be a Roman holiday for lawyers.

Mr. Rai: I think it is an attempt to create an offence by omission, which I think is bad in principle. I think the Amendment should read like this—

“... shall at the time of production be required to declare his correct address, and if he fails to do so he shall be guilty of an offence.”

He should first be required to declare his address.

The Attorney-General: That is precisely what the law says at the moment—that he shall at the time of production declare his correct address. You cannot have anything more positive than that.

Mr. Rai: I think the hon. the Attorney-General has missed the point. My Friend and I are saying that there should first of all be a request, and not merely an omission to do something. The Police should be required to request a person to declare his address.

Mr. Burnham: I am in agreement with the hon. Member, Mr. Rai, but I think he has put it in such a way as to lead the hon. the Attorney-General to believe that he was placing a compulsion on the person producing his licence. What I

think he meant was that on being requested he shall give his correct address.

The Attorney-General: I move that subsection (3) shall read as follows:

“Any person producing his licence under the preceding subsection shall on being requested to do so declare his correct address, if such address is not the same as that recorded in the licence, and if he refuses to do so he shall be guilty of an offence.

Mr. Burnham: The person making the request would not know if it was the same address. We should let the request be made for his address, and if he gives a false address he would be guilty of an offence. It should read:

“... shall on request give his correct address at the time of production . . .”

The Attorney-General: I think we might defer consideration of the Clause.

Mr. Rai: I take it that the object of getting the correct address of the person producing the licence is to be able to locate him. I do not think it should be optional on the police constable whether he should ask the person for his correct address; I think it should be obligatory.

The Chairman: In the meanwhile the draft Amendment will be considered.

Clause 6.—Amendment of Section 37 of Chapter 280.

Mr. Burnham: As I understand it the purpose of Clause 6 is to make our traffic law stricter, but I do not think it is right that a person should be liable to disqualification on a second conviction for careless driving. The measure of culpability in the case of careless driving is quite different from that of dangerous driving, and I feel that the present law is adequate. I do not see why, after a second conviction for careless driving, a man should be liable to lose his licence. I may not have strong objection to an increase of the penalty on a second conviction, but it is a tremendous penalty to disqualify a person for careless driving on two occasions when more recent authori-

ties seem to hold that what in other cases may be considered errors of judgment may be deemed to be careless driving. I am therefore opposed to Clause 6 completely and shall move its deletion.

The Chairman: Clause 6 seeks to amend Section 37 (2) of the Ordinance by the deletion of the words "or second".

Mr. Burnham: It will create a distinct hardship, especially in the case of a man who earns his living or cannot afford to pay for the services of a chauffeur. If a child is killed as a result of driving it connotes such negligence on the part of the person driving as to make it not careless driving but reckless driving.

The Attorney-General: Not necessarily.

Mr. Rai: In the Objects and Reasons it says:

"Clause 6 seeks to enable a magistrate to disqualify a person from holding or obtaining a licence on a second conviction for careless driving."

It is my view, and I am also authoritatively informed that the law as it stands does not give a magistrate any power at all to disqualify a person from holding a licence, so that the intention of the Amendment cannot be carried into effect by merely deleting the words "or second" from subsection (2) of Section 37 of the Principal Ordinance. Section 36 of the Ordinance provides that on a first or second conviction for reckless or dangerous driving a person may be disqualified from holding or obtaining a licence. Section 37(2) merely sets out the position clearly, that whereas in the case of a first or second conviction for reckless or dangerous driving a person may be disqualified from holding or obtaining a licence, in dealing with careless driving it says that a first or second conviction shall not render an offender liable to be disqualified. I submit that disabilities should not be created by implication but by definite provision.

The Chairman: Are you saying that subsection (2) is surplusage?

Mr. Rai: That is the position. If it is the intention to give power to the Court to disqualify a person for careless driving it ought to be done in a positive way and not by implication.

The Attorney-General: I wonder if I could explain the position with regard to our law, because I do not think the Amendment which has been suggested is very satisfactory. The position is that our law relating to motor vehicles is based on the United Kingdom legislation, the Road Traffic Act of 1930, which is precisely the same as the existing Section of our law. It reads like this:

"12. (1) If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road he shall be guilty of an offence.

(2) A first or second conviction for an offence under this section shall not render the offender liable to be disqualified for holding or obtaining a licence."

In 1934 the English Road Traffic Act was amended. If a man was found guilty of careless driving, the magistrate could disqualify him for holding a licence except in cases where he is told specifically that he cannot disqualify. The Section in its original form states "that on a first or second conviction the magistrate shall not disqualify . . ." In England, in 1934, they felt that the traffic dangers were increasing, and it was necessary to bring home to motorists the very great care that must be exercised on the road.

I agree with my learned Friend, the hon. Member for Georgetown Central, that the degree of negligence that is required to support a charge or conviction for careless driving is considerably lower than is required to support a conviction for dangerous driving. But it has been held, and it is in fact law, that the test as to what is careless driving is not what the driver was doing or not doing, but the effect of his act as a result of his driving the car. It has also been held that if a driver falls asleep at the wheel momentarily and then runs into something, he

can be found guilty of careless driving. It is not whether he intended to fall asleep or was careless in falling asleep. The test is the damage that he has done.

It has been considered in the United Kingdom, way back in 1934, that it is sometimes necessary to deprive a driver of his licence on his first conviction for careless driving. In 1934 the law was amended to read as follows:

"A first or second conviction for an offence under this section shall not render the offender liable to be disqualified for holding or obtaining a licence for a longer period than, in the case of a first conviction, one month, or, in the case of a second conviction three months."

They considered that, because of the seriousness of the road accident situation which, I suggest, is very similar to the problem we face in this country today, it was necessary to provide that a driver might be disqualified on a first conviction and it is not unreasonable to bring our law into line with the parent law in the United Kingdom.

Indeed Trinidad, whose law is also the same as that of the United Kingdom in this matter, prescribed that a magistrate has the power, which he may exercise if he thinks fit, to deprive a person of his licence for careless driving on a first conviction. Section 47 of Trinidad's Motor Vehicles and Road Traffic Ordinance reads as follows:

"If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road he shall be liable to a fine of one hundred and twenty dollars and to be disqualified for holding or obtaining a driving permit for such period as the court shall think fit: Provided that on a second or subsequent conviction for a like offence the period of disqualification shall be not less than one month."

The inference, therefore, is that on a first conviction for careless driving it is within the power of the magistrate, although he may not exercise it, to deprive a person convicted of careless driving of his licence for one month. But if he is convicted again for careless

driving he shall be deprived of his licence for not less than one month.

The Section that we are dealing with in our law, which is Section 37, must be read with Section 31, which states:

"Any court before which a person is convicted of any criminal offence in connection with the driving of a motor vehicle (not being an offence under Part VIII of this Ordinance).

(a) may in any case, except where otherwise expressly provided by this Ordinance, and shall where so required by this ordinance, order him to be disqualified from holding or obtaining a licence for such period as the court thinks fit."

Whether it is the first conviction or not he can be disqualified.

Now so far as dangerous driving is concerned, where the degree of negligence for a conviction is considerably higher, the law in England has always been that "on a first offence or conviction the magistrate may suspend a driver, but on a second and subsequent offence he shall disqualify, except for special reasons. The special reasons may include the fact that he was previously convicted for dangerous driving (which qualifies him for a mandatory suspension), but the period may be so long ago that he could be considered as having driven carefully for so many years that it would be unrealistic to disqualify him."

I would suggest that, having regard to the history of our law and the fact that it was based on the United Kingdom legislation—which was changed in 1934 to say "that a magistrate need not disqualify a person convicted of careless driving the first time, nevertheless, he may do so in a bad case"—we adopt the English practice.

I do not agree with my learned Friend that careless driving is something which in all cases is so trivial that there should be no question of depriving a man of his licence. A good deal of damage and harm can flow from careless driving. We merely have to look at the road accidents figures since last year to see what is tak-

ing place, and I am sure that the general public demands that such action as is reasonable should be taken to ensure that drivers do take more care on our roads. Is it asking too much to say that our road legislation should be brought into line with what obtains in the United Kingdom where in 1934 it was changed, as well as in Trinidad?

I would suggest that instead of the Amendment in the Bill, we should not only take the first part of the United Kingdom legislation, but also say that—

“On a first or second conviction for an offence under this section shall not render the offender liable to be disqualified for more than one month on first conviction, and for more than three months on a second conviction.”

That does not mean that the magistrate will suspend a licence in every case, but it is important to have the power to do so in the law. Magistrates are endowed with wide powers and if they exercise them harshly one can always go to the Court of Appeal. It is proper and right to do what is done not only in the United Kingdom, but also in our neighbouring territory of Trinidad.

Mr. Burnham: Do I understand that my learned Friend is proposing an Amendment to the Bill?

The Attorney-General: I now formally propose an Amendment to subsection 2 of Section 37 of the Principal Ordinance by substituting the wording in the United Kingdom legislation which I have just read.

The Chairman: What is the Amendment?

The Attorney-General: The Amendment should read as follows:

“A first or second conviction for an offence under this section shall not render the offender liable to be disqualified for holding or obtaining a licence for a longer period than, in the case of a first conviction, one month, or, in the case of a second conviction, three months.”

There is also a proviso in the English legislation which states that “If during

the previous three years this person who is now charged with careless driving has been convicted of dangerous driving that conviction can count as a conviction for careless driving” which, I think, is very reasonable. I would also move that Amendment, but there is no point in my doing so if hon. Members are against it. I would like to hear hon. Members on the point.

Mr. Davis: I would like to suggest this for consideration. If a driver is disqualified for some reason or another for a long period, provision should be made whereby he could apply or petition to some authority and show reasons why his licence should be returned.

The Attorney-General: I would refer the hon. Member to the fact that if there is a conviction for dangerous driving and the driver is disqualified from driving for 12 months, the driver, after six months, has the right to apply to the court, and if he gives sufficient reasons, they may give him his licence back. This does not apply to anybody whose licence is suspended for less than six months, and I do think that if a magistrate is aware that a person is dependent on his driving licence for his livelihood, he would take this into consideration when deciding how long he should be disqualified for or whether or not he should be disqualified.

Mr. Davis: Yes, but this is the point: he applies back to the same magistrate, and he cannot apply until six months have passed. This is where I think an amendment should be considered.

The Attorney-General: If the disqualification is wrong the Court of Appeal would presumably say that the disqualification cannot stand. If however it is right that his licence should be suspended, it is ridiculous to say that; you would be taking away with one hand and virtually giving him the right to have it back with the other. He already has the right, after a certain time, to go to the magistrate and say, “I have lost my licence. Six months have passed and I need it badly. I conducted myself badly.

I am contrite, and I am endeavouring to be more careful and drive properly in the future." It is then up to the magistrate to modify the disqualification.

Mr. Burnham: Mr. Chairman, I am happy to see that the learned Attorney-General has attempted to give us the full benefit of the English and Trinidadian provisions, but how can he introduce English legislation when he does not limit the period of disqualification? The other day I was reading Glanville Williams' "Criminal Law," and the point was made that the law relating to motor vehicles road traffic punishing a person for careless driving does not make sense because those are the persons who do not realize they are doing careless things; the very acts of carelessness are not conscious, and for that reason I am not inclined to agree with such a heavy penalty for careless driving and, of course, careless driving has two aspects without reasonable consideration or without due care and attention.

I am not inclined to agree at all with a disqualification on a first conviction or with the magistrate's having the power at all to disqualify on the first conviction; but I may be prepared to agree with disqualification after a second conviction, with the limitation that it should not be for more than one month.

We are not to avoid accidents in Georgetown and British Guiana by merely punitive methods. I remember that when Mr. Tasker's motion was debated I made the point that what was necessary was not stiffer penalties, but rather a concerted course of education of the road users, and no arguments by the learned Attorney-General can persuade me that it is safer to leave in the hands of the magistrate the power to disqualify a man for careless driving offences. There are magistrates with ability, a sense of fairness, and integrity for whom I have the highest regard; but magistrates are human and very frequently you find magistrates who have a particular attitude towards a particular offence saying that "anyone coming before me on

charges for such offences will be seriously dealt with" or "anyone coming before me on charges of indecent language (or careless driving) will get the maximum." Heaven help, Mr. Chairman, when you land before such a magistrate—you will get the maximum fine and you will get the disqualification.

Mr. Jai Narine Singh: I think those of us who have the good fortune to be in the courts would agree that it is a dangerous weapon in the courts to disqualify a man for the second offence or for the first.

The Chairman: You are using strong language.

Mr. Jai Narine Singh: Sometimes it is good that those who administer justice should remember that there are places where they can be reprimanded. A man's livelihood may depend on a magistrate's whim or caprice on a particular day. He may not be in a very good mood on that day and he may be visited upon by the person who has the misfortune to appear before him for an offence. I take this opportunity to support the views expressed by the hon. Member for Georgetown Central.

The Chairman: Any other speaker?

Mr. Jai Narine Singh: I would like to draw to the attention of the Attorney-General that Section 36, which deals with dangerous and reckless driving, states that on a second or subsequent conviction under this Section a person can be disqualified from holding a licence, not on the first conviction. I think this should be forcibly drawn to the hon. the Attorney-General's attention.

The Chairman: That Section was drawn to Members' attention in your absence. Had you been present you would have known that it had been adverted to before.

Mr. Jai Narine Singh: Thank you, Sir. In these circumstances, I hope Government can be persuaded not to follow the

lines proposed. I think that what Government can do is to take stronger action against drunken drivers, and not careless drivers, because careless driving means inadvertence in some cases. This can happen to magistrates themselves, and therefore the reasonable doubt should be given to defendants. Sometimes it is found very difficult to convict these persons, and in these border cases, the magistrate will be compelled to take a certain line.

Mr. Rai: While we are on this topic of disqualification, I would ask the hon. the Attorney-General to note that there is no remedy or power to remove a disqualification where there is a breach of the Motor Vehicles Insurance Ordinance. For instance, if a driver is convicted of driving while drunk, he can be disqualified for a period of 12 months or more, but after six months of his disqualification, he can ask for reconsideration. However, under the Motor Vehicles Insurance (Third Party Risks) Ordinance, if a person is convicted of using a private car for hire purposes he can be disqualified, but there is no provision here for him to apply after a period for a removal of his disqualification. I am asking that this aspect be considered.

Mr. Burnham: Wouldn't it be better for the Minister to report progress and ask leave for the Committee to sit again?

Mr. Ram Karran: I beg to second the Amendments moved by the hon. the Attorney-General.

Mr. Jai Narine Singh: What are they?

Mr. Burnham: They have not been formulated.

The Attorney-General: Yes.

Mr. Burnham: Under the Standing Orders those Amendments have to be put in writing.

The Attorney-General: They are in writing.

Mr. Burnham: They are not in writing.

The Attorney-General: I think it would be better to defer consideration of this Clause so that I may frame a new Amendment. I think it is a very important point in the interest of British Guiana and its road users. I am sorry my Friend, the hon. Member for Georgetown South (Mr. Jai Narine Singh) was not here at the beginning. I think it would be in his interest to defer it.

Clause 6 deferred.

Clause 7.—*Insertion of new Section 46A in Chapter 280.*

Agreed to.

Clause 8.—*Insertion of new Section 58A in Chapter 280.*

Mr. Burnham: I am against the provision in subsection (6) that a certificate signed by the Commissioner of Police shall be *prima facie* evidence of the expenses incurred. I think it takes away the right of a defendant to challenge the accuracy of the plaintiff's claim. I cannot see what reason prompts the Government to accept the *ipse dixit* of the Commissioner of Police or one of his subordinates, and to endeavour by means of a certificate to commit a rape on a well established principle in English jurisprudence as we know it. I therefore move the deletion of the words "and for the purpose of any such proceedings a certificate signed by the Commissioner of Police shall be *prima facie* evidence of the expenses incurred."

Mr. Rai: I take it that the certificate would be signed either by the Commissioner of Police or by a responsible officer in his Department. If that is so my Friend may be reminded of the legal maxim, "*Omnia praesumuntur vite esse acta*", which means that things which are done by public officers are presumed to be properly done. That principle also applies under the criminal law. It is open to a defendant to rebut the certificate that such expenses had been incurred.