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*[*Volume 7*]*

PROCEEDINGS AND DEBATES OF THE FIRST SESSION (1982) OF THE NATIONAL ASSEMBLY OF THE THIRD PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA.

210th Sitting	2 p.m.	Friday, 28th March 1980

MEMBERS OF THE NATIONAL ASSEMBLY (63)

Speaker (1)
Cde. Sase Narain, O.R., J.P., Speaker

Members of the Government – People's National Congress (46)
Prime Minister (1)
Cde. L.F.S. Burnham, O.E., S.C.,
Prime Minister

Deputy Prime Minister (1)
Cde. P.A. Reid, O.E.,
Deputy Prime Minister and Minister of
National Development

Senior Ministers (11)
Cde. H.D. Hoyte, S.C.,
Minister of Economic Development and Co-operatives
Cde. S.S. Naraine, A.A.,
Minister of Works and Transport (Absent)
Cde. B. Ramsaroop,
Minister of Parliamentary Affairs
And Leader of the House
Cde. C.V Mingo,
Minister of Home Affairs
*Cde. H. Green,
Minister of Health, Housing and Labour (Absent)
*Cde. H.O. Jack,
Minister of Energy and Natural Resources
*Cde. F.E. Hope,
Minister of Finance
*Cde. G.B. Kennard, C.C.H.,
Minister of Agriculture
*Cde. M. Shahabuddeen, O.R., S.C.,
Attorney General and Minister of Justice
*Cde. R.E. Jackson,
Minister of Foreign Affairs
*Cde. J.A. Tyndall, A.A.,
Minister of Trade and Consumer Protection
*Non-elected Ministers

Ministers (2)

Cde. O.E. Clarke,
Minister – Regional
(East Berbice/Corentyne)

Cde. C.A. Nascimento,
Minister, Office of the Prime Minister (Absent – on Leave)

Ministers of State (10)

Cde. F.U.A. Carmichael
Minister of State – Regional (Rupununi) (Absent)

Cde. P. Duncan, J.P.,
Minister of State – Regional (North West)

Cde. K.B. Bancroft, J.P.,
Minister of State – Regional (Mazaruni/ Potaro)

Cde. J.P. Chowritmootoo, J.P.,
Minister of State – Regional (Essequibo Coast/West Demerara)

Cde. J.R. Thomas
Minister of State, Ministry of Education,
Social Development and Culture

Cde. R.H.O. Corbin,
Minister of State, for Youth and Sport,
Ministry of National Development

Cde. S. Prashad,
Minister of State – Regional
(East Demerara/West Coast Berbice)

Cde. R.C. Van Sluytman,
Minister of State,
Ministry of Agriculture

Cde. F.U.A. Campbell,
Minister of State for Information,
Ministry of National Development

Cde. H. Rashid,
Minister of State,
Office of the Prime Minister

Parliamentary Secretaries (6)

Cde. M.M. John, C.C.H.,
Parliamentary Secretary, Office of the
Prime Minister, and Government Chief Whip (Absent – on leave)

Cde. E.L. Ambrose,
Parliamentary Secretary, Minister of
Agriculture

Cde. M. Corrica,
Parliamentary Secretary,
Ministry of Education, Social Development and Culture

Cde. E.M. Bynoe,
Parliamentary Secretary, Ministry of Trade
and Consumer Protection.

Cde. C.E. Wrights, J.P.,
Parliamentary Secretary, Ministry of Economic
Development and Co-operatives

Cde. J.G. Ramson,
Parliamentary Secretary,
Ministry of Works and Transport

1980-03-28 02:05 – 02:35 p.m.

ANNOUNCEMENTS BY THE SPEAKER

Leave to Member

The Speaker: Leave has been granted to the Leader of the Opposition from the 25th March for two weeks.

PUBLIC BUSINESS

BILLS – SECOND AND THIRD READINGS

CRIMINAL LAW BILL 1980

A Bill intituled:

"An Act to clarify the procedure relating to summary trial of indictable offences and to provide for certain other matters relating to the criminal law." *[*The Attorney General and Minister of Justice.*]*

The Attorney General and Minister of Justice (Cde. Shahabuddeen): Cde. Speaker, I beg to move that the Criminal Law Bill 1980 be read a Second time. Consideration of this matter was deferred from last Monday's meeting in order to afford an opportunity to the Guyana Bar Association to have consultations with me on certain aspects of the Bill. I must now in duty to the House report that the contemplated consultations did take place. In addition to telephone conversations between me and the President of the Guyana Bar Association, I met a delegation from the Association last Tuesday and conferred with them for practically the entire morning. It is true that a complete coincidence of views was not attained, but at a later and more appropriate stage I hope to put forward certain amendments which I do believe should go some way towards meeting the concerns of the Guyana Bar Association. I should add that notice of the proposed amendments has been laid over in the National Assembly and that save for one or two words the entirety of the notice was given to the President of the Guyana Bar Association yesterday afternoon so the G.B.A. should be fully cognizant of the amendments which I propose to move later this afternoon.

For the very limited purpose of explaining as briefly as possible the technical aspects of the origin of this Bill, I will crave leave to refer to a matter which is still pending on the merits and which is consequently sub-judice. My reference to it would be very anxiously restricted to the purpose of explaining the technical background of this proposed piece of legislation.

The case to which I am referring concerned what is generally known in the legal profession as a hybrid offence. Normally, when a law creates an offence, it will say that the offence is punishable either on indictment, that is to say, before the High Court, or that it is punishable on summary conviction, that is to say trial before a magistrate. But in a relatively

small but growing category of cases, the law creating an offence will sometimes say that the offence is punishable either on conviction on indictment or on summary conviction. Offences of this kind, are Cde. Speaker, you will know, generally referred to as hybrid offences. It will be seen that these offences involve two basic concepts, namely, the concept of an offence punishable on indictment and the concept of an offence punishable on summary conviction. These concepts are encapsulated in the relevant statutory definitions of "indictable offence" and "summary conviction offence". The definitions are to be found in section 2 of the Summary Jurisdiction (Procedure) Act, Chapter 10:02, which defines "indictable offence" to mean "any offence punishable on indictment before the High Court", and which also at the same time defines "summary conviction offence" to mean "any offence punishable on summary conviction before the magistrate's court".

In a real sense, the whole structure of this branch of the law revolves around these two definitions. They are both established by the same law. They are co-ordinate in status and authority, and effect has accordingly to be given to each of them whenever possible.

From at least the year 1932 the Law Officers of this country has consequently assumed that both an indictable offence and a summary conviction offence, as so defined, were created whenever a law made an act punishable either on conviction on indictment or on summary conviction, the offence being an indictable offence to the extent that it is made punishable on indictment, and being a summary conviction offence to the extent that it is made punishable on summary conviction.

This assumption has been recently overruled as being incorrect by the Court of Appeal which, on the authority of two decisions by English courts, has unanimously held that in such a case on and only one offence is created, and that this is an indictable offence "for all purposes". Needless to say, the decision of the Court, which went against the State, is final and authoritative, and the conceptual issue involved is thus definitively settled.

Perhaps I should now explain to the House that, as the Court of Appeal itself noted, in the year 1932 the then Legislature of this country had made one indictable hybrid offence amenable to the procedure relating to the summary trial of indictable offences. It is called the amenable procedure. Following on this 1932 precedent, in 1978 all other indictable hybrid offences were made amenable to the same procedure.

In net terms, the effect of the opinion and ruling of the Court of Appeal is that, since 1932, in the case of that one hybrid offence, and since 1978, in the case of all other hybrid offences, it has not been legally possible to prosecute summarily under the summary branch of a hybrid offence

section.

As I read the judgments, the Court seemed to recognise that this consequence was a technical one, unforeseen and unintended by the Legislature, and that a legislative amendment was required to put the matter right by restoring the earlier position under which a summary charge could be brought and tried in the ordinary way under the summary branch of a hybrid offence section.

Before passing on, I should say a word on penalty. Normally, the maximum penalty for a summary conviction offence, as we all know, is lower than the maximum penalty for the same offence if tried on indictment or if it is dealt with as an indictable offence triable summarily. The effect of the decision of the Court of Appeal is that ordinary summary proceedings are not permissible in the case of hybrid offences, with the consequence that the lower penalties prescribed for summary offences are equally not available to a defendant who is charged with a hybrid offence. Every such defendant must therefore face the risk of the higher penalty involved in indictable proceedings. So one object of the proposed amendment is to restore the lower penalties previously associated with ordinary summary conviction proceedings under hybrid offence sections. It certainly is not the object of the Bill in any way whatever to increase penalties, as has been suggested in some quarters.

This background explains clause 2 of the Bill except for one important aspect, which I must not shrink from dealing with. This concerns the fact that the clause is designed to correct the problem retrospectively. It is necessary to do this because a number of hybrid cases has been dealt with summarily between 1978 and now. Indeed as I mentioned a little earlier, there was one such hybrid offence which was made amenable to the procedure relating to summary trial of indictable offences way back in 1932. Unless there is some retrospectivity a large number of concluded matters will fall for purely technical reasons to be regarded as nullities although they were tried on exactly the same basis as that in force before 1978, although no one suggests that that basis was anything but perfectly fair, and although indeed no one until latterly thought that was not the correct legal procedure. I submit that such a consequence is not required by the public interest.

So much for cases already concluded. Now for pending cases, that is to say, cases which are pending in court today. So far as these are concerned I shall propose at the proper stage the inclusion in clause 2 of certain safeguards under which the court will have power to do any of a number of things with a view to ensuring that the application of the Act to a pending case does not operate even accidentally, to impair the right to a fair hearing. For example, some of the things which I shall be proposing are to give the court a power to recall witnesses, to hear fresh

arguments, to grant any adjournment, or to stop a pending case and order an entirely new trial. Further, if in the opinion of the court none of these steps will suffice to ensure a fair hearing in all the circumstances of any given case, I shall propose that the court be simply empowered to dismiss the case outright.

I should add that, although I do not consider that the Bill, as it stands, has any tendency to increase penalties retroactively, I shall out of abundant caution propose at a later stage the insertion of a proviso with a view to making sure that no such thing can ever happen. Under article 10(4) of the Constitution as I read it, the ceiling limit for a hybrid offence is in effect the penalty imposable on conviction before the High Court. We shall however be proposing that a lower ceiling be fixed at the level of the penalty imposable for the offence if it is treated as an indictable offence triable summarily.

It is perfectly right, when legislation involving an element of retrospectivity is proposed, that it should be jealously scrutinised, and we do not grudge the right to criticise, even when unsparingly used. Indeed, as I have mentioned, the consideration of the Bill was expressly deferred to enable me to collect the thinking of the Guyana Bar Association.

But it does appear to me that on this question of retrospectivity there are really only three relevant points. First, Parliament cannot create offences retrospectively. We are definitely not proposing to do that. The Bill is concerned with the procedure for trying persons charged with existing offences. It is not concerned to create any new offences retrospectively. Secondly, Parliament cannot increase penalties retroactively. Far from doing this, the Bill, as I have sought to explain, will have the effect of restoring penalties which are lower that those available under the law as settled by the Court of Appeal. Thirdly, the application of the Bill to a pending case should not result in any impairment of the constitutional right to a fair hearing. We submit that, with the proposed amendment, the Bill cannot produce any such effect.

Subject to the constitutional limitations to which I have adverted and which, as I submit, will not be breached, Parliament is fully competent to enact retrospective legislation even in relation to the criminal law. The retrospectivity in this case concerns three areas. First procedure, secondly, evidence, and thirdly, the jurisdiction of the court. I do not see any basis for any argument that retrospective legislation on any of these three points can be regarded as inconsistent with Anglo-Saxon jurisprudence which, I believe, has been invoked in respect of these matters.

So far as retrospective legislation on procedure and evidence is concerned, Anglo-Saxon jurisprudence is quite clear that there is no presumption against such legislation being considered

as retrospective whether in relation to criminal or civil trials.

So far as jurisdiction is concerned, here again there is nothing in Anglo-Saxon jurisprudence which is inconsistent with legislation which seeks to validate trials which were otherwise perfectly fair and proper except for the circumstance that, for some technical reason or the other, the court might have lacked jurisdiction.

What then remains in an argument based on morality. Morality is often as good a basis for argument as any, and a case based on it is entitled to dutiful consideration. Indeed, I wish to say to this House, that this was precisely the part of the arguments against the Bill to which I devoted my most anxious and respectful consideration.

But it did appear to me that, when the appeals to morality were examined in this case, that they seemed to amount to was a contention that legislation should not be enacted so as to prevent parties in a pending case from taking advantage of a point which is purely technical, unforeseen and unintended by Parliament. After giving the matter my best consideration, it does appear to me that a balance needs to be struck between the right of parties to capitalise on and to exploit a purely technical point and the interest of society in bringing offenders to book. It seems to me that a proper balance is struck when legislation is passed to correct the technical point subject to safeguards designed to ensure that the application of the corrected law to a pending case does not impair the constitutional right to a fair hearing. And it is accordingly on this basis that the Bill, considered with the proposed amendments, has been framed.

There are some other provisions in the Bill. The explanation for these sufficiently appears, I hope, in the Explanatory Memorandum but if there are any questions, I can elaborate. The main feature is the one I have sought to address in my previous remarks.

To those remarks I will merely add this. Loopholes in laws surface from time to time in every country in the world. Sometimes they are discovered by the courts, sometimes by the executive itself, and sometimes by the ordinary citizen. When they are discovered they should of course be corrected by the proper authority. The proper authority in Guyana is Parliament. The Court of Appeal has itself suggested that we should come to Parliament for any necessary amendment. We have accordingly come to Parliament, conscious that the human mind cannot guarantee perfection of its works, but willing, whether in the case of this or any other measures, to return as promptly as possible to this Assembly for any remedial action required. [Applause.]

Question proposed.

The Speaker: Hon. Member Mr. Singh.

Mr. M.F. Singh: Mr. Speaker, the Guyana Bar Association, to which the Hon. Attorney General referred when he began his remarks, represents practicing lawyers in Guyana. Indeed, we are most grateful to the Attorney General for having given us the opportunity of going to him and making representations. I must repeat and reiterate that those representations were made in a most cordial and in a most congenial atmosphere on both sides but the fact of the matter is that the Guyana Bar Association is still vigorously opposed to this Bill.

I am a member of the Guyana Bar Association. I attended the first two emergency meetings that were held since this Bill was announced and the opposition to this Bill is still unanimous. Not a single member who attended those two meetings, at which I was, was in favour of the Bill. The first meeting was held on Monday last at which a memorandum by the President was approved for circulation and that meeting was attended by no less than sixty-five lawyers. At this meeting, there was not a single voice in support of the Bill. All were unanimous in opposing and condemning it. Surely, then, something must be wrong with the proposed legislation when opposition such as this is evident. Why do we oppose the Bill?

Before I read from the memorandum, with which I agree and which the Guyana Bar Association has requested that it should be made known to all and sundry including Parliament, let me say that it is really one single aspect of this Bill to which we are opposed. That is the retroactivity in clause 2. We concede that Parliament has the right to make law and to make them effective from now. We concede that the Parliament has the right to make laws to change the existing situation, to change the Appeal Court decision, to change the existing law, but what we say is, rights accured under the existing law, including the legal position after the decision by the appeal court, cannot be taken away. You cannot derogate from rights which the Appeal Court by its decision says that an accused person enjoys at this present moment. That is why you cannot make it retroactive and at the appropriate time I will deal with the amendments because the contention is that the amendments do not meet with the situation. The amendments still allow for the derogation of the rights which the Appeal Court says an accused person has at the present moment. So the amendments, in the humble opinion of the Bar Association and its members, do not meet with their objection.

02:35 p.m.

I think, as I have been requested to, I will read the memorandum which was circulated and approved for circulation by the Guyana Bar Association at its first emergency meeting last Monday. It says:

> "Memorandum of the Guyana Bar Association
> On the Criminal Law Bill 1980
>
> A Bill intituled an Act to clarify the procedure relating to summary trial of indictable offences and to provide for certain other matters relating to the criminal law has been tabled in Parliament. Standing Orders will be suspended on Monday 24th March, according to press and radio reports, and the Bill will be passed through all its stages on that day. When enacted, the Act may be cited as the Criminal Law Act 1980.
> Section 2 of the Bill reads as follows . . ."

And it sets out clause 2 which I will not read because we all have it. It goes on:

> "First it must be observed that the effect of this section is intended to be retroactive by virtue of the words:
>
> 'Nothing in sections 4, 5, 6, and 7 of the Administration of Justice Act 1978 shall be deemed to affect or ever to have affected any law (whether enacted before or after the enactment of this Act').
>
> Secondly, it must be noted that this enactment applies to hybrid offences, that is, offences which by statute can be tried either summarily or on indictment and are clearly therefore for all purposes indictable offences; more particularly the Bill applies to the punishment of persons on summary conviction for such offences and to the prosecution, trial, conviction or sentencing of any person charged summarily under any law relating to hybrid offences.",
>
> the same kind of offences to which the Hon. Attorney General referred. It goes on in the Memorandum:
>
> > "Thirdly, the clear intention is to rush the Bill through Parliament with the greatest haste and without proper notice to the public or to the legal profession, which as not been consulted beforehand. Up to the time of writing this memorandum, no lawyer has received an Official Gazette containing a copy of the Bill. The time given to Opposition Members of Parliament to consider the implications and labyrinthine intricacies of the Bill is too short for them to make a detailed study of the Bill or to make an adequate contribution to the debate."

I think I made this exact point to the Hon. Attorney General and he acceded to my request for a postponement. The memorandum goes on:

"The Bar Association opposes the Bill in its present form because of its retrospective or retroactive effect."

As I said that is contained only in clause 2. It goes on:

"It will deprive defendants of accrued rights and annual rights that are already acquired. It offends the right of a person who is charged with a criminal offence to a fair hearing within article 10 of the Guyana Constitution. The retrospective effect of the enactment is apparently intended to defeat or nullify some of the no-case submissions made by defence Counsel in the marathon conspiracy trial relating to the Exchange Control Act. The Bar Association views this situation with alarm since no legislation ought to be used unjustly.

Examples of hybrid offences are to be found in the Exchange Control Act, the Firearms Act and the National Security Act. Both by Guyana law and English law these offences are indictable offences. This view was unanimously adopted by the Guyana Court of Appeal in Kwame Apata v. Roberts in judgments that were delivered on 26th February 1980.

In Apata's case the learned Chancellor referred to Hastings & Folkestone Glassworks Ltd. (1948) 1 All E.R. 711 and to R. V. Fussel (1951) 2 All E.R. 761. He said at page 9 of his decision:

'the Court of Appeal, however' " –

and he referred to 1948, 2 All E.R. page 1013 -

" 'reversed the trial judge's view holding that the offence was none the less indictable because if the prosecution chooses, it can proceed with it indictably: that the material time to consider is when the offence was committed and before the prosecution has elected to proceed summarily or secured a conviction on that basis'.

The Chancellor firmly laid it down that the rule in the Hastings case is applicable to any law in which so-called 'hybrid offences' are framed.

See also the important decision of Guildhall Justices ex parte Marshall (1976) 1 W.L.R. p. 335 on the indictable nature of Exchange Control Offences.

It is a fact that since the 2nd November 1978 sections 4, 5, 6 and 7 of the Administration of Justice Act 1978 have legally applied to indictable offences including

hybrid offences. This is the factual and legal situation at the present moment.

It will therefore be legal fiction and repugnant to common sense to say that these sections never had any application to the hybrid offences as the Bill proposes to enact. Deeming sections never to have had application does not mean that they had not been validly enacted.

To show the importance and substance of" –
they are talking about the Administration of Justice law being amended: but the memorandum goes on:

"In the conspiracy trials that are now in progress objection has been taken to the jurisdiction of the Court -- "

The Speaker: Hon. Member Mr. Feilden Singh, we have to be very careful how we are going to deal with that aspect of the matter because our Rules are very clear, that if a matter is sub judice we cannot make reference to it here. So, if you are going to deal with that case, be very careful as to what will be said or discussed.

Mr. M.F. Singh: Thank you very much for your observation, Mr. Speaker. I am quite aware that apart from being Speaker you are an Attorney-at-Law and I will recognise and adhere to your observations in the matter. The reference is merely a passing one.

". . . it has been submitted that the prosecution cannot now elect to proceed summarily against a person on commission of hybrid offences.", and that is quoting Justice of Appeal Luckhoo in his Judgment on this point at page 10 of the Appeal Court Judgment. It is contended and this is reported in the papers, that the trial and the submissions were riddled with irregularities and illegalities in view of the sections sought to be repealed.

If these submissions so confidently made are correct, it will be a travesty of justice for a legislature to pass a law in an endeavour to remove the legal bases on which they are made. It may destroy the defendant's right to discharged or the charges quashed.

It will be immoral and in the Bar Association's view will infringe the defendant's constitutional right to a fair trial.

The Bill is intituled an Act to clarify procedure. The explanatory memorandum of the Bill postulates the following.

'Clause 2 of this Bill seeks to clarify the procedure relating to the summary trial of indictable offences by making it clear that the requirements of the procedure were not intended to apply to any case in which proceedings for an offence could have been commenced by way of a summary charge under any law which provided for proceedings in respect of the offence to be brought either by way of indictment or by way of summary charge.'"

The memorandum goes on.

"While it is true that explanatory and declaratory Acts are free from the general presumption against retroactive effect"

and there is a reference to Odgers on the Construction of Deeds and Statutes fourth edition at page 204, the memorandum says it cannot be said that this Bill is either explanatory or declaratory. I would like to quote in support of that, what is said in the same Construction of Deeds and Statutes by Odgers Fourth Edition on page 198. The nature and ordinary way to regard statute is as affecting something in the future and as not affecting what has gone before. Prima facie says L.J., an Act to deal with future and not with past events. If this were not so, the Act might annual rights already acquired – I will come to the question of rights already acquired in a moment – while the presumption is against the intention. In the same case, Eyre L.J. said: There are numerous cases which clearly show that the Court leaned against so interpreting a statute as to deprive a party of an accrued right. I would like this to be remembered because I will deal with accrued rights in a moment. That is the essence of our objection, rights which are already accrued and which are sought to be taken away by the retroactivity in clause 2.

"The Bill seeks to reverse the ratio decidendi in Apata's case and in particular to destroy the entitlement of the seventeen defendants in the conspiracy trial to be discharged, which entitlement has, it is argued, already accrued.

The effect of repealing a statute is to obliterate it completely from the records of the Parliament but rights acquired under a statute will not be taken away by the repeal of

the statute conferring them, as this Bill seeks to achieve. Moreover, the construction of a penal statute must be strict.

There are several other charges for hybrid offences which are pending under the Firearms Act and National Security Act and in dangerous driving cases, and it is submitted that those persons charged are also entitled to take advantage of any blunder by the prosecution in the laying or trial of the charges.

It is unknown in the democratic world where"

I think the Hon. Attorney General referred to it,

"Anglo-Saxon jurisprudence is practiced for sections of the law on which accused or defendants validly rely, to be blotted out or effaced ex post facto merely in order to have criminal convictions recorded against them. In criminal jurisprudence this legislative counter-attack is known.

For these reasons the Guyana Bar Association opposes the retroactivity expressed in the Criminal Law Bill of 1980 as unjust, unconstitutional and a deviation from the norms of criminal jurisprudence."

That was the position of the Bar Association before its meeting with the Hon. Attorney General on Monday morning. What is its position today? There was an emergency meeting this morning at a quarter to nine. I did not attend it. [Interruption.] I was busy preparing my speech for Parliament this afternoon. That is why. I am the only lawyer in the Opposition as I see it – [Interruption.] - and it is therefore on my shoulders that lies the responsibility as a practicing lawyer to put forward the views of my Association. They are also my views and the views of my party.

Mr. Speaker, I spoke with a member of the Executive of the Bar Association. He told me that they had received and they had read the proposed amendments by the Hon. Attorney General delivered to them yesterday afternoon. These were discussed by the Guyana Bar Association at its emergency meeting this morning, and I have been informed by this official that several motions were unanimously passed after consideration of the proposed amendment. One motion unanimously passed was protesting against this Bill and rejecting the proposed Amendment out of hand. It was said that the amendment only made matters worse. The magistrate now has power to pronounce as to whether a trial is fair or not.

This seems to be in anticipation of and to meet any constitutional motion to declare that a trial was not fair. So this makes it worse. The magistrate is not compelled to restore existing rights. He merely has the power to consider the position.

I am told that also unanimously passed was a motion withdrawing the services of all lawyers of the Guyana Bar Association until the 10th of April as a protest against this legislation. [Interruption.] And lastly, I must say this, because I have to report the factual position, that the Association also unanimously passed a Motion expressing no confidence in the Hon. Attorney General. [Interruption.] I have to report this because I am speaking on behalf of my Association and on behalf of myself as a Parliamentarian. This is how strongly the Guyana Bar Association feels about this Bill. I know of the two meetings before. The decisions were unanimous. I am told that the decisions today were also unanimous.

Mr. Speaker, in case there are those who have any doubts as to what the Bill seeks to do as regards, for example, the marathon case, referred to in the memorandum, presently before the courts, and which indeed the Hon. Attorney General referred to, and we know the matter is sub judice, all we need to do to see how the Bill affects these matters is to look at the front page of the Guyana Chronicle of Tuesday, March 25th, 1980. Under the caption "Adjourned", it says that Senior Magistrate Oslyn Small adjourned hearing of the $7.6 million foreign exchange conspiracy trial on an application by the Director of Public Prosecutions, Mr. Mannie Romao, who said that he had seen a Bill which, when approved by Parliament, would affect the trial. In this application for adjournment, the D.P.P. added that when approved, the Bill would have an interpretation on the provisions of the Administration of Justice Act 1978. Hearing was fixed for 8th April, 1980. [Interruption.] That is not the point. Justice is the point. There are the stark facts that stare us in the face. I do not see any denial of this. I do not see anything in subsequent newspapers that the D.P.P. was misquoted or anything of that nature. In fact, I am told that people, who were in Court, confirm that this report was in fact accurate, so, if we had any doubts as to what the legislation will do, it is shown to us here in the Chronicle newspaper.

[Mr. Singh continues]

And the Magistrate has been asked not to consider the submissions because this law when passed will have an effect on it.

2:55 p.m.

As an example, let us examine what this legislation when passed will do, for example, to this case, because the point has been raised here.
The case is brought against several defendants under the Exchange Control Act, that is Chapter 86:01. The offence is under paragraph (1) of Part 11 of Schedule 5, the penalty is prescribed under paragraph –

The Speaker: I think, Hon. Member Mr. Singh, this is the very point I was saying. We have to be very careful. We are now going into the merits of the case, the charges laid, the submissions made and whether the decision will be fair or not. I think we have to be very cautious in reference to the case. Maybe generalisations –

Mr. M.F. Singh: With all due respect to you, sir, I was merely quoting the sections under which the case was brought and the offence. I am dealing with hybrid offences. I am not dealing with the merits of the case. The Hon. Attorney General referred to the case in relation to hybrid –

The Speaker: The Hon. Attorney General referred to the case only by mentioning that there was presently this case and he was very careful not to go into the charges and saying that it was alleged that this Bill was brought for the specific purpose of rectifying certain errors, procedural, in relation to this matter. That is all. I think you are now quoting the sections under which the people were charged and dealing with the submissions of the lawyers which is a different thing.

Mr. M.F. Singh: With all due respect to you, sir, I suppose I am entitled to differ. Parliament is differing from the Appeal Court. With all due respect to you, I am merely quoting the section under which they were charged and the penalty. I am not dealing with the merits of the case. I am dealing with the question of hybrid offence and the ruling of the Appeal Court which is what we are dealing with here.

The Speaker: You read a whole memorandum. I was wondering whether you would have read a whole book. You have been allotted 30 minutes; three minutes to go.

Mr. M.F. Singh: I think it is accepted, sir, that the Apata decision is binding. I think the Attorney General accepted that the Apata decision is binding law at the present moment. I gather that was accepted by the Hon. Attorney General and it is a question now of Parliament changing what is the existing law because it thinks otherwise. So let us read what is the existing law under the Apata decision.

The Apata decision was a decision in which the accused was charged for an offence which is a so-called "hybrid" offence. Since it was a so-called "hybrid" offence the Court ruled that any so-called "hybrid" offence is, for the purposes of the Administration of Justice Act 1978, an indictable offence and as an indictable offence the provision as to the trial of indictable offences summarily under the provision of the Administration of Justice Act 1978 must be strictly applied. And what are those provisions? I think it is important for us to read some of the provisions which must apply to so-called "hybrid" offences being tried summarily and let me quote from section 61 (6) of the Summary Jurisdiction (Procedure) Act as contained in section 4 of the Administration of Justice Act 1978:

> "(6) Where the court commences to deal summarily with any indictable offence as aforesaid and the accused pleads not guilty, the court shall order the prosecution to file with the clerk of the court at least seven days before the time when the hearing is to commence copies of every statement by every witness whom the prosecution intend to call at the hearing of the charge; but the court may adjourn the hearing to such time as it thinks fit to allow further time for such copies to be filed or, if filed before such adjournment, in order that the hearing should not commence earlier than seven days after the filing of such copies."

The Speaker: Time!

Cde. N. Persaud: I beg to move that the Hon. Member be given fifteen minutes more to complete his contribution.

Cde. R. Ally: seconded.

Question put, and agreed to.

Mr. M.F. Singh: Thank you, sir. Subsection (7) states:

> "(7) The accused, whether admitted to bail or not, shall be entitled, at his request, to be furnished by the clerk with one copy of each statement of which copies have been filed in pursuance of subsection (6) and the remaining copy thereof shall be retained by the clerk

for the use of the court."

Very substantive rights are given to him. I forgot to read the very beginning, the first one where he is charged summarily in respect of a hybrid offence which the Appeal Court has said is an indictable offence:

"(1) Where a person who is an adult is charged before the court with any offence specified in the First Schedule"

And that includes indictable offence –

". . . having regard to any representations made by or on behalf of the prosecutor or the accused in the presence of each other" –

Let us stop there a moment. Where he is charged so summarily, the prosecutor has the right to make representations as he also has a right to make representations of whatever nature whether he agrees to be tried summarily or he may make representations that he does not want to be tried summarily but he wants to be tried by a jury. That is a right. Where he is charged summarily in respect of a hybrid offence he has the right to make representations of that nature. I continue:

"having regard to representations made by or on behalf of the prosecutor or the accused in the presence of each other, the nature of the offence, and all the other circumstances of the case (including the adequacy of the punishment which the court has power to inflict) may," –

that is, the court may –

"subject to this section, deal summarily with the offence, and, if the accused pleads guilty to, or is found guilty of, the offence charged, the court may sentence him to any punishment or punishments to which the High Court could have sentenced him if he were convicted of such offence in the High Court:"

The point I want to make there is: he is entitled to make representations, he is entitled, if the court proceeds summarily, to copies of statements by the prosecution witnesses who will be giving evidence against him.

Now, let us see some important parts of this decision. I think it is accepted that the court has definitely ruled that a hybrid offence is an indictable offence. I think the Attorney General has accepted that is the ruling of the court and that is present law. I will not labour that point therefore. I will merely go on to quote a part which I think is very, very important in the present Bill, that is, towards the end of the Judgment on page 17 of the Judgment written by the Chancellor. The Court of Appeal comprised Justice Crane, the Chancellor, Justice of Appeal R.H. Luckhoo, Justice of Appeal K.S. Massiah. There were three of them. This was the

Judgment which was signed by Chancellor Crane and Justice Massiah. There is another Judgment which agrees with them but separately by Justice R.H. Luckhoo. This Judgment by the Chancellor and Justice Massiah says:

"Before 1978, save and except for section 80 of Cap. 47:01 all hybrid type offences were unaffected by the provisions of the repealed section 61(1)" This point the Attorney General made. That is why it was at that time possible for a Magistrate to try hybrid offences summarily and apart from section 61(1) of Chapter 10:02 even though stricto senso they are, as we have seen, indictable offences, it was the undoubted right of the prosecutor formerly to have a magistrate proceed summarily in the case of a hybrid offence apart from the provisions of the repealed section 61(1). That right has now been abrogated by the clear provisions of the substituted section 61. Not by the provisions, but by the clear provisions of the substituted section 61. All indictable offences against any law are now within the embrace of section 61 of Chapter 10:02 as substituted.

[Mr. Singh continues]

3:05 p.m

Now it is apparent to me that the point that has been overlooked in this case is one of constitutional importance and I am quoting the Appeal Court now, I would like this to be very carefully listened to because a point of constitutional importance has crept into it and it is concerned with provisions that are entrenched to secure the defendant the protection of the law, that is, to secure him the benefit of a fair hearing as mentioned by the Hon. Attorney General.

Having reached the conclusion that the Act of 1978 did apply to the case, it was inevitable, I think, that we should consider the magistrate's non-compliance with section 61(6) as a matter that went to the very foundation of justice. What is 61(6)? Section 61(6) is the section which says that you must file copies of all statements by prosecution witnesses so I think we should consider the magistrate's non-compliance with section 61(6) as a matter that went to the very foundation of justice. That section requires that the magistrate "shall" when he commences dealing summarily with all indictable offences against any law, after taking a not-guilty plea from the defendant, order the prosecution to file with the Clerk of Court at least seven days before the hearing is to commence copies of every statement by every witness whom the prosecution intends to call at the hearing of the charge.

In my view the expression "shall order" in section 61(6) of the Act of 1978 in mandatory and fundamental to a fair hearing of the proceedings before the Magistrate. The section is mandatory. You have to do it. The magistrate under the proposed amendment does not have any such mandatory right or mandatory obligation. I think it was obligatory on the prosecution to file a statement with the Clerk of the Court because, although the offence is one triable summarily before the coming into operation of the substitute section 61(1), the offence was committed after section 61(1) was substituted and came into operation. I consider the magistrate's failing to order the prosecution to file with the Clerk every statement by every prosecution witness, not only renders the trial a nullity but attaches the stigma of a non judice to the proceedings.

The matter does not rest there however. It goes much further, says the Appeal Court. Article 10, sections (1) and (2) (c), of the Constitution of Guyana, entrenches in no uncertain terms that of which counsel for the defendant had complained. Counsel did not cast the submission in a constitutional move and article 10, sections (1) and (2) (c), laid it down that: "If a person is charged with a criminal offence, then, unless the charge is withdraw, the case shall be afforded a fair hearing with in a reasonable time by an independent and impartial court established by law." And then, "(2) Every person who is charged with a criminal offence – (c)

shall be given adequate time and facilities for he preparation of his defence;". The quote goes on:

"I have arrived at the clear conclusion that there was a denial of the defendant's constitutional right to obtain a fair hearing occasioned by the magisterial error in denying him time and facilities for the preparation of his defence when it was considered that the Act of 1978 did not apply, and it was the prosecutor's and not the magistrate's right to elect summary trial. The ruling, in my opinion, that the defendant was not entitled to the statutory statements by prosecution witnesses at his summary trial undermined the criminal process and justice of the trial. And I say without hesitation that the defendant was not only handicapped but constitutionally handicapped by not having these statements to fashion whatever defence he would have cared to proffer".

That is the judgment and this judgment was in fact in concurrence with the judgment of Justice of Appeal R.H. Luckhoo. He completely concurred with the judgment of the other two judges. The matter does not end there. In the High Court when Apata's lawyers went to the Chief Justice for bail, the Chief Justice agreed with the submissions made by the representatives of the D.P.P.'s office, that he did not have jurisdiction, that the offence was an indictable one and that it was the Appeal Court that had jurisdiction.

The matter was withdrawn and the Chief Justice told them to go to the Appeal Court, the Court of Appeal is the right forum. However, when it went there, I understand the Office of the Director of Public Prosecutions changed its stand and said that the Appeal Court did not have jurisdiction. Anyway, we know that the Chief Justice agrees with his decision, the Chancellor agrees with this decision, Justice of Appeal Luckhoo agrees with it, Justice of Appeal Massiah agrees with it. All of them agree with it.

What is the present law in Guyana? I quoted the decision. The Appeal Court decision is binding law, therefore in respect of any so-called hybrid offences committed after 2nd November, 1978 when being taken summarily, the accused has the right under the Administration of Justice Act to make representations to have a trial by jury. He may not get it but he may get it. He has the right to make representations to either submit to summary trial or to ask the magistrate that he be tried by jury. The magistrate might consider the case so complex that he will accede to the representations made by the accused, but it is a right which he has at the present moment. This the appeal Court has referred to. He also has a constitutional right, as the Appeal Court said, which is the existing law, to have delivered to him statements by the prosecution witnesses. Those are existing rights.

To say that the Bill is to clarify the procedure is clearly wrong. It is changing the existing law. It is taking away existing rights which the Appeal Court has pronounced upon. To say as

they said in the Chronicle newspaper of 22nd March, 1980, that the Bill is intended to clarify the procedure believed to have resulted from a misinterpretation of the Administration of Justice Act 1978 is an insult to our Appeal Court. The Appeal Court says those were the clear provisions of the Act. How can you say that these goodly gentlemen in our highest forum misinterpreted the law? That I think is impudence on the part of the newspaper or whoever wrote it. We are changing the law and we are taking away substantive rights, constitutional rights, according to the Chancellor. The accused will no longer have the rights which the Appeal Court says he has under the 1978 Act. Can we take away retroactively such rights, such constitutional rights? Surely, this will offend against article 10 of the Constitution.

*[*Mr. M.F. Singh continues*]*

I admit that Parliament can change the law from now but not to destroy existing rights. Sure, Parliament is supreme. Parliament is soverign, they can change it but do not take away rights that exist at the present moment.

3:15 p.m.

The Speaker: One minute more.

Mr. M.F. Singh: Is it the right, Mr. Speaker, I ask you as an Attorney at Law, that a lawyer who makes submissions based on what the Appeal Court tells him is the existing law today, should have those submissions all wiped away by retroactive legislation? He is right today, but tomorrow morning, when this Bill is passed, all his submissions are wrong. Is that right?

The Speaker: Hon. Member, Mr. Singh, I am right now, because it is 15 minutes past 3 o'clock. [Interruption.] No. You cannot move that because the Motion was that he would wind it up. The Motion that was put was that he be granted 15 minutes more to complete his contribution.

The Prime Minister: Cde. Speaker, I beg to move that the Hon. Member be given 15 minutes more.

Mr. Speaker: I do not know how you, Cde. Prime Minister, could move that when the Motion that was moved and was accepted by this House was that he be given 15 minutes more to complete his contribution. [Interruption] Well, 5 minutes more Mr. Singh. We will put back the clock. [Interruption.]

No, I am not doing that.

Mr. M.F. Singh: Mr. Speaker, the proposed amendments, in my humble submission do not remedy the complaint of the Bar Association. The proposed amendments do not remedy the retroactivity. In any pending case, an accused charged summarily with a hybrid offence committed after the 2nd November, now has the right to statements by the prosecution witnesses. When this Bill is passed, even with the amendments he will have no right to demand statements by the witnesses or to make representations for a jury trial. He has the right now, the Appeal Court says he has got it now. The magistrate will merely have the right to decide if he is being tried fairly or not. The magistrate is subjective, whatever he decides, that is so. The Appeal Court is saying that is not a matter for subjectivity of the magistrate, what he thinks, whether it is fair or not, it is a legal right given by the existing law and the Bill is taking away that existing legal right for him to make representations for a jury trial, for him to make representations to have the statements by prosecution witnesses. Therefore, the proposed amendments do not cover

the objection to retroactivity. Under the proposed amendments, he will be entitled to recall witnesses and all the rest of it, but the magistrate is not being given the power to specifically give him back the rights which the Appeal Court says he has at the present moment.

It is no use our saying that the Appeal Court made mistakes, or that the draftsmen made mistakes. It is a well-known legal maxim that if there is any doubt, the accused must have the benefit of the doubt. This has nothing to do with merit, he must get the benefit of the doubt, this was said by the Chancellor himself on page 15. "If an Act of Parliament is so drawn that there are ambiguities, the benefit of the obscurities should be given to the accused person."

Finally, I want to make it quite clear, I am not dealing with any particular case, I am speaking in respect of any accused person being presently proceeded against summarily in respect of any hybrid offence committed after the 2nd November, 1978. He is now legally entitled to make certain representations and he will not in fact be entitled to those existing rights after this Bill is passed with the amendments.

I would like, sir, to express the objection in respect of this Bill in what one learned Attorney-at-Law said to the Bar Association. The new legislation is particularly innocuous, iniquitous, because it substitutes trial by legislation for trial by judicial inquiry governed by the rules of evidence. The legislation removes the important element of predictability from the law. How do the lawyer and his client know that a submission which they so confidently relied on today would not be wrecked by a legislative cat put among the judicial and magisterial pigeons tomorrow. The Act would give the appearance of an initial move intended to make redundant the legal profession and the magistracy and the judiciary. It is only fairly to say that those were the words of Mr. Cleveland Hamilton, Attorney-at-Law, former Mayor

[Interruption.] Didn't he compose our National Anthem? Yes.

The Speaker: Time. Cde. Field Ridley.

Cde. Field Ridley: Thank you very much, Cde. Speaker. I can assure you that I want to make a very short contribution to the debate this afternoon because I had thought when the Hon. Member Mr. Fielden Singh had risen to his feet to participate in the debate, that debate would have been taken some degree further than it was when the learned Attorney General had left it. I find myself now having to congratulate the Hon. Member Mr. Feilden Singh for the erudite way in which he did some readings for the House. We, I think, were very grateful for the kind of feeling he put into reading the memorandum prepared by the President of the Bar Association and by various bits of the decision that had been handed down in the case concerning Apata.

I believe, Cde. Speaker, that we in this House are particularly fortunate in so far

as the kind of erudition that is available to us in the person of the Attorney General and Minister of Justice and I think it was a commentary on the kind of contribution he made to the debate that Cde. Fielden Singh, I beg your pardon, Mr. Feilden Singh, found himself at a loss to contribute to the debate. It had reminded me, I do not know how many other Members of the House remember, or you Cde. Speaker, a rather malicious radio programme a few years ago. I think it was called "Beyond the Brink" or something like that, in which they sought to prevent to the public a debate in Parliament and at that time they asked the members of the public to listen to the views of the Hon. Member on the other side. And then there was nothing. I thought it was a rather scurrilous programme myself, but perhaps, I understand now some of the problems they had. When Cde. Singh, Mr. Singh, I am sorry Cde. Speaker, I don't know how I fall in this lapsus of ideological nature, when Mr. Feilden Singh stood up and said that he was a member of the Guyana Bar Association and therefore he proceeded to present their views, I thought that he was rather in a fortunate position in being able to describe himself as a member of the Bar Association. I myself had wished that I were in that position and in fact I did everything that I could do to put myself in that position, I paid my subscription very early in the year. It is true, I got no receipt but my subscription was not returned. I gathered they have been having meetings recently. I have not been invited to those meetings, I am not sure what is the position. I am not accusing them, of course, of inefficiency, or partiality, or a desire not to have me. I am not accusing them of immorality, perhaps they have decided I am not entitled to be a member and perhaps they have just forgotten to return my subscription, and perhaps too, it is good that they are able to say that certain resolutions have been passed unanimously because I can assure you, Cde. Speaker, that had I been there, that unanimity, I am sure would have been exposed.

Cde. Speaker, why I think that it is useful for me to contribute and why I had the modesty to dare to speak after the kind of legal discussion that we have benefited from is because I myself have been trained as a lawyer. I have practiced for some time and then I have not practiced for a very long time and I think those years away from practice have given me the opportunity to look at the law perhaps a little more as the layman sees it. Perhaps I am a little closer to those gentlemen and gentlewomen, who used to meet under the big tamarind tree in the days when I practiced, to discuss the outcome of any particular case that occupied the attention of the court and to predict pretty accurately what would be the outcome. In fact, many of them knew much more law than some of the people who proposed to practice.

[Cde. Field-Ridley continues]

But it seems to me that we are dealing with an issue which does involve some amount of technicality. It really is a very simple matter to my mind.

3:25 p.m.

If one looks at the whole issue from the point of view of the layman, I think one needs to ask: What is it that a member of the public, what is it that the citizen demands of the legal system of his or her country? What is it that they are looking for? I believe that the ordinary citizen wants to be assured that those who are guilty of an offence will be brought to justice and be made to pay the penalty. I believe the ordinary citizen wants to know that those who are innocent have their innocence proclaimed to all their compares and the people within the country and I think the ordinary citizen also wants to know that everyone gets a fair trial. I think these are the three things that concern the ordinary citizen.

I myself have been in discussions when ordinary citizens are alarmed, perplexed and made uncertain because many people who seem to have committed an offence have been freed on what the layman calls “a technicality”. I think that all those who have had training in the legal profession are aware that some of these technicalities – if I can use that word in a layman sense – that many of them are necessary for the protection of the citizen but there are times when some of these seem to get in the way of the smooth flow of justice.

Also there is a question of what a particular law means once it has been written. I think all of us must pay special tribute to draftsmen within this community who, against great, great odds, against shortages which we have heard of in this House time and again, have sought to keep our legal system going, have sought to meet the demands that occur almost from day to day, and have sought to legislate in a way that keeps in touch with the social, political and other changes that occur in our society. This is a big task because, Cde. Speaker, I am sure you yourself will concede that the kind of legal training that we have had, particularly those who were trained in Britain, and certainly in my day that was essential if one was going to be what was then a Barrister, that kind of training has built in it a tendency towards conservatism. Lawyers are trained to see what has been the position before, what are the precedents, and guide their future on the basis of that.

In a society like ours where there is change, I think Members on both sides will concede that there has been a lot of change. Some people might say the change has not been fast enough, but if we are building a socialist society and we have started from a capitalist society, there is

need for change and this change must be reflected in the legal system which, in a way, fashions the framework in which we live.

In that situation the draftsmen have been trying, as I said against great odds, to keep abreast of the demands of the changing situation. One problem that has arisen in this case, but not at all for the first time in this country or for the first time in the world, has been a situation where the draftsmen have done a particular job and it comes to be interpreted in the Courts. The interpretation has come out – and I would like to say that I think that we are indebted to the Justices of the Court of Appeal for the kind of argument and thought that they put into their reasons. I think we have come out with a situation where now the law as laid down by the Court of Appeal is a little different from that which I believe the draftsmen sought to achieve in that we have a position which, as the Attorney General said, was unforeseen and unintended by Parliament.

That is not an unusual situation. It happens in countries all over the world and particularly for those of us brought up in this kind of system based, however much we might like or dislike it, on the Westminster approach to Parliament. We are familiar with this sort of thing happening and that is why the Parliament in Great Britain has been described and the highest court of the land because it does have a role and a function to play to ensure that Parliament, where there is lack of clarity in the law, in the system of precedents in the law as laid down in the Courts, when there is a lack of clarity coming out of a situation, that Parliament makes that position clear.

It seems to me that all we are attempting to do here is to make very clear what was intended by Parliament when it passed that bit of legislation. It is not a question of enacting new law; it is not even to my humble mind a question of retroactivity or not. It is merely a question of saying that this must be understood as having been the position. In other words, to my mind, even if you did not have Apata's case, something else would have or could have brought to mind the need for the clarification of this particular bit of legislation, the 1978 Act.

In saying this I am certainly saying that the Court of Appeal was quite right in the way it approached its decision making and on the face of what it examined and how it saw the matter, the decision of the Court of Appeal was consistent with the legislation as the Court interpreted it. I am sure that everyone here would concede that the Court of Appeal has laid down what then is the law in terms of that particular bit of legislation but particularly because that has happened – but in my view even if it had not happened – the need to make clear what turned out to be unclear, rests with this Parliament. It is the function of Parliament to guard over the legislation of this country and in meeting here this afternoon, this is what we are attempting to do.

The Hon. Member Cde. Feilden Singh spoke about rights being taken away from the citizens. Did I say "Comrade" again? Cde. Speaker, I am sorry. I would like to apologise to the Hon. Member. Mr. Feilden Singh spoke about rights being taken away from the citizen. We are in Parliament and we are looking at legislation. He talks about the right to make certain requests but he himself would concede that ultimately the magistrate's discretion is what operates to decide whether he will be given a summary trial or an indictable trial, and ultimately that is the position that has been laid down.

What I think we need to look at is how Parliament meets the basic needs of citizens in their demand for stability, in their demand for certainty, in their demand for smooth flow of justice. Where the law is uncertain or unclear, there can be no stability, there can be no certainly, there can be no smooth flow of justice and therefore it seems to me that this honourable House has a firm obligation to deal with this matter at the very earliest opportunity when the situation is brought to its attention as it has been brought to our attention.

I notice that there has been some agitation about the Bill and particularly among members of the Bar Association. I know that the Hon. Attorney General put down the matter for debate with your agreement, Cde. Speaker, from Monday to Friday and I think during that period the Bar Association has taken the opportunity to have meetings, according to Mr. Feilden Singh, to discuss the matter. I understand from Mr. Feilden Singh that he understands from a member of the Executive – I have a feeling that his information could not be correct if I am to think of what is happening today – that they have made certain resolutions, one of which is that the Bar Association will be withdrawing the services of the members of the Association until April 7th. I am not even sure what that means.

Who is the Bar Association in relation to controlling the services of members of the Bar? What is the relationship between the members of the Bar and the Bar Association in terms of carrying out their relationship and their obligations to clients, to whom they have a special relationship as we all know. Are they not in breach of that, I wonder, special relationship that exists between attorney and client if a client briefs that attorney-at-law to represent him in Court and the attorney-at-law, for matters quite extraneous to the client's interest, chooses not to appear before the court? I would hope, Cde. Speaker, that the Magistrates and Judges have their clear function to perform and that nothing will impede them in the performance of that function whether certain members on the instruction of any Association decide not to be there to help the Court with the exercise of their own tasks.

I do not even understand why it is that the Courts must be made the subject of this kind of action. Surely, I thought what the Bar Association was saying was that it is upholding the decisions taken by the Courts of law and it seems to me that if it has been expressing solidarity

with the Courts of law, then why is it withdrawing its services from the Courts of law. [Noise of fire engine.] Cde. Speaker, I had not thought that the matter was –

The Speaker: I do not think you should compete with that.

Cde. Field-Ridley: I had not realised that the matter was as burning as all that. [Pause.]

[Cde. Field-Ridley continues]

3:35 p.m.

Yes, Cde. Speaker, as I was saying, I do not understand either why some clients, who it seems to me are always at the receiving end of action like this, should be made victims for some action planned by the Bar Association. I respect the legal association, the legal colleagues in this country, but unfortunately there is not perfection anywhere as there is not in the process of drafting any bit of legislation. I have heard so many complaints from members of the public of the kind of service they are given by some members of the profession, the kind of fees they are charged by some members of the profession, the kind of absences that they are subjected to by some members of the profession. To me, this kind of step does not help in that situation.

Finally, I would just like to say that Mr. Feilden Singh conceded the right of Parliament to change legislation. I would like to say that if he concedes the right of Parliament to change legislation, then he would also concede the right of Parliament to clarify legislation. And I believe that since he relied on the arguments of the Court of Appeal and of the Bar Association, that those arguments were not just adequately but certainly convincingly dealt with by the Hon. the Attorney General. I would like to say that if only from the point of view of the members of the public who are not really concerned with or perhaps do not even understand the meaning of a hybrid offence – what is that – nor even concerned with the technicality, I think from the point of view of the interest of the public, and we know that sometimes members of the public have been used against their own interest, and I suspect in this case an attempt will be made to do this, it is in the interest of the public for this House to pass the Bill that lies before us.

The Speaker: Comrades, I would like to know if we are going to sit right through or we will take the Suspension. *[*Interruption.*]* It is up to all the members to decide. It is proposed that we sit right through instead of taking the Suspension.

Question put, and agreed to.

Motion carried.

The Speaker: Cde. Collymore.

Cde. Collymore: Cde. Speaker, I rise on behalf of my party to take very strong exception to the Bill now before the House. Cde. Speaker, we are of the view that the Bill is very strongly politically motivated and it is more or less directed at certain cases which could be deemed to be politically inspired and arising from political incidents within the country. While I am on my feet, I should like to say that the contribution made by the member for the United Force was very good – the Liberator Party. In fact, we would say that it is his best contribution since he has been

in this House. [Interruption.] It is, indeed, that he has put the matter very concisely and in depth and this is a great departure from the cosmic type of approach with which he has been boring this House for many years.

The Speaker: You cannot say that he has been boring this House. No, I would not have that. [Interruption.]

Cde. Collymore: Entertaining. Cde. Speaker, as I said, the Bill is aimed at certain political opponents of the regime and our good friends on the opposite side have seen fit to bring the new Bill so as to repeal certain sections of the Administration of Justice Act. This is where retroactivity comes in; this is why the Bar Association is complaining, and Cde. Speaker, we would like to associate ourselves with the views expressed by the Guyana Bar Association. I had intended to make some quotations from the Bar Association's memorandum but seeing that this was dealt with completely, I will not go into that so my contribution will be very short.

Cde. Speaker, we feel that the Bill, with all deference to the learned Minister of Justice, is a vicious piece of legislation. It has actually subverted the pillars of justice and you, Cde. Speaker, as an attorney would know this. Cde. Speaker, why is it they are saying it is retroactive? Why is it we are contending it is vicious? It is because of what the Constitution says. Then I remembered Mr. Feilden Singh alluded to article 10 of the Constitution and the Minister of Justice also alluded to it. He also referred to paragraph 4. Paragraph 4 talks about retroactivity and it goes on in paragraph 5 to say certain things. Paragraph 5 would tell you why it is that the Government has now seen fit to repeal certain sections of the Administration of Justice Act by this Criminal Law Bill 1980? What does article 10 paragraph 4 say?

> "No person shall be held to be guilty of a criminal offence on account of any act or omission that did not at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is more severe in degree or nature than the most severe penalty that might have been imposed for that offence at the time when it was committed."

Cde. Speaker, we came here and we saw that the Minister of Justice had made another amendment. He has amended the Bill to say that there is no increase in severity of penalty in the Act to be attracted by the person so charged. But we go on to paragraph 5:

> "No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at that trial for that offence, save upon the order of a superior court in the course of appeal proceedings relating to the

conviction or acquittal."

The lawyers are saying that they have approved material for making legal submissions on no case and it is purely because of the fact that these submissions will have been challenged in a court of law that the Government through the Minister of Justice has come to this Parliament to ask for amendment to the Justice Act which is couched in terms of a so-called Criminal Law Bill 1980. I also wanted –

The Speaker: What do you mean by that Cde. Collymore, "a so-called Criminal Law Bill." I know there is a Bill here. It is not "so-called." It is a Bill.

Cde. Collymore: Cde. Speaker, I also wanted to quote a point from this newspaper. This quotation says that the D.P.P. is actually telling the magistrate that they must wait on this Act before they can listen to legal submissions. This is unthinkable, immoral. I think that Parliament, as you said here, is supreme and the most supreme court in the land but then the Parliament cannot make a law in such a way that it can be retroactive so as to change certain arguments that already have been accumulated in the court of law. It is making the legal process a farce.

Now let us just suppose hypothetically that after this law has been passed and assented to that the lawyers go back again and build up new legal submissions. Are we going to have the Hon. Minister of Justice coming here with another amendment, another Bill, to further amend either the Criminal Law Act or the Justice Act? This is ridiculous and this is our complaint and the complaint of the Guyana Bar Association. I do not need to quote what the D.P.P. has said. It is quite ridiculous and absurd whether we quote from the Westminster type of jurisprudence or the socialist type of jurisprudence. It is intolerable and I do not think we should tolerate this on this side of the Table. We oppose Cde. Speaker, we are calling, therefore, for our good friends on the opposite side in the interest of fair play not to proceed with the Bill.

Now Cde. Speaker, just another point we would like to make is this, that the Bill now before this House is yet one more step towards completely scrapping our jury system. Now in the first place, the Government enacted the Justice Act because it could not secure convictions under the jury system when such convictions were being sought on a political basis. Let us take the case of Arnold Rampersaud. On three instances they tried to hang that innocent person and it is only because of the jury system that he was not sent to the gallows; he would have been dead today and buried. Our good friends on the opposite side even removed the venue of the case. It should have been heard on the Corentyne but it was brought to the city and yet they could not get a conviction on three occasions. That is why they went to the great pains to draft the Administration of Justice Act.

Cde. Speaker, we are very concerned about this and we feel that this Bill before Parliament is a further instance where justice is being subverted. Justice is being subverted to the detriment of the people who expect to have their cases heard fairly. It seems therefore, that our good friends will not make any overt attempt to scrap it, they will not pass a Bill saying that they will scrap the jury system. They will have it as a show piece, just as the Constitution is going to be a window dressing as they proceed to administrative abuses. It is going to be a show piece when these so-called high court cases are supposed to be tried by judge and jury because in the final analysis if a case is very serious, the accused person will depend on being tried by his peers and not by a so-called tribunal. These magistrates are actually going to be tribunals. Whereas, twelve persons will have the power to convict, in such cases only one person, who is subject to influence, will sit.

Cde. Speaker, I also would like to say that we on this side of the House associate ourselves with the motion which was adopted by the Guyana Bar Association expressing no confidence in the Attorney General and also no confidence in the Director of Public Prosecutions. These are two key legal officers of the Government. One of them, the Minister of Justice, is the chief draftsman for this National Assembly on the Government side and the D.P.P. is the chief law enforcement officer. Today, we find the Bar Association opposed to them. It goes a far way towards what is transpiring in this country. Cde. Speaker, as I said before, many of the points which I wished to make were made by the Hon. Member Mr. Feilden Singh and this is why we congratulate him. He has done a very good job. My contribution is very short and I wish to say that we denounce the Bill, we oppose it mainly because of its retroactivity and mainly because of the immoral nature of such a piece of legislation. [Interruption.]

The Speaker: I think if this is what is going to go on, I will suspend the Sitting.

The Minister of Economic Development and Co-operatives (Cde. Hoyte): Cde. Speaker, I listened with great interest to the contribution of my good friend, Cde. Collymore. I am sure that he did intend to make a point, but somewhere along the line that point escaped him. There is a maxim in Equity which says, “Equity considers as done that which ought to have been done,” and since the comrade intended to make a contribution to this debate, I would invoke that equitable principle.

Cde. Speaker, this Bill is not one which is susceptible of emotional arguments. It is concerned with matters of technical law and, therefore, requires cool, calm deliberation based upon at least some knowledge of the technical principles involved and some understanding of the underlying issue. If we apply that criterion, I would be inclined to think with some justification that the members on the other side of the house do no qualify to intervene in this debate. My good friend, Cde. Collymore, has a long and intimate acquaintance with the law. There are

many people, Cde. Speaker, who have a great love for the law, but the law tends to be a coy lady and does not always reciprocate that admiration; and indeed, sometimes the law has a way of extending her clutches, so to speak, to embrace in a very crushing way those who transgress her rules. I believe that the acquaintance of the Hon. or the Cde. Member with the law must have exposed him to this crushing embrace an experience which qualifies him not really to speak about legal issues but to speak on the subject of penology. He is a past master in that.

But to return, Cde. Speaker, to the main issue we are dealing with here: this Bill is dealing with a matter of adjectival law as opposed to substantive law. Adjectival law deals with procedure. There is no question of anybody ever having a vested right in procedure and all the judgments of the court have said that procedural matters do not go to substance. Procedural matters are always susceptible to being changed at any time and at any stage of a trial, criminal or civil. I would have thought that the learned member, Mr. Feilden Singh, in applying his mind to this argument of retroactivity would have reflected upon what is settled law on the question of alleged retroactivity.

3:55 p.m

Undoubtedly, the judgment of the Court of Appeal in the Apata case has upset settled practice in the application of the adjectival law. No one up to that time when the learned Judges in the Court of Appeal delivered that judgment ever conceived of the procedure in terms of the criminal jurisdiction being what the Court of Appeal said it ought to be. And therefore it is not a question as to whether the Court of Appeal is right or wrong. The learned member says we are bound and the Courts are bound by that decision that is so, but the High Court of Parliament is not bound by that decision. The High Court of Parliament has a duty to ensure that the criminal law and, indeed, all law in this country is administered within procedural framework which enables the objective of justice to be attained.

The result of the judgment has been, as I have said, to upset settled practice. But more than that. Unless the High Court of Parliament declares the law to have been what every lawyer hitherto conceived it to be and declares the law to be what every magistrate in the past has conceived it to be, we would have tremendous problems in our criminal jurisprudence. And are we to accept that all of those cases which have been disposed of by our magistrates on the basis of what was accepted to be the procedural principles are we to say that all of these matters have been dealt with irregularly? And, if that is the position, well then it is necessary for this Parliament to ensure that the procedures which we have applied and which have worked well are declared to be the procedures which the Parliament intended.

An argument has been based upon a deprivation of defences. Now, that argument must arise from a misunderstanding of what is a defence. Let me say outright, Cde. Speaker, that this Bill has nothing to do with defences available to anybody. An issue of jurisdiction is never a defence. If one looks at jurisdiction, one could for purposes of convenience divide it into two categories: The first is a question of jurisdiction arising because a certain offence is statute-barred. In this case the Court has no competence to hear it, the Police have no competence to bring the charge because the law says we must forget that offence - too much time has passed.

This Bill does not deal with that kind of issue but with the second category of jurisdiction: this second category has two limbs, first, where a Court has no competence at all because it is the wrong forum, and, secondly, where the Court does have competence but a particular procedure being applied is the wrong one. In either of those cases, raising an issue as to jurisdiction is not a defence, because if the lower Court proceeded when it did not have jurisdiction or proceeded a long a wrong procedural course, all that happens on appeal, assuming the defendant is convicted, is that the trial is declared a nullity and the superior Court directs a new trial.

It is not a question of any defence. The issue of procedure does not apply to defences and therefore all arguments based upon all alleged deprivation of defences are arguments which are based upon a complete misunderstanding of the law and of the nature of this Bill before this honourable House. I must say, further, that this Bill creates no new offence and this Bill deprives nobody of any defence. Once one grasps that essential point, one recognises that the foundation of the arguments which have been advanced crumbles completely.

It has been said time and again that the Courts do not exist to preside over games of technicalities. We cannot reduce the criminal law of this country to a game of dice. We need to have some clarity and continuity in the way in which courts are required to administer criminal trials and the fact of the matter is that criminal trials in the lower Courts – I do not want to get into this question of hybrid and non-hybrid offences – criminal trials in the lower Courts of summary jurisdiction offences, have always proceeded in the way in which this Bill declares they ought to be proceeded with.

The Bill confirms settled practice. The Bill does not change anything. The Bill seeks to clarify what the law is with respect to procedure in criminal cases tried summarily. Any changes which threaten to undermine the procedural foundation of the criminal law would be changes arising from the decision of the Court of Appeal. As I have said before, whether the decision of the Court of Appeal is right or wrong is not a matter of any moment. What is of concern to the Government and what ought to be of concern to this honourable House is to ensure that we do not import into the adjectival law, within the criminal jurisdiction, uncertainty and confusion. If the law was ambiguous, if the law was unclear, well then the Court of Appeal, the final Court in this land, has its duty and the Court of Appeal has discharged its duty. But this High Court of Parliament also has its duty and the intent and purport of this Bill is to discharge that duty, to clarify the law and to make it clear beyond a peradventure that the way in which the criminal procedure for summary jurisdiction offences was applied in our summary Courts is what Parliament intended it to be and what it ought to be.

Cde. Ram Karran rose –

The Speaker: Cde. Ram Karran, unfortunately when you handed in to the Clerk the letter requesting leave for Dr. Jagan it was not drawn to my attention that you were Acting Leader of the Opposition. I wish to have it recorded that you are Acting Leader of the Opposition. [Applauses.]

4:05 p.m.

The Acting Leader of the Opposition (Cde. Ram Karran): Your Honour, it is the

atmosphere in which we live, it is the occurrence of incidents over the past few years, all these things make this issue as important as it is to the Guyanese people, to the nation. My friends on the other side suggest that this is a harmless measure. Adjectival law or whatever he calls it – nothing. And yet the Government sought to push this down the throats of the people last Monday, without even giving us an opportunity to study it. And here again, sir, the Hon. Attorney General suggests an amendment which he will move later, which was received today, which was seen by us today. My friend makes the point that we are not qualified, we are not lawyers, we cannot understand, and yet they have tried to push it down our throats without giving us an opportunity to have advice on the matter. I hope that Your Honour will rule accordingly when the time comes.

It is the atmosphere in which we live, everything must be rammed down your throats; that is good for you. I recall what my friend said about the trial of Arnold Rampersaud, where the Government, the administration, was unable to get a conviction via the jury system even though they changed the venue from New Amsterdam to Georgetown, in order to get a more banked jury. We recall the case of Baijoon, where the defence had asked for a change of venue because the interest of the accused was more likely to be prejudiced because of the area in which the offence was concerned, the person whom he was alleged to have killed. The administration then – and those were the colonial days, sir, when justice was not – held the trial, nevertheless, in Berbice and the man was convicted and hanged.

Here it is, the State puts itself in the position of the accused and says: "Our case will be prejudiced. We are no longer taking the attitude that a huntsman should not shoot sitting birds. He should have a fair trial, he should have a fair chance to get himself acquitted. But everything was done to convict this poor man, as my friend said, but it was after Arnold Rampersaud that we heard the talk from over the other side: "Oh, we are going to have a people's court." But what we do have

at the moment is a sort of people's court. Isn't it? The jury trial? But, you will recall, sir, recently that jury trial has virtually been removed and I think the Hon. Attorney General said that in 1932 they had the first hybrid case, but it is nearly 50 years, during which the administration did not fornicate with the jury with the courts to produce more hybrid cases. We are betting them now, apparently, and that is what is happening.

That is why, sir, the honourable the Chancellor of the Judiciary could have sat on his lofty bench and made comments of a prejudicial nature against a pending case in which the accused was identified. Such nonsense could never have happened. In fact, Your Honour is very strict on reference to cases and it was reported in the newspapers, you will recall, it was alleged that people were bringing into this country, suitcases with false bottoms and all sorts of things. The honourable Chancellor, his Lordship, was asking for a gun court, as they had in Jamaica, where a man caught with a gun today was tried and jailed the next day.

Comrades. We are not opposed to criminals being charged and convicted, whether those people are bringing guns in suitcases with false bottoms, whether they are bringing them at Jonestown, or whether they are burying them in their yards – detonators. Charge them. We are not opposed to that sort of thing, but we are opposed to manipulation of the law to catch people they do not like. What does the law say? The law says here, I am reading from the laws of Guyana Chapter 10:02, section 61 (1) Part V, Summary Trial of Indictable Offences. I am reading the English side –

> "where a person who is an adult is charged before the court with any indictable offence specified in the First Schedule, the court, if it thinks it expedient so to do, having regard to any representation made in the presence of the accused by or on behalf of the prosecutor, the character and antecedents of the accused, the nature of the offence, the absence of circumstances which would render the offence one of a grave or serious character and all the other circumstances of the case (including the adequacy of the punishment which the court has power to inflict) and if the accused, when informed by the court of his right to be tried by a jury," –

let me read that over again:

> "and if the accused, when informed by the court of his right to be tried by a jury, consents to be dealt with summarily, may, subject to this section deal summarily with the offence, and if the accused pleads guilty to, or is found guilty of, the offence charged, may impose upon him a fine of two thousand dollars and imprisonment for two years."

What is the justification, Your Honour, for that law which has stood the test of time, to be altered, to be changed by this Government, which fornicates with the courts? Section 61 of the Summary Jurisdiction (Procedure) Act is hereby amended and the following section substituted therefore. This is what has been substituted for what I read just now.

> "Where a person who is an adult is charged before the court with any offence specified in the First Schedule, the court, if it thinks it expedient to do so, having regard to any representations made by or on behalf of the prosecutor or the accused in the presence of each other, the nature of the offence, and all other circumstances of the case (including the adequacy of the punishment which the court has power to inflict) may, subject to this section, deal summarily with the offence, and, if the accused pleads guilty to,"

and so on. The whole point is, sir, and I referred to the atmosphere, why have you changed this? In a country like this where we have tradition, we have manner, a way. This year, I understand the calypso by Spurwing has got the first prize and that brings us to the thinking of our friends on the other side. What does the calypso say? "Beat them, beat them, they must have regard for policemen, bring back the cat-nine tail." [Interruption.] That is the one that got the first prize and that is in keeping with the spirit. Those are the wrong words? Spurwing didn't write it? [Interruption.] That is the spirit, that is the motivation of my friends on the other side. They have complete disregard.

[Cde. Ram Karan continues]

4:15 p.m.

Sir, your will recall my friend the Hon. Minister of Economic Development, Desmond, when he was defending the blackmarket Bill, when the Opposition said that the magistrate should have a discretion because many old women selling plantain by the wayside would have been subject –

The Speaker: Cde. Ram Karan, there is a point of order being raised by the Minister of Home Affairs.

The Minister of Home Affairs (Cde. Mingo): Cde. Speaker, it is true that Cde. Spurwing won the first prize but the song that he sang to win was "Ten Splendid Years" and not what the comrade is saying.

The Speaker: Comrades, all that has happened is that Cde. Ram Karran may have used the wrong name but he wanted to say the words of the song.

Cde. Ram Karran: Your Honour, I only used those words but the song was composed by Spurwing to show the feeling of this Government, the attitude of this Government with respect to jurisprudence. But this is the important point. When the Hon. Minister spoke on this matter, he said very clearly in this House, unfortunately, we do not have Hansard supplied or I would have quoted from it, that the magistrate should not have a discretion, that the magistrate should abide by the law and the maximum was fixed: first time, $500.00, second time, jail. You said so in defending the Bill. How come now, sir, that they are giving these magistrates, in whom they had no confidence some years ago, discretion to sit down and discuss whether this person or that person should face the jury or should not face the jury or whether he should face the magistrate performing the functions of jury. This is a totally unacceptable position. [Interruption.] What you did with the railway, you should tell the Guyanese people that.

Your Honour, my friend says that this is procedural matter and that the Parliament, which is a rigged Parliament, which does not reflect the views of the Guyanese people as has been clearly seen during the referendum, has taken upon itself by its majority, a doctored majority, a rigged majority to amend a law. My friend says that any lawyer will see it and yet the entire Bar Association, as it has been stated by my friend the Hon Mr. Feilden Singh, is opposed to it. What is more, they feel so strongly about it that they will boycott the Courts. I hope you are in that, sir. Boycott the Courts because this injustice which is being practiced upon the Guyanese people ought not. This whole situation is in keeping with the government's philosophy of

getting at its enemies. Things cannot be allowed to continue in this manner. I am saying that those of you who stifle justice will have in due course to be tried by the same measures before those measures are amended to what they are in decent societies [Interruption.] You will be tried by them and you know that. The people are going to try you. Many of you are fit for jail already. Everybody knows that. For the number of crimes that have been committed by members of the Front Bench, the P.N.C. ought to have been salted away for ever and ever.

I want to urge at this stage before I take my seat, two things, that the government ought to give careful consideration, having regard to what it has contributed to the debate, to the dismissal of the D.P.P. who espoused the Government's position when he sought a postponement of a case that is currently being carried on, allegedly that the law which is now being processed will have effect on that case. The Government ought to give that assurance. The second thing is, I want Your Honour to give the assurance that the amendment, which is yet to be seen, understood and studied by the House will not be discussed until the House has been given time to study it.

The Minister of Energy and Natural Resources (Cde. Jack) Cde. Speaker, this measure that is being debated in the House today is, in my view, an extremely important one, important for a number of reasons and it has been the practice of members of the Opposition to cloud the real issues with a number of irrelevant cobwebs. For this reason, I think, we should try to clarify some of the issues from the very outset. First of all, this measure becomes necessary because of a ruling of our Court. I think that having regard to the stand taken by both sections of the Opposition, they cannot but accept the fact that the decision by the court was an independently-made decision and that it reflects in as clear a way as it possibly could reflect, the complete independence of our Judiciary. It has been the practice of members of the Opposition, both there and abroad, to vilify this government, and when it suits their purpose, to say there is no independence of the judiciary. Nevertheless, on this occasion, I think that they do not dare but admit that the court in its judgment – whether the Government is happy or not about the judgment – acted in a judicial manner and with complete independence. Furthermore, the Chancellor who delivered the judgment is at the moment not in some dungeon, but acting as President of our country. I trust that those who have the duty to report accurately to our people in Guyana will be conscious of what is taking place here today.

The next point, I wish to mention before speaking particularly of the issue is the alliance that has emerged between the reactionary Liberator and the so-called Socialist P.P.P. Since 1969, we have witnessed in this House time and again that despite the progressive protestations made by members of the major opposition party, on every occasion when a measure was brought to this House to bring about a further development of our country, they have run and hidden in a corner and allied themselves with reaction. This is why I was particularly concerned to make my

contribution after they had had an opportunity of exposing themselves for what they are. Imagine if somebody came to this country and heard that there was a party of Marxist-Leninists sitting in this House, and if they came into this House and heard Messrs. Collymore and Ram Karran, Hon. Members, praising what Mr. Feilden Singh and the Bar Association had done, they would have looked all around to find Mr. Feilden Singh, they would have looked all around to find out where those Socialists were.

4:25 p.m.

We will come in another moment to the concept of law where Socialism is concerned. But because of the great hypocrisy that parades in our country today as high morality, I think we need to examine the Bar Association and to look at the interest which at the moment it intends to serve by the stand it has taken.

[Cde. Jack continues]

There is a case pending and I will not go into that case. There is a case pending, and who are the lawyers engaged in that case? If one looks at the list of representation in that case one would see the co-mingling of the lawyers who represent the defendants in the case which has been mentioned and the leading members of the Bar Association.

Mr. Feilden Singh has been rather astute in absenting himself deliberately from the deliberations of that Association recently and with good reason. He has not been paid and he does not have an interest in continuing the defence of those persons in Court and out of Court. I think it is time that we call a spade a spade and expose these people for what they are doing, for the manner in which they are corruptly using the Bar Association for their own personal gain and for their own professional gains. [Applause. (Government)]

This measure obviously reflects the fact that a certain group of people have managed to capture significant positions in the Association and have been able to use their influence against the interest of the majority of the people in the Bar Association I would hope that all members of the Bar Association would examine themselves carefully to find out whose interests are being served by the measures and the posturing that is taking place at this moment.

There is a vote of no confidence in the D.P.P. Let me take this opportunity of saying that the Government has absolute confidence in the D.P.P. [Applause. (Government)] The job of the D.P.P. in any country is a very arduous one. It is a very strict one; it calls for a man of integrity; it calls for a man who, no matter how many millions of dollars are involved, cannot be swayed by extraneous persuasions. It is a lonely job and it is a job that that D.P.P. has been carrying out with distinction. [Applause. (Government)]

But the even greater impudence has been the irrelevant vote with regard to my brother, the Attorney General and Minister of Justice. Again, Mr. Feilden Singh, I think is particularly clever not to have sullied himself and shamed himself and his professional standing by being a party to that travesty. It would be an impropriety, I believe, for the Hon. Attorney General and Minister of Justice to say anything on this matter himself and therefore somebody should say it. The learning, erudition, integrity and, I believe, what most hurts certain sections of the Bar Association, incorruptibility, are well known. [Applause.] The only reason that I worry to mention something that we should normally treat with contempt is because I think it should be on the record that this Government will ignore and continue to ignore any irrelevant recommendation or resolution which that bunch of people may care to pass now or any time in the future until it is properly constituted.

And now we come to the question of the matter in hand. A lost has been said about the rights of the accused but I would have thought that socialists would have been concerned about the rights of the Society. I would have thought that Socialists would have been concerned about the rights of the State. But not necessarily socialists.

Any decent-minded people anywhere. But here we have a bleating about the rights of the accused. Let us examine these rights.

The court is a court of law and a person charged with a criminal offence is entitled to the strict application of law to the issue before the Court. That is what he is entitled to but it seems to be that there is an extension of this concept which says, according to the Opposition, that the States must fold its hands and allow any person who commits any crime to get away with the crime because of what are called the “obscurities of the law”.

Counsel for the defence in a case is entitled to avail himself of the obscurities of the law and those of us who have practiced have availed ourselves of the obscurities of the law or any imperfections in the law. That does not apply to the State. It is the duty of the State, as both Cde. Field Ridley and Cde. Hoyte have said, to be guardians of justice and where there are obscurities, to make sure that these obscurities are removed in such a manner that nobody can misunderstand.

We hear the usual lie peddled that this is a political action on the part of the Government against its enemies. Too often have members of the Opposition peddled scurrilities with such persistence that the unwary have been taken in. Who were the people charged? Are they politicians? No. they are men, some in business, some in the Public Service, some of them are acquaintances or people that all of us have met. Before they were charged, there was never any hint at all of any political confrontation with any of them and it is a downright falsehood and a deliberate attempt to mislead the people of this country to peddle this kind of thing in this House because they know it is not true.

Who are the politicians in this? Attempts are being made to try the case not only in the Court where it should be tried, but to try the case here and we, on our side of the House at least, must be careful not to say anything which would prejudice the right of a fair trial of those persons who stand to be tried.

But let me say this: If one were to go to a socialist country and adopt the argument of Messrs. Collymore and Ram Karran he would be booted out. The important question is that justice should be done and in the ultimate if a man has committed no crime and he is acquitted by the Court, justice will have been done. And if a man commits a crime and he is convicted,

then justice will have been done. Do they dare to say that anyone before the Court now, in the past or in the future, that if he committed a crime and if he is convicted that justice will not have been done? And do they dare to say that if the person had not committed the crime and if he were acquitted that justice would not have been done?

This is not the forum to decide whether those people are innocent or guilty but this is the forum to ensure that the hands of the State are not tied so that people – as has happened so often in the past – can snigger as they commit atrocious crimes and get away with them, and, what is worse is this: every time the people in the Opposition open their mouths they talk of corruption and when there is a case of corruption and the State brings an action, they rush to the defence of the people and talk about their rights.

It is a shameful thing to have sat here and to have heard them and I wish that a film had been made of this and I wish that we could send it to the socialist countries before the next set of them pay a visit there and let them see it.

[Applause. (Government)]

The Speaker: Any other member? Cde. Attorney General.

4:35 p.m.

Cde. Shahabudeen (replying): Cde. Speaker, I would just like to refer as briefly as I can to one or two of the very few points which possess sufficient merit to deserve serious and concerted response. I think I should congratulate my colleagues on this side of the House for having found so much to reply to. My Hon. and learned Friend Mr. Feilden Singh puts his case partly on the basis that what was involved in this Bill was a deprivation of accrued rights. As he conceives it, people, who are in the course of a trial, had in the course of that trial certain accrued rights and Parliament is prohibited from legislating in such a way as to deprive them of those rights, those rights being conceived of, I imagine, in the same sense of rights of property, for example.

I would suppose that my Hon. and learned Friend has in mind the standard provisions which appear in the Interpretation Act of our territory and which can be found in section 54 on 2 of the Interpretation and General Clauses Act of this country, Chapter 2:01, but if time allows, no doubt, those who are interested can look it up. If they do, they will find that the opening phrase of that section uses the words “unless otherwise required.” In other words, it is really merely a rule of construction. It is not a rule which prohibits Parliament from legislating so as to do the kind of thing that we are inviting the House to do. Umpteen cases can be cited from the jurisprudence developed in all sorts of territories to show that Parliaments all over the world have on several occasions, when a situation of this kind has arisen, legislated to affect the criminal procedure, the rules of evidence, and jurisdictional matters relating to pending cases.

In all such situations counsel for the defence could have argued, as my Hon. and learned Friend is arguing today, that the effect of the legislation was to deprive his client of the accrued rights. If that was ever a good argument, it has so far as I know never been upheld by a single judge in any part of the Commonwealth. The only restrictions, as I sought to show to the House, on the competence of Parliament to legislate retrospectively even in relation to the criminal law are three. They are prescribed by the Constitution itself, namely, Parliament must not legislate so as to create expo facto offences, Parliament must not legislate in such a fashion as to impair the constitutional right of a defendant to a fair trial. That has to do with, I submit, this Bill, to ensure that the competence of Parliament is full and unfettered.

A phrase used has been culled from some script written by someone else and read by my Hon. and learned Friend Mr. Feilden Singh in which it was said that this Bill amounts to a legislative counter attack on submissions which have been made in some pending matter. I do wish to submit that phrase is perhaps a little more colourful than it is careful. Now Cde. Ram Karran, the Hon. Leader of the Opposition, acting, made complaints about the lateness with

which the notice of amendments put forward by me was served. Yes, indeed, it is regrettable –

The Speaker: I think you need not deal with that. The standing rules provide that amendments can be put at any time. Once the Speaker puts the Question, an amendment can be put. So you may proceed to something else.

Cde. Shahabudeen: I am very grateful that you have taken off my hands the labour of replying to that merit which was argument.

Now two small points are left, one concerns the proposition by my Hon. and learned Friend Mr. Feilden Singh, whose views, as I said on the last occasion, I hold with respect even if I do not hold . . . that jury trials would no longer be possible. If I understand him rightly, perhaps I do not, I would like to give him the assurance of my own very humble interpretation of the law, that if he was speaking of hybrid – type offences then it would not be accurate to say that there is anything in this Bill which will preclude the holding of a jury trial. All that has happened is this. If a man is proceeded against by indictable proceedings, if an information is sworn out against him commencing the proceedings against him indictable, well then, he will have a right to trial before a jury, unless, of course, the case is cognizable under the procedure relating to the trial or summary trial of indictable matters. On the other hand the effect of this Bill, and I do wish to make it plain, will be this, that if under a hybrid offence section a man is prosecuted under the procedures relating to summary conviction offences, well then the case will be dealt with by the magistrate in the ordinary way in which it deals with charges relating to such offences.

4:45 p.m.

The very last point I would make is this. I think it is desirable that I should reiterate, if merely reiterate, the words I used in opening, and that is, this Government does regard the judgment of the Court of Appeal as final and definitive. All that happens is that we are today invoking the superior authority of what Cde. Hoyte has correctly described as the High Court of Parliament to make certain changes in the law with a view to refurbishing the legislation

relating to an important area of concern to society. [Applause.]

Question put.

Cde. Roshan Ally: Division.

Cde. Dalchand seconded.

Assembly divided: Ayes 31, Noes 12 as follows:

Ayes	Noes
Cde. Zaheerudeen	Mr. Singh
Cde. Willems	Cde. Sukhai
Cde. Walcott	Cde. Nokta
Cde. Taylor	Cde. Dindayal
Cde. Sukul	Cde. Dalchand
Cde. Sukhu	Cde. Ally
Cde. Salim	Cde. Belgrave
Cde. Rayman	Cde. Collymore
Cde. Jones	Cde. N. Persaud
Cde. Hussain	Cde. Reepu Daman Persaud
Cde. Gill	Cde. J. Jagan
Cde. Fowler	Cde. Ram Karran - 12
Cde. Field-Ridley	
Cde. Ramson	
Cde. Wrights	
Cde. Bynoe	
Cde. Corrica	
Cde. Ambrose	
Cde. Van Sluytman	
Cde. Prashad	
Cde. Corbin	
Cde. Thomas	
Cde. Chowritmootoo	
Cde. Bancroft	
Cde. Duncan	
Cde. Clarke	
Cde. Mingo	
Cde. Ramsaroop	
Cde. Hoyte	
Cde. Reid	
Cde. Burnham - 31	

Motion carried.

Bill read a Second time.

Assembly in Committee.

Clause 1 agreed to and ordered to stand part of the Bill.

Clause 2.

Mr. M.F. Singh: I beg to move the Amendment standing in my name. It has been circulated. The effect of this Amendment –

The Chairman: You have to have a seconder.

Cde. Ram Karran: I beg to second the Amendment moved by the member.

The Chairman: Hon. Member Mr. Singh, I think the Attorney General has an

Amendment too. Perhaps it would be best if he also moved his Amendment and you can speak on both Amendments at the same time.

Cde. Shahabudeen: I beg to move the Amendment standing in my name to clause 2.

The Chairman: Hon. Member Mr. Singh.

Mr. M. F. Singh: Mr. Chairman, as I said before, the one objection to this Bill is really confined to clause 2 and the retroactivity which the wording of clause 2 has at the present moment and that is why it is sought to delete the words "be deemed to affect or ever to have affected any law (whether enacted before or after the enactment of this Act)". Those are basically the words which created retroactivity and I move that those be replaced by "affect any law".

In order to make assurance doubly sure I am moving also that after the clause a proviso shall be put in:

> "Provided that the provision of this section shall not apply to any complaint pending before any court at the date of the enactment of this Act."

That would make it pellucidly clear that there should be no retroactivity attached to that particular clause.

The reason for this I have said in my main contribution in this House but I would like to clear up perhaps something that might have been slightly misunderstood in respect of jury trials. I will come to that in a moment.

The Hon. Attorney General in his reply just now said that Parliament must not legislate in respect of some areas and one of the areas he spoke about is that Parliament must not legislate to impair the constitutional right to a fair trial. On the basis of that, if that is correct, what I would humbly like to reiterate is also the clear wording of the Judgment by the Chancellor in the Kwame Apata case where it speaks exactly of that constitutional right to a fair trial. It says here on page 19:

> "I have arrived at the clear conclusion that there was a denial of the defendant's constitutional right to obtain a fair hearing occasioned by the magisterial error in denying him time and facilities for the preparation of his defence when it was considered that the Act of 1978 did not apply and it was the Prosecutor's and not the Magistrate's right to elect summary trial. In my opinion, the ruling that the defendant was not entitled to the statutory statements by prosecution witnesses at his summary trial undermined the

> criminal process and justice of the trial and I say without hesitation that the defendant was not only handicapped but constitutionally handicapped by not having these statements to fashion whatever defence he would have cared to proffer."

That was the statement by the Chancellor, agreed to by all the other members of the Court. The factual legal position right now is that any person charged with a so-called "hybrid" offence summarily has the right under the law to have the statements of prosecution witnesses delivered to him. He also has the right – and this is the point I want to clear up - to make representation for a jury trial.

[Mr. M.F. Singh continues]

He may not get it but he has the right to do it. After we pass this law, any person at present before the court charged summarily with a so-called hybrid offence, that person has the right now, but after this law is passed that person will no longer have those rights. Those are said by the Court of Appeal to be constitutional rights, and they would have been wiped away by this proposed legislation.

4:55 p.m.

Dealing with the hon. Attorney General's amendment, does it restore those rights? Does it give those rights? I say no. They talk about a fair trial, but in the clear words of the Court of Appeal, it is a right to have the statements, which the magistrate must allow. The magistrate in not allowing it infringed that right. This amendment does not tell the magistrate that he must allow the accused person to have those statements. It merely states that a magistrate may take any steps including allowing any party to call or recall any witness or hearing fresh arguments, etc. He may do all those things but the Court of Appeal says that there is the right to the statement; but the magistrate is not bound to supply those statements and that is why I say and the lawyers are saying, the Bar Association is saying that the amendment does not go far enough. That is why I am still moving my amendment and saying we do not agree with the amendment put forward by the Hon. Attorney General.

Cde. Shahabudeen: Cde. Chairman, I am indebted to my Hon. Friend for the very clear expression of his views on the subject which has given a great deal of difficulty in all parts of the Commonwealth but the position does seem to me to be relatively straight forward in this case. First, you have a constitutional provision which enunciates a principle that a defendant in a criminal case is entitled to a fair hearing, but the Constitution itself does not provide this framework, the procedural framework for that hearing. It leaves it to Parliament to provide the procedural framework for the hearing, so the Constitution recognises that Parliament is fully competent to lay down the procedure which is to provide a fair hearing in any given category of cases.

Now if you examine the statute law of this country, you will find that there are in fact several methods of trials. For example, at the top, there is jury trial. That is one method of providing a fair hearing. Down at the bottom, you have summary conviction procedure where there are no statements supplied, there are no jurors, you just come before the magistrate, evidence is led, and your case is determined. And now in 1978, we in effect interposed an

intermediate kind of hearing which would involve statements being supplied and a matter which ordinarily should have been heard in a High Court can be heard in the Magistrate's Court. So there are various ways of trying cases. The fact that one method differs from another does not mean that one is fairer than the other. Therefore, in like manner that it was this Parliament which in 1978 laid down a requirement in some cases for defendants to be supplied with statements, it is still very competent for this same Parliament to say that shall no longer apply to certain categories of cases. The fact that you withdraw it – [Interruption.] In the same way my learned and Hon. Friend presented very skillfully, a very complicated piece of argument, and I would be indebted to be allowed to reply to it.

In like manner that Parliament fashions the trial procedure for any category of cases, and provides for different procedures in different categories of cases, so too can Parliament from time to time remove elements from the trial procedure in any given situation. Parliament in 1978, stated that in a certain kind of case, statements must be supplied. Parliament in 1980 can with confidence say that requirement shall not apply in a certain situation, therefore the fact that requirement is withdrawn does not by itself collide with the constitutional requirement for a fair hearing. What you have to do is this. If after the requirement for supplying statements has been withdrawn, you can establish to a court that the remainder of the procedure is inequitable, that it cannot give a fair hearing, then you can make out a case that there has been a collision with the constitutional requirement for a fair hearing. If I may say so, therefore, the argumentation which my learned friend has adopted from his colleague on this question is somewhat confused and confusing.

Now, for the reasons which I have just given, statements in conjunction with those I sought to give to the House earlier today, I find myself in the position of not being able to support the amendment proposed by my Hon. and learned Friend.

The Chairman: I will now put the amendment by the Hon. Member Mr. Singh.

Amendment –

(a) That the following words be deleted:
"be deemed to affect or ever to have affected any law (whether enacted before or after the enactment of this Act)", and the words, "affect any law" be substituted therefore;

(b) That a colon be substituted for the full stop after the word "law" at the end of the clauses and the following be added: "Provided that the provisions of this section shall not apply to any complaint pending before any court at the date of the enactment of this Act.",

put, and negatived.

The Chairman: I will now put the amendment by the Cde. Attorney General and Minister of Justice.

Amendment -

That the following words be deleted:

", or for any appeal by,"

and before the full stop at the end, the following be inserted:

"or for any appeal in respect of any charge brought summarily as aforesaid:

Provided that in the case of any proceedings (including any appeal proceedings) pending before any court immediately before the date of the enactment of this Act in respect of any charge brought summarily as aforesaid, the court, on application of any party, may, without prejudice to any other powers which it has, take any steps, including allowing any party to call or recall any witnesses, or hearing fresh arguments, or granting any adjournment or discontinuing the hearing and ordering a new trial, if in the opinion of the court it is necessary by reason of the application of this section to the case to do so in order to ensure a fair hearing, and, if in its opinion a fair hearing cannot in all the circumstances of the case be insured by taking any such steps, dismiss the case;

And provided further that the punishment of any person on summary conviction as aforesaid of any offence committed between November 2, 1978, and the date of the enactment of this Act shall not exceed the most severe penalty which could have been imposed on him if the offence had been dealt with as an indictable offence triable summarily under the provisions of section 61 of the Summary Jurisdiction (Procedure) Act.",

put, and agreed to.

Clause 2, as amended, agreed to and ordered to stand part of the Bill.

Clause 3 to 5 agreed to and ordered to stand part of the Bill.

Clause 6

Cde. Shahabudeen: If it pleases Your Honour, I have served notice of intention to move an amendment to the Bill to add a new clause, clause 6. A word of explanation is due to the House. This clause relates to the procedure for hearing applications for bail in what in the profession are called amenable matters, that is to say, indictable matters which are triable summarily, by the magistrate. What has been happening is this. In 1978 when we changed the laws in this area, Parliament said that in such cases appeals should lie not from the Magistrate's Court to the Full Court as in the case of ordinary summary conviction matters, but that they should lie direct from the magistrate's Court to the Court of Appeal itself. We wanted to make

sure that any person who was convicted under this sort of procedure would have an immediate right of access to the highest forum in the land. As part of those new arrangements, Parliament in effect provided for this, that an appellant pending determination of his appeal should be able to be admitted to bail on application, either to a magistrate or to a Judge of the Court of Appeal. That method by-passed the High Court completely.

5:05 p.m.

Now, the result of all of this, unhappily, is that there has been a flood of bail applications to the Court of Appeal and representations have been made to me accordingly, to put to Parliament a proposal that we could assist the Court of Appeal very usefully by interposing a High Court Judge as an intermediate forum in the hearing of procedures relating to these bail applications. In brief, then, at the moment, these bail applications are made either to the magistrate or direct to a Judge of the Court of Appeal. The variation we seek in this amendment form is that we should insert a High Court Judge as an intermediate forum so that the application would be made to a magistrate, or to a High Court Judge, and if refused by the High Court Judge, it would then be made to a Judge of the Court of Appeal. We think if the Assembly were pleased to accept the proposal we would be rendering a great deal of substantial assistance to an overburdened Court of Appeal.

Amendment -

That after clause 5, the following new clause be added:

"Construction of section 12 of the Summary Jurisdiction (Appeals) Act, Cap. 3:04 Cap. 3:04	6.	In relation to any appeal from any decision given by a magistrate after the coming into operation of this section in respect of an indictable offence dealt with summarily, subsection (4) of section 12 of the Summary Jurisdiction (Appeals) Act shall be construed and have effect as if it read - '(4) An appellant referred to in subsection (3) may be admitted to bail upon application by him to the

magistrate from whose decision appeal is made or on petition to a Judge of the High Court or, on refusal of any such petition, on petition to a Judge of the Court of Appeal, and any such application or petition shall be heard as soon as practicable.’”,

put, and agreed to.

Clause 6, as added, agreed to and ordered to stand part of the Bill.

Assembly resumed.

Bill reported with amendments; as amended, considered; read the Third time and passed.

ADJOURNMENT

Resolved, “That this Assembly do now adjourn to a date to be fixed. [The Minister of Parliamentary Affairs and Leader of the House.]

Adjourned accordingly at 5:10 p.m.