SECOND LEGISLATIVE COUNCIL

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

Thursday, 6th July, 1961

The Council met at 2 p.m.

PRESENT:

Speaker, His Honour Sir Donald Jackson
Chief Secretary, Hon. D. M. Hedges
Attorney-General, Hon. A. M. I. Austin, Q.C. } *ex officio*
Financial Secretary, Hon. W. P. D'Andrade.

The Honourable **Dr. C. B. Jagan** —*Member for Eastern Berbice* (Minister of Trade and Industry)

" " **B. H. Benn** —*Member for Essequibo River* (Minister of Natural Resources)

" " **Janet Jagan** —*Member for Western Essequibo* (Minister of Labour, Health and Housing)

" " **Ram Karran** —*Member for Demerara-Essequibo* (Minister of Communications and Works)

" " **B. S. Rai** —*Member for Central Demerara* (Minister of Community Development and Education).

Mr. **R. B. Gajraj** —*Nominated Member*
" **W. O. R. Kendall** —*Member for New Amsterdam*
" **R. C. Tello** —*Nominated Member*
" **L. F. S. Burnham, Q.C.** —*Member for Georgetown Central*
" **A. L. Jackson** —*Member for Georgetown North*
" **S. M. Saffee** —*Member for Western Berbice*
" **R. E. Davis** —*Nominated Member*
" **A. M. Fredericks** —*Nominated Member*
" **H. J. M. Hubbard** —*Nominated Member*
" **A. G. Tasker, O.B.E.** —*Nominated Member.*

Mr. E. V. Viapree—Clerk of the Legislature (acting)
" V. S. Charan—Assistant Clerk of the Legislature (acting).

ABSENT:

Mr. F. Bowman—Member for Demerara River
Mr. S. Campbell—Member for North Western District
Mr. E. B. Beharry—Member for Eastern Demerara
Mr. Ajodha Singh—Member for Berbice River
Mr. Jai Narine Singh—Member for Georgetown South—on leave.

The Clerk read prayers.

MINUTES

The Minutes of the meeting of the Council held on Wednesday, 5th July, 1961, as printed and circulated, were taken as read and confirmed.

PAPERS LAID

The Financial Secretary (Mr. D'Andrade): I beg to lay on the Table the

Annual Report of the Licence Revenue Office for the year 1960.

INTRODUCTION OF BILL

The Minister of Labour, Health and Housing (Mrs. Jagan): I beg to give notice of the introduction and First Reading of the

Kitty Railway Lands Bill, 1961.

ORDER OF THE DAY

BILL — FIRST READING

The following Bill was read the First time:

A Bill intituled "An Ordinance to make provision for certain lots of land to be transported."

BILL — SECOND READING

DISTRICT COURTS BILL

Mr. Speaker : The hon. Attorney-General to move the Second Reading of the following Bill:

A Bill intituled "An Ordinance to provide for the establishment of district courts and for matters pertaining to such courts."

The Attorney-General (Mr. Austin): Members of the Council may be aware that British Guiana has a two-tier system of courts of Justice. The Magistrate's Court has both civil and criminal jurisdictions—civil jurisdiction up to hearing suits in which no more than $250 are involved—and the Magistrate can hear criminal offences for which the maximum punishment is six months' imprisonment. In certain cases, namely, indictable cases which may, by statute, be dealt with by the Magistrate's Court with the consent of the accused, the Magistrate can award up to 12 months' imprisonment. Cases, both civil and criminal, outside this very narrow limit, must be dealt with by the Supreme Court.

It is quite clear that when a country is developing, the machinery of Government must meet, from time to time, each stage of development of that country, whether it be the Administrative machinery of the Government or the Judicial machinery; and in the early days of this country when the population was much smaller and the amount of commerce and industry was not so great and, indeed, the tempo of life was more leisurely, this two-tier system of courts was found to be adequate. Indeed, there were only three Supreme Court Judges required to discharge the functions of that Court in 1946, but there has been, as hon. Members know, a great stride forward in this country since the war as, of course, in other countries, and it is likely that this development will be accelerated in the near future.

Since the war, the amount of litigation has increased. Both litigation and criminal work have increased in the Magistrate's Court and in the Supreme Court and, whereas the number of Judges of the Supreme Court has increased from three to seven since 1946 which is just over 100 per cent., the amount of civil work that now falls to the Supreme Court has increased by 300 per cent. I do not wish to bore Council with statistics, but I think it is important to show how the business of the Supreme Court has increased tremendously in the last few years.

In 1946 there were 581 civil suits filed; in 1950, 906—that is, within five years; in 1955, 1,557; in 1960, 2,107, and at the rate we are going, by the end of this year there should be 2,325 suits as against 581 filed in 1946. The

criminal work has also increased; 145 indictable cases were tried and 325 civil cases listed for hearing, which is an increase of 125 per cent. on the civil work, and 306 per cent. on the criminal work. The Establishment Judges have been increased from 3 to 7, just over 130 per cent. This was done because it was hoped that as it was an extension system —not an extension but a development of that dual system of Courts—they could get the requirements from time to time and enable the Magistrate's Court or the Supreme Court, as the case may be, to deal with the cases before it expeditiously. That has not proved to be the case.

The increase in litigation, which always results from the development of industry and the increase in population, has more than kept pace with the normal increase in the establishment of Courts under a system which is basically sound for the circumstances in which it operates. Today, I believe, there are some 800 cases waiting to be heard in the Supreme Court. The Judges, under the able leadership of the new Chief Justice, have been working overtime for a long period in trying to stem the tide of mounting arrears.

They have done a splendid job, and I am echoing the voice of the Chief Justice of the Federal Supreme Court of the West Indies, who says that our Judges did a really good job. And I believe it is right to say that the Supreme Court of this country has never been stronger. Whereas you can call upon the Judges to work overtime and, possibly, long hours, it is quite wrong to expect them to work under the strain of heavy responsibility year after year in this way. Justice, in the end, is bound to suffer, and the Government has been increasingly aware of this situation of the existing courts not being able to cope with the increase in litigation and also in criminal work.

Justice delayed is justice denied, and unless the Courts are able to hear and determine cases, both criminal and civil, reasonably quickly, justice is denied. Of course, preference is always given to the hearing of criminal cases as they involve the liberty of the subject, and the civil cases have to wait for a Judge to hear them after the criminal work has been done. Assuming it is a matter of years before a civil case comes up for hearing, during that interval of time witnesses may go away from the country or may die, and there may be the disappearance of evidence through nobody's fault.

What is important is that the Government of the country must provide the judicial machinery to cope efficiently and expeditiously with the litigation to be dealt with; and what is very important is that it does not cause any unnecessary cost to the parties, nor indeed should the cost to the Government in administering the Courts be any more than necessary.

What is the answer to the problem that is before the Government? Litigation is increasing, and the criminal work also tends to increase rapidly. The Supreme Court building is fully occupied. There are seven Courts in Georgetown and also a Court in New Amsterdam, Berbice, and at Suddie, Essequibo, but a Judge is not always available to preside over all of them. One Court has to be kept available for the Federal Supreme Court when it comes here to sit for some four or six weeks. Quite apart from accommodation, the Government has felt that a continued increase in the number of Judges is no solution to this problem.

The Government feels there is a root cause of the problem of mounting arrears of cases in the Supreme Court, and the question is whether or not it is a fact that some of the work which now has to be dealt with by the Supreme Court does not really justify the involved procedure of that kind, which is indeed necessary in intricate cases, both criminal and civil. There are many cases which are simple, in so far as the law is concerned on the civil side, involving breaches of contract

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or action for which the appropriate remedy is damages, which rightly come outside the jurisdiction of the Magistrate's Court, but which do not justify the long and involved procedure of the Supreme Court, and which, of course, causes the litigant to bear heavy costs.

The Supreme Court is a piece of intricate judicial machinery which is designed and geared to deal with involved and grave problems. When you have a piece of machinery to do a difficult task, it is expensive to instal in the first place with the necessary people to look after it, and it is expensive to maintain. The Magistrate's Court, which does not deal with such difficult or grave problems as the Supreme Court, is of a simpler composition and the cases before it are not so grave.

The question is whether or not there are cases, both civil and criminal, which, because justice must always be done and cannot be queried, can be disposed of by appropriate judicial officers of experience and authority who are good enough to sit with a jury in criminal cases or to hear civil cases of law involving a trial procedure. If that is so, the answer is, that the dual system of Courts should be amplified to make a three-tier system which affords a middle Court, whether you call it a County Court or a District Court, as exists in some overseas territories, for the reason that those other places have developed and found that the volume of legal work could indeed, for the sake of efficiency, be dealt with not by the Magistrate's Court nor the Supreme Court, but by a middle Court of appropriate authority.

The Government has considered this problem and, wishing to have expert advice on it, referred the matter to the Law Reform Committee, which was established some 18 months ago, and which, I believe, is a successful and most valuable institution. It is presided over by the Chief Justice and comprises a High Court Judge, Representatives of the Law Officers, and two practising Barristers, one of whom is nominated by the Bar Association, and two practising Solicitors, one of whom is nominated by the Law Society. So this Committee consists of a cross-section of all those in this country whose concern is the administration of justice.

The problem faced by the Government has been carefully considered by this Committee, and its recommendation was that there should be established a new Court to be called the District Court which would have both civil and criminal jurisdictions. It was felt that so far as the civil jurisdiction is concerned, the District Judge would be the presiding officer, and would deal with cases of breach of contract and cases giving rise to payment of damages involving amounts up to $1,500, which is a considerable increase in the jurisdiction of the Magistrate's Court in that type of case.

The District Court would not have jurisdiction to grant title to land or in cases where equitable relief is being sought, such as granting injunctions, or cases of specific contracts, which is a branch of law very much specialized and very difficult, and which it is thought best to retain in the Supreme Court.

So far as criminal jurisdiction is concerned, it was found that a considerable number of the cases which go to the Supreme Court now depend moreso on facts and very little on law, and the accused persons on being found guilty, the punishment is not more than two to three years at the outside.

If one looks at the Gazette at the end of the Assizes one would see that of the thirty or forty cases which have been heard in Georgetown, probably one-third of the accused were convicted of some of the less grave offences of uttering counterfeit coin, escaping from lawful custody, breaking and entering houses and so on

offences which are punishable with imprisonment for not more than eighteen months; sometimes two or three years, and it is considered that only in really grave cases that trial by jury is necessary. Trial by jury, of course, was instituted at a time when almost every criminal offence was punishable by death and, because of the very grave consequences of being found guilty, the safeguard of trial by jury has long been cherished.

It was Sir Robert Peel, in the middle of the last century, who reduced some two hundred offences which were punishable by death and so only the grievous offences are now punishable by death; other grave offences are punishable by a long term of imprisonment. In these cases trial by jury is essential. The question is: Where does the line come between those which can safely be dealt with by a judicial officer sitting alone, and those which should go before a judge and jury? The dividing line at the moment is offences attracting imprisonment up to six months, but I believe in England there is a move to alter that and raise the limit. It is certainly raised in other countries.

In Hong Kong, for instance, which has a population of three million, which is six times as large as this country, it is raised. Highly modernized and industrialized as it is, there are no more than four supreme courts. All of the other work, civil as well as criminal, is dealt with by Magistrates' Courts and District Courts. The District Judge sitting in his jurisdiction is able to send a person to prison for three years, and the system works well. There are middle Courts in overseas territories such as Africa and elsewhere.

When the Law Reform Committee made this recommendation and accompanied it by a draft bill, which is specifically the bill before the Council today, there was the anxiety expressed, and understandably expressed in some quarters, that if an accused person commits an offence today for which he has a right to stand trial by jury it would be wrong to oblige him to stand trial before a summary court, that is to say, before a judicial officer sitting alone in future.

Of course, one may argue that if you get into trouble, then you have no right to choose the tribunal before which you should be tried. But, on the other hand, there is this understandable feeling that even if a person may be made to incur imprisonment for one year, two years or three years he should have a trial by jury if he wants it. The Government, therefore, whilst accepting the principle of the recommendation of the Law Reform Committee, conceded the point about compulsory trial on a criminal charge before the District Court, decided that the criminal jurisdiction of the District Court should be with the consent of the accused person, and that if he wished to be tried before a jury he could ask for that to be done. In that case his punishment may be more than three years. On the other hand, if he elected to be tried by a District Judge he, on being found guilty, would only be liable to three years imprisonment.

There is provision also that if he is tried before a District Court he would have a copy of statements made by witnesses to the police, so that he can see the case that would be put against him. That is not so in the Magistrates' Courts, but it is done in the Supreme Court where depositions are taken. If the person is committed to trial he is able to see and hear what the witnesses are going to say against him.

I can say, at this stage, that it was very clear during the consideration of district courts by the Law Reform Committee that the solicitors, who are represented by the Law Society, were in favour of this move to introduce a new court in British Guiana, but the Bar Association which represented the barristers were not in favour *in toto*. I think there were ex-

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ceptions by certain members of the Bar. The majority of barristers feel that the solution of the problem before the Government of being able to deal expeditiously with litigation and criminal cases that come before the Courts lies not in creating a middle Court, but in the appointment of more Judges and the stretching out of the two-tier system. They also favour the appointment of Masters in Chambers who would do some of the pretrial work which is now done by Judges and which takes up a lot of time. It is a very useful suggestion but not a novel one because it has been thought of in the past. It will be referred to the Law Reform Committee for examination and recommendation. I feel that they will recommend that it should be adopted, and this should certainly speed up the work in the Supreme Court.

The Government in accepting, in principle, the recommendation of the Law Reform Committee made this modification so far as the criminal jurisdiction is concerned and agreed that this Bill should be introduced into this Council. Subsequently the Bar Association asked that they should come and see me to discuss the Bill, and a delegation comprising the President of the Bar Association, Mr. Percy Cummings, and the Secretary came and had a very frank and useful discussion with me. They made some of the same points that were made by their representatives on the Law Reform Committee. They said that they thought the Bill was a retrograde step, and there was no necessity, at the time that we were about to embark on self-government and independence, to introduce this new Court. They said that it would be expensive; that the Court would have to be carried on in buildings appropriate to the dignity of such a court, and that the Government should use that money on other pressing claims.

They also said that, whilst acknowledging that the Government had conceded the point that the criminal jurisdiction of the District Court should not be compulsory but by consent of the accused, in a case where a person is charged with a offence which would be triable by a District Court he would give his consent to being tried under duress. He would have the jitters to such an extent that he would not be a free agent to consent. There were one or two other points that they made. They said that whilst it would be logical to appoint Solicitors as District Judges they might, by their experience, not be able to deal adequately with the criminal work.

All of these points were considered by the Government, and it was felt that although some of the ideas would be useful—particularly those about the appointment of Masters in Chambers and so on—the solution to the problems suggested by the Bar Association at that stage would be merely a palliative: it would help a bit, but it would not grasp the problem by its roots and deal with it. This Government felt that it should be dealt with at the dawn of the new age where development would go ahead and attract with it an increase in litigation and so on.

I should like to inform hon. Members that the basis of the matter is that it will be a District Court in every sense of the word. It will be a Court that will render justice to the people in the district. It would not be as in the Supreme Court where a person who has a grievance has to come to Georgetown, or go to New Amsterdam and get involved in a lot of legal procedure before he gets into Court. He need only go to the Court in his district.

The District Judge will be an itinerant Judge. The District Court will sit in the Court house normally used by a Magistrate but at different times. The procedure of the Court will be the same basically as in the civil and criminal jurisdictions of the Magistrate's Court. It will be a simple straightforward procedure, and the idea is that the less involved the procedure the more expeditiously justice will be done.

The Government and I hope that hon. Members will look at this problem objectively. The people really concerned are the litigants, the people who are accused of offences. That is what courts are for, and we want to ensure that people get justice without having to pay more for it than is absolutely necessary. There is no legal aid scheme in this country as yet. At the moment those who seek medical attention and are unable to pay for it can obtain it free, so it will not be too long before those who need legal advise but are unable to afford it will be able to obtain such advice without expense to themselves. We have not yet reached that stage so far as legal advice is concerned, but it is important that the cost to the litigant should be no more than is absolutely necessary.

I believe that if and when these courts are established, rather than restrict litigation, more cases will be filed. At the moment a number of cases which should be brought before the Court are not brought because the people say they cannot get near the court for two or three years and they need not bother with them. That is not right, and the people should have the means of redressing their wrongs quickly and equitably. That can be done through these District Courts.

I commend this Bill to the Council very earnestly because I believe it is a manifestation of this Government really appreciating the problem, going about it and finding a solution in the correct way, namely, considering it first, referring it to an expert body, having their report on it, considering it, then taking a decision which may not meet with the approval of all sections of the community and, of course, the legal community is an important one here. But I would stress that the Solicitors who form an important part of the legal community, and I know that some leading members of the Bar quite apart from those who are on the Law Reform Committee, are for it. It is a real attempt to deal with this problem before it gets larger and unmanageable. The appointment of four Judges without doing very much more would just put off the evil day, and Government hopes that the idea of District Courts, which is certainly new to this country, will be accepted and that in accepting it, a new stride forward will be made in this country.

At present, the administration of justice is top-heavy; it is cumbersome; it is expensive. I am not advocating cheap justice or inefficient justice. I am advocating sound justice, simple and expeditious justice, and the Government believes that the introduction of these Courts would be a means of providing it for the people of British Guiana.

I beg to move that the Bill intituled

> "An Ordinance to provide for the establishment of district courts and for matters pertaining to such courts"

be read a Second time.

The Financial Secretary: I beg to second the Motion.

Mr. Burnham : I came here this afternoon contrary to my doctor's instructions because I understood and knew that this Bill, which is undoubtedly important, was going to be debated; and I have been informed by the Attorney-General that it is not advisable or practicable to defer the debate until next week. I also came because I expected the "Disqualification Bill" would be debated. That, I understand, will not come up until tomorrow.

May I say from the outset that the principle behind this District Courts Bill finds or earns my support. I do not blame the initiator of the idea. I recollect that sometime in 1959 my opinion was canvassed and I did support the concept of an intermediate Court with greater jurisdiction than the Magistrate's Court and lesser jurisdiction than the High Court, and I did have the advantage of seeing this Bill in its very early draft

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form and of making some recommendations, one of which I noticed has been accepted. That is, that there should be the right of election on the part of the accused person as to whether he would be tried by the District Court Judge or take the advantage of his normal right to be tried before a Judge and jury. But since then, the Bar Association of which I am a member—not an executive member— has considered this Bill in some detail and, as the hon. Attorney-General has correctly stated, has come out in opposition to the provisions of this Bill.

Let me say that it is not my belief that the views of a professional body should necessarily be accepted *in toto* or that these views should have precedence over the views of a larger section of the community and the interests of the entire country. I, however, do feel that the views of professional bodies on subjects which come within their particular experience, should be carefully considered and not lightly brushed aside.

For instance, it has been brought to my attention that at a special meeting of the Bar Association there was a resolution passed which suggested that the congestion of work which one finds at the moment in the Supreme Court can be removed if, at least, three or four things were to be done. One of these things is the appointment of Masters in Chambers to take care of interlocutory applications, particularly, and certain pre-trial issues as happens in the United Kingdom.

Another suggestion of the Bar Association was that Judges of the Supreme Court should be assigned to definite divisions for stated periods, and that would obviate the embarrassment and difficulty which so frequently occur of a Judge having to break off a civil hearing and informing counsel at the last moment that he (the Judge) has to go over to Sessions. It is felt that that can be got around if Judges were assigned to definite divisions for stated periods. There would be fewer part-heard cases and fewer cases which have to be re-heard.

A third suggestion, with the same idea or intention as the second suggestion, was that there should be Commissioners of Assizes appointed from time to time to get rid of indictable matters which are triable in the Supreme Court. It seems to me that there is a certain amount of merit—in fact, I say there is undoubted merit—in these suggestions which come from the resolution passed by the Bar Association.

Personally, let me say quite clearly that I am not of the opinion that these suggestions put up would serve the purposes we want as admirably as would be the introduction of an Intermediate Court, but, like many others, including the Attorney-General, I may well be prognosticating wrongly; may well be not fully advised and may well be wrong; though I think we are right. And since the implementation of this District Courts Bill is not something, I understand from authoritative sources, that is likely to take place within the next two months; and since the suggestions made by the Bar Association have the same object as the District Courts Bill; and since the Attorney-General has said that he proposes to have the question of the appointment of Masters in Chambers referred to the Law Reform Committee, I wonder whether it would not be better advice for the Government to defer consideration of this Bill until such time as the recommendations of the Bar Association are sent to the Law Reform Committee and considered in juxtaposition with the District Courts Bill. Then members of the Bar Association and its executive body would have an opportunity to put forward their points of view in the context of a more careful and lengthy consideration.

If Government, after reviewing and considering the recommendations of the Bar Association, still feels that the District Courts Bill should be promulgated and passed, then Government will, at least, have the pleasure of knowing that everything was done after taking into consideration the views of the informed and the uninformed.

If this District Courts Bill were going to be acted upon immediately, I would not have recommended that, but I feel that the Law Reform Committee, which undoubtedly has members with the experience of Court of actions, would agree that the suggestion should be adopted. But, of course, I am aware of the fact that in this Council, it is always for those who have the greater number of heads—full or empty—to make the final decision: so I merely put that forward. I consider it my duty not only as a legislator, but as a enior Member of the Bar.

But, let us assume that my suggestion of tolerance does not find favour with the Government, there are some criticisms which I desire to make of the Bill as presented today. I did support the idea of this intermediate Court, and I hasten to say that for that I claim no originality. The person who canvassed me told me that the jurisdiction of a District Judge would have been greater than that of a magistrate not only from the point of view of the greater penalty which the former could inflict, but also from the point of view of the offences of which he could take cognizance. I have, however, been disappointed, because looking at clause 19 of the Bill I have got the impression that only those indictable offences which are triable summarily under Chapter 15— the Summary Jurisdiction (Procedure) Ordinance—are now to be taken cognizance of by the District Court. It may be that my reading or deduction is wrong, and if it is I am prepared to admit that I am wrong.

Another aspect of this Bill which calls for a certain amount of criticism, to my mind, is that the right of appeal from a decision of this District Court, particularly in its criminal jurisdiction, i too limited. The appeal, I see, goes from the District Court to the Full Court of Appeal, and not to the Federal Supreme Court. That rather seems to be definitely limited as compared with the right of appeal from the Supreme Court as a Court of first instance. It, therefore, follows that where previously a man who was litigant could readily and easily get from the Supreme Court to the Federal Supreme Court a long as the action involved $500 or more, that right is no longer open to him.

By virtue of the fact that an appeal from the District Court is to the Full Court of Appeal, my proposal in the circumstances is that there should either be an amendment to the Federal Supreme Court Ordinance or an additional provision attached to this particular Ordinance allowing an appeal even from the Full Court of Appeal to the Federal Supreme Court, provided it is coming from a District Court, as of right, in the same circumstances as those in which litigants are permitted to appeal from the Supreme Court to the Federal Supreme Court.

This particular aspect, I concede, is very complicated, but I am quite sure that the hon. learned Attorney-General, apart from being the leader of our profession, would appreciate the point I seek to make today. Both in civil and criminal cases the right of appeal to the Federal Supreme Court should be such as not to be more limited than at present. I do not agree with those who argue that in spite of the right of election there is bound to be a certain amount of coercion or duress.

I, however, would like *en passant* to make this observation which I ask the hon. the Attorney-General to note very carefully: Too frequently on an applica-

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tion under the Summary Jurisdiction (Procedure) Ordinance, First Schedule, the Police do exercise a certain amount of duress because their normal practice is this: They say to the accused person "We will apply for a summary trial provided you are prepared to enter a plea of guilty." Anyone who has practised at the Bar knows that, and cannot deny that such instances have been brought to his attention in the practice of his profession. How that can be remedied is another question.

Perhaps administratively there can be a direction to the Police, or perhaps there can be embodied in the provisions of the law some penalty for those who administer Justice or are responsible for prosecutions and indulge in such a practice. Further, the question as to whether or not a man should be tried summarily, if he so desires should be left to the accused—not only on the prosecutor's application but also on the accused's. This concept, I thought, would have been introduced in this Bill.

There are many accused persons who would be prepared to stand summary trial, but who are not given the opportunity. The prosecution has the right to decide whether or not an application should be made for a summary trial. I am not unaware of the practice that the Magistrate who is taking the preliminary enquiry has the power, in certain circumstances during the course of the hearing, to decide whether the case is one which ought to be dealt with summarily, and to intimate his to the accused person, and thus give him an opportunity to have the case dealt with summarily.

But in the first place, this comes rather late in the trial. That power cannot be exercised until evidence has been heard. In the second place it is a matter of discretion. Not very often does one see that power exercised. It would seem to me that the right should be given to the accused person under this Bill and the right to make application for a mary trial not left exclusively to the prosecution.

There is one other criticism I have of this Bill and also of the 1932 Ordinance which, I think, introduced for the first time the power of the Magistrate to take indictable cases summarily. That criticism is that there should not be endorsed, as is the practice, on the case jacket the grounds on which the application is made for the case to be dealt with summarily instead of indictably.

In the case of the Magistrate one may excuse him, for his is not the final adjudication. But in the case of a District Court Judge what would happen if the prosecution makes an application on the ground of adequacy of punishment and not having regard to the known character of the accused person? There is obviously the inference to be drawn that the accused person has not a good character. I am aware of the fact that the District Court Judge is going to be a lawyer. One has not to say a trained lawyer because one is deemed to be trained before one becomes a lawyer.

But it is to be observed that the qualification for a Judge of the District Court is five years' standing at the Bar. He may in the case of undoubted brilliance be considered qualified, but conversely the average practitioner of five years' standing may not be sufficiently experienced; he may not be able to qualify himself for the wider task on the Judiciary. There should therefore be no inference or implication that the accused person does not have a good character.

It may appear to be a minor matter to those who have, neither as advocate nor accused person, to face the Court, but by those who have to face the Court on criminal charges of some gravity, and those who do represent such persons, I think

the importance, albeit nicety of the point which I seek to make, will be readily accepted.

There is one other hiatus in this Bill —the right of representation. Under the Legal Practitioners (Definition of Functions) Ordinance which was passed in the context of our two-tier system of Courts, in an action involving more than $500.00, neither a Solicitor nor a Barrister can appear alone. The law here is not clear. Does it follow that because the District Court is to be established for certain purposes according to the Summary Jurisdiction Ordinance, a Solicitor or a Barrister can appear alone before it, in an action involving a maximum of $1,500? A solicitor will be competent to be a District Judge under this Ordinance. I shall make a comment on that shortly.

It seems to me that if neither the solicitor nor the barrister can appear alone in the High Court in an action over $500, then there is certainly an anomaly if either can appear alone in a District Court in an action up to $1,500. It is not that I am suggesting that neither should be allowed to appear alone in a District Court in an action over $500. It may well be that the Government is going to amend the Legal Practitioners Definition of Functions Ordinance to permit a barrister or a solicitor to appear alone in an action over $500. But let us regularize it.

Maybe what those who drafted this Bill had in mind was that the limitation of the cases over $500 would also apply to the Ordinance to which I have referred. Even the best of draftsmen sometimes forget little matters — the Statute Books are replete with examples of corrections and omissions. Perhaps the Attorney-General will tell us if he proposes to introduce an amendment to the Legal Practitioners Definition of Functions Ordinance before this Bill comes into force.

Another observation I want to make is with respect to the qualifications of those who can or should sit as District Court Judges. I am not a snob and, consequently, I can say that in the solicitors' branch of the profession there are many persons of undoubted experience who can with justification and success carry out the functions of a District Court Judge as well as a number of members of the Bar, but what I am concerned about is the limitation of five years standing. What does five years standing mean?

We who have practised in the Courts have noticed that on occasions five years standing has been interpreted to mean five years after qualifying, or five years after being called to the Bar. The mole had his eyes thousands of years ago but he does not have them now, but you can say that the mole's eyes are of thousands of years standing. There are many persons who may qualify either as barristers or solicitors five years or more prior to their appointments but who have not heard their voices in the court of law even in a criminal complaint brought under Section 144 or Section 141, commonly called in ordinary parlance "cuss cases". It certainly seems to me that, save in exceptional and extraordinary cases, someone who has not had active practice at the Bar would not normally be as well qualified. I am choosing my words most carefully, Mr. Speaker, and I say they would not normally be as well qualified as one who has had active practice at the Bar.

There are some persons who have been raised to judicial offices, I understand, who are not particularly familiar with the White Book. That is unsatisfactory because one wants to find a Bench which is noted not only for its integrity, but also for its actual experience — I would not say necessarily its academic brilliance but, at least, its scholarship. I believe that five years standing is not a sufficient yardstick. I do not have the solution to this problem at the moment, because I know that there are some exceptional cases. I know, for instance, there was a three-year limit so far as the appointments to the magistracy and law office were concerned, and we have had

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in recent times the example of the last Solicitor-General who, without having the necessary practice, has done very well. But even though exceptions may be made, I still feel that the limit of five years standing is not good enough, if the district court is to be a court which would earn respect.

I do not quarrel with solicitors being appointed; I quarrel with persons who are not properly qualified by performance and experience to hold such an office. I know that in Jamaica, for instance, a Magistrate can either be a solicitor or a barrister. In fact one of the members of the Jamaica Bench, Mr. Duffus was a solicitor up to 1956. I know that the late Sir Alfred Crane was a solicitor when he was appointed to the magistracy. I hope that the appointments to any of these District Courts Bench will not be automatic appointments from the magistracy. May I be careful with my language and say exactly what I want to say on this question. I conceive that one will find among the Magistrates on the magisterial Benches today a number of individuals who, to my mind, would make suitable District Court Judges, but I shall ask those who may be responsible for appointments to the District Court judiciary not to make these appointments automatic rewards for sheer seniority on the magisterial Bench. There has been too much of a tendency to make these promotions automatic.

I repeat that there are many persons that I have seen and known in the past and in the present who are entitled to promotion — judicial promotion — from magisterial appointments, but please do not let it be automatic; please do not ignore the claims of the members of the practising Bar or practising solicitors. I can hardly be accused of arguing my own case because my aspirations have never been magisterial or judicial—there are in another field. Apart from that the field is certainly not financially attractive.

There is one final observation I desire to make. I understood from the Attorney-General that he looked upon these District Courts as itinerant Courts, and they would wander from Magistrate's Court to Magistrate's Court.

Mr. Speaker : Time.

Mr. Jackson : I beg to move that the speaker be given fifteen minutes more.

Mr. Gajraj: I beg to second the Motion.

Question put, and agreed to.

The Speaker: Proceed.

Mr. Burnham : I was saying that the Attorney-General gave me the impression during the course of his remarks, that he looked upon the District Court as an itinerant Court that wandered lonely as a cloud from Magistrate's Court to Magistrate's Court. It seems to me that nothing can be better calculated to destroy the dignity of the court than to have it wandering from Magistrate's Court to Magistrate's court. The dignity of the Court, regardless of the political or economic system of a country, is something that is emphasized in all parts of the world, West, North and East. This district court is expected to be a court with a larger jurisdiction than a Magistrate's Court and, consequently, its dignity must be ensured from the very beginning. It is no sense putting forward the thesis that there is no money available for setting up the new system as well as the buildings. There is no point in talking about the Court going to the people. If we are going back to ancient Rome and Greek times we could talk about the Court going to the people.

What we want is a Court of dignity; a Court that will be respected not only because of the scholarship which one finds there, not only because of the experience which one finds there, but also because of the physical surroundings and habitat. The Government must face the

fact that it has to set up a District Court organization. It has to find buildings, staff and make preparation and provision for the District Court's registry. There is no sense doing it harum-scarum and making the Magistrate's Court registry the same a the District's Court registry, because the Magistrate's Court registry is already over-burdened and ill-housed. In most cases loss of documents did not come to the notice of the public because the cases were not as important as those of the Supreme Court.

I feel that new buildings should be set up. You need not have only three District Courts. I will not for one moment agree to these courts being itinerant, and running to a Magistrate's Court when the latter is not there. I would not like to see the District Court going to Sisters Magistrate's Court where the pound is just next door and the flies from the animals' excreta pervade the Court where there is hardly space for counsel to stand; where the witness stands in a sort of improvised little box, and the Magistrate gives the impression of being a clerk rather than one who is dispensing justice.

The dignity of that particular Court is lacking even for Magistrates, let alone District Courts Judges. Let us not have these Courts running around the place into Magistrates' Courts or into Police Stations, because some Courts are Police Stations. We do not want these Courts, like Magistrates' Courts, to be held at Police Stations. We do not want them in the precincts of Police Stations and therefore, as a special privilege, accommodated by the Police. We want, as in other parts of the world, an Intermediate Court as a separate Court that will sit from time to time — from day to day — to adjudicate on matters which come before it.

Those are some of the criticisms I have of the Bill as it stands, and also of the remarks made by the hon. Attorney-General. But, finally, I would urge upon Government the deferment of the Bill to allow full consideration of the points raised by the Bar Association representing the views of the Members of the Bar.

Mr. Davis : Every time I rise to speak on a draft Bill that has reference to justice and the Courts, I seem to remember that warning levelled by my hon. Nominated Colleague a few months ago, of fools rushing in where sometimes angels fear to tread. In spite of that, I stand to offer my comment on this draft Bill as presented. Before starting, may I pay tribute to the hon. Member for Georgetown Central for the very lucid and admirable manner in which he has made his contribution to this bit of legislation.

I have taken the trouble to discus this matter with men in the country whom, in my judgment, this Bill concerns. Now, we have heard from the hon. and learned Attorney-General that the people want to feel that they are having justice. Quite true: and justice is a delicate matter which must be handled with the utmost care. People would like to feel that they have been given justice in all matters.

The learned Attorney-General also said that justice must be made available quickly and cheaply. I agree with that, but that justice must be within the reach of every man, woman and child who, for the moment, may call themselves British.

I have been informed that, in the past, there has been an abnormal list of untried and unfinished cases. I have been advised, also, that at about the beginning of 1960 that list carried between 1,200 to 1,300 cases. I am also advised that today that number has been reduced to about 400. I am sure the learned Attorney-General would correct me if these figures are wrong.

It is stated in the Objects and Reasons, under paragraph 5, page 16, that subject to certain reservations, the Magistrates' Courts have jurisdiction to hear

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and determine civil actions arising from contract or tort where the amount claimed by way of damages or otherwise does not exceed $250. It has been suggested to me that that amount should be varied upward and that would, in itself, relieve some of the cases that now go to the Higher Courts. That, to me, seems to be a reasonable expectation. When this amount was originally fixed, the dollar, then, did not have the value that it has today. By that I mean we still get the same one hundred cents on the dollar, but the point I want to stress is that what could have been bought in those days for one dollar would cost very much more now.

In discussing this matter, it had also been suggested to me that part of our trouble, particularly in the Magistrates' Courts—and I offer it for what it is worth — is that since the price control laws, in particular, have become obsolete, the work has not been properly distributed. Let me put it this way: There has not been a corresponding revision of the distribution of the work. I have been advised that some Courts are considered relatively easier Courts to administer than others, because of this factor. I think that this should be one of the points which could be actively considered by the Attorney-General and his Government.

The establishment of these District Courts might run into considerable sums of money. With the establishment of these Courts, there must necessarily follow the appointment of Registrars, additional clerks and bailiffs; and a possibility that must not be ruled out is that after the Courts have been established, it is more than likely that you must address your minds to the problem of housing for the officers in the districts. And on examination of this particular phase of operation, I feel we should move cautiously in the matter. I want to be quite clear in making this point because I do not want any Member to leave here with the impression that I feel justice is something that can be administered cheaply.

If it is really necessary — and I think it is necessary to have this piece of legislation for the man in the street as well as the man who is better placed — then we must make the same provision for justice for all concerned. Because of this, I must say that I am impressed favourably with the suggestion that for the moment an additional Judge may provide the answer to our problem, or perhaps two additional Judges, and not the palliative, as suggested by the hon. the Attorney-General. I am also impressed by the suggestion that emanated, as the hon. the Attorney-General has said, from the Bar Association for the District Court's jurisdiction — the appointment of two Masters in Chambers.

It does appear to me that if this simple but most necessary work is taken off the shoulders of the Higher Court then, as a further suggestion that emanated from my hon. colleague, the Member for Georgetown Central (Mr. Burnham) that the appointment of Judges to either criminal or civil sections be by agreement for stated periods, I think that is a worthwhile and workable suggestion. I have heard it expressed that the District Court may cause confusion and even greater inconvenience. It is the same point raised by the hon. Member for Georgetown Central: an accused person should have the right to choose or to request that he be tried by his peers or equals.

But does that work as well as it should? I have been informed that the average accused person only elects to be tried summarily, either when his case is indeed a very black one, or when he finds himself in such an impecunious position that he is unable to obtain the services of learned counsel. He really accepts a summary trial in a back-to-the-wall attitude. I consider that when a

person is likely or has to face the possibility of imprisonment for more than 12 months, it is his inherent right that he be tried by his peers or equals.

I feel that an accused person, who is going to face the possibility of such a long stretch of imprisonment as three years, would much prefer to face a trial by a Judge and jury, particularly when he thinks of the possibility of the jury bringing him in guilty but also recommending him to the Judge for clemency or leniency. I think that is the essence of Justice, for we have learnt from the British that an accused person or his counsel is likely to trade on the sympathy and emotion of the jury. Only very recently we have added the fairer sex to the jury. I think I am right in saying that it follows that this Bill of Rights, as it is called, for the accused person to be tried by his peers should be fundamentally his at all times and should not be left entirely to the discretion of any other person.

Another suggestion I would like to make is this: If after all the arguments against, the Government persists in introducing this piece of legislation, then I suggest—indeed I urge—that consideration be given only to the handing over of civil matters to the District Court, and thus remove from the orbit of the District Court all criminal matters in which persons are charged indictably.

I am also impressed by the point made by the hon. Member for Georgetown Central, when he pointed out that this Bill does not provide for matters to go from the District Court to the Federal Court of Appeal as a right. As I understood him, a matter which had been determined in the District Court would first, as of right, have to be taken to the Full Court of Appeal, and then if the litigants or the Police, and/or the Crown want to take the matter further, they would then have to apply for leave to do so, which may or may not be granted. I do consider this to be an imposition.

I do not believe any Government should want to do anything which would deny justice to its people. I should also like to urge that the Government accepts the suggestion made by the hon. Member for Georgetown Central not to hurry this bit of legislation, particularly in view of the fact that the overburdened list of cases of the past has now withered down to a reasonable proportion. I have been advised that it is now in the vicinity of 400, which is not an unreasonable number for a country of this size. I have been so advised, and if I am wrong I would accept correction.

That being so, I have to agree with my hon. colleague. I cannot appreciate the necessity for any indecent haste in the matter. To sum up, I think the points made against the Bill are all worthy of consideration by Government — the appointment of Masters in Chambers, the appointment of an additional Judge or two, perhaps. Then we should be able to see how this problem of expediency in our Courts can be improved. In any event if the decision is taken by this Council that these District Courts be still created, then their orbit should be limited only to civil actions or contracts.

The Attorney-General : I was very glad to hear from the hon. Member for Georgetown Central that the principle of the Bill earns his support, and that what he had to say did not in any way affect the root of the problem or the solution which the Government offers. It is right, indeed, that organizations which have a special interest and special knowledge in anything should have their views considered, and the Government in this case has taken great care to do so in two respects. The Bar Association made representations to the Governor in Council which were laid before the Governor in Council and carefully considered. But, as the hon. Member for Georgetown Central says, it does not always mean that what an interested organization says should necessarily be adopted.

[THE ATTORNEY-GENERAL]

I mentioned in my speech in moving the Second Reading of the Bill that the Bar Association had advocated the appointment of Masters in Chambers. I did not say that they had made one or two other lesser recommendations, but in fact they did and they will also be considered by the Law Reform Committee. I did not mention them because they were not exactly on the point of speeding up directly the hearing of cases in the Supreme Court. They had recommended that judges should be appointed to hear civil cases or criminal cases and be allowed to do so without their work being disturbed by being taken off to hear appeals and so on. It is a useful procedural suggestion which will also be considered by the Law Reform Committee. They had also recommended that Commissioners of Assizes should be appointed.

Now a Commissioner of Assizes is a lawyer of experience who is appointed to try Supreme Court criminal cases with a jury. He does not hear civil cases. Commissioners of Assizes have been appointed in the past in England from time to time when the lists at the Assizes become very heavy and they cannot always spare Judges to hear them, but there has been a considerable amount of criticism of the principle of the appointment of Commissioners of Assizes. It is felt, and indeed conceded by the Government in England, that when a person is on trial he should be tried by a full-blown Judge who is a Judge in all respects in his own right and [illegible] a member of the Bar or a senior member of the Bar who is brought in in the special occasion to hear one or more criminal cases. In practice it has not met with favourable response, and that is why in England recently a considerable increase in Judges of the High Court has [illegible] Judges have appointed. But on that ground the recommendation to the Bar Association will not be withheld from the Law Reform Committee. All of their suggestions will be considered.

The hon. Member for Georgetown Central suggested that the Bill should be deferred, but I have pointed out that it was brought up at this time, after very mature consideration, to deal with a really urgent problem. It is quite true, as the hon. Nominated Member, Mr. Davis, has said in his very valuable contribution to this debate, that the arrears in the Supreme Court have been reduced materially but that has been done at the expense of Judges working too hard. Our Judges should not have to work over long periods as hard as they have been, and I have heard Judges of the Supreme Court express that view. It is for that reason —even if there was not one case in arrears —Government feels that this measure should be introduced and adopted. I have said that in this day and age with a developing economy industrially, commercially and so on, and with the tempo of life much greater, it is felt that there are a number of cases both civil and criminal which do not require the attention of the High Court and all the procedure that goes with it.

It has been suggested that the criminal jurisdiction and indeed the civil jurisdiction of the District Courts should be widened as prescribed in the Bill. I think my hon. Friend the Member for Georgetown Central, who said that he was open to correction on this point, is not right when he says that the criminal jurisdiction appointed for the District Court is the same jurisdiction as Magistrates have in indictable cases which can be heard in a Magistrate's court with the consent of the accused. That is one part of the jurisdiction, but the other part is for offences which are now triable indictably and for which the maximum punishment is seven years imprisonment. There are some of these offences which are still at the moment not triable by the Magistrate even with the consent of the accused. The jurisdiction is wider than my hon. Friend thinks.

The original suggestion I may say for the civil jurisdiction of the court was $2,500, but after more mature consideration in the Law Reform Committee it was considered that $1,500 would be suitable. It is one of those things which no one can say is wrong or right at the present time. It is better to start off and see how it goes. It is unlikely to be excessive. The suggestion is that we should see how it works, and if it works well we can increase it at a later stage.

As regards the question of the right of appeal, it is quite true that cases can only get to the Federal Supreme Court from a Magistrate's Court today if the appeal, after having been heard by the Full Court, is on a point of law or a case where a person is losing his livelihood or whatever it is. The idea in this Bill is that the cases should henceforth be dealt with basically on the principle of summary jurisdiction and that would be on all-fours with cases in the Magistrate's Court. The procedure is the same, but it is realized that with an enhanced jurisdiction certain cases should be handled by judicial officers of more experience. The stand at the moment is that the cases to be heard by the District Courts would not justify any special treatment other than that meted out to cases in the Magistrates' Courts.

Now, I would like to deal with a point which I know is very close to the heart of the hon. Member for Georgetown Central. He is very concerned, and indeed so am I, about criminal cases which are indictable but which come within that category that can be heard in the Magistrate's Court with the consent of the accused. I have been going into the matter myself recently because I have felt that the only cases that seemed to be dealt with summarily are those where the accused pleaded guilty; and I believe that in an effort to get justice done without any unnecessary procedure and delay of cases which can justifiably be taken in the Magistrate's Court although they are indictable, they can be tried there unless there is some special reason why they should be tried by the Supreme Court.

There are some cases—and I have had to deal with one myself—where it would be a travesty of justice if a person who has pleaded guilty were only given six months' imprisonment, and I have had to advise that the case should be taken by the Supreme Court. But that is an exception; and I have given special instructions to my colleague, who works at Police Headquarters to advise the Police, that cases which are not intended for the Magistrate's Court should be examined by him so that cases, in future, will not go to the Supreme Court which can be dealt with in the Magistrate's Court unless they had been carefully examined and it is found there are special reasons why they should go 'upstairs'. So that the point raised by my hon. and Learned Friend is taken.

He said that there should be the right to apply for the case to be heard by the Magistrate's Court. But, of course, the ultimate decision as to whether the case may be dealt with by the Magistrate's Court or the Supreme Court must be left to the Magistrate; and that is why provision is made in this Bill for a District Court Judge to hear representations by both sides as to whether or not it should be dealt with by a District Court. But the final decision must be in the light of the history of the case, the gravity of the offence and consideration of the evidence to be taken by the Magistrate.

My hon. and learned Friend also raised the point about the basic qualification for a District Court Judge being of not less than five years' standing does not necessarily mean five years' practice and we must be careful on that point, and that no person is fit to be appointed a District Court Judge unless he has many more years' experience. I would like to remind him that the basic qualification for a Supreme Court Judge is that he should be a person of not less than seven years' standing as a barrister. We have

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said five years' standing as a barrister or solicitor for a District Court Judge; and the new Constitution provides that the qualification for a Supreme Court Judge may be more than seven years' standing. Article 85(3) of the new Constitution provides:

> "85(3) (a) Any person being a barrister of not less than seven years' standing shall be qualified to be appointed a judge of the Supreme Court and no other person shall be qualified to be so appointed."

Of course, that is the very minimum; and I very much doubt whether anybody with that minimum would be appointed.

My hon. Friend said that what they want is men of experience and learning who know their work, but I wish to stress that the Government is very conscious of the fact that District Courts Judges can, by their conduct, make or mar the success of the District Courts; and we are very conscious that, because of this point that was taken, District Courts Judges must not be looked upon as, necessarily, recognition of long service as Magistrates with a view to automatic appointments. I think that the Judicial Service Commission, which now advises on all appointments of Magistrates and Judges other than the Chief Justice will soon, we hope, have executive powers and will be quite able to sense the need for care in appointing District Courts Judges. The Judicial Service Commission after all, is composed largely of Judges. The Judicial Service Commission will be presided over by the Chief Justice. It will have on it the Senior Puisne Judge, besides the Chairman of the Public Service Commission—another person who has held a high judicial office and, therefore, a person who has been a Supreme Court Judge. And I am quite satisfied that this point—an important and delicate point—will be looked after by the Judicial Service Commission. So my hon. Friend opposite need have no fear.

I am surprised that it has been suggested that the Courts should not be itinerants. I have in mind that the idea is that there should be three Courts to begin with—one in Berbice and two, with headquarters in Georgetown, for Demerara and Essequibo, respectively. There will be Registrars in each of these headquarters and then these Courts will travel around as, indeed, the Magistrates Courts do.

It is very understandable that hon. Members should be concerned that the dignity of a Court of this type should be maintained and that a Court should only sit in appropriate surroundings and accommodation. That is all very well, and it is an ideal course, but we cannot all give effect to champagne taste with a pocket that can only afford beers. There is a plan which the Government has and which, I believe, is actually a paper plan for a new building to house not only District Courts but Magistrates' Courts in an attempt to get the Magistrates' Courts out of the Wharton Building where it is considered the accommodation is quite inappropriate and unsatisfactory. But to say that no District Court should sit in a place where a Magistrate's Court sits is going too far. Indeed, the Supreme Court in Suddie sits in a Court house where the Magistrate's Court sits. It is not a desirable thing, but if you want to achieve something and there is an urgent problem to solve, then the thing to do is to get on with it, and if later on the Courts can be embellished, then they will be embellished.

It is necessary, as the hon. Nominated Member, Mr. Davis said, to appoint magistrates and bailiffs. We have to do that. It may not be necessary for them to be housed in every district where the Court will sit. Probably not; but just as the increase of litigation is showing no signs of abating, so must we show no signs of relaxing in dealing with this all-important problem of having swift and efficient justice.

The hon. Nominated Member, Mr. Davis, suggested that the Court should be a Civil Court. There was a suggestion

to which the Government had agreed to enable criminal jurisdiction to be only by consent. There was the suggestion that very few accused would consent, unless the cases against them were overwhelming and they knew they were going to be convicted and sentenced, and they hoped to get two years in a District Court rather than going to the Supreme Court where they would get five years. It was suggested that these cases would not be sufficient to justify giving the District Court criminal jurisdiction at all. On the other hand, a number of legal practitioners have said that the clients they represent would go to a Court like this, and even if they had a good chance of getting off in the Supreme Court, they would not like to go all the way from the Magistrate's Court to the Supreme Court from the point of view of anxiety, costs and so on. The entire view is that a number of accused persons would elect to go to trial before a District Court.

And as far as appeal is concerned, as I have said, the whole idea of this Court is that it should be virtually on all-fours with the Magistrate's Court except that the judicial officer would be a man of more experience and authority, and he would be slightly more acquainted with the cases. If it is necessary, at any stage, to alter the course of appeal, then the way to do that is through the Federal Supreme Court legislation rather than the District Courts legislation.

I welcome the very constructive speeches made by hon. Members on the other side of the Council, and I can assure them that the points they have made will be carefully considered.

Mr. Speaker : I shall now put the question, "That this Bill be read a Second time.

Question put, and agreed to.

Bill read a Second time.

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

COUNCIL IN COMMITTEE

Clauses 1 to 4 passed as printed.

Clause 5—*Appointment of District Judges.*

Mr. Burnham : May I inquire from the hon. the Attorney-General what is the necessity for defining "Barrister", and for defining it in a way as to leave us in great doubt. Among the advocates in the Supreme Courts of the Commonwealth are persons who are neither Barristers nor Solicitors. One can be an advocate in St. Lucia without being a Barrister or a Solicitor. Why not leave the word "Barrister" as it is understood?

The Attorney-General : This is a precedent on which I cannot on my own express an opinion at the moment. I do not know whether it is in the Supreme Court Ordinance. I will look into it. We can leave this Clause open until I look into it.

Consideration of Clause 5 deferred.

Clauses 6 to 12 passed as printed.

Clause 13—*Jurisdiction in contract and tort.*

Mr. Burnham : In subsection (4) there arises a difficulty. I have pointed out to the hon. the Attorney-General privately that the District Court is not given a jurisdiction where immovable property is involved. What happens if the evidence in a case discloses that a question of title is being raised? There should be some provision for automatic transfer to the Supreme Court, as it will make for less expense.

The Attorney-General : The same position exists in the Supreme Court today, but in practice such difficulties do not arise unless one party claims equitable remedy.

Mr. Burnham : The prescribed limit being $250 in the Magistrates' Court, one can almost see why it does not arise, but when the amount is raised to $1,500 one can imagine a number of circumstances in which it would arise. I would suggest to the hon. the Attorney-General that provision be made for the transfer of such cases to the Supreme Court when it becomes obvious at the trial that it is a matter of which the District Court can take no cognizance.

The Attorney-General : This position has been considered. Although the argument sounds logical, in practice we are satisfied it will not arise. My hon. Friend has admitted that in a jurisdiction of $250 it does not arise, but he suggests that in a jurisdiction of $500 it would. In equity the amount of money is involved. You may have a contract involving $100 which tells from specific performance, but it is not in practice raised unless equity is claimed.

Mr. Burnham : Under subsection (4) you would have to go to the Supreme Court to raise a defence in answer to an equitable claim.

The Chairman: I want to get this clear. It is suggested that title to immovable property should not be raised under the jurisdiction of the District Court.

The Attorney-General : No, Sir.

The Chairman: Supposing a person brings a claim where title to immovable property is involved. Would it not be mentioned?

Mr. Burnham : The claim may be for goods or fruits, and then the defence may state "I took these by virtue of my title to the land". What happens in such a case? There should be a provision for automatic transfer to the Supreme Court. Otherwise what is going to happen? The District Court will at a certain stage of the evidence decline jurisdiction. Then you will have to start all over again, which is belying the original intention to reduce the cost to litigants.

The Chairman: It is my knowledge that the question of title has been raised in the Magistrates' Courts several times, even though there was no mention of the question in the claim. That is why I asked if a person is precluded from raising it in defence. He certainly is not.

The Attorney-General : As I understand it, there is no jurisdiction to entertain anything which involves title, in which case the Court will have to decline jurisdiction, but these cases are extraordinarily rare. I imagine if anything has to be done it must not be done in this Bill. I would like to have some time to go into it, because it requires serious consideration. It is an important principle, and I do not care to go into the matter now. I will refer it for consideration by the Law Report Committee which does that sort of examination.

Mr. Burnham : The Attorney-General says it requires serious consideration. It is serious; when you are presenting a Bill like this there should have been serious and careful consideration from the beginning. I forgive the law officers for this because they are very busy with the new constitution. He says this is something to be referred to the Law Reform Committee. Surely the whole Bill is something to be referred to the Law Reform Committee. One of my reasons for asking that the Bill be deferred is that I understand from unimpeachable sources that this Bill will not be implemented immediately; it will be put in cold storage, therefore why carry it through today and then put it in cold storage? If there was some urgency in the matter, if it were something that this Government wanted to get through before it left office that would be something different. How can the leader of the Bar say now that this is a question that deserves serious consideration and should be referred to the Law Reform Committee?

This Ordinance will be amended piecemeal; it will give the practitioner a great deal of difficulty and force the lay-

man to employ a practitioner for what can be a very simple matter. Amendments should be shied away from. This is a question of finding amendments and interpreting things. I would urge upon the hon. and learned Attorney-General, since he admits by a nod of the head that it will be put in cold storage, to defer these points under consideration in conjunction with the proposals of the Bar Association.

The Attorney-General : I think the hon. Member is rather confused in his thoughts. What I said required consideration was the principle in relation not only to this Bill, but to District Courts and Magistrate's Courts. The function of the District Court has been exhaustively considered by the Law Reform Committee, and I am quite satisfied that it has gone carefully into all of these matters. Now that the hon. Member has raised new issues about the Magistrate's Court the matters will have to be gone into *de novo*. That is why I have said that certain points are under consideration.

He says that by a nod of the head I acknowledged that this Bill, if it were passed, will go into cold storage. I think he is mistaken there. What I have said is that this Bill has a suspensory clause in it and would not automatically come into force immediately it is assented to, and, in view of the fact that this Council may be dissolved shortly, it may well be that it will not be brought into effect straightway particularly as the Chief Justice, who will be concerned with getting the new Courts going, is still away.

Therefore it is unlikely that, if the Bill is assented to shortly, it will come into force immediately. There is likely to be some delay in its implementation, but I still stand by what I have said: that in practice, so far as equity is concerned—equity is no more likely to arise in a District Court as in a Magistrate's Court because it has no equitable jurisdiction—the defence is rarely likely to be raised when an equitable remedy is sought. If, in the past, there have been a few cases where the title of land has been raised as a defence, that has not been brought to my attention by those experts who have considered this Bill and who have had very good practical experience for a number of years. I will certainly raise this matter with them, but I think that this is not the time to put in an amendment on that point.

Mr. Burnham : If the Attorney-General is speaking for his Government and he says that this is not the time for for an amendment, that is a matter for him. I certainly thought that we were approaching this particular Bill not from the point of view of Government and opposition. It certainly seems to me to be a bit of naïveté to suggest that because equitable defences have not usually been raised when $250 is involved they will not be raised when $1,500 is involved. One or two of us who work in the courts know to the contrary. I can say categorically that it is much more likely to be raised when $1,500 is involved. I am not talking about people with standing—anybody can have standing. Everybody cannot practise, but anyone who has had practice in these courts will know how expensive things can be. The hon. Minister of Community Development and Education would bear me out, if he were in his seat, that in many of these cases involving the sum of $1,500 equitable defences are raised. The fact is that they are raised.

The general attitude normally is that $250 is a comparatively small sum, and unless there is some grave issue involved the litigants or their legal advisers prefer to avoid the issue. But if the sum involved is $1,500 they will take advantage of every possible defence that can be raised. There is a great deal of difference between $250 and $1,500, and careful attention must be paid to this point. If the Attorney-General were to look at the appeals in cases in the Supreme Court

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he would see in how many cases in which there is a straight claim involving $1,500 equitable defences have been raised. I am sure he will find several of them.

Question put, and agreed to.

Clause 13 passed as printed.

Clauses 14 to 24 passed as printed. Be read a Second time.

Clause 25---*Accused to have copies of statements of prosecution witnesses.*

Mr. Burnham : Mr. Chairman, when an early draft of this Bill was shown to me, I remember raising the point that serving an accused with a copy of the statement of a witness was good but up to a point. Sometimes the original to the witness' statement carries certain deletions which can be material for the conducting of the defence of the accused. I would suggest that the accused be given the right in addition to getting a copy to inspect the original. I have known of my own knowledge that many a copy is not a true copy at times. I am quite sure the way this is going to be interpreted is that a copy of what is finally said by the witness would be served. If the witness said something and then changed it, there should be shown on the copy what had been crossed out. In a case in which I appeared recently I was able to serve a subpoena to give me the material to use in behalf of the defence. The defence may want to get a certain book, but what the Police may do is to serve a copy of what finally appears and not what originally appeared. I would suggest that the right be given the accused person to inspect the originals.

The Attorney-General : I can hardly imagine that if the accused person is entitled to a copy and asks to inspect the original, such request would be refused. I think the hon. Member would acknowledge that those who prosecute on behalf of the Crown are ready and willing to show the defence a copy of statements which in the interest of the defence should be revealed. I do not think it is necessary, at any rate at this stage, to legislate for something that in practice will be allowed. It is known that the practice is to give a copy. The Administration is only too ready to collaborate with the defence in any case.

Mr. Burnham : Let us face certain facts. There is nothing in the Law to compel a Magistrate or a Judge to order the prosecution to show the original. I have had experience with some bull-necked policemen who refused, and some bull-necked members of my profession too. But I must say that the majority of those who prosecute have a proper concept of their duty.

If the right is given in the Ordinance you would be able to exercise that right, but if you have to go through too many evolutions and revolutions you may not see the original. I make this statement from my experience.

The Chairman: I think we had better stop here.

Council resumed.

The Attorney-General : I beg to report progress in Committee on the District Courts Bill.

The Chief Secretary : It is proposed to hold a meeting of Finance Committee after Council at four o'clock. With the approval of hon. Members, I move that the Council adjourn to 2 p.m. tomorrow.

Mr. Speaker : Council stands adjourned to 2 p.m. tomorrow, Friday, 7th July, 1961.

Council adjourned accordingly.

SECOND LEGISLATIVE COUNCIL

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

Friday, 7th July, 1961

The Council met at 2 *p.m.*

PRESENT:

Speaker, His Honour Sir Donald Jackson
Chief Secretary, Hon. D. M. Hedges
Attorney-General, Hon. A. M. I. Austin, Q.C. } *ex officio*
Financial Secretary, Hon. W. P. D'Andrade.

The Honourable **Dr. C. B. Jagan** —*Member for Eastern Berbice* (Minister of Trade and Industry)

„ „ **B. H. Benn** —*Member for Essequibo River* (Minister of Natural Resources)

„ „ **Janet Jagan** —*Member for Western Essequibo* (Minister of Labour, Health and Housing)

„ „ **Ram Karran** —*Member for Demerara-Essequibo* (Minister of Communications and Works)

„ „ **B. S. Rai** —*Member for Central Demerara* (Minister of Community Development and Education).

Mr. **R. B. Gajraj** —*Nominated Member*
„ **W. O. R. Kendall** —*Member for New Amsterdam*
„ **L. F. S. Burnham, Q.C.** —*Member for Georgetown Central*
„ **A. L. Jackson** —*Member for Georgetown North*
„ **S. M. Saffee** —*Member for Western Berbice*
„ **R. E. Davis** —*Nominated Member*
„ **H. J. M. Hubbard** —*Nominated Member*
„ **A. G. Tasker, O.B.E.** —*Nominated Member.*

Mr. E. V. Viapree—Clerk of the Legislature (acting)
„ V. S. Charan—Assistant Clerk of the Legislature (acting).

ABSENT:

Mr. R. C. Tello—Nominated Member
„ F. Bowman—Member for Demerara River
„ S. Campbell—Member for North Western District
„ E. B. Beharry—Member for Eastern Demerara
„ Ajodha Singh—Member for Berbice River
„ Jai Narine Singh—Member for Georgetown South—on leave
„ A. M. Fredericks—Nominated Member.

The Clerk read prayers.

MINUTES

The Minutes of the meeting of the Council held on Thursday, 6th July, 1961, as printed and circulated, were taken as read and confirmed.

PAPERS LAID

The Financial Secretary (Mr. D'Andrade): Sir, I beg to lay on the Table

> Progress Report on the Development Expenditure for the half year ended 31st December, 1960, in the Development Programme 1960-1964.

STATEMENTS BY MEMBERS OF EXECUTIVE COUNCIL

LOAN FROM WORLD BANK

The Minister of Trade and Industry (Dr. Jagan): I should like to take this opportunity of informing Council of certain details of a Loan Agreement which I signed on behalf of the Government of British Guiana on 23rd June last with the International Bank for Reconstruction and Development.

The Agreement provides for a loan by the World Bank to British Guiana of an amount in various currencies equivalent to $1,250,000 U.S. which is equal, at the current rate of exchange, to about $2,125,000 B.W.I. The loan is guaranteed by the U.K. Government and it is repayable with interest at 5¾% over a period of just over 8 years in half yearly instalments—the first instalment falling due on November 1, 1963. The proceeds of the loan are to be used exclusively to augment the funds available to the British Guiana Credit Corporation for the mechanization of agriculture, land improvement, improvement of poultry raising and animal husbandry, processing of and storage facilities for rice and other agricultural products, logging and sawmilling, water transport for agricultural and forestry products and improvement of marine and river fishing.

Members will be pleased, I am sure, to hear that two private banks in the U.S.A. have participated, without any further guarantees, in the loan to the extent of $1 Mn. U.S.—an indication of the trust and confidence which the business world has in the economic future of British Guiana—a country on the threshold of internal self-Government and soon, I hope, to become fully independent.

DISTRICT COURTS BILL

Mr. Speaker: Council will resume consideration of the following Bill in Committee.

> A Bill intituled "An Ordinance to provide for the establishment of District Courts and for matters pertaining to such Courts".

The Attorney-General (Mr. Austin): I beg to move that Council resolves itself into Committee to resume consideration of the District Courts Bill.

The Financial Secretary: I beg to second the Motion.

Question put, and agreed to.

COUNCIL IN COMMITTEE

The Chairman: We were dealing with clause 25, and the hon. Member for Central Georgetown was raising some question on it when the Committee adjourned.

Clause 25—*Accused to have copies of statements of prosecution witnesses.*

Mr. Burnham: At the adjournment I was suggesting to the hon. the Attorney-General that there be a provision in this clause giving the accused person or his Solicitor and/or his Counsel the right to inspect on request the original of any statement, a copy of which had been served on him under the provision of this clause. As I spoke I thought of the Cinderella story. I wonder whether the hon. the Attorney-General would be the charming Prince.

The Attorney-General I have given considerable thought to the points raised yesterday, and I will deal with two other points at a later stage. But I reiterate what I said yesterday: that it is not proper that this Bill should provide the right of inspection of Police documents. The whole point of this clause is to give the accused person material from which he can see the sort of case that is being brought against him. The statements will be in lieu of depositions, and those statements will give him sufficient indication of the charge he is likely to meet.

If in the course of the trial a witness gives different evidence from that recorded in his statement, a new situation arises. The defence will then readily make available the original statement, if there is any doubt whether the witness is speaking the truth, or any person concerned is acting incorrectly. There are two separate issues.

The first one under this clause is to give the accused person an opportunity of seeing the case that is being brought against him. The second issue is the one raised by my hon. Friend. It is an important one but not appropriate to this clause. If there is any discrepancy in what the witness told the Police and what is in his statement, then that is provided in the existing principles of law and practice. I therefore ask the hon. Member not to press this point.

Mr. Burnham: I will not press the point, but it is not because I am convinced by the argument of the hon. the Attorney-General. One must be realistic to appreciate that it is useless to continue to press the point.

Question put, and agreed to.

Clause 25 passed as printed.

Clauses 26 to 28 passed as printed.

Clause 29—*Prosecution.*

Mr. Burnham: I suggest that it be stated that such legal practitioner who is appointed under this clause to conduct the prosecution shall have all the rights and privileges of the Attorney-General, as in the case of a barrister appointed to prosecute for the Crown under Chapter II.

The Attorney-General: That is the intention. I have not time at this moment to look at the particular clause, but there is no intention that the legal practitioner should have any less powers. The point about this clause is that there will be no question of the prosecution being conducted by a Police prosecutor, as in the case of the Magistrates' Courts. I ask to defer consideration of this clause so that I can look into it.

Further consideration of clause deferred.

Clauses 30 to 32 passed as printed.

Clause 33—*Payment of costs by convicted person.*

Mr. Burnham: I agree with the principle of the convicted person being made to pay costs, but I do not see why the principle is not applied to the prosecution, as happens in the United Kingdom under the Act of 1947. I do not think the Crown should escape paying costs when it brings vexatious or fictitious prosecutions. I thing that in this clause there should be inserted the liability of the prosecution to pay costs, if so ordered in a proper case by the Court.

The Attorney-General: This is a new principle so far as this country is concerned, and the Government will not accept any amendment which introduces a new principle of law. It may come in time, but not now.

Mr. Burnham: Certainly there is some attempt at humour on the part of the hon. the Attorney-General when he says this is a new principle.

The Attorney-General: Costs being awarded against the Crown.

Mr. Burnham: Under Chapters 10 and 11 an accused person can be made to pay costs. If that principle exists, it is not a new principle for the prosecution to pay in similar circumstances. I cannot understand why the hon. the Attorney-General and this Government are shying away from a new principle of law which will give protection to the subject. But it is not a new principle. Section 43 of Chapter 15 provides that the prosecution can be made to pay the costs in the case of a frivolous and vexatious prosecution. I do not see why in the District Court the prosecution should not be made to pay costs in a case where there is a frivolous and vexatious complaint.

The Attorney-General: The point about the Magistrate's Court is that the prosecution is a private prosecution and nobody pays costs.

Mr. Burnham: The point about the Magistrate's Court is that private and Police prosecutions may be brought; and in the case of the Police against Ashton Chase, it was the Police who had to pay the costs. The Magistrate's Court is not a place where only private complaints may be brought, but also Police prosecutions.

The Attorney-General: I cannot accept the Amendment on the point for the reasons I have given. I have made a note of it and will cause it to be considered by those whose duty it is to do these things, namely, the Law Reform Committee. It is a point that must be gone into, and it will be gone into.

Mr. Burnham: Mr. Chairman, I am in a generous mood. I shall not proceed.

Clauses 33 to 36 passed as printed.

Clause 37. — *Accessory before the fact and accomplice to misdemeanour.*

Mr. Burnham: Mr. Chairman, this is not a criticism; it is an inquiry. I desire to find out from the Government why it has put in Clause 37 which appears to be a repetition of Sections 25 and 31 of Chapter 10 — the liability of the accessory before the fact and abettor of a misdemeanour? What is the reason particularly, of Clause 37(2) which is a verbatim copy of Section 31 of Chapter 10? Because the District Court Judge, as I understand the principal framework of this Bill, has all the powers and, therefore, it would follow if he were sitting here as Judge and jury in certain cases, as in the case of the Magistrate whose trial of offences is summary that, automatically, these two provisions apply. I wonder what is the reason for the inclusion? I think it applies automatically.

The Attorney General : My hon. and learned Friend talks about "applying automatically". The automatic application of procedure stems from the incorporation of the Summary Jurisdiction Procedure by reference in the Schedule. These matters are not matters of procedure; they are matters of substantive law, and it is a question of setting out in the body of the Bill such an important matter.

Mr. Burnham: The position is this: As I understand, any offence under Chapter 10, which under the 1932 Ordinance could have been heard by a Magistrate in certain circumstances, is cognizable in this Court. Remember, too, any indictable offence which carries punishment of no more than seven years is also cognizable, and the offence created by Section 31 carries no higher punishment than seven years; so it is already included.

The Attorney-General: I can assure my hon. Friend, whereas the Clause in this Bill says that the criminal jurisdiction shall cover offences for which the maximum punishment is seven

years, it is necessary, at least out of abundant caution, to prescribe specifically for accessories before the fact and those who attempt to commit an offence.

Mr. Burnham: May I, therefore, now ask that since an accessory before the fact, in all cases of felony, can be tried by a District Court, what happens when the District Court cannot take cognizance of a felony which carries punishment of more than seven years? Section 37(1) increases the power of the District Court, but then one will have to read it "subject to the provisions of Section 19"; otherwise this would, in fact, give the District Court power to punish an accessory before the fact where the felony is punishable by more than seven years. A District Court cannot inflict punishment for a felony which carries more than seven years. Section 37(1) does not empower a District Court to take cognizance of an offence which carries more than seven years. Then it must be clearly stated: "subject to the provisions of Section 19".

The Attorney-General: This Clause refers specifically to offences which the District Courts can try, and there is no question of this clause referring to any other offences insofar as an accessory before the fact is concerned. The Clause is strictly referable to the offences which are within the jurisdiction of the District Courts.

Clauses 37 to 51 passed as printed.

Clause 52.—*Civil appeals.*

Mr. Burnham: Mr. Chairman, I think this is an appropriate place to remind the Attorney-General that this Bill curtails the right of appeal in cases which are tried by the Federal Supreme Court.

The Attorney-General: It is not correct to say that this Bill curtails the right of appeal in cases which today are tried by the Supreme Court. The point is that when a court has jurisdiction to try a matter there must be an unrestricted right of appeal. There is an unrestricted right of appeal in this Bill; the avenue of appeal is to the Full Court sitting with two or three Judges of the Supreme Court. From there, there is a further right of appeal to the Federal Supreme Court, but it is narrow. It is either on a point of law, or where it involves the loss of livelihood of a person by his having his licence to pursue a certain occupation taken away.

What my hon. Friend is trying to say is that he has great faith in the Federal Supreme Court and that he wants to be able to bring his appeal from the District Court straight to that Court. But it is the Government's duty to provide an adequate avenue of appeal and that is given in the Bill. Whether it be to the Full Court, which is a Court having the fullest competence, or to the Federal Supreme Court, is immaterial. The point is that there must be an unrestricted right of appeal and that is provided. Therefore, whilst appreciating my hon. Friend's point, I feel that there is no necessity to alter this clause.

Mr. Burnham: I can assure the hon. Attorney-General that I was not thinking of my appeals or taking appeals to the Federal Supreme Court.

The Attorney-General: I never had that in mind when I made the remark, and I withdraw it, if it is understood as referring to any appeals which my hon. and learned Friend may have to argue. I was dealing with appeals generally.

Mr. Burnham: Accepted, Mr. Chairman. One has to face this fact: the higher the appellate tribunal the better the opportuity for it to bring its authority, learning and scholarship to bear on cases. Therefore if one takes away from a litigant or accused the right of appeal as of right to the higher appellate tribunal, one is in fact restrict-

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ing that person's right of appeal. It is, to my mind, not logical. It smacks of sophistry to say that you have provided a Full Court of appeal as a tribunal to which the accused or litigant can go, when you curtail his right of appeal to the Federal Court. Let us follow that to its logical conclusion. What is wrong with giving to persons who are litigants in the High Court or are accused persons in the High Court the right to appeal to the Full Court. You have curtailed their rights and this is really the *reductio ad absurdum* of the argument by the Attorney-General. Merely to say that you have given them some tribunal to which they can appeal is not good enough.

I will ask the Attorney-General, since he seems to be in a strong considering mood, to consider this matter because it is a serious one. When one goes to Section 9 (2) (d) of the Federal Supreme Court Ordinance there is no appeal as of right. It can only be as the Attorney-General said a question of law, or where loss of office or status is involved, and in any case it has to be with the leave of the Full Court or the Judge making an order to the Federal Supreme Court.

It must be appreciated that it follows that there will be no appeal in civil cases coming from the district court to the Federal Court of appeal on the ground that the decision was against the weight of evidence, because that is not a matter of law and it does not involve loss of status. But it could be an important matter because there are certain facts on which an appeal can hang and be taken to the Federal Supreme Court not necessarily on a matter of law but on facts — a litigant cannot take his case there if it comes from the district court.

As I understand the law, since the district court has jurisdiction up to $1,500, unless some question is raised which involves equity or title to land, slander or something like that, you cannot go to the Supreme Court with a $1,500 action. If it is a straight action of contract or tort with no equitable defence in question regarding the title to land which the district court cannot take cognizance of, you have to go to the district court. No man who has an action involving an amount of $1,500 has the right of appeal to the Federal Supreme Court, unless it is a matter of law or loss of status.

I have said already that the principle of the Bill finds my support, but, certainly, the Attorney-General must understand that the curtailment of the subject's right of appeal cannot find my support. Certainly the Attorney-General, who is the lawyer in the Cabinet, should have impressed upon his colleagues that one does not lightly take away the right of appeal. I know there is another lawyer in the Cabinet but he is not there as a lawyer; he is a quasi Minister of Community Development Education. Cannot the Attorney-General appreciate this fact? Anybody who has practised law ought to be solicitous for the rights of the subject.

The Attorney-General: My hon. Friend must be consistent in his arguments. Civil cases heard by the District Court will be subject to a restriction of the forum in which they are to be heard. Instead of being heard in the Supreme Court by a Judge in all his glory, they will be heard by a District Court Judge who will be a subordinate judicial officer.

It is, therefore, consistent that an appeal from the District Court — the original hearing has been restricted to a lower court, so the appeal should also be restricted as regards the forum. The restriction in the original hearing is because, as I have already said, the cases arising out of contract and tort where the sum involved is not more than $1,500 are considered to be appropriate

for determination by a District Court. Similarly, it is considered appropriate that an appeal from the District Court should be heard by an appellate tribunal other than the Federal Supreme Court.

My hon. Friend quite rightly said that an appeal from a case arising out of contract and tried by a District Court in which $1,500 is involved will be heard by the Full Court. A case in contract where the plaintiff sought equitable relief in the form of specific performance would be tried in the Supreme Court, and on appeal would go straight to the Federal Supreme Court. The reason for that is that the equitable relief sought in that case is a far more intricate matter so far as law is concerned than a common-law case involving contract which could be left to the District Court. Where the law is more complicated the case will be dealt with by the Supreme Court. The appeal will, consequently, be more complicated, and it will therefore be dealt with by the Federal Supreme Court. My hon. Friend cannot say that the original hearing will be in the lower Court, but the appeal must go to the higher appeal Court.

Mr. Burnham: I am grateful to the Attorney-General for reminding me of consistency. He speaks about a lower Court, but the litigant did not choose the lower judicial officer — the litigant cannot go to the Supreme Court, except in certain circumstances.

What the litigant is asking for is not that his case be tried by a lower judicial officer, but that his case be tried expeditiously. But for an expeditious hearing of his case he must agree to a curtailment of his rights of appeal. The hon. the Attorney-General yesterday, when upholding the principle of the Bill, made expedition his major point, but now he says equitable relief is more complicated. Look at the ridiculous situation. He will have but to sue for $1,501 and take his full right of appeal to the Federal Supreme Court.

The hon. the Attorney-General, who has a penchant for consistency and logic, should recognize that notwithstanding the provision of subsection (2) of section 5 of the Federal Court Ordinance there should be an appeal as a right to the Federal Court in matters that come from the Supreme Court and the District Court. You are going to have the difference of a few cents making all the difference in the world. Any lawyer worthy of his salt is going to sue for $1,501 damages.

The hon. the Attorney-General cannot say he ought not to do so. He wants his case to go before the High Court even if the amount involved is less than $1,500 because he has the right of appeal. As soon as lawyers recognize that the right of appeal is not provided in the District they will readily go back to the High Court. Yet the hon. the Attorney-General is trying to help the administration of Justice with this District Court.

The Attorney-General: What my hon. Friend has not told this Council is that the same situation arises in the Magistrates' Court where civil cases up to $250 are tried, and there is the right of appeal to the Full Court. But if the amount involved is $251 the case goes to the Supreme Court for trial where there is the right of appeal to the Federal Supreme Court. He says the argument is ridiculous because, if you bring an action for $1,500, it will be heard in the District Court with the right of appeal to the Full Court, but if you sue for $1,501 the case will be heard by the Supreme Court with a right of appeal to the Federal Supreme Court. As I have pointed out, the same position arises in civil cases in the Magistrate's Court today.

If a plaintiff wishes to have his case tried by a certain Court he will have to increase the claim for damages to

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meet the provision of the Court he wants to try his case. In any event this is not the right place to provide for an appeal to the Federal Supreme Court. If there should be an appeal as a right (my hon. Friend does not say so, but he wishes to bypass the Full Court) then it would mean an amendment to the Federal Supreme Court Ordinance.

But let us see how it works. If after a number of cases have been determined by the District Court it is felt that the Government should provide another avenue of appeal, the matter would be considered at that time. This Bill has been carefully considered in the Law Reform Committee by leading representatives of the various branches of the profession, and they are perfectly satisfied with the right of appeal as provided —and so am I. I feel that the points raised by the hon. Member for Georgetown Central have been answered by what I have said, and I cannot see my way to accept his amendment to this clause.

Mr. Burnham: There is quite a difference between $250 and $1,500. What applies in a case of $1,500 does not apply in a case of $251. To wait and see how this thing works is not the correct approach, if one is interested in jurisprudence. The principle here is that the subject's rights should not be unnecessarily curtailed, and that can be answered by preserving the right to go the Federal Court. I am not to be overawed by the assertion that this Bill has been given careful consideration.

If this legislation has been given careful consideration, why not a verbal order instead of an oral order as to this right? I am not impressed. I am not saying that going by appeal to the Full Court must be cut out. All I am saying is: give a person the right to go to the Federal Supreme Court. You can do it here by saying "Notwithstanding the provisions of the Federal Appeal Ordinance there shall be an appeal from the District Court. I would have been much happier if the hon. the Attorney-General had introduced here an amendment of the Federal Appeal Court Ordinance to preserve this right. But if he does not want it, his successor will do it. I thought he would have liked to have left a more impressive record.

Question put, "That Clause 52 stand part of the Bill". The Committee divided and voted as follows:

For	*Against*
Mr. Tasker	Mr. Davis
Mr. Saffie	Mr. Gajraj
Mr. Rai	Mr. Jackson
Mr. Ram Karran	Mr. Burnham — 4.
Mr. Jagan	
Mr. Benn	
The Financial Secretary	
The Attorney-General	
Chief Secretary — 9.	

The Chairman: The Motion is carried. Clause 52 stands part of the Bill.

Clause 53 — *First, Second and Third Schedules passed as printed.*

The Chairman: There are two clauses outstanding: Clauses 5 and 29.

Clause 5 — *Appointment of District Judges.*

The Attorney-General: The hon. Member for Georgetown Central queried the definition of "Barrister" in subclause (2) of clause 5. I am bound to admit that I cannot see why, at this time, the qualification laid down cannot refer to members of the Bar and similarly to Solicitors admitted to practise before the Supreme Court of British Guiana. I have circulated a proposed amendment which reads—

> "Substitute the following:
>
> (2) For the purposes of this section and section 8 of this Ordinance—
>
> "Barrister" means any person duly admitted to practise before the Supreme Court as a Barrister;
>
> "Solicitor" means any person duly admitted to practise before the Supreme Court as a Solicitor."

The only thing I would say is that the typist has put a capital "b" for barrister and a capital "s" for solicitor when it should be a small "b" and a small "s".

The Chairman: Is "Supreme Court" defined?

The Attorney-General: "Supreme Court" is not defined though it is mentioned in several places. It is considered that the Supreme Court in this context needs no definition.

Mr. Burnham : I agree with the Amendment. Perhaps, it is a proper place to ask the Attorney-General whether he has reached any decision on the right of audience? As I did point out on the Second Reading, in the Supreme Court neither a solicitor nor barrister can appear alone in a matter over $500. What is the position with the District Court where the jurisdiction extends to $1,500 ?

The Attorney-General: I have nothing to add to what I said yesterday: that this is a Court of summary jurisdiction and, at the moment, the special relationship of barrister and solicitor applies to the Supreme Court. It does not apply to the Magistrate's Court, a Court of summary jurisdiction, nor would it apply to the District Court, also a Court of summary jurisdiction. It is, of course, the practice that in cases involving difficult points of law, where both barrister and solicitor have the right of audience, it is usually for clients to go to solicitors to be advi ed and barristers are briefed to appear in Court. It is unusual for a client to be represented by a solicitor in any Court where a particularly difficult point of law is involved. It sometimes happens in England that the most eminent Queen's Counsel appear in the Magistrates' Courts. When I was in Chambers I appeared with counsel who, t the moment, is the Lord Chancellor. think that is what will happen, in practice, here, as indeed it happens in the County Courts in England. Solicitors rarely appear, unless it is a straightforward case.

Mr. Burnham : I would like the Attorney-General to understand that I am not quarrelling with him, but it seems to me that the position is anomalous. Perhaps, he can assist by telling us that with this Ordinance there is a distinct provision for these District Courts. There is no reference, for instance, to Chapter 30 —the Legal Practitioners Ordinance— which provides for the right of audience. From time to time there is special reference to the Magistrates' Courts. The point I am making is that this Ordinance is silent. Chapter 30 cannot have reference to the District Courts Bill because the District Courts Bill comes after; therefore, unless you say "for all purposes" or "for certain purposes this shall be deemed to be a Magistrate's Court or a Court established under Chapter 12", a very diffiicult situation would arise. What are the rights of audience before this Court ? The Attorney-General must understand that I am not saying that solicitors must not appear alone or barristers; I am merely saying that something has to be provided. Merely due to an oversight of my friends, there is no provision by implication.

The Attorney-General: The right of audience is dealt with in the Legal Practitioners Ordinance, but so far as the Courts, other than the Supreme Court, are concerned, the heading "Any Magistrate or other inferior Court or tribunal" will catch the District Court because it is not the Supreme Court. I do not see there is any necessity for any reference to the Legal Practitioners Ordinance in this Bill.

Mr. Burnham : I agree with the Attorney-General that the right of audience will be dealt with under (a) of 42 (1) of Chapter 30. Now, the next question that arises is: Does not the hon. the Attorney-General consider the position anoma-

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lous? Does he not see the necessity then, to amend Chapter 30; that is, giving either the solicitor or barrister the right to appear alone up to $1,500, so that there can be some consistency?

The Attorney-General: I have taken a note of all my hon. and learned Friend's points, including the one made about the court of appeal. I will submit them for consideration by the Law Reform Committee; but I do not think, as I said, there should be reference to the Legal Practitioners Ordinance in this Bill.

The Chairman: The Question is, that Clause 5 (2) as amended be read as follows:

> "(2) For the purposes of this section and section 8 of this Ordinance —
>
> 'barrister' means any person duly admitted to practise before the Supreme Court as a barrister:
>
> 'solicitor' means any person duly admitted to practise before the Supreme Court as a solicitor."

Question put, and agreed to.

Clause 5 passed as amended.

Clause 29. — *Prosecution.*

The Attorney-General: It is true to say that in the Criminal Law Procedure Ordinance, where a legal practitioner is appointed to appear for the Attorney-General in criminal prosecutions before the Supreme Court, he is vested with all the powers of the Attorney-General. But I do not think it is necessary to spell this out here. The point is that the legal practitioner has the right of audience and all the powers that go with that right, and the only power that I can think of which he would not have and, indeed, he should not have without reference to the Attorney-General, is the power to discontinue proceedings. If it is felt at some stage that proceedings should be discontinued, the Attorney-General or the Director of Public Prosecutions, as it will be, will arrange for the legal practitioner appearing for the prosecution in the District Court to take the necessary action.

Mr. Burnham: That is not the particular right which I had in mind when I spoke about giving all the rights to the Attorney-General, because it is a most disgusting thing to see a member of the Bar there like a little lackey. [**The Attorney-General:** "What!"] Like a lackey I have carefully selected my words, Mr. Chairman — saying "May I have an adjournment so as to consult the Attorney-General?" He is a member of the Bar and I feel he should be given the right to exercise his judgment as a barrister to withdraw and not be a lackey to go back and consult the Attorney-General. I feel, in the same way he is given power with indictable cases which can carry hanging as a penalty, life imprisonment as a penalty—a barrister has the right to enter a *nolle prosequi* on his own judgment—I do not see why in the District Court he should not be given the same power.

The Attorney-General: I feel that it would not be appropriate to alter the present practice that when a case is to be discontinued, the public prosecutor is consulted, because it is a very important step to take and due consideration must be given before it is taken. It is a step which is not to be taken lightly. I can see from his expression that my hon. Friend understands what I have said.

Mr. Burnham: What I thought the Attorney-General would have admitted was that the prosecutors in the Supreme Court are not allowed the powers given them under the Ordinance. However, I shall not pursue that point.

Clause 29 passed as printed.

The Attorney-General: I should like to make reference to the point raised by the hon. Member for Georgetown Central yesterday about pleading defence in equity before the District Court. I

have given the matter careful consideration with my colleagues. It is a point which rarely arises in relation to the Magistrate's Court or, at least, not very often. As I said yesterday, the District Court is not a court of equity in the sense that anybody who wishes to seek equitable relief can go there. Equitable relief has an equitable remedy in the form of an injunction to restrain a person from doing certain things and so on. On the other hand, if an equitable defence is pleaded—there are several equitable defences dealing with fraud, misrepresentation, undue influence and so on, and Government feels that there is nothing which would prevent the District Judge from entering such a defence even if he cannot give the equitable relief.

I think the point made by my hon. Friend is covered without the necessity of making an amendment to the Bill to enable the case to be transferred to the Supreme Court. The law in subsection 2 means the common law including principles of equity. This Bill in giving jurisdiction to the District Court provides specifically that it should have jurisdiction in all actions at law which means common law whether arising from tort or contract. Law is common law including equity, but it is not a court of equity which means that it can grant equitable remedies or relief.

Council resumed.

The Attorney-General: Sir, I beg to report that the Bill has been considered in Committee and passed with one Amendment. I now beg to move that it be read the Third time.

Question put, and agreed to.

Bill read the Third time and passed.

CATTLE STEALING PREVENTION (AMDT.) BILL

The Speaker: The Attorney-General to move the Second Reading of the following Bill:

A Bill intituled "An Ordinance to amend the Cattle Stealing Prevention Ordinance".

The Attorney-General: Chapter 81, which is the Cattle Stealing Prevention Ordinance, is an ancient piece of legislation. It was passed in 1877 and it provides for a safeguard against stealing cattle by means of the registration of brands so that cattle owners can register their own brands, and cattle can be identified so far as their owners are concerned by the brand they carry.

It is found in practice that in certain parts of the country buffaloes, an important category of cattle, are not covered by this Ordinance. It is desirable that the owners of buffaloes should be given the same protection against theft as the other categories of cattle which include oxen, asses, bulls, cows, steers, sheep and so on. The prime object of this Bill is to insert "buffaloes" in the definition of cattle.

Secondly, Section 20 of the Bill which is, as it were, the sanction for the safeguard, enables a member of the police force or a rural constable to stop anybody on the road driving or conveying cattle and to ask for information relating to the ownership of the cattle: where they come from and where they are going. But it has been found that there is no offence created if any person refuses to stop or to give information concerning the cattle. Clause 5 of the Bill seeks to take care of that. I now beg to move that the Bill be read a Second time.

The Financial Secretary: I beg to second the Motion.

Mr. Davis : I can quite see why the Attorney-General and the Government have tried to tidy up this bit of legislation, but I would like to make two comments on what appears to me to be omissions. There are only two parts of the country where these buffaloes are

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prevalent: on Liberty Islands, Essequibo, and in the Mahaica/Mahaicony regions, but these buffaloes have now got out of hand and are rather like wild, dangerous animals. There are large numbers of them running wild in the Mahaica/Mahaicony back regions. Some of them are unprotected and unbranded not because the owners would not like to brand them, but because it is a very difficult and dangerous job to do so. I would have thought that consideration would have been given to the question of shooting the buffaloes as wild animals, because they can be a dangerous nuisance.

Another point I would like to make is with reference to Clause 5 (3) which states:

> "Where the person refuses to stop or refuses or neglects to give the information as aforesaid or knowingly gives false information "

I think this came about because the police have been insisting that persons who have transits to bring cattle from the West Coast and other places to Georgetown are told by the police that they must stop at each police station on the way down. Surely that seems to be taxing, unduly, the patience of legitimate cattle dealers. It has happened to me, Sir.

I was in a truck in which I had cattle at the back; I had my transit prepared and issued at the Mahaica Police Station, and I was told that I was required to stop at every police station on the way down. I considered that an imposition. When you arrive at the first police station you have to await their "lordships" pleasure — sometimes for half-hour—and when they come out to check they give you the impression that they are doing you a tremendous favour by inspecting the cattle. If that is what is meant by this bit of legislation, I will not be able to support it because I think it is wrong.

The Attorney-General: The first point made by the hon. Nominated Member, Mr. Davis, is an interesting one. It is news to me, and it has nothing to do with stealing of cattle. I suggest that he may either have a chat with the hon. Minister of Natural Resources who is concerned with agriculture in its widest aspects, or he can table a substantive Motion for debate because it would certainly require legislation to declare a buffalo which, as far as I know, is a domestic animal in this country as a wild animal and allow it to be shot. All sorts of legal questions are involved, but it is an interesting one.

The second point raised by the hon. Member is that it is tedious in driving cattle along the East Coast Road, for example, to have to check in at every police station. Whether he is speaking as a cattle owner I do not know, but I imagine that cattle owners would cherish the safeguard provided by this Ordinance and would be slow to say that persons conveying cattle should not check in at every police station. After all the police stations are not over a mile or so, there are long distances apart. If a person said that he was going from Rosignol to Mahaicony that may be so, but he may well turn off at an earlier stage of his journey. I think it is necessary to continue this provision that drovers of cattle should check in at each police station they pass. The point has never, so far as I know, been raised before. This Ordinance has been in force since 1877 and it seems to be one of substance. If the hon. Member feels strongly about it, I suggest that he raises the matter at another time.

Question put, and agreed to.

Bill read a Second time.

The Attorney-General: I beg to move that the Council resolves itself into Committee to consider the Bill clause by clause.

The Financial Secretary: I beg to second the Motion.

Question put, and agreed to.

COUNCIL IN COMMITTEE

Clauses 1 to 4 passed as printed.

Clause 5—*Power to stop persons driving or conveying cattle on highway.*

Mr. Gajraj: I should have spoken after the hon. Nominated Member, Mr. Davis, on the Motion for the Second Reading, to support the point he made. I do not have at the moment an amendment to offer, but if I am permitted, I would be very grateful. What the hon. Nominated Member has said in so far as the hardship and difficulties of the persons who are in charge of removing cattle from one part of the Coast to another, is absolutely true. I have had experiences of a similar kind reported to me, where persons legitimately purchase some head of cattle, put them in a truck and wish to bring them to Georgetown. They go to the nearest police station and after having proved their right to the possession of the cattle, they are given a transit permit which they have to keep with them.

But the trouble is—I do not know if the police constables are themselves carrying out the letter of the law properly —they do insist at the time of giving the transit permit, that the person in charge of the cattle must stop at every police station on the route to Georgetown. I know of cases where bringing in a truck two or even a single head of cattle from Mahaicony took nearly six hours to get to Georgetown because at every police station on the way the truck had to stop and as the hon. Nominated Member said, it takes a long time for the police constables to come and look after the matter.

What strikes me is what the hon. the Attorney-General mentioned. That is, that this legislation is of ancient vintage. It seems there must have been a very good idea at that time to insist on checking the number of cattle and brands at every police station, because up to five or more years ago most of the cattle were driven on foot on the public road to Georgetown. Today that position has changed considerably, and most of the cattle are brought into Georgetown by means of motor trucks. They are also brought in trucks on the railway.

In the past it is quite understandable that some persons travelling on the road with cattle might pick up a few head of cattle illigitimately and add them to their numbers. But that is hardly possible these days, as the cattle are transported in trucks. One wonders whether something can be introduced at this stage to differentiate between the cattle driven along the road and cattle conveyed by other means, because in the one case there is some justification for checking at every police station, but not in the other.

If a police constable at the station issuing the transit permit says: "You must go to every police station on the way to Georgetown", you have no alternative than to do what he requires. I wonder whether that is the intention. If it is, then you may relieve the people of some of the inconvenience and hardship they suffer in that respect. On the question of principle no one is opposing the Bill; it is just that the operation of the Ordinance imposes a hardship on the legitimate removal of cattle by road.

Mr. Davis: I think my hon. Friend, the Nominated Member, Mr. Gajraj, has struck the nail on the head. In the past every animal that came into Georgetown was driven down the public road. Eighty-six years ago it was deemed necessary to insist that, although a person had a transit pass, he should stop at every

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police station on the way to Georgetown and have his cattle and their brands checked. As the hon. Nominated Member, Mr. Gajraj, stated, it was because certain unscrupulous persons might add a few heads of cattle or exchange them on the way, or probably leave back one or two heads of legitimate purchase and include one or two "pick ups"

These are actual facts. But in these days when we have vehicles that go along the Coast, surely it is an imposition to ask them now to stop at each police station. What can be included here is a phrase such as this: "provided they are in possession of a valid transit pass".

Mr. Chairman : Put that where? Where are you suggesting that should be put?

Mr. Davis: In the second line of Subsection (2) which would read: "... may require any person driving or conveying cattle not in possession of a valid transit".

The Attorney General : What hon. Members have lost sight of is that cattle stealing is prevalent in this Colony. This Ordinance, though old, has a very practical effect, and the Government regards the safeguards provided by it as exceedingly important. It may mean some small inconvenience to cattle buyers, whether on the road or in a vehicle. It is very important to keep a check on the cattle being transported.

The hon. Nominated Member, Mr. Gajraj, suggests that once they have been checked they should be able to pass. That, of course, is the last speaker's suggested amendment, but, unless there are elaborate safeguards against cattle stealing, the idea may or may not be of a major effect. After the truck is checked the driver may drop off a head or two and take up one or two stolen cattle.

Unless there can be some proper arrangement, I foresee great difficulties of sealing the vehicle conveying cattle to prevent cattle getting in or out of it. The idea will not have any practical effect. Added to that, if a valid transit pass is given, as suggested in the amendment, the truck will still have to be stopped to see whether the driver has authority to transport the cattle. So very little saving of time can be foreseen, if the idea is adopted.

Mr. Gajraj : I quite agree with the hon. the Attorney-General that we should not do anything which would affect or tend to limit the steps taken to prevent an increase in cattle stealing, but it strikes me that we ought to be able to get rid of some of the inconvenience to the people removing cattle from one point to another. So I would suggest that the trucks be checked at two points: at the point of origin of the removal or movement, and at the last police station in the area to which the cattle are consigned.

Most of the cattle come into Georgetown from the coastal area and, therefore, they can be checked at a police station in Georgetown and the intervening police stations along the route be thus by-passed. That will help to save a lot of time and in no way encourage cattle stealing. As the hon. the Attorney-General has said, if on the way the driver of the truck drops off a head or two of cattle and takes on others that have been stolen, then it would certainly be discovered at his destination in Georgetown, and at the last police station. I think all hon. Members would appreciate the remarks of my hon. Friend, that we ought to try to work out something which would impose less hardship on those people.

Further to that, Mr. Chairman, intended to make the same point made by my hon. Friend, and that is: the cattle should be checked at the point of

destination. There should be a deterrent to cattle stealing. I have friends who have suffered from cattle stealing.

The most established system of cattle stealing is this: If a man lives at the Mahaica end and another man lives at the Mahaicony end, cattle being stolen from the Mahaica end are driven up and left for some time at the front of the Mahaicony end. These cattle do not go to the market for sale right away. They are kept there for two or three months. But the safeguard that would be effective is the one suggested by my hon. Friend — that is, checking at the point of disembarkation. It is there that the sale takes place.

There is another point that may be considered, and that is: the checking of all cattle should only take place between the hours of 4.00 p.m. and 6.00 p.m. — during the daylight. That, perhaps, may act as a deterrent.

The Chairman: I think we have agreed to stop at four o'clock today because there is Finance Committee.

The Attorney General (after consultation): My friend says if the Bill is only going to take a short time before it is finished, we may go on.

The Chairman: I do not mind if we go on to five o'clock.

The Attorney General : Not until five.

The Chairman: I do not mind. I have arranged for four o'clock, but I can go on to five o'clock.

The Attorney-General: It will not be necessary to sit, in any case, until five o'clock.

The Chairman: I have to make other arrangements.

The Attorney-General: I have consulted, in the short time available, with my colleague, the Minister of Natural Resources, and it is Government's view that, at least, until this matter is considered more fully and all the various implications gone into, the law should remain as it is. It is good that the hon. Members opposite have brought the point up and, as I have said, it will be noted and considered; but we feel that rushing into it at the moment and making a hasty amendment may not be the wisest thing. I give an undertaking that it will be carefully considered.

Mr. Gajraj : I will accept that and not press the point.

Question put, and agreed to.

Clause 5 passed as printed.

Council resumed.

The Attorney-General: I beg to report that the Bill was considered in Committee and passed without Amendment, and I move that it be now read the Third time.

Question put, and agreed to.

Bill read the Third time and passed.

Special Sittings

The Chief Secretary (Mr. Hedges): As there are still several items on the Order Paper that have not yet been dealt with, and as next week will be the last before the dissolution of the Council, subject, Sir, to your being satisfied that it will be in the interest of the public to sit outside the normal sitting days of Wednesday, Thursday and Friday, I beg to move that Council adjourns to Tuesday next at two o'clock in the afternoon.

Council adjourned accordingly, at 4.10 p.m.