

LEGISLATIVE COUNCIL.**THURSDAY, 7TH SEPTEMBER, 1950**

The Council met at 2 p.m., His Excellency the Governor, Sir Charles Woolley, K.C.M.G., O.B.E., M.C., President, in the Chair.

PRESENT

The President, His Excellency the Governor, Sir Charles Campbell Woolley, K.C.M.G., O.B.E., M.C.

The Hon. the Colonial Secretary, Mr J. Gutch, O.B.E.

The Hon. the Attorney-General, Mr. F. W. Holder, K.C.

The Hon. the Financial Secretary and Treasurer, Mr. E. F. McDavid, C.M.G., C.B.E.

The Hon. C. V. Wight, C.B.E., (Western Essequibo).

The Hon. Dr. J. B. Singh, O.B.E. (Demerara-Essequibo).

The Hon. W. J. Raatgever, (Nominated).

The Hon. V. Roth, (Nominated).

The Hon. C. P. Ferreira (Berbice River).

The Hon. Capt. J. P. Coghlan (Demerara River).

The Hon. D. P. Debidin (Eastern Demerara).

The Hon. J. Fernandes (Georgetown Central).

The Hon. Dr. G. M. Gonsalves (Eastern Berbice).

The Hon. W. O. R. Kendall (New Amsterdam).

The Hon. A. . Peters (Western Berbice).

The Hon. W. A. Phang (North Western District).

The Hon. G. H. Smellie (Nominated).

The Hon. F. E. Morrish (Nominated).

The Clerk read prayers.

The minutes of the meeting of the Council held on Friday, the 1st of September, as printed and circulated, were taken as read and confirmed.

GOVERNMENT NOTICES**INTRODUCTION OF BILLS.**

The ATTORNEY-GENERAL gave notice of the introduction and first reading of the following Bills:—

A Bill intituled "An Ordinance to amend the Town Planning (Georgetown Fire Area) Ordinance, 1945."

A Bill intituled "An Ordinance to confer upon the Consular Officers of foreign States with which consular conventions are concluded by His Majesty certain powers relating to the administration of the estates and property of deceased nationals of such States; to exempt such officers from the payment of any tax in respect of any land or buildings owned or occupied by any such State for the purpose of a Consular Office; to enable any land or buildings to be conveyed to any such State without the payment of stamp duties; to restrict the powers of constables and other persons to enter the Consular Offices of such States; and for purposes connected with the matters aforesaid."

PETITION.

Capt. COGHLAN tabled a petition from certain residents of the Christianburg and Wismar Country District regarding certain lands in that area.

RELIEF OF DISTRESS IN ANTIGUA.

The FINANCIAL SECRETARY & TREASURER: Sir, before the Order of the Day is taken I ask leave of the Council to refer to a matter of grave importance. Hon. Members will have learned from the Press of the recent disaster which has befallen the people of Antigua as a result of two hurricanes. Some details

have now reached this Government which indicate that the damage caused and the distress resulting therefrom is even greater than was indicated in the Press reports. I can do no better than read from a few paragraphs of an official telegram which has reached this Government. The acting Governor, in reporting to the Secretary of State for the Colonies, in a telegram dated September 1, stated:

"I regret to report that a hurricane of even greater intensity and extent than that which occurred on August 21 struck Antigua again last night (August 31). I am advised that it is the worst hurricane in Antigua in living memory. The centre passed a few miles north of Antigua about 1.40 a.m. today at Coolidge Field. Gusts of 165 m.p.h. were experienced and the barometer fell to 28.78 inches. In St. John's gusts were 140 m.p.h. and barometer 29.02 inches."

"Telephone and electricity services were still being repaired after the first and were again completely disorganised. The water supply for St. John's was temporarily disorganised since the main from Gray's Hall reservoir was broken by the sea. One of two steel lattice masts at the cable station was snapped clean off but communication with the outside world was resumed this morning. Government launch only craft left afloat in harbour, many craft having been driven ashore and some sunk or overturned.

"As far as can be ascertained at this stage, there has been no loss of life, though it is rumoured that two sailors of a Trinidad schooner were drowned.

"Owing to blocked roads no preliminary survey of damage in rural areas yet possible but, judging by damage in villages near the city, many further houses (mostly of primitive construction) have been destroyed or unroofed. A good many are homeless, having lost clothing and other possessions including small stocks of food held in houses.

"St. John's did not escape unscathed from this hurricane and quite a large number of poorer type houses have been destroyed, while other houses and warehouses have been unroofed.

"Stocks of sulphate of ammonia and sugar in warehouse accommodation have been ruined. Warehouse containing bulk stocks of flour and rice has been badly damaged and invaded by salt water, but I hope it will be possible to save appreciable quantities.

"It will be necessary to provide emergency relief in the form of food-stuffs for those who are homeless but,

apart from this immediate action, I feel sure you will appreciate that, in view of Antigua's meagre financial resources, both public and private, it will probably be necessary to appeal to His Majesty's Government to make available financial assistance on a fairly large scale to meet the damage caused by two disastrous fires and two hurricanes in the space of 11 days.

"Everything here is naturally somewhat disorganized at present and assessment of damage and recommendations for scale of relief will take some time, but this will be done as soon as immediate relief measures have been organized."

Hon. Members will realize that there must be extreme distress in Antigua. I therefore ask the permission of the Council to move the suspension of the Standing Rules and Orders in order to enable me to put to the Council a motion approving of the payment from public funds of a grant of £1,000 from this Colony to Antigua towards the relief of distress in that island arising from those disasters. I hope the Council will permit that to be done. I now move the suspension of the Standing Rules and Orders in order to enable me to put such a motion before the Council.

The ATTORNEY-GENERAL seconded.

Question put, and agreed to.

Standing Rules and Orders suspended.

The FINANCIAL SECRETARY & TREASURER: Following upon the statement which I have just made I beg to move:

"That, this Council approves of the payment of a grant of \$4,800 from public funds for the relief of distress in Antigua arising from the recent disastrous hurricane in that island."

I need say no more on the subject.

Mr. RAATGEVER: In seconding the motion I would appeal to Your Excellency to increase the amount to £2,000. In view of the suffering of the people in Antigua I do not think £1,000 is adequate, and I would further suggest that arrangements be made to send foodstuffs by plane to

those unfortunate people, because I understand from another source that they are suffering as a result of lack of foodstuffs.

Mr. DEBIDIN: Had the hon. Nominated Member not spoken I would not have said anything. We are not unaware of the recent distress which the people of our own Colony, have suffered quite recently, and we are still considering their claims to compensation. It is true that we have to be sympathetic with a sister Colony which has suffered severe damage through an act of God. We can appreciate the extent of their suffering in view of our experience in the recent floods in this Colony, but it must be borne in mind that Jamaica and other Colonies are offering considerable assistance to Antigua as far as I am aware. I therefore feel that in the circumstances our contribution of £1,000 would be quite adequate. We may be too precipitous at this moment to offer more than that. I say so because it may turn out that the damage or suffering may not be as great as estimated at the moment, but if there should be a further appeal from Antigua for assistance I feel sure that this Colony would willingly give a further contribution.

I would, however, suggest to the hon. Member for Western Essequibo (Mr. Wight), who is the Mayor of Georgetown, that there are 200 cases of evaporated milk now available from Flood Relief stocks which the Controller of Supplies is very anxious to get rid of. I know that it has been put before the Central Flood Relief Committee, and in view of the fact that our flood conditions have subsided a little we might divert this consignment of milk to Antigua and deduct the cost from the grant we propose to give them.

The PRESIDENT: Two points have been raised but the Council appears to be unanimous that we should make some gesture in view of the predicament which has overtaken the Leeward Islands. I think the proposal which Government has put forward, namely, that we send £1,000 to Antigua, is perhaps as far as we can go at the moment. When we know more about the distress and how great the need is, and how far it is possible to meet it, then we may consider whether there is a

case for a further gesture on our part suggested by the hon. Nominated Member Mr. Raatgever.

With regard to the suggestion by the last speaker, we do not know exactly what Antigua wants. I know they want clothing and food, but whether they need the evaporated milk to which the hon. Member referred I really do not know but we can make an adjustment of that kind, and I will ask the Governor of the Leeward Islands whether he would prefer the cash or part of it in the form suggested by the hon. Member. I think that is all we can do at the moment.

Motion put, and agreed to.

PUBLICATION OF THE CENSUS REPORT.

Mr. DEBIDIN: Sir, I am constrained to raise the question of the non-publication of the Census Report for the Colony of British Guiana in view of its importance and the amount of inconvenience which I personally have experienced. I have on a previous occasion tabled questions on the subject in this Council.

The PRESIDENT: May I ask the hon. Member, whether this is a matter of urgency justifying the suspension of the Standing Orders, or does he merely wish to bring to the notice of the Government that he has not got a copy of the Census Report?

Mr. DEBIDIN: It is a matter of grave urgency, a matter in which every Member of this Council, as a politician and even as a member of the public, is vitally affected by the lack of the publication of the Census Report which, after four years, has not yet been produced. We must be alarmed because not only is it causing inconvenience to some extent but we are living in a state of exasperation by not being able to do what we would like to do. There are certain details which we would like to know so as to be able to adjust our minds to matters which come before this Council, such as the application of social welfare work to the direction of particular services such as Education and so forth.

The PRESIDENT: What does the hon. Member wish to do — to bring to the

notice of Government the failure of those responsible to produce the Report? What is the point?

Mr. DEBIDIN: The most I can say at this point is that I wish to bring to the attention of Government what I regard as a disgrace — our not having the Report before now, and secondly, to ask Government to use its best offices to see that it is forthcoming to Members of the Council and to the people of the Colony.

The PRESIDENT: Very well, I will take the matter up. My impression is that the Report is being printed at present.

Mr. DEBIDIN: The B.P.I. has had it for two years now.

The PRESIDENT: It has had advance copies. The hon. Member knows the difficulties of printing in these days. He could have brought the matter to the notice of Government in another way much sooner.

ORDER OF THE DAY

CRIMINAL APPEAL BILL, 1950.

The ATTORNEY-GENERAL: I beg to move the second reading of a Bill intitled:

“An Ordinance to establish a Court of Criminal Appeal and to make provision for appeals in criminal cases.”

This Bill seeks to establish in the Colony a Court of Criminal Appeal in accordance with Resolution No. XVI of the Legislative Council passed on the 23rd day of September, 1949. Hon. Members will recollect that that motion was moved by the hon. the Deputy President (Mr. Wight) last September, and the Bill which is now before the Council is modelled on the lines of the Trinidad Criminal Appeal Ordinance, Chapter 3, No. 2, with certain changes to meet local conditions.

Clause 2 is the interpretation clause. Clause 3 deals with the constitution of the Court of Criminal Appeal, comprising the Chief Justice and the Puisne Judges of British Guiana. The Court shall be unmoned in accordance with directions given by the Chief Justice, and shall be duly constituted if it consists of three

Judges. The Court shall sit in Georgetown unless the Chief Justice otherwise directs, and the Chief Justice, if present, and in his absence the senior member of the Court, shall be President of the Court.

Sub-clause (4) provides that a Judge shall not sit as a Judge of the Court of Criminal Appeal on the hearing of any appeal, or on the hearing of any application for leave to appeal, against a verdict given or sentence passed at a trial at which he presided.

Sub-clause (5) provides that the determination of any question before the Court of Criminal Appeal shall be according to the opinion of the majority of the members of the Court hearing the appeal.

Sub-clause (6) provides that unless the Court directs to the contrary in cases where, in the opinion of the Court, the question is one of law on which it would be convenient that separate judgments should be pronounced by the members of the Court, the judgment of the Court shall be pronounced by the President of the Court, or such other member of the Court hearing the case as the President of the Court directs, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the Court.

Clause 5, which is an important clause, provides for the right of appeal to the Court of Criminal Appeal. It states:

5. Any person convicted on indictment may appeal to the Court of Criminal Appeal —

- (a) against his conviction, on any ground which involves a question of law alone;
- (b) if a female convicted of an offence punishable with death, from the finding of a jury on proceedings under section one hundred and sixty-two A of the Criminal Law (Procedure) Ordinance, as substituted by section twenty-one of the Criminal Justice Ordinance, 1932, that she is not pregnant.
- (c) with the leave of the Court of Criminal Appeal, or upon the certificate of the trial judge that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact

alone, or a question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal; and

- (d) with the leave of the Court of Criminal Appeal, against sentence, unless the sentence is one fixed by law.

Clause 6 provides for determination of appeals. Hon. Members will see that the Court of Criminal Appeal shall allow an appeal against a conviction if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported, having regard to the evidence, or that the judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision on any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal. It is provided, however, that the Court of Criminal Appeal, notwithstanding that they are of the opinion that the point raised in the appeal might be decided in favour of the appellant, shall dismiss the appeal if they are of the opinion that no substantial miscarriage of justice has actually occurred.

Hon. Members will also observe that it is provided that the Court of Criminal Appeal shall, if they allow an appeal, either quash the conviction and direct a judgment and verdict of acquittal to be entered, or if the interests of justice so require, order a new trial. On any appeal against sentence the Court of Criminal Appeal shall, if they think a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence (whether more or less severe) as they think ought to have been passed. In other words the Court will have power to vary a sentence either by increasing or decreasing it.

Clause 7 (4) provides:

(4) If, on any appeal it appears to the Court of Criminal Appeal that although the appellant was guilty of the act or omission charged against him he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be

kept in custody as a criminal lunatic under the provisions of section one hundred and seventy-three of the Criminal Law (Procedure) Ordinance in the same manner as if a special verdict had been found by the jury under that Ordinance.

In Clause 8 provision is made for re-vesting and restitution of property where a conviction is recorded. Clause 9 provides for suspension of disqualification or forfeiture pending an appeal. Clause 10 deals with the time for appealing. Clause 11 provides for the Judge's notes and report on the trial to be furnished on appeal. In Clause 12 provision is made that the Court of Criminal Appeal may order the production of documents for exhibits, or witnesses to attend before the Court to be examined, and also gives the Court power to receive additional evidence, and to refer to a special Commissioner any question which involves prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court, conveniently be conducted before the Court. Power is also given the Court to appoint any person with special expert knowledge to act as assessor to the Court in any case in which such special knowledge is required.

Clause 13 provides that the Court of Criminal Appeal may assign to an appellant a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary to or incidental to an appeal in which they think it desirable to do so.

Clause 14 provides that an appellant shall be entitled to be present at the hearing of his appeal. Clause 15 provides that a Law Officer shall appear for the Crown on every appeal, and in clause 2 "Law Officer" is defined as meaning the Attorney-General, the Solicitor-General, a Crown Counsel, or such other counsel as may appear for the Crown.

Clause 16 provides that on the determination of an appeal or any proceedings preliminary or subsequent thereto no costs shall be allowed on either side, but provision is made for expenses, as set out in sub-clause (2), to be defrayed up to an amount allowed by the Court, but subject to any regulations as to rates and

scales of payment made by the Governor in Council.

In clause 17 provision is made for the admission of an appellant to bail, and that he should be treated in like manner as a person awaiting trial.

In clause 18 the duties of the Registrar with respect to notices of appeal and matters of procedure are set out, and sub-clause (2) provides that where it appears to the Registrar that any notice of appeal against a conviction purports to be on a ground of appeal which involves a question of law alone and does not show any substantial ground of appeal, he may refer the appeal to the Court for summary determination, and the Court is vested with power to determine the appeal summarily without calling on any persons to attend the hearing, thereby avoiding the bringing of frivolous and fictitious appeals.

Clause 19 provides for Shorthand notes to be taken of the proceedings at the trial of any person on indictment, and a transcription of the notes or any part thereof to be made and furnished to the Registrar, if he so directs, for the use of the Court of Criminal Appeal or any Judge thereof. The Governor may also direct that a transcript of the Shorthand notes be made and furnished to him for his use. In clause 20 the powers which may be exercised by a Judge of the Court are set out. They are —

- (a) to give leave to appeal;
- (b) to extend the time within which notice of appeal, or of an application for leave to appeal may be given;
- (c) to assign legal aid to an appellant;
- (d) to allow the appellant to be present in cases where he is not entitled to be present without leave;
- (e) to admit an appellant to bail.

In clause 22 the question of the prerogative of mercy is dealt with. It provides for the Court of Criminal Appeal giving assistance to the Governor when it is necessary. In clause 23 provision is made with regard to jurisdiction in Crown cases reserved. This clause states:

“Where any person is convicted on

indictment of any offence, the Judge before whom the case is tried may, in his discretion, reserve any question of law arising on the trial for the consideration of the Court of Criminal Appeal.....”

That is a matter of discretion, as is the case now, where the Judge reserves a question of law in his discretion for determination by the West Indian Court of Appeal. I think, Sir, that those are the salient features of the Bill. This matter has been before this Council some time ago, and the whole question has been very fully discussed. Now this Bill seeks to carry out the wishes of the Council so far as the establishment of this Court is concerned. I beg to move that the Bill be now read a second time.

Mr. WIGHT seconded.

Mr. DEBIDIN: There are just one or two points I want to refer to. The first is to clause 18 (2) of the Bill. We have had our debate on the question of establishing a Court of Criminal Appeal and, I think, when the decision had been arrived at we contemplated no difficulty in the individual taking his case before the Court of Criminal Appeal. It was felt he should have a clear right, untrammelled and without any strings, in order to have another opportunity for freedom as the case may be. Clause 18 (2) seems to me to be something in the way of that, and I am going to ask when the proper time comes for it to be deleted. As it reads, it gives the Registrar a right to determine on a question of law the merits of a notice of appeal. I will not comment on the ability of the Registrar; there have been times in the past when I would have had an opportunity to comment very strongly on that, but fortunately we have a Registrar who has been recently appointed in whom I have great confidence in so far as ability is concerned.

The PRESIDENT: Is that not a matter for the Committee stage? It has nothing to do with the principle of the Bill.

Mr. DEBIDI: In speaking on the second reading I am just discussing at this moment the whole question of

getting down to a clear idea of this Bill or what we have tried to achieve. That is why I am dealing with it at this stage. I have started off, that we should do nothing to impede progress. I have been dealing with this clause as an example, in order that Members might know what they must expect when we come to the Committee stage. I have been referring to a person's right to take his case absolutely to the Court of Criminal Appeal. According to this clause that largely depends on the ability of the Registrar.

The PRESIDENT: The Registrar does not decide the matter, the Court does. All he can do is to refer the matter to the Court. There is no provision not to that effect as far as I can see. I do suggest to the hon. Member to leave it until we come to the Committee stage. There is no power of decision given to the Registrar. Even if he thinks the appeal is trivial, he has to refer it to the Court to be decided. Is that not the case Mr. Attorney-General?

The ATTORNEY-GENERAL: That is so.

Mr. DEBIDIN: I am going to discuss that in the Committee stage. I am at a loss. I think we must have a ruling as to what extent we can discuss a Bill on the second reading, because it seems to me that we can say nothing, unless one refers to the various clauses of the Bill in order to pick holes in the Bill.

The PRESIDENT: I allow the hon. Member to speak, but I do not want a debate on the clause during the second reading. We can do that in the Committee stage. The hon. Member is perfectly right in drawing attention to the clauses, and he will then do the same thing all over when we go into Committee on the Bill. We have far too much of that in this Council.

Mr. DEBIDIN: May I ask for information at this stage before taking my seat? Clause 5 (d) states:

"A person convicted on indictment may appeal to the Court of Criminal Appeal with the leave of the Criminal Appeal against sentence, unless the sentence is one fixed by law."

I assume that every sentence is fixed by law. I would like to know really what is the full implication of that subclause. It seems to me it only means, a sentence not stated by law a person can appeal from. On the other hand I would like to know that we have a provision under which, if a person is sentenced severely, he is permitted to appeal against the severity of the sentence. If subclause (d) does not mean that, I am to ask for an interpretation of the words "unless the sentence is one fixed by law". That is one observation I would like to make on the second reading. It seems to me it is best to reserve what I wish to speak on the second reading to the Committee stage.

Mr. WIGHT: Perhaps I may just say a few words in congratulating Government on having introduced this Bill. I think it is necessary now. That is something that has been done which is for the benefit of the community and for which Government should get a little acclamation. It does seem to me that whatever Government does and what it has not done is always wrong. In other words, the Government does not do anything right. If it does something right and it meets the wishes of the Council, everyone becomes silent. It seems to be the trend of the age in this Colony only to look for the bad and evil. I am happy that recent events which have taken place in the Colony show that something good is to be brought about by those who administer the Government.

Question put, and agreed to.

Bill read a second time.

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

COUNCIL IN COMMITTEE.

Clause 5 — **Right of Appeal to the Court of Criminal Appeal**

Mr. DEBIDIN With respect to paragraph (c) it seems to me, Sir, that this whole paragraph may have the effect of putting the convicted person practically in the same position as he was before,

and that is, to go before the trial Judge and ask for a case to be stated before he obtains the right to appeal to the West Indian Court of Appeal. That is the position today, because it states here :

“With the leave of the Court of Criminal Appeal, or upon the certificate of the trial judge that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal;”

Mr. WIGHT : To a point of order for information ! May I state that this follows exactly the Criminal Appeal Act of 1907. The words are the same. That is why you have Crown Cases Reserved in England.

Mr. DEBIDIN : I would like my hon. Friend to say if all the circumstances obtaining in England are the same here.

Mr. WIGHT : To a point of information ! For the benefit of the hon. Member I say : Yes, the circumstances surrounding criminal trial in this Colony are the same as in England except, as he perfectly knows, we have not yet abolished the Grand Jury system. That has been abolished in Barbados. Otherwise the trial is the same, as he knows fully well. As far as I am aware for the short time of my practice for 25 years, the circumstances are the same as obtain in England. No doubt the legal Members of this Council will be able to substantiate whether I am correct or not.

Mr. DEBIDIN : In my short term of practice I know we have been suffering, since a case has to be stated before the appeal is made. Perhaps the hon. Member has practised most of his 25 years in England. It seems to me that the leave of the Court of Criminal Appeal has first to be obtained, and according to this clause that may be obtained by going to a Judge of the Supreme Court of this Colony, and that Judge has to be fully satisfied before he can give that permission to appeal. We know that human nature being what it is, a trial Judge in this Colony may very well say to the individual “I know some of the circumstances”, or certain circumstances may be

peculiar to him, and when the appeal goes before him in his own mind he may feel it is not justified. In other words, for the very reason that today it may be difficult and, it has been the case in the past where applications or petitions to the trial Judge under the present system to state a case have been refused by the very Judge, it is very possible to ask a Judge for leave to appeal and it may be equally refused.

The CHAIRMAN : I would ask the hon. Member, has he read the Bill ? The clause to which he refers is clause 20 which says :

“The powers of the Court of Criminal Appeal under this Ordinance to give leave to appeal may be exercised by any Judge of the Court in the same manner and subject to the same provisions as they may be exercised by the Court; but if the Judge refused an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court as duly constituted for the hearing and determination of appeals under this Ordinance.”

I would ask the hon. Member to read the Bill.

Mr. DEBIDIN : I think you have missed the point I was making completely. You have not taken into account the point I was making. You have to apply for leave to appeal. What you have read is extra to what I have said. It means, if the trial Judge refuses he sends it up to the Court of Criminal Appeal. Why should a man be subject to all of that. It will make it twice more difficult for a man to obtain his leave to appeal to the Court of Criminal Appeal. I have refrained from continuing to deal with this aspect in the second reading, but I am dealing with it now. I am merely at this moment standing to say we ought not to allow any impediment otherwise it will defeat the object of the Bill by the expense involved, as you have to incur tremendous expense in the employment of shorthand note-takers and clerks. We do not want to find after all that has been done the individual is in practically the same position as he was before this legislation. We do not care one farthing whether it is the law in England.

Why are we changing from the existing laws? The existing laws are not very far removed in so far as appeal to the West Indian Court of Appeal is concerned. Under the existing laws you have to apply to a Judge to state a case and he may refuse. I have heard a Judge, a great man of dignity, say: "It is not for me to refuse your application. As long as you have merely stated in your petition that you have a triable issue." That is one Chief Justice who had been here holding office about three terms ago. How many Judges have not refused to state a case? In many cases people have had to go to England to have their appeal heard. Since that position is not so far removed from the spirit of this clause, where you have to apply for leave to appeal not to the Registrar on the question of law — I have not yet come to that — but under this particular paragraph (c) of this clause, you have to get the certificate of the trial Judge who may or may not give it, if the trial Judge does not give it, then you have to go to the Court of Criminal Appeal. If that is a satisfactory state of things and the hon. Member for Western Essequibo (Mr. Wight) is willing to accept such conditions, it is a matter for him. Fortunately it does not affect me so much, because as a member of the Solicitors' Branch of the profession I do not have to appear before the Court of Appeal. I am just voicing what are certainly impediments to a clear right to go to the Court of Appeal.

I feel strongly that this whole clause should be made to read, that on the filing of notice to appeal a person has the right from then on without any reservation to the trial Judge or the Court of Criminal Appeal to say he should get leave from them. Just as you appeal from a Magistrate to the Full Court of Appeal in this Colony. You file the grounds of appeal, the records are laid over and the appeal is fixed in due course. That is done at the moment in respect of the West Indian Court of Appeal in several cases. You file your notice of delayed action and immediately after that you have your records settled, and then you file your records and the matter is ripe for hearing and it is fixed before the West Indian Court of Appeal. That is

how regard a person's right and what, I understood, we were aiming at when a Court of Criminal Appeal was being sought to be established in this Colony and at much expense to the Colony. I am moving that this clause be changed completely.

Mr. PETERS: Sir, I am afraid that I have to agree with my hon. Friend in respect of his contention with regard to this clause. I feel, too, that if we have grown up sufficiently along the lines of the litigious side of our life in this Colony we should do all that lies in our power to remove every obstacle or barrier that makes it difficult, if not impossible, for a person, one of His Majesty's subjects in this Colony, to get full justice done to him and to his cause. My own feeling is, that it does not seem to me just and right for a man, who may be convicted for stealing 10 cents and has given notice of appeal and laid over his papers to have his case investigated in the higher Court of this land, to be made to ask leave to do so. He does not have to ask leave of the Magistrate at the present time to do so, but goes right up to the Full Court and have his matter investigated and a decision given. I feel that the new idea that we are seeking to pursue in this Bill should follow the same pattern. To a large extent when it comes to the subject pursuing his rights and liberty in His Majesty's dominions, especially when it is left to the discretion of a Judge, it is a very complex and, one may venture to say, mercurial affair difficult to get hold of in the way of being sure as to what may happen.

We have had the experience here just two or three years ago when a man who was convicted of murder and sentenced to death having his counsel make application to the trial Judge to reserve some point of law to be investigated by the West Indian Court of Appeal, and the trial Judge declined to grant the application. In process of time his counsel took the matter to the Privy Council and it is history that the Privy Council by its decision set that man at liberty. If there had not been the opportunity by another process to approach the Privy Council that man would have been in his grave today, because we have bestowed all the

chances of his life in that critical moment on the discretion of the trial Judge. I think, if we are going to institute this Court of Criminal Appeal — and I will charge too — that the approach to this Court should be made as easy as possible so that the citizen, the subject of our King, may feel that, if he has a right to pursue in the highest Courts of our land, no barrier whatever would be placed in his way. I would urge very strongly that this particular clause be recast so that it may be made very easy for a person to have his case investigated by the Court.

The ATTORNEY-GENERAL: I am sure that hon. Members have read the clause and appreciate that provision is made for two courses. In the first case any person convicted on indictment may appeal to the Court of Criminal Appeal against his conviction on any ground which involves a question of law alone. On a question of law alone there is no obstacle. In the second case, leaving out the provision in paragraph (b) with respect to expectant mothers, it will be seen that with the leave of the Court of Criminal Appeal, or upon the certificate of the trial Judge that it is a fit case for appeal, a person may appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal. I pause here to emphasize that the appeal is from a trial by jury, and both hon. Members are aware of the fact that questions of fact in a trial on indictment are for the jury alone. Questions of law are for the Judge. In every summing up the Judge tells the jury that questions of fact are their province, but questions of law are for him.

In the case of an appeal on a question of law alone the right is given to the appellant, the convicted person, but on questions of fact an appeal can only be brought with the leave of the Court of Criminal Appeal, or upon the certificate of the trial Judge that it is a fit case for appeal. That means — and it happens — that although the Judge had charged the jury with regard to the facts the jury might take a different view, and

the Judge himself might feel that if he were deciding on the facts he might have decided differently, and therefore he gives a certificate that on a question of fact he thinks it is a fit case for appeal.

Then follows the question of mixed law and fact. The two things may be so interwoven that a convicted person should have a right of appeal. I suggest to hon. Members that it is put there in a general way to permit appeals on grounds which do not strictly come within the category of fact alone, or law alone, but within the category of mixed law and fact. It is on the certificate of the trial Judge who would be aware of the fact that certain circumstances had emerged in the course of the trial which might make it desirable and proper that an appeal should be allowed to the convicted person, but if, for the sake of argument, the trial Judge does not consider it a fit case for appeal, then the convicted person is given the right to ask the Court of Criminal Appeal for leave to appeal on a question of mixed law and fact, or on certain general grounds. That is nothing new. It is, as the hon. Member has said, the principle of the law which was enacted in the U.K. Criminal Appeal Act of 1907, Chapter 23, section 3, which reads:

“3. A person convicted on indictment may appeal under this Act to the Court of Criminal Appeal —

- (a) against his conviction on any ground of appeal which involves a question of law alone; and
- (b) with the leave of the Court of Criminal Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the court to be a sufficient ground of appeal: and
- (c) with the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law.”

That is the U.K. Act which was passed after a certain amount of discussion with regard to similar cases to which the hon. Member referred. In the

Criminal Appeal Ordinance in Trinidad, on which this Bill has been framed, section 5 makes similar provision. It reads:

"5. A person convicted on indictment may appeal under this Ordinance to the Court of Criminal Appeal —

- (a) against his conviction on any ground of appeal which involves a question of law alone; and
- (b) with the leave of the Court of Criminal Appeal or upon the certificate of the Judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal; and
- (c) with the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law.

Therefore hon. Members will see that there is that provision in the law of England and also in the Criminal Appeal Ordinance in Trinidad, which has been operating for some years, and with regard to which I am certain there has been no objection. I would ask hon. Members to bear in mind that it is a trial by Judge and jury which is completely different from a trial by a Magistrate who sits alone, and from whose decision there is a right of appeal to the Full Court of Appeal. For instance, every citizen has a right of appeal to H.M. Privy Council, yet he has to get leave of that Court to do so. He has to apply to the Privy Council for leave to appeal. Then the Council sits and very often in five minutes he is told that there is no ground for appeal, and the application is dismissed. If there is merit in the application leave to appeal is granted, and the appeal is heard. To suggest that the provision in this Bill should be enlarged and put on the same basis as an appeal from the decision of a Magistrate who sits alone and determines questions of fact and law, is to miss the point completely. I would suggest to hon. Members that on reflection they would leave the clause as printed. There is no departure from the accepted principle. It is something which has stood the test of time, and there are decided cases on the point.

Mr. DEBIDIN: I have listened with very great attention to what has been said by the hon. the Attorney-General, but I still maintain that in this Colony a convicted person should have a right of appeal on a question of fact, or a question of mixed law and fact, to the Court of Criminal Appeal. It is not sufficient for the Attorney-General to remind us all the time that a similar provision exists in Great Britain or in another Colony. The trouble with our Colony is that we follow others too much. We are not original in cases where we should be original. That is why we are referred to as the "Cinderella Colony."

The ATTORNEY-GENERAL: Not for that reason.

Mr. DEBIDIN: This may be one. We have followed Trinidad so much that we sent somebody there to copy practically word for word their Workmen's Compensation Ordinance, which we have had to amend in this Council from time to time. I feel that the whole question is one of convenience and the rights of the individual. A convicted person may be in poor circumstances, and generally is. He has to make application to the Court of Criminal Appeal for leave to appeal against his conviction. When the Court of Criminal Appeal is established the position will be that in every indictable case Shorthand notes will be taken, whether there is an appeal or not. The Judge will also take his notes, and if a person desires to appeal against his conviction on a question of fact all that would be required for the full facts to be put before the Court of Appeal would be copies of the record, which would include the Judge's notes of the evidence as well as the notes of the Shorthand writer. That is the object of the Shorthand note-taker. He will not be there only to take notes of the Judge's directions to the jury, but notes of the evidence. The Court would then have all the facts necessary to determine the appeal on a question of fact. I think the legal Members of the Council will agree with me when I say that it is my opinion that in every case where there is an appeal counsel would appeal on a question of law as well as on a question of fact, so that if he is stumped on the

question of law he would have an opportunity of appealing on the facts. A Judge might refuse to grant leave to appeal to the Court of Criminal Appeal, and if a convicted person decides to appeal to the Court of Criminal Appeal for leave to appeal he would have to retain counsel.

The CHAIRMAN: Is the hon. Member right in saying that? What section of the law says that he has to retain counsel?

The ATTORNEY-GENERAL: Clause 13 of the Bill provides:

"13. The Court of Criminal Appeal may at any time assign to the appellant a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary to or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid and that he has not sufficient means to enable him to obtain that aid."

Mr. DEBIDIN: That is a *Pro deo* measure only.

The ATTORNEY-GENERAL: Is the hon. Member arguing for the litigant or for counsel?

Mr. DEBIDIN: Both. That is the usual procedure where a person starts proceedings as a poor person. He is given the assistance of a solicitor and counsel.

The CHAIRMAN: The hon. Member says that a person has to have counsel to appear before the Court of Criminal Appeal.

Mr. DEBIDIN: I did not mean that.

The CHAIRMAN: You implied that.

Mr. DEBIDIN: The counsel in the original trial would have to continue because he would be just as much interested in the final issue of the man's conviction, but he is going to exact a fee for his additional services. How very simple it would be to give every convicted person a straight right of appeal to the Court of Criminal Appeal. In England there are cases going before the Court of Criminal Appeal from various circuits, and in every case leave to appeal is

granted. One would hardly find a case in which leave to appeal was refused. We do not know how they are thinking in England now. We may be copying legislation which in England some people may be thinking should be reformed. Because Trinidad has adopted it is no reason why we should.

Mr. WIGHT: If the hon. Member, as he himself has indicated, would not be able to appear before the Court of Criminal Appeal to plead in these matters, I think perhaps he should leave it to those Members who are barristers to express their opinions.

Mr. DEBIDIN: A very poor point.

Mr. WIGHT: Our Supreme Court of Judicature Ordinance, Chapter 10, section 27, vests in the criminal jurisdiction of the Court the same powers which are exercised by a single Judge sitting with a jury in the same manner and with the same powers and authorities as a Judge of the Assize in England. If the hon. Member desires to step ahead of the English law perhaps it would be necessary to amend section 27 of the Supreme Court of Judicature Ordinance.

Mr. DEBIDIN: The point I have made has nothing whatever to do with altering the qualifications or functions of Judges. I think it is quite clear.

Mr. WIGHT: I think what I have said is also clear — that section 27 of Chapter 10 refers to the whole of the criminal jurisdiction of the Courts of this Colony. Those of us who practise in the criminal Courts regard Archbold as the bible for lawyers, and we find this bible still quoting the Criminal Appeal Act of 1907 in England. It is true, as the hon. Member has said, that the Judges are not repositories of wisdom with regard to the administration and interpretation of the law, and I agree with him that we have had some who were not so, and we may still have some, but that does not alter the fact that these criminal appeals are not going to be appeals to a single Judge who may say that he has already given his decision and will not allow it to be attacked. There

may be men of narrow minds even in the Judiciary. Some of them cannot be accused of having any breadth of vision, or having any regard for other people's opinions. Be that as it may, one cannot help saying that this step which we are taking now has gone very much farther from the position we are at present, and is taking us right up to the practice in England after centuries of juridical pronouncements and consideration by some of the most able legal minds the world has produced. After all the English system has been the beacon upon which many a system has been moulded. Are we in our state of infancy suddenly to decide to depart from that system and tell the world what the law should be? I suggest to hon. Members that we have gone very far in producing a Bill on similar lines to the English Act of 1907 and the Trinidad Criminal Appeal Ordinance of 1933, neither of which has been altered. I would commend to hon. Members the enactment of this clause without any further amendment.

Mr. DEBIDIN: May I erase from this Council the impression given by the last speaker. I do not know why he should endeavour to draw a red herring across the arguments we had just now. Certainly he has done nothing else than mislead this Council by saying that the decisions which have been made in England will not be applicable any longer.

Mr. WIGHT: May I rise to a point of error? I am not concerned with what the hon. Member thinks as to my misleading the Council or not. I leave that to hon. Members, but I have not stated and could not state that the cases in England are not applicable any longer here. Perhaps the hon. Member was not listening. Here is our bible. This, our criminal law, says where we have followed on English cases.

Mr. DEBIDIN: I thought the hon. Member would have replied by saying that I was wrong in what I was saying. The hon. Member was pointing out where decisions have been made in England, and by those decisions he seemed to imply all that would be lost if we depart in the way I have suggested. All I can say is, that is a wrong impression to give,

because the appeal under my suggestion will be the same to the Criminal Court of Appeal in this Colony. The Judges are going to have the same functions; they are going to determine issues on appeal in the same way on questions of fact, or questions of law, or mixed questions of fact and law. All I am asking for and am suggesting here is that in order that the appeal should go to the Court of Appeal let it be easy by not asking for leave to appeal. How can that affect the decisions of England perhaps over all the centuries of case law? I have not in any way suggested that the case law or decisions governing questions of appeal be restricted or not applicable easily? That is what he tried to suggest.

At this stage I do not know how many Members would like to speak, but I am asking to move an amendment by the deletion of the words in paragraph (c) "with the leave of the Court of Criminal Appeal, or upon the certificate of the trial Judge that it is a fit case for appeal" and "or any other ground which appears to the Court to be a sufficient ground of appeal", and by the deletion of the words in paragraph (d) "with the leave of the Court of Criminal Appeal" and "unless the sentence is one fixed by law". My amendment eliminates any question of asking for leave of any tribunal, whether it be the trial Judge, or any other Judge, or the Court of Criminal Appeal. A person will then have the right of appeal on a question of law, or a question of fact, or a question of mixed fact and law, and against sentence a of right.

The ATTORNEY-GENERAL: I would counsel hon. Members to have regard to the result itself and the effect which I have endeavoured to place before this Council. To take the last point first — that is with the leave of the Criminal Court of Appeal against sentence. It will be clear to hon. Members that it is absolutely essential that the words "unless the sentence is one fixed by law" should be retained, because there are some sentences which are specifically fixed and, therefore, if there is an appeal which is against conviction, and the conviction stands, the sentence is attached to the conviction. In other words, if the

Legislature by statute fixes a fine of \$500 and a person is convicted on indictment the penalty of \$500 is attached. There is no discretion permitted to the Judge in a case of that nature, because the penalty is fixed by law. Therefore if the convicted person appeals, he appeals against his conviction and the sentence is automatically attached to the conviction. He appeals against his actual conviction and whatever flows from that.

The CHAIRMAN: Has the hon. Member seen clause 6 (3) of the Bill? I states:

"On any appeal against sentence the Court of Criminal Appeal shall, if they think a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence (whether more or less severe) as they think ought to have been passed."

Mr. DEBIDIN: That relates to alternative sentence. That is dealing with alternatives.

The CHAIRMAN: Here the sentence is not necessarily a fine, and the Court could not impose a fine if our law says imprisonment. They can vary the term of imprisonment only.

Mr. DEBIDIN: That clause really deals with another matter. I am prepared to accept the explanation. I said I wanted an explanation of what is meant by "fixed by law". I am prepared to accept it and, therefore, in the amendment which I have moved, so far as 5 (d) is concerned all the words to be deleted will be "with the leave of the Court of Criminal Appeal". The words "unless the sentence is one fixed by law" will remain.

The ATTORNEY-GENERAL: The hon. Member has withdrawn his proposal to amend paragraph (d). Therefore his amendment relates to paragraph (c). Where the law is more or less established and you are altering it, you must have good ground for making the alteration of what has been built by years and, perhaps, centuries of consideration of criminal jurisprudence. We all value the right of trial by jury, and we all appreciate the fact that the jury system and the jurors deal with questions of fact.

Now the hon. Member is suggesting that you go behind that power which is given to the jurors to determine questions of fact. They give their verdict, it is perfectly true, on the direction of the trial Judge, but it is their verdict. When it comes to altering that, you are going back and altering what is the basis of our trial by jury, because Judges do not, unless there is very good reason to the contrary, propose or suggest alteration on a decision of a jury on questions of fact. That is clear. So long as there is evidence on which after full consideration the jury are in a position to come to a reasonable decision, the Courts of Appeal do not interfere with that decision because it goes back to the fundamental principle of trial by jury. The Judge directs the jury as to the questions of law. They take their law from the Judge, but questions of fact are the province of the jury.

Now the hon. Member is saying that without any evidence a person who is convicted, because he disagrees with the decision of a trial by a Judge and jury, should automatically have a right of appeal on questions of fact which have received the fullest consideration by the jury, and the trial Judge should not be in a position to say whether he agrees or not. That is the reason why the certificate of a Judge is required, or on his failure to give a certificate the right of appeal may be given by the Court itself.

Mr. WIGHT: May I ask one little point of practical importance? Does not the hon. Member really think if there is this free for all fight, leave to appeal is just given willy-nilly to everybody, that everybody properly convicted in the Courts is going to take the sentence imposed and walk downstairs into lot 12 Camp Street and say "Thank you", unless it is an old lag, who cares to make permanent abode in lot 12 Camp Street prison? A lot of them are going to appeal. We often hear, and as practitioners we know, that the Magistrate gives a decision and the client would say "I appeal", and you have to say to him "It is the law; you cannot appeal on fact". Does the hon. Member really think that to allow this free for all leave to appeal,

without some restriction and brake which has obtained in England for years, really it will not be letting loose a whole cavalcade of appeals on the Court of Criminal Appeal and turning the Court into a farce, as the Court will be just throwing them out after looking at the records and without hearing them? It does seem that any person wrongly convicted or thinks he is wrongly convicted can possibly have the full merits of his case thrashed out, even in the case where in his opinion the Judge directed the jury and summed up either in favour or against and the jury took an entirely different view. Surely in a case like that the Judge will give the right to appeal on a question of fact. One can speak for hours and days on this question of Criminal Courts of Appeal. We have gone from Crown Cases Reserved to a Criminal Court of Appeal, but we still have our Crown Cases Reserved following the English law. We are following England step by step.

Mr. DEBIDIN: It seems to me the last speaker is certainly begging the question.

Mr. ROTH: I rise to ask that the question be now put! We have been over one hour on this particular clause, and the hon. Member is only repeating his argument over and over.

The CHAIRMAN: The Member is entitled to do so and I agree, unless any other Member wishes to speak.

Capt. COGHLAN: There has been a different view with regard to law and fact in the Magistrates' Court and afterwards in the Supreme Court. In the Magistrates' Court, as we know, a Magistrate is both Judge and Jury; he is to decide on the facts just as well as he has to determine the law. For this reason if you are appealing from the Magistrate's decision, all that is done is the Magistrate is asked to supply a copy of his notes to the Supreme Court and it depends entirely on the notes the Magistrate has taken, because the Judges of the the Supreme Court do not have the witnesses before them. They depend on the Magistrate's notes. The Magistrate, who has had the witnesses before him,

has had every opportunity from his experience to know whether the witnesses have been speaking the truth or not. The conduct of the witnesses in the Box is a great indication to the Magistrate as to whether they are speaking the truth, the whole truth and nothing but the truth. In the Supreme Court the Judge is alone a judge of the law and the jury is the judge of the facts. I quote the principle laid down on which this was founded:

"Ad questionem juris non respondent juratores.

Ad questionem facti non respondent iudices."

In other words:

"Answer not ye Judges as to question of fact.

Answer not ye Jury as to question of law."

Therefore we have often known of Judges who differed from the Jury on questions of fact. We have known of Judges who have even discharged Jurors. Therefore it is hardly wise to think that a Judge in his capacity as a Judge appointed by His Majesty's Government to this or any other Colony will have any interest otherwise than to dispense justice to the criminal. For that reason it is very wise to allow this clause to stand as it is. As experience has taught us, in Great Britain and in Ireland and all the British Dominions this is exactly the same thing there as it is here. So if a Judge exercises his discretion in that way, I think, we should be quite satisfied and quite happy, otherwise, as my learned friend, the hon. Member for Western Essequibo, has said, what you will have in the Supreme Court is what you have now frequently in the Magistrates' Court — immediately a decision is given by the Magistrate you hear "I give notice of appeal". In two cases out of three they have no intention of going to appeal; they only do that for the face-saving of counsel who did not agree with the decision of the Magistrate. In the same way it will be a little bit farcical in the Supreme Court for a lawyer giving notice of appeal without any intention of fulfilling that which he gave notice to do and, even if he did intend to fulfil it, as

long as the cow will give milk he will continue to milk it. That is all I have to say. It is better for the clause to stand as it is.

Question put, and agreed to.

Clause 5 passed.

Clause 13 — Legal assistance to appellant.

Mr. WIGHT: I move that the word "may" be substituted for the word "many" in the first line. It is a printers' error.

Clause passed as amended.

Clause 18 — Duties of Registrar with respect to notices of appeal, etc.

The CHAIRMAN: The hon. Member for Eastern Demerara had raised a point under this clause.

(Mr. Debidin was absent from the Chamber).

The ATTORNEY-GENERAL: I think it was in relation to subclause (2). As I pointed out on the second reading of the Bill, if it appears to the Registrar that any notice of an appeal against a conviction, purporting to be on a ground of appeal which involves a question of law alone, does not show any substantial ground of appeal, he may refer the appeal to the Court for summary determination. The Registrar is not given power to determine it himself. He has the power to refer the matter to the Court for summary determination. So the determination of the matter is for the Court itself.

Clause passed.

Clause 19 — Shorthand notes.

Mr. WIGHT: Perhaps I may make a general remark or observation under this clause as regards the question where the Rules of Court and Regulations are to be made. I do hope that as soon as this Bill is passed and your assent has been given thereto a start will be made on the Rules and Regulations, and not have the Ordinance just standing on the Statute Book without the Rules and

Regulations to allow the Ordinance to operate.

The CHAIRMAN: Very well.

Clause passed.

Clause 23 — Jurisdiction in Crown cases reserved.

Mr. WIGHT: I am sorry the hon. Member for Eastern Demerara (Mr. Debidin) is not in his seat, because I would like to point out here that we have reserved the old principle in our laws of Crown Cases Reserved. The Judge on his own volition, if he thinks a question of law should be reserved, can forward it in the usual way, but in England, that provision — I think the last time it was used was around 1910 or 1914 — is not used. There are two or three cases in which the Judges did not use the right because of the provision of the Criminal Court of Appeal, as would be in this case. So the intention is there for the practice to be used, and it is further intention to see that justice is given to the criminal.

Clause passed.

Clause 28 — Commencement.

The ATTORNEY-GENERAL: The Ordinance comes into operation by Proclamation as will be observed from this clause which reads:

"This Ordinance shall come into force on such day as the Governor shall by Proclamation published in the Gazette appoint."

The reason for that is, arrangements have to be made with regard to the establishment of the Court. As the hon. the Deputy President has said, the question of Rules to be made and matters incidental to the establishment of a Court of this nature have to be dealt with, and accordingly this clause provides for the Ordinance to come into operation by way of Proclamation.

Clause passed.

The Council resumed.

The ATTORNEY-GENERAL: I beg

LEGISLATIVE COUNCIL

to move that this Bill be now read a third time and passed.

Mr. WIGHT seconded.

Question put, and agreed to.

Bill read a third time and passed.

**CRIMINAL LAW (PROCEDURE)
(AMENDMENT) BILL.**

The ATTORNEY-GENERAL: I beg to move the second reading of a Bill intituled.

"An Ordinance further to amend the Criminal Law (Procedure) Ordinance".

The proposed amendments are consequential to the establishment of a Court of Criminal Appeal in this Colony. As the jurisdiction to hear appeals in criminal cases is to be vested solely in the Court of Criminal Appeal, it is necessary to amend the Criminal Law (Procedure) Ordinance, Chapter 18, by repealing the definitions of the expression "Court of Appeal" in section 2 of the Principal Ordinance. The sections sought to be repealed by Clause 3 of the Bill enable a trial Judge before whom a person is convicted on indictment, to reserve, in his discretion, any part of law for the consideration of the West Indian Court of Appeal, and lay down the procedure to be followed.

This Bill will now be necessary because a convicted person can appeal to the Court of Criminal Appeal and, of course, has the right to seek means to appeal to the Privy Council.

Mr. WIGHT seconded.

Question put, and agreed to.

Bill read a second time.

The Council resolved itself into Committee and considered the Bill clause by clause without discussion.

The Council resumed.

The ATTORNEY-GENERAL: I move that the Bill be now read a third time and passed.

Mr. WIGHT seconded.

Question put, and agreed to.

Bill read a third time and passed.

PRISON (AMENDMENT) BILL, 1950.

The ATTORNEY-GENERAL: I move the second reading of a Bill intituled:

"An Ordinance to amend the Prison Ordinance, 1929, by making provision to bring up prisoners before the Court of Criminal Appeal."

This Bill is consequential on the establishment of the Court of Criminal Appeal. It is necessary to make provision for the appearance before the Court of Criminal Appeal of those prisoners who have appealed when their appearance is required by that Court. I formally move that the Bill be read a second time.

Mr. WIGHT seconded.

Question put, and agreed to.

Bill read a second time.

The Council resolved itself into Committee and considered the Bill clause by clause without discussion.

The Council resumed.

The ATTORNEY-GENERAL: I move that the Bill be now read a third time and passed.

Mr. WIGHT seconded.

Question put, and agreed to.

Bill read a third time and passed.

PENSIONS (AMENDMENT) BILL, 1950.

The ATTORNEY-GENERAL: I beg to move the second reading of a Bill intituled:

"An Ordinance to amend the Pensions Ordinance, 1933, by providing for the pensions of officers with mixed service in Government and the Health Services."

Hon. Members will see from the memorandum of Objects and Reasons of

the Bill that the object of this Bill is to amend the Pensions Ordinance, 1933, in order to make provision for the pensions of officers with mixed service in the Government, the Society for the Prevention and Treatment of Tuberculosis, the Infant Welfare and Maternity League, and the Municipal Health Services. This Bill is intended to implement certain recommendations of the Committee on the Health Services at present provided through the agency of the Society for the Prevention and Treatment of Tuberculosis and the Infant Welfare and Maternity League.

I think hon. Members will recollect that on March 11, 1948, a Message was communicated to the Council by His Excellency with regard to this matter, and a resolution was passed on the 13th of April approving of the adoption of the recommendations of the Committee appointed to deal with the question of Health Services. The object of this Bill was approved in principle when the matter engaged the attention of the Council in connection with the Message to which I have referred. There was a question of improved salaries to which effect has already been given. I move that the Bill be read a second time.

Mr. RAATGEVER seconded.

Mr. DEBIDIN: I desire to speak on this Bill. I am merely exercising my constitutional right as a Member of this Council. I am a creature of what may be regarded as a vicious constitutional set-up, but still I hope I am discharging my public functions.

The PRESIDENT: What does the hon. Member mean by "a vicious constitutional set-up?"

Mr. DEBIDIN: Because a Member of this Council represents his people so long as it is the will of His Majesty's Government through its representative who presides over this Council.

The ATTORNEY-GENERAL: I do not quite understand what the hon. Member is trying to say—that a Member of this Council represents his people at the will of His Majesty's representative? I

do not appreciate his remark at all. Is hon. Member saying that he is here by the sufferance of the representative of His Majesty?

Mr. DEBIDIN: More than that. One seems to have limited rights and is here at the whim of someone who can get up like an automaton and say "I move that the question be now put." There is little tolerance, and one is shut down.

The PRESIDENT: I cannot accept the hon. Member's remark that little tolerance has been shown to him. He has been speaking about an hour on a particular clause. It is a matter which we are not discussing at the moment. The hon. Member had better raise his point at another time if he wishes to do so when he has fully considered it.

Mr. DEBIDIN: I will certainly do that, because I am not satisfied or pleased over what occurred on the previous Bill. That is why I took the action I did.

The PRESIDENT: The hon. Member should have said what he had to say when the Bill was being discussed.

Mr. DEBIDIN: I will proceed to say what I have to say on this particular Bill and will try to make it as short as I can. So far as the Bill itself is concerned there is very little to quarrel about, but I wish to draw attention to the fact that the services which are being joined to what may be regarded as recognized services for the purpose of the Pensions Ordinance are services of less importance, to my mind, than certain services connected with the Government of the Colony. I refer particularly to services like the Drainage Board, certain aspects of the Public Works Department, and the Sea Defence Board. I know of several hard cases of persons who were employed by the Public Works Department and were transferred to the Drainage Board to do very important work similar to what they had been doing for the Public Works Department, but because the greater part of their service was with the Drainage Board they have been deprived of a gratuity. I feel that service given by

employees of the Drainage Board should come within some pension scheme. If possible I would suggest that some provision be added to this Bill for employees of the Drainage Board whose service started in the Public Works Department, to be eligible for pension. It is an extremely important matter, and I am wondering whether consideration of this Bill cannot be deferred for reference, probably to the Financial Secretary or to the Attorney-General, to see whether the scope of this Bill can be enlarged to include other public service.

There is no doubt that the Infant Welfare and Maternity League and the Society for the Prevention and Treatment of Tuberculosis are rendering excellent service to the Medical Department, although I am quite at a loss to understand how a Municipal Health Service can come within the provisions of this Bill. It seems to me that the employees in that service have their own pension rights, and it can also be argued that Government is subsidizing the Municipality by providing a certain amount under Subventions. I can imagine that a person in the employment of the Municipality who accepts an appointment in the Civil Service, does so because of the facilities in the Civil Service, and that should exclude any right to have the period of his service with the Municipality added to his service with the Government for the purpose of his pension. I shall therefore oppose paragraph (c) of clause 2 of the Bill. There is urgent necessity for consideration of the question of pensions for employees in the branches of the Government Service I have referred to

Mr. MORRISH: I would like to comment on the point made by the hon. Member when he made reference to certain employees of the Sea Defence and Drainage Boards. Several cases have come before the Boards which did appear to be cases of hardship through transfers from what is strictly a Government Department to employment under a Board which operates in conjunction with a Government Department. I therefore think there is some merit in the suggestion that the position of such employees should be examined.

The FINANCIAL SECRETARY & TREASURER: I would like to deal with the point which has been referred to by the two hon. Members who have last spoken. Members must not overlook the fact that the Central Drainage Board meets its liabilities by levying rates on private individuals who own property in the area, and of course some Local Authorities. Consequently, before the Central Board itself can apply pensionable provisions to any employee of its own, quite obviously the agreement of the various Local Authorities comprising the Drainage Area to meet such a liability would have to be first obtained. The Drainage Board is a statutory body with its functions laid down, and with the liabilities which it has to meet by rates all set out quite clearly in the Ordinance. There would have to be a measure of agreement among all parties before such a liability could be accepted by the Board. That would be the first step.

What is happening here is not that Government is accepting the liability for paying any pension which would be payable by the Municipality. The object of this Bill is to enable a pension to be computed, firstly, as if the officer concerned has his service completely with the Government, and secondly, for the additional charge to be borne between the two bodies concerned. Of course the Municipality has accepted the responsibility to pay a pension, although not necessarily on the same basis or rate as the Government does. Similarly with the Infant Welfare and Maternity League and the Tuberculosis Society. Those bodies accept liability to contribute to a pension, and that is the scheme which has been approved by this Council by resolution and communicated to the bodies concerned who have accepted liability to meet their share of the pension in accordance with the Rules of the Government or, in the case of the Municipality, in accordance with their own Rules. I hope I have made that point clear.

The question of the Drainage Board is a matter of some concern. The employees of the Board are not directly employees of the Government. If they

were it would be very much simpler. That is the position as it stands.

The PRESIDENT: It is a matter for the Board to put up a suggestion for consideration of the matter, and it would be examined.

Mr. MORRISH: I thank you, Sir, for the suggestion.

The PRESIDENT: If the Board feels that something should be done for those people it should put up a case and state how it is proposed to meet the cost of a scheme.

Mr. ROTH: In view of the explanation given by the hon. the Financial Secretary I take it that those three bodies concerned will pay their portion of the pensions. That is not very clear in the clause

The PRESIDENT: The clause states that the pension of an officer shall be computed and apportioned. "Apportioned" is the operative word.

Question put, and agreed to.

Bill read a second time.

COUNCIL IN COMMITTEE.

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

Clause 2 — Pensions of officers with service in certain Health Services.

Mr. SMELLIE: I would like some information. I have chosen this moment because this is the main clause of the Bill. Certain of these officers are now enjoying interim pensions, and I take it that when the actual pensions are decided upon they will be divided proportionately between the Government and the bodies concerned. I hope that will be done as quickly as possible.

The FINANCIAL SECRETARY & TREASURER: I do not know that the hon. is correct — that there are certain officers enjoying interim pensions. I have no knowledge of that.

Mr. DEBIDIN: I am still not clear as to the position so far as the Municipality is concerned. I have listened to the explanation given, and I take it that it is also correct to say that the pension will be apportioned, but the point is clear that the person may not have qualified for any pension at all had his period of service in the other Department not been taken into account. Why should a person with previous service with the Municipality have that period of service regarded as service with the Government for the purpose of computing his pension from Government? Why should such a person be granted this concession which is denied employees in certain Departments which are, for all practical purposes, Government Departments?

The CHAIRMAN: Service with the Municipality does count at present.

The FINANCIAL SECRETARY & TREASURER: The position arises out of the report which the hon. Member mentioned — a very comprehensive report which was tabled in this Council in 1948. It was the report of a Committee on Health Services at present provided through the agency of the Society for the Prevention and Treatment of Tuberculosis and the Infant Welfare and Maternity League, and one of the principles which was brought out in that report was the unification of the health services provided by the Health Visitors. In fact that was the most important point of the whole report, and a Message was communicated to this Council and a Resolution was passed adopting the recommendation for the unification, as far as possible, of the terms and conditions of service of the Health Visitors in all three of those services — the Municipality, the Government and the Government agencies — the idea being that trained Health Visitors, wherever they were first appointed, should get more or less the same conditions of salary and pension. All that has been accepted and adopted.

As regards pension this is the final act to allow of computation as if the service was continuous, with a proportion being paid by the Government. This

Bill only relates to the proportion which is properly payable by Government. It is Government's liability in a formula which is contained in the Pensions Ordinance itself. That formula is somewhat complicated, and that is why the term "scheduled Government" is used at the end of clause 2. This is an implementation of a Resolution which was adopted by this Council and of course communicated to the Town Council and accepted by that body.

Mr. DEBIDIN: In view of the explanation I will accept the clause

Clause 2 put, and agreed to.

The Council resumed.

The ATTORNEY-GENERAL: I move that the Bill be now read a third time and passed.

Mr. RAATGEVER seconded.

Question put and agreed to.

Bill read a third time and passed.

**CINEMATOGRAPH (BRITISH FILMS)
(AMENDMENT) BILL, 1950.**

The ATTORNEY-GENERAL: I beg to move the second reading of a Bill intituled:

"An Ordinance further to amend the Cinematograph (British Films) Ordinance, 1933."

The Cinematograph (British Films) Ordinance, 1933, (No. 42), requires that twenty per centum of the films exhibited at each cinema shall be British films. Clause 2 of this Bill seeks to amend the definition of the expression "British film" in section 2 of the Principal Ordinance by substituting the following definition:

"British film" means any film depicting scenes intended for exhibition by a cinematograph apparatus which has been shown to have been registered as a British film under the Cinematograph Films Act, 1927, or the Cinematograph Films Act, 1938 and 1948 by the production of a certified copy of the entry relating to such film in the register kept by the Board of Trade under the provisions of the aforesaid Acts."

This has become necessary and I recommend it to the Council.

Mr. RAATGEVER seconded.

Question put, and agreed to.

Bill read a second time.

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

COUNCIL IN COMMITTEE.

Clause 2 — Amendment of section 2 of the Principal Ordinance.

The ATTORNEY-GENERAL: I move the addition of the letter "s" to the word "Act". It is a printers' error.

Clause as amended passed.

Council resumed.

The ATTORNEY-GENERAL: With the consent of Council I beg to move that the Bill be now read a third time and passed.

Mr. RAATGEVER seconded.

Question put, and agreed to.

Bill read a third time and passed.

A.M.E. CHURCH INCORPORATION BILL.

The PRESIDENT: The hon. Member for Western Berbice would like to take his motion which is a formal one. I think hon. Members have copies of the motion. It is on the Supplementary Paper. I take it the Council would grant leave for it to be taken.

Leave granted.

Mr. PETERS: I beg to move the following motion —

"WHEREAS A Bill intituled "An Ordinance to incorporate the Board of Trustees of the African Methodist Episcopal Church in British Guiana" was on the 15th day of June, 1950, passed by this Honourable Council;

AND WHEREAS the sum of one hundred dollars was paid as stamp

duty pursuant to the Tax Ordinance, 1939, No. 43, in respect of the said Bill ;

AND WHEREAS the said Church has made useful contribution to the religious and educational life of this Colony during its operations in this Colony over half a century ;

AND WHEREAS it has been customary for this Honourable Council to recommend the refund of stamp duty paid in respect of Private Bills dealing with the incorporation of Churches ;

BE IT RESOLVED that this Honourable Council be pleased to recommend to Government the refund of the said sum of one hundred dollars paid in terms of the Tax Ordinance, 1939, for the said Private Bill intituled "An Ordinance to incorporate the Board of Trustees of the African Methodist Episcopal Church in British Guiana, to vest therein certain property, and for other purposes connected with the matters aforesaid."

This motion speaks for itself and I trust that the present Council will exercise its consideration in as courteous a manner as its predecessors had done in the past.

Mr. DEBIDIN seconded.

(Several other Members had also risen to second the motion).

The PRESIDENT : It seems to have the unanimous wish of Members.

Motion put, and unanimously adopted.

TAX (AMENDMENT) (No. 2) BILL.

The ATTORNEY-GENERAL : I beg to move the second reading of a Bill intituled :—

"An Ordinance further to amend the Tax Ordinance, 1939."

A Bill has been prepared which seeks to amend the Intoxicating Liquor Licensing Ordinance so as to enable a licence for the sale of intoxicating liquor to be granted in respect of premises at Atkinson Field. Such legislation would involve a consequential amendment to the Tax Ordinance, 1939, to provide for the duty payable in respect of such a licence, and this Bill seeks to effect such an amendment.

Hon. Members are aware of the fact that refreshments are provided and sold at Atkinson Field which include intoxicating liquor, and accordingly it is necessary if that is to continue that some provision be made in the law for this to be done. There is another Bill dealing with this question under the Intoxicating Liquor Licensing Ordinance, which will permit that to be done. At the moment we are dealing with the Tax Ordinance and the acceptance of that in principle. I beg to move that this Bill be now read a second time.

Mr. RAATGEVER seconded.

Question put, and agreed to.

Bill read a second time.

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

COUNCIL IN COMMITTEE.

Clause 2 — Insertion of new section 42A in the Principal Ordinance.

Mr. ROTH : May I enquire from the hon. the Attorney-General, in the main Ordinance is not there a provision for what is known as a Tavern Licence for the sale of intoxicating liquor at railway stations and stellingings ? Does not that cover Atkinson Field ?

The ATTORNEY-GENERAL : It is considered that the present law does not cover this.

Council resumed.

The ATTORNEY-GENERAL : With the consent of Council I beg to move that the Bill be now read a third time and passed.

Mr. RAATGEVER seconded.

Question put, and agreed to.

Bill read a third time and passed.

INTOXICATING LIQUOR LICENSING (AMENDMENT) BILL.

The ATTORNEY-GENERAL : I beg to move the second reading of a Bill intituled —

"An ordinance further to amend the Intoxicating Liquor Licensing Ordinance."

Having regard to what has been already said in connection with the last Bill, it is not necessary to make further comment except to say that this Bill seeks to provide for the issue of licences in respect of the sale of intoxicating liquor at Atkinson Field.

Mr. RAATGEVER seconded.

Question put, and agreed to.

Bill read a second time.

The Council resolved itself into Committee and considered the Bill clause by clause without amendment.

Council resumed.

The ATTORNEY-GENERAL: With the consent of Council I beg to move that this Bill be now read a third time and passed.

Mr. RAATGEVER seconded.

Question put, and agreed to.

Bill read a third time and passed.

SUPPLEMENTARY APPROPRIATION (1949) BILL.

The FINANCIAL SECRETARY & TREASURER: I beg to move the second reading of a Bill intituled:

"An Ordinance to allow and confirm certain additional expenditure incurred

in the year ended the thirty-first day of December, 1949."

This is a formal act of the Legislature in authorizing the total expenditure incurred for the year, 1949. All the necessary estimates have been already approved by this Council and the completed financial statements have been already tabled. This is only the formal act confirming by law the total amount of expenditure for the year.

The COLONIAL SECRETARY seconded.

Question put, and agreed to.

Bill read a second time.

The Council resolved itself into Committee and considered the Bill clause by clause without amendment.

Council resumed.

The FINANCIAL SECRETARY & TREASURER: With the consent of Council I beg to move that the Bill be now read a third time and passed.

The COLONIAL SECRETARY seconded.

Question put, and agreed to.

Bill read a third time and passed.

The Council adjourned to 2 p.m. the following day, Friday, 8th September, 1950.