

LEGISLATIVE COUNCIL

(Constituted under the British Guiana
(Constitution) (Temporary Provisions)
Order in Council, 1959).

THURSDAY, 16TH MAY, 1957

The Council met at 2 p.m.

PRESENT:

His Honour the Speaker,

Sir Eustace Gordon Woolford, O.B.E.
Q.C.

Ex-Officio Members:

The Hon. the Chief Secretary,
Mr. M. S. Porcher (Ag.)

The Hon. the Attorney General,
Mr. A. M. I. Austin

Nominated Members of Executive Council:

The Hon. W. O. R. Kendall (Mem-
ber for Communications and Works).

The Hon. G. A. C. Farnum, O.B.E.
(Member for Local Government, Social
Welfare and Co-operative Develop-
ment).

The Hon. R. C. Tello.

Nominated Unofficials:

Mr. C. A. Carter

Mr. H. Rahaman

Miss Gertie H. Collins

Mrs. Esther E. Dey

Dr. H. A. Fraser

Mr. Sugrim Singh

Mr. W. T. Lord, I.S.O.

Clerk of the Legislature :

Mr. I. Crum Ewing.

Assistant Clerk of the Legislature :

Mr. E. V. Viapree

Absent:

The Hon. the Financial Secretary,
Mr. W. P. D'Andrade (Ag.)
—on leave.

The Hon. Sir Frank McDavid.
C.M.G., C.B.E. — on leave.

The Hon. P. A. Cummings -- on
leave.

The Hon. R. B. Gajraj — on leave

Mr. J. I. Ramphal — on leave.

Mr. T. Lee — on leave.

Mr. W. A. Phang — on leave.

Mr. L. A. Luckhoo, Q.C. — on
leave.

Mr. E. F. Correia — on leave.

Rev. D. C. J. Bobb — on leave.

Mr. R. B. Jailal — on leave.

The Speaker read prayers.

The Minutes of the meeting of the
Council held on Wednesday, 8th May,
1957, as printed and circulated were
taken as read and confirmed.

ANNOUNCEMENTS

LEAVE TO MEMBERS

Mr. Speaker: The hon. the Acting Financial Secretary is out of the Colony on official business. Mr. Tello who is here, has asked for leave from the 18th to 24th of May. Mr. Ramphal has asked to be excused from today's meeting and Mr. Luckhoo also. The Rev. Mr. Bobb has asked to be excused from the 15th to the 31st. I thought this was announced but I am informed that it wasn't. Mr. Correia, who is not here, has asked for the 16th and 17th. Sir Frank McDavid is at present in Trinidad attending a conference.

PROPOSED MARRIAGE (AMENDMENT)
BILL

I have received a letter signed by several persons in which they state that they are preparing to enter a protest against the passing of the proposed Marriage Ordinance. They will be sending a petition to the Council against the Bill being enacted. The petition is signed by a number of persons, and as the proposed legislation is one that affects a large number of persons both Hindus and Muslims, it is advisable that the Bill should be carefully considered and everyone interested afforded an opportunity in stating what their objections are to its becoming law.

There are a number of instances where East Indians who according to their views are legally married—I mean those who have lived together as man and wife and have had issue. The trouble about these cases is, that when one or the other of the party die intestate—whether it be the mother or the father of these children—neither the surviving mother, the surviving father nor the children can inherit whatever property has been left. The survivors, the next of kin of the father or the mother as the case may be inherit from them.

PAPERS LAID

The Chief Secretary (Mr. Porcher, Acting): I beg to lay on the table, the Annual Report of the Georgetown and New Amsterdam Fire and Ambulance Services for the year 1956.

The Chief Secretary: I beg to lay on the table, on behalf of the hon. Financial Secretary (Mr. Essex), the

Minutes of the meeting of Finance Committee held on 14th February and 28th March, 1957.

Schedules of Supplementary Estimates for the months of January and March, 1957.

Schedules of Supplementary Estimates (Development) for the months of January and March, 1957.

The Attorney General (Mr. Austin): In the absence of the hon. Member for Agriculture, Forests, Lands and Mines (Sir Frank McDavid) I beg to lay on the table, the

Financial Statements of the Government Produce Depot for the year ended 31st December, 1955, together with the Director of Audit's certificate and report thereon.

Mr. Farnum (Member for Local Government, Social Welfare and Co-operative Development): I beg to lay on the table, the

Annual Report of the Commissioner of Local Government for the year 1956.

GOVERNMENT NOTICES

SUPPLEMENTARY ESTIMATES FOR
JANUARY—MARCH, 1957

The Chief Secretary: In the absence of the hon. the Financial Secretary I beg to give notice of the following two motions set out in the Supplementary Order Paper—

"Be it resolved: That this Council approves of the Supplementary Estimates for the months of January and March, 1957, totalling \$52,447.63 and \$223,790.00,

respectively, which have been laid on the table."

SUPPLEMENTARY DEVELOPMENT ESTIMATES, JANUARY—MARCH, 1957

"Be it resolved: That this Council approves of the Supplementary Estimates (Development) for the months of January and March, 1957, totalling \$384,764.00 and \$371,526.00, respectively, which have been laid on the table."

OTHER NOTICES

LARGE SCALE MANGANESE MINING IN NORTH WEST DISTRICT

Mr. Luckhoo: I beg to give notice of the following motion:

"Be it resolved: That this Honourable Council welcomes the announcement made in Sessional Paper No. 10/1957 and requests that an expression of its recommendation be conveyed to the representatives of the North West Guiana Mining Company, Ltd."

REPLIES TO QUESTIONS

ADMISSION AGE FOR PRIMARY SCHOOL

Mrs. Dey: I have been requested by the hon. Member, the Rev. Mr. Bobb to ask the hon. Chief Secretary the following questions listed on the Order Paper—

"Is the Honourable Member for Education aware that a circular issued by the Director of Education forbids the admission of children who have attained the age of five years to primary schools (except those in riverain and remote areas) in which accommodation exceeds enrolment; and if so, will the Honourable Member inform this Honourable Council what is the Government's view on the circular?"

The Chief Secretary: The Circular to which the hon. Member refers was issued by the Director of Education with

the approval of the Member of Education.

The Primary School population within the compulsory age group, which is from 6 to 14 years, is increasing rapidly and many Primary Schools are already severely overcrowded. Overcrowding seriously impairs the efficiency of the teachers and the capacity of the children to learn. It has therefore been decided that until further notice no child under the compulsory age of 6 years shall be enrolled in a Primary School, except in those schools in which present accommodation exceeds enrolment in order to ensure that children within the compulsory school age group are provided with as efficient educational facilities as possible. Children between the ages of 5 and 6 who have already been enrolled and have been attending schools will be allowed to continue in school.

Before I take my seat I would like to draw attention to this fact that the Standing Orders require that the answers to questions be given within 14 days. That sometimes puts a severe test on Departments, and the Members concerned. It is very disappointing when one comes prepared to answer questions to find that the Member who had tabled them is not here to hear the answers.

Mr. Speaker: I have mentioned that before.

INTRODUCTION OF BILLS

MARRIAGE (AMENDMENT) BILL.

The Chief Secretary I beg to give notice of the introduction and first reading of a Bill intituled—

"An Ordinance further to amend the Marriage Ordinance."

Mr. Speaker: I think that, as a matter of courtesy, I should reply to

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this letter and tell them that they must make their representations to the proper quarters. Notice of the introduction of this legislation has been given by the Chief Secretary, and I am afraid I must say that any correspondence relating to it must be addressed to the Chief Secretary. I should like to tell the hon. Mr. Singh that this would not prevent any other representations from being made.

Mr. Singh : I understand, Sir; you know very well how they feel in this matter.

Mr. Speaker : Before we go on to Public Business, I would like to draw the Council's attention to what has been discovered since we passed the third reading of the Moneylenders Bill. Some imperfections have been discovered in the provisions of the Bill and there will have to be some minor alterations.

ORDER OF THE DAY

MARRIAGE (AMENDMENT) BILL

A Bill intituled:

"An Ordinance further to amend the Marriage Ordinance."

The Chief Secretary : I do not know if it would help if I gave the assurance that I would not proceed with this Bill with undue haste. I will give adequate opportunity for representations to be made and I will also give opportunity for delegations to meet me if they have any points to be raised.

Mr. Speaker : I hope that would be properly recorded in the newspapers.

PUBLIC FREE LIBRARY (AMENDMENT) BILL

The Chief Secretary : I beg to move the second reading of the Bill intituled:

"An Ordinance to amend the Public Free Library Ordinance."

In moving the second reading of this Bill I do not think I need to say very much because it is a small Bill and I think the provisions speak for themselves. The point is that ever since 1950 the employees of the Public Library have not been paid any superannuation benefits and it has been recently discovered that although this provision has been made in the Library estimates each year, there is no provision in the Ordinance (Chapter 160) for paying pensions. The whole purpose of this Bill is to legalise what has happened in the past and to make it legal in future for the Library to pay superannuation benefits.

The Attorney General : I beg to second the motion.

Question put, and agreed to.

Bill read a second time.

Council resolved itself into Committee and passed the Bill as printed.

CRIMINAL JUSTICE BILL

The Attorney General : I beg to move the second reading of the Bill intituled:

"An Ordinance to abolish penal servitude and imprisonment with hard labour."

This is also a short Bill, but it is of considerably more interest than its predecessor in so far as it will put a formal end to a long chapter of social history which started well over 100 years ago in England and was followed in the Colony.

The offences against the laws of this country are divided mainly into felonies, which are the more serious offences, and misdemeanours which are serious but usually not quite so serious. The punishments or certain of the punishments prescribed are penal servitude, which is imprisonment for a minimum period of three years, and in some

cases imprisonment with hard labour. Now those two forms of punishment were instituted in England in those dark days of social history when it was considered that in order to reform a criminal or deter other people from crime it was necessary to inflict a very severe penalty which was designed to cause harm and hurt to a man's body and mind, in order to warn him of the awful consequences if he lapses into crime or repeats his crime.

It was in those days that persons were sent to prison for punishment because it was in prison that harsh, cruel punishment was meted out to them. It has been found in the course of time that this form of brutal treatment has had the reverse effect of what was intended; that far from deterring men and women from committing crime, it made them anti-social and rather confirmed them in their criminal ways. As a result, and particularly in recent years, the trend has been a complete swing away from retributive punishment to punishment which is designed not primarily to wound a man in mind and body but to reform him and send him out of prison a better man than he went in, so that he can take his place as a useful member of society.

This Bill is one of the steps which have been taken by Government to bring penal administration in this Colony up to date and to carry it out on modern lines which have been adopted in England and, indeed, elsewhere. The complementary step will be the new Prison Bill which will shortly be moved through further stages in this Council—it was considered that when the new Prison Bill was made law it would not be right for the prison organization to have to deal with these archaic forms of imprisonment or punishment which for many years have been of no practical effect and which, in point of fact, are only of historical significance.

I do not wish to go on for any length of time but I think it is important in considering this matter to realize what we are really doing. Penal servitude and hard labour, as I have said, come from a time when punishment was intended to be retributive and Members will remember that it was not without significance that in Gilbert and Sullivan's opera "The Mikado", the Mikado sang—

"My object all sublime
I shall achieve in time —
To make the punishment fit the crime —
The punishment fit the crime."

In those days if a person committed a heinous offence he was to suffer very dreadful punishment. In those days it was said that hard labour — which is what we still have on our Statute Books — should be of a hard and servile form, designed to repress the offender. It is entirely out of date but even today we still have the rules that hard labour shall be by "the tread-wheel, shot-drill, crank or capstan", but we hope before long the position will be altered.

The present policy is that if a person commits a crime he shall be reformed if possible, and he is sent to prison not for punishment but as a punishment, so that when he is there he will not be subjected to those repressive forms of punishment but he will be treated in such a way as will contribute to his welfare and his reform. Under those conditions there is no room for any differentiation in the form of depriving a person of his liberty except for the length of time which he serves in prison, and a rational prison system has no room either for penal servitude or imprisonment with hard labour—and when I say hard labour I mean hard labour designed to hurt, offend and to degrade. A prisoner these days is taught to respect labour and industry and to desire it rather than to loathe it.

I shall be very surprised if this Bill meets with opposition for when

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these old and archaic forms of punishment are removed from our Statute Books the way will be clear in practice and in law—particularly when the new Prison Bill is passed into law—for a person in prison to be dealt with in such a way that instead of being confirmed in his crime he will be able to come out of prison a better man and if a woman, a better woman.

That is the background to penal servitude and imprisonment with hard labour. Clause 2 of this Bill is intended to make a formal declaration that in future no one shall be sentenced to penal servitude nor imprisonment with hard labour. The clause also has an interpretative significance in so far as we are not going to amend all the laws which prescribe penal servitude and imprisonment with hard labour, but we are going to say that in interpreting them in future they must be considered to mean that an offender should be sentenced merely to imprisonment.

Clause 3 of this Bill provides for transitional provisions in respect of those at the moment undergoing penal servitude and imprisonment with hard labour. They too will be considered, from the enactment of this legislation, and treated, as if they had been sentenced to imprisonment. Clause 4 provides for consequential amendments. There is reference in the Interpretation Ordinance at section 35 that—

“Where in any statute power is given to impose a sentence of imprisonment with hard labour only, it shall be lawful to impose the imprisonment with or without hard labour.”

That will be completely of no effect and it was thought that in order to show the intention, this provision of the law should be removed.

Similarly, there are provisions in the Criminal Law (Offences) Ordinance and

the Summary Jurisdiction (Offences) Ordinance to the effect that imprisonment may be with or without hard labour as the Court may direct. There is a further amendment of a consequential nature which I shall move in the Committee stage, and that is, on the abolition of penal servitude the necessity for the Convicts Licences Ordinance is removed, and that is also a consequential amendment which is necessary to this Bill.

The Chief Secretary: I beg to second the motion.

Mrs. Dey: I rise to support this Bill. It seems to me that the hon. Mover has been combing the cobweb in my brain. We are seeking to abolish penal servitude, but we have a type of person who has been going to prison from time immemorial. You, Sir, should know—I do not know anyone else in this Council who would know—but I know—that many years ago one went to prison for debt, and the creditor was compelled to lodge a guilder (32 cents) with the keeper of the prison every day, and the morning that amount was not paid the debtor was released from prison. That creditor gained nothing by imprisoning a person for not fulfilling his obligation, but such a person still goes to prison for debt.

Then you have the man who does not support his wife after a maintenance order is made by a Magistrate against him, and is sent to prison. Also you have the man who does not fulfil his honourable obligation of looking after his children, and ignores the Magistrate's order. He, too, goes to prison. I do not advocate that those persons should have hard labour but have some type of labour. As to whether all prisoners should have the same type of punishment, I do feel that in respect of those persons to whom I have referred, some sort of line of demarcation should be made and that would be more acceptable. Apart from that I wish to support this Bill.

Mr. Lord : I would like to ask the hon. Mover whether penal servitude is to be revoked or whether that in addition to imprisonment with hard labour is to disappear from prison life. I know that in the old days prisoners were called upon to break stones. I do not know if they can be called upon to do so after this.

Mr. Sugrim Singh: I must support this Bill. I think the hon. the Attorney General in moving this Bill has made it crystal clear that this Bill is bringing our prison life in line with the progressive idea of the abolition of "hard labour". There are many similar Ordinances or legislation on our Statute Books which do not reflect favourably in this changing world. I am very glad this has been revoked. May I call it the beginning of things. I trust that very soon the law of unlawful possession, which has its root in the days of slavery which no longer exists, would soon be expunged from our Statute Books. In England no policeman dare stop a man in the street because his pockets are bulky and, if something is found on him for which he cannot give a satisfactory account, charge him with unlawful possession. In the old days of slavery the labourers on the wharf filled themselves with sugar, and this law was particularly introduced to stop things of that kind.

I must agree with Government on this very important change. Before I take my seat I do say that I share the modern school of thought that when a man commits an offence he needs treatment not punishment. Taking that to a logical conclusion this Colony would become a paradise in a short time.

The Attorney General: Reference was made to imprisonment for civil offences rather than criminal offences. I think that those remarks are really somewhat unfortunate in a debate on the

present Bill because without going into the question of imprisonment for debt as that is a matter as much here as in England and elsewhere for people to find themselves in prison for disobeying an order of the Court. Those persons are dealt with as civil prisoners and do not suffer the same discipline and treatment as the criminal prisoners.

I think when the Prison Bill comes to that debate in this Council it will be very appropriate for hon. Members to raise those points then and, I think, satisfactory replies will be given. There should be provision in the Prison Bill for different treatment to be meted out to civil prisoners than to criminal ones, such as to wear their own clothes and not obligated to work.

I now come to the question of breaking stones. Hard form of labour seems to be preferred, although it may have been abolished, and prisoners are, I understand, obliged in their own interest to work hard, because hard work is good for people. I think it is very rare that they break stones but they are encouraged to do so not for the purpose of humiliating them and oppressing them.

As far as the suggestion of the hon. Member, Mr. Singh, is concerned, about the offence of unlawful possession, if a person has something in his possession and cannot explain that possession satisfactorily he is guilty of an offence. The hon. Member suggests the origin of that offence and further that it is peculiar to this Colony or part of the world. I can assure him that it is not so.

Mr. Speaker : It is not peculiar to this Colony. The law says the onus is on the person to prove his innocence. It is not easy to imprison a person for debt. If a man has a judgement of the Court recorded against him for a debt, before he can be imprisoned for that debt his creditor has to take him before the Court under the Debtors Ordinance and

[Mr. Speaker]

he is examined there as to his means. If he has not the means to pay the debt, no order is made against him. For an order for imprisonment to be made against him the Court has to be satisfied that he can pay the debt.

With regard to the other question of the maintenance order I can tell you this, that in England—I do not know if there is actual legislation—in order to enforce payment on the putative father it is now being sought to make it obligatory on his employer to deduct the amount from his salary or wages. That is one form of legislation from which other forms of amendments might follow.

I have no doubt that the hon. the Attorney General could say a great deal on that. I know that a former Governor of this Colony—I will not mention his name—on a petition submitted to him by an aggrieved mother who had borne a child for a man, informed the petitioner that the Government of this Colony was not responsible for the wages of sin.

Question put, and agreed to.

Bill read a second time

COUNCIL IN COMMITTEE

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

Clause 1—*Short Title* — passed as printed.

Clause 2 passed as printed.

Clause 3.—*Transitional Provisions*.

The Attorney General: I beg to move an amendment by the insertion of a new subclause in the following terms—

“(3) Where any person is at the commencement of this Ordinance the holder

of a licence granted under the Convicts' Licences Ordinance which has not been forfeited or revoked, he shall be treated as if his sentence had expired.”

Question put, and agreed to.

Clause 3, as amended, passed.

Clause 4 passed as printed.

Clause 5.—*Repeal of Chapter 79*.

The Attorney General: I beg to move the insertion of the following new clause 5—

“5. The Convicts' Licences Ordinance is hereby repealed.”

Question put and agreed to.

Clause 5 and the title and enacting Clause passed as amended.

Council resumed.

The Attorney General: I beg to move that this Bill be now read a third time and passed.

The Chief Secretary: I beg to second the motion.

Question put and agreed to.

Bill read a third time and passed.

The Chief Secretary: I do not want to hurry Members over the secondary education motion, but I would like to get on with it, and the sooner we deal with it the better. On the other hand, I would like as many Members as possible to be present at the debate. I think a few Government Members should be back next week.

Mr. Speaker: We will get on with it. Council is now adjourned *sine die*.