LEGISLATIVE COUNCIL.

THURSDAY, 27TH MAY, 1948.

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. W. L. Heape, C.M.G.

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

The Hon. the Colonial Treasurer, Mr. E. F. McDavid, C.B.E.

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

The Hon. F. J. Seaford, C.B.E., (Nominated).

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

The Hon. Dr. J. A. Nicholson (Georgetown North).

The Hon. T. Lee (Essequibo River).

The Hon. V. Roth (Nominated).

The Hon. T. T. Thompson (Nominated).

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

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. Dr. C. Jagan (Central Demerara).

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

The Hon. C. A. McDoom (Nominated).

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

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

The Hon. J. Carter (Georgetown South)

The Hon. E. M. Gonsalves (Nominated).

The Clerk read prayers.

Minutes of the meeting of the Council held on Friday the 21st of May, 1948, as printed and circulated, were taken as read and confirmed.

ANNOUNCEMENTS

COMMISSION OF ENQUIRY—TRANSPORT AND HARBOURS DEPARTMENT.

The President addressed the Council as follows:—

"Honourable Members of the Legislative Council,

I am laying on the table today a copy of the report of the Commission appointed by me to enquire into the causes of the strained relations which had developed in the Transport and Harbours Department between the management on the one hand and the employees and the Transport Workers' Union on the other, and to make recommendations as to the steps which could properly be taken to bring the discontent to an end and to ensure satisfactory relations in the future.

2. The report is a lengthy one, running into some eighty pages, apart from voluminous annexures and oral and documentary evidence running into a thousand

pages. I am grateful to the Commission for the most thorough and painstaking manner in which it has carried out its task so expeditiously.

3. The text of the report and evidence clearly reveal regrettable misunderstandings on both sides and faults on both sides. The Commission's comments on the actions of both parties which led to their estrangement and finally to a strike of the employees have been, it seems to me, commendably restrained and made. I have no doubt, with the primary object of facilitating a reconciliation and closing what is aptly described in the concluding remarks of the report as "an unfortunate breach which the tide of indiscretion on both sides has brought about." I accept the findings of the Commission as summarized in paragraph 215 of the report and, generally speaking, I also consider that their recommendations in paragraph 216 should be pursued together with all other possible steps to bring about permanently satisfactory results.

4. I have come to the conclusion having regard to the representations which were made to me by the employees, and more particularly in the light of the Commission's report and the evidence adduced, that they have had in respect of some, but by no means all, of the matters out of which the dispute arose, reasonable grounds for complaint. It seems to me very important in matters of this kind that, to use a well known legal maxim, not only should justice be done but that it should appear to be done; and there is no doubt in my mind that in some instances, as I say, it neither appeared to the bulk of the employees to be done nor was it believed by them to be done—whether in fact it was or was not done. Nevertheless, and not in the least degree does this circumstance justify the ill-advised and precipitate, as well as illegal, action of the employees in going on strike without notice and before they had explored all means available to them under the law or by appeal to obtain a mutually satisfactory solution. If the Trade Union is to have my confidence they must in so far as they have not done so already, give the assurance to me and to the public that illegal action of the kind I have referred to will not be resorted to again.

5. Now it is indubitable that no public service can function satisfactorily under the conditions disclosed by the Commission's enquiry to exist in the Transport and Harbours Department, and I am sure that it will be agreed by all that steps must be taken and at once, to remedy this situation: to this end I have given the matter my most careful and anxious consideration and hardly less time to it than the Commission itself.

6. As to the management, I have considered it necessary to consult the General Manager in the light of the Commission's findings and recommendations. As the Council is aware, Colonel Teare has been engaged on a contract which expires in eight months' time, and he has informed me that in the light of recent events it may well be that further administrative efforts on his part for the improvement of the transport services may be largely frustrated, and he would not seek to renew his contract with this Government; Government is most anxious that the objects for which he was engaged, namely, the rehabilitation and reorganisation of the railway and steamer services, should as far as possible be achieved. In view of the most unfortunate circumstances which have arisen I have come to the definite conclusion that those objects can best be achieved if Colonel Teare, instead of resuming administrative charge of the Department, devoted the remaining few months of his contract exclusively to completing the formulation of his plans for the rehabilitation of the railway; in particular he should visit Bermuda as soon as possible and conclude the arrangements initiated by him and approved by the Finance Committee of this Council for the purchase, collection and transport from Bermuda of the rolling stock and other railway equipment valued at some $500,000. I have accordingly decided that he should so devote his time and unquestionable talent, and that he should not resume the Administrative charge of the Department, which will continue under the present temporary arrangements until others can be made. I have decided upon this course after a most careful study of the report of the evidence, both oral and documentary, and in the light of all that to my knowledge has occurred since I assumed the administration of this Colony. I believe it to be the best course to adopt in the public interest and I am issuing instructions accordingly. Colonel Teare's duties under this arrangement will include the preparation and submission to Government of a detailed report with his final recommendations for the rehabilitation of the railway (with particular reference to the most advantageous utilization of the Bermuda equipment) and for the further improvement of the transport services in this Colony. On the expiration of his contract he will be granted the leave for which he will be eligible in accordance with its terms. It will of course soon be necessary to take steps to secure a new General Manager, on whom will fall the task of continuing the work initiated by Colonel Teare of rehabilitating and further improving the railway and steamer services.

7. As to the employees, I feel that they will now, one and all, appr
and accept as fundamental, the fa

the Transport and Harbours Department is an essential public service; and that not only the management, but also the employees have a special responsibility to the public to operate that service without interruption and, what is equally important, to operate it efficiently. It must be equally understood that a high standard of discipline throughout the Department must be maintained to secure that efficiency. These are considerations which those of the employees whose function it is to guide and to lead as Trade Union executives will do well to apprehend fully. It is important that there should be no misconception on their part as to their personal responsibility and liability in these respects.

8. When all is said and done, what is of fundamental importance to this Colony is that it should have fully efficient railway and steamer services and that must be the common aim of us all, and it must be achieved. We must remember that the future of the railway is still at stake and with it essential transport facilities for the Colony, no less than the employment of 1,600 men, and every endeavour must be made to put these services in such a state of efficiency that they will be a credit, not only to the management and employees but also to the Colony. In conclusion I strongly endorse the Commission's appeal for "a new approach to this problem and with no mental reservations in the effort now to be made."

(Copies of the Report of the Commission were laid in accordance with the President's announcement).

The COLONIAL SECRETARY laid on the table the following documents:—

The Report on the Deeds Registry for the year 1947.

The Report and Financial Statements of the Berbice Lutheran Fund for the year 1947.

UNOFFICIAL NOTICES

RECALL OF ELECTED MEMBERS.

Dr. JAGAN gave notice of the following motion:—

"Whereas the constitution of British Guiana provides for the election of Representatives to the Legislative Council every five years but does not provide any guarantee to the voters that those elected will give honest and sincere representation;

And whereas it is a recognised democratic principle that voters should at all times have an opportunity to pass judgemended that Unofficial Members will be tatives who are merely agents of their popular will;

And whereas the aforesaid democratic principle has been embodied in the constitutions of several states and countries by the provision known as the Recall;

And whereas it has been recommended that unofficial members will be provided with an allowance from public funds of a sum of $150 per month from January 1, 1948;

Be it resolved that Government enact legislation to give to the electors of every constituency the right to reccall Members of the Legislative Council at any time after elections."

ORDER OF THE DAY

BILLS—FIRST READING.

The ATTORNEY-GENERAL: With your permission, Sir, and with the permission of Members I move the suspension of Standing Rule and Order No. 9 to permit of items 10, 11 and 12 in the Order of the Day being taken first.

Agreed to.

The following Bills were read the first time:—

A Bill intituled "An Ordinance further to amend the Customs Duties ordinance, 1935, with respect to the customs duty on bottles and bottle stoppers."

A Bill intituled "An Ordinance to provide for the establishment, control, training and discipline of the Volunteer Force, and for matters connecctd therewith."

A Bill intituled "An Ordinance further to amend the Militia Ordinance with respect to the constitution of the British Guiana Militia Band and by repealing all references to the militia force."—(The Attorney-General).

Notice was given of the second reading at the next or at a subsequent meeting of the Council.

SUMMARY JURISDICTION (OFFENCES) (AMENDMENT) BILL, 1948.

A Bill intituled "An Ordinance to amend the Summary Jurisdiction (Offences) Ordinance with respect to the

power of a Court of Summary Jurisdiction to impose corporal punishment."

The ATTORNEY GENERAL: In moving the second reading of this Bill I would point out to hon. Members that the question of the infliction of corporal punishment as an award by Courts and as a prison punishment has been receiving Government's attention for some time as a result of certain despatches which have been received from time to time from the Secretary of State for the Colonies. As hon. Members know, this matter of corporal punishment, not only in this Colony but throughout the Colonial Empire and in England particularly, has received a considerable amount of attention within recent years. Some time ago—I think it was early in 1939, just before the war—in a despatch the Secretary of State for the Colonies, pointed out that a Committee had been appointed "to consider the question of corporal punishment under the penal system of England, Wales and of Scotland; to review the law and practice relating to the use of this method of punishment by Juvenile Courts, by other Courts, and as a penalty for certain offences committed by prisoners; and to report what changes are necessary or desirable."

The recommendations which were then made by that Committee were accepted, and it was then suggested that provisions to give effect to those recommendations should be included in the Criminal Justice Bill which was at that time before Parliament. The Bill at that time proposed the abolition of corporal punishment as a Court penalty in England or the United Kingdom, and provided that in future it should only be used for punishment of serious offences against discipline in prison. Of course, arising out of that, the point was taken that such a decision to abolish corporal punishment in the United Kingdom would naturally give rise to the question whether similar measures should not be adopted by the Colonial Empire. Consideration was given to the views expressed but, as hon. Members realise, the war came on us and of course we were occupied with matters arising out of an consequent to the war.

Subsequently, some time in 1940, there was another despatch on the subject from the Secretary of States for the Colonies, and it was then pointed out that certain standards were drawn up for general guidance regarding the use of corporal punishment, namely, when awarded by the Courts it should be limited to serious offences against persons, involving the use of violence. Sentences of corporal punishment imposed by inferior Courts should either be subject to confirmation by the High Court or be reported to the Chief Justice as soon as possible after infliction. Only an approved instrument should be used,—the cat or the cane. The cat should be administered on the back and the cane on the buttocks, and only after a medical examination of the offender and in the presence of a medical officer. The cat should not be used on offenders under the age of 18. The maximum punishment should be 24 strokes. The retention of corporal punishment in Colonial conditions may be justifiable on the grounds of its value as a deterrent, but the gradual abolition of corporal punishment as a sentence of the Court should be aimed at.

As regards juveniles (boys under 16) it was suggested that corporal punishment should continue as a Court sentence in the absence of alternative forms of punishment other than imprisonment. A light cane of an approved pattern should be used and administered on the buttocks after a medical examination and in the presence of a medical officer. The maximum punishment should be 12 strokes.

So far as prison offences are concerned it was suggested that corporal punishment should be confined to cases of mutiny, attempted mutiny, and violence towards officers in the prison service.

As regards reformatory institutions or approved schools for juveniles, it was suggested that corporal punishment should be resorted as sparingly as possible, and only in the case of serious or repeated offences. It should be administered with a light cane on the buttocks. The maximum number of strokes should be 12, and only the officer in charge of institutions should have the power to order the punishment.

The Bills which are now before this Council seek to carry into effect the suggestions with regard to the infliction of

corporal punishment, either by a Court or as an award for breach of prison discipline. From the Objects and Reasons of this Bill it will be seen that under the Summary Jurisdiction (Offences) Ordinance, Chapter 13, a whipping or flogging may be ordered by a Magistrate where a person is convicted before him—

(a) of praedial larceny in a proclaimed district (section 76);

(b) of praedial larceny, with aggravating circumstances (section 77);

(c) of unlawfully carrying a dangerous weapon in a public way or place (section 141);

(d) of practising obeah or aiding or abetting the commission of that offence, where the person convicted is a male (subsection (2) of section 148); and

(e) of incorrigible roguery (section 150).

It is not considered desirable that a Magistrate's Court should have the power, except in the case of conviction for larceny in a proclaimed district, to order a whipping or flogging. Clauses 3 to 6 of the Bill therefore seek to amend sections 77, 141, 148 and 150 of Chapter 13 accordingly.

Clause 2 (a) of the Bill seeks to insert in section 76 of Chapter 13 the provisions of a notice published in the **Gazette** of the 28th July, 1917, at page 34 under the authority of the said section.

The effect of this is that so far as flogging is concerned a Magistrate's Court would not have the power to order it except in the case of a conviction for praedial larceny in a proclaimed district. I wish to emphasise that under that section — 76 — it is provided that:—

> "(2) The Governor in Council whenever, owing to the number of offences under the preceding sub-section committed in any part of the Colony, it appears to him expedient to do so, may by proclamation published in the **Gazette** declare that part of the Colony a proclaimed district within the meaning of that sub-section."

The other amendment to that section is to include certain specific things, as will be seen in clause 2 of the Bill, as coming under praedial larceny. It inserts after the words "sweet potatoes" certain words as set out. I think hon. Members will appreciate the fact that while a matter of this sort must clearly exercise the minds of us all, one must realise that this is an advancing world, and we must approach all these problems from the sociological or the purely humanitarian point of view rather than from the criminal point of view. These suggestions have come from the Secretary of State and have been considered by this Government, and I think they should receive approval by way of the passing of this Bill. I beg to move that this Bill be now read the second time.

The COLONIAL TREASURER seconded.

Mr. ROTH: In spite of the Attorney-General's suggestion that we should approach this matter from the human or the humanitarian point of view, I still consider that Government would be well advised not to press this Bill at the present time. The kind of person who goes in for praedial larceny — stealing from farms and so on — is usually the kind of person who can only feel through his skin. Six months' imprisonment means nothing to that kind of person. We are now trying to encourage the further extension of agricultural pursuits, and what encouragement would it be to the farmers if they are not allowed to reap any crops? We have had instances recently of persons carrying dangerous weapons about, and some of the older Members of this Council would realise what the practice of obeah can lead to. As I have already said, the type of person who commits these offences can only feel through his skin, and in the interest of the general public I think Government would be well advised not to proceed with this Bill just now.

Mr. DEBIDIN: I am opposed to the measures put forward in all of the Bills now being brought by the Attorney-General. Of course, we are dealing with the first one now, but it seems to me that the arguments will certainly overlap if we were to deal with them separately. The one I am referring to refers to the

amendment of the Summary Jurisdiction (Offences) Ordinance and while it is proposed not to give power to a Magistrate Court with respect to flogging, I find that there is power reserved to it in two cases, one being in respect of praedial larceny. While I am opposed to the removal of this form of penalty from the Ordinance and would rather have seen this Bill taken last than first, I will, if anything, support the amendment as published in the **Official Gazette.** It has been a source of great embarrassment to legal practitioners in not being able to produce proof as regards praedial larceny and many cases have been struck out by Magistrates for want of proof. I certainly feel that offences created by section 141 of the Ordinance should be exempted from the jurisdiction of Magistrates. The section reads:—

> "141. Everyone who, or in view of any public way, or place, openly carries without lawful excuse any deadly or dangerous weapon or instrument or any stick whatsoever, with intent, of in a manner, to cause terror or alarm to the public shall, on conviction thereof, be liable to imprisonment for six months and to whipping or flogging."

Unlike some of the other sections dealing with whipping and flogging this does not provide an alternative penalty; it provides both imprisonment and whipping or flogging. In my view it is a harsh penalty but if the majority of the Council feel that it should remain they would have my support. If there is any section which calls for an exemption, however, I think this one should be considered. With respect to the others, I would suggest that the penalties remain as they are in the statute book. It is true that we are moving forward in a modern world, but I would like to mention that it is a trite principle of jurisprudence that penalties are only provided as a deterrent to further crime. I hope that hon. Members would not judge this matter from the point of view that the penalty should not be in the statute book in these days, but rather from the point of view that it is there on principle to serve as a deterrent to this particular type of crime. I am satisfied that in this Colony there is a very high incidence of crimes of violence and that these crimes are often associated with other types such as the practice of obeah and vagabondage. Let us take as a concrete example the question of being deemed an incorrigible rogue. Under sections 146 and 147 there are offences which make a convicted person liable to be deemed a vagrant, and under section 147 he can be punished for doing a number of wrongs, some of them very grave indeed, and the maximum penalty is $50 or 3 months but he can be deemed a rogue and vagabond. Section 147 (vi) says everyone who

> "(vi) has in his custody or possession any picklock, key, crowbar, jack, bit, or other implement, with intent unlawfully to break into any building, or is armed with or has upon him any gun, pistol, sword, knife, razor, bludgeon, or other deadly or dangerous weapon or instrument, with intent to commit any unlawful act: and the weapon or instrument shall, on the conviction of the offender, be forfeited,. . ."

This is the section under which a charge can be brought for a person to be deemed a rogue and vagabond, but it is when one comes to the question of an incorrigible rogue that one sees how seriously the law views it. In other words, a person is given a second chance to commit a serious offence but after that the law deems that he should be liable to a whipping. The penalty is six months' imprisonment and a whipping. The point I am making is that there is good reason for the penalty provided in section 150 which deals with the question of an incorrigible rogue, because such a person is regarded as a danger to society and it is felt that a whipping might have the desired effect upon him. I feel that just as this Bill seeks to protect growing crops it is important to have protection for human life and property as well. If any provision in the law is calculated to offer a certain amount of protection to life or to property of any kind great care must be taken before any drastic change is made to it. I am speaking with the experience of one who has been practising in the courts of this Colony for a long number of years and I say that the time has not yet come when we should embark upon the Utopian idea of abolishing these provisions in this Colony. There is a difference in the standard and arrangement of society between this Colony and Great Britain and it would be dangerous to take as an example

dence in suspecting that the notes were forged the other man would have found himself in addition to paying the amount of those notes paying the penalty of a fine or imprisonment. There is another case, Your Excellency, which happened quite recently, where one man impersonated another in order to get a judgment against a third person. Cases lilke those do not carry whipping or flogging, and to my mind they are very much more serious than praedial larceny or obeah. As I have already said, I am entirely against whipping or flogging because I have seen it carried out and I would not like to see it again.

Mr. PETERS: I desire to endorse very strongly the position taken by the hon. the Attorney-General in respect of the question of the abolition of these forms of punishment as far as application is possible. I have myself had the privilege of seeing the penalty of whipping inflicted upon a lad for fowl-stealing. The thing that impressed me, when I stood in the room where he was being whipped, was the fact that the whole business was a sort of soulless affair in so far as the Sergeant who was inflicting the punishment was concerned. It was only a sort of punctillious duty he was performing, and the other minions of the law who were holding the lad down were just simply teasing and taunting the lad as though he was "for once a devil had been caught and was being given the punishment of his life." I left that room feeling very much concerned that in our civilised community a lad should be treated that way. I formed the opinion that the snag in the question of corporal punishment being inflicted upon the child is to be found in the fact that while there is a disposition or desire to inspire f e a r there is not that other very necessary something that one should get, and that is to evoke sympathy. Get the lad or the child to sense something of the feelings of the person inflicting the punishment. One desires to inspire the fear of punishment in the child through the whipping so that the offence committed should not be repeated and should be avoided in the future. The Magistrate or the Judge orders the punishment but does not inflict it himself. The person who inflicts the flogging or whipping is a sort of mechanised instrument. In this mechanised way of the Courts ordering punishment by flogging or whipping, the person inflicting that punishment does not care anything for the one who is being punished. In the light of that, we are still growing up in that we are trying to get higher and closer to the forward-looking countries of the world. I find, for instance, these are the days when society has taken upon itself the burden of revising on an improved scale the method of dealing with delinquent lads and lasses, and we find that the children are responding far better to the efforts that are being made in that respect than if we had not such a system in which to help them to adjust themselves to the demands of society.

Again we find that in nine cases out of ten we have been failing to enquire into the history of the particular case. There are times when children go wrong because they are absolutely dependent and the persons on whom they depend are not economically competent to take care of them, and those children in a moment of weakness or hunger fall into crime. Then there are instances where a child is given to crime not because it does not anticipate being punished for the wong but simply because of some mental deficiency. If we consider ourselves the parents of society, and if we feel that the time has come to ease up somewhat on this gruesome relict of the past and adopt some other means of dealing with our delinquent children, I personally am glad to endorse everything that has been said and done in order to keep pace with the progress of the time.

Dr. NICHOLSON: Flogging in an age like this must be regarded as a relict of the dark ages, and one always wants to feel that should be. Flogging debases both the doer and the receiver, and the law should not debase itself because certain misguided and unintelligent subjects debase themselves. We have got to follow modern trend and seek to avoid corporal punishment, such as flogging and whipping. It has never served as a deterrent. I have had some experience of prison life. I have spent ten of my best years in prison work. From 1917 to 1927 I was Deputy Chaplain of the Georgetown Prison, so I had to go there every Sunday,

every Good Friday, every Christmas. When I returned from Edinburgh to practise medicine I found prison life following me. For two and a half years I was Prison Surgeon at the New Amsterdam Prison and at His Majesty's Convict Station at Mazaruni. So I know something of prison life. The prisoners will say:— "Prison is a fine place because you are told when to go to bed, when to get up and when to have a bath, and your meals are cooked for you." Do not mention the social workers; they are advocating so much butter and cheese and milk and fruit per day for the prisoners, and are placing them on a more substantial scale than people who have to toil hard outside of prison. Instead of a flogging there ought to be a more rigorous confinement. A man can endure a flogging in spite of what is said about it, and the effect is going to pass off rapidly.

On the other hand I am supporting the Bill as it stands. Flogging would be prescribed in respect of certain areas where praedial larceny is rampant, because it is very hard for one man to sow and another reap. Provision for flogging has a psychological effect. I have been a schoolmaster for some years and I know that when you have a cane you are able to maintain good discipline and order. It is there as a reminder. I am therefore supporting the proposal in the Bill to remove flogging in other cases but to retain the provision as a deterrent against praedial larceny in prescribed areas. It is better to proceed step by step rather than go the whole length all at once.

Dr. SINGH: Here we are aspiring to more responsible government — for what purpose? We are trying to get in line with other countries, and if the proposal to abolish whipping and flogging has come from the Mother Country with its centuries of culture and historical background, why should we refuse to accept it? I think we should leave it to our social workers and Members of this Council to do some propaganda work so as to reduce praedial larceny and other serious crime.

Mr. THOMPSON: I am supporting the Bill. I have had to do with the farmers in various districts and I know that there are incorrigible fellows who would steal their produce but for the fear of being flogged. Now that we are encouraging the farmers to grow more food I think they should be protected, and the retention of provision for flogging in cases of praedial larceny would serve as a deterrent.

Mr. E. M. GONSALVES: As regards paragraph (e) of the Objects and Reasons which deals with incorrigible roguery, may I ask the hon. the Attorney-General whether the retention of whipping or flogging applies only to praedial larceny, or to any person who is deemed a rogue and vagabond?

The ATTORNEY-GENERAL: The amendment proposed in clause 6 of the Bill is that the words 'and to whipping or flogging" be deleted from section 150 of the Principal Ordinance. So that a person who is deemed a rogue and vagabond under that section would only be liable to imprisonment for six months.

Mr. GONSALVES: In view of that answer I do not see how I can support the Bill with that proposed amendment. I think flogging is a deterrent to a person inclined to use violence against a policeman who tries to apprehend him.

The ATTORNEY-GENERAL: Perhaps those hon. Members who practise in the Courts will agree that that part of the penalty has been rarely invoked in matters of that sort. It is in the law, and as the hon. Member for Georgetown North (Dr. Nicholson) has said, it is like the cane in the hand of a schoolmaster who does not go around whipping the boys in the school every morning.

Mr. GONSALVES: Then you are seeking to have flogging deleted?

The ATTORNEY-GENERAL: That is so. It is proposed that the words "and to whipping or flogging" be deleted. In other words the punishment would be that he would be deemed an incorrigible rogue and would be liable to imprisonment for six months.

Mr. GONSALVES: In view of that I am afraid I am against the Bill.

The PRESIDENT: The hon. Member can move an amendment in the Committee stage.

The ATTORNEY-GENERAL: The question of corporal punishment as a deterrent is a difficult one on which to express a clear-cut and definite opinion. The general and prevailing view in these modern times is that corporal punishment cannot be regarded in itself as a deterrent, and that offences for which it is provided be dealt with in a more positive way rather than from the more negative approach by the infliction of corporal punishment. Some hon. Members have pointed out that corporal punishment is a relict of a barborous period. In the legal text-books we are told that years ago there was hanging for sheep stealing and offences of that sort, but nobody would ever think of hanging a person today for stealing a lamb. The social conscience of the world has moved on, but at the same time we must be realistic about these things. We must keep our eyes on the objective towards which we are moving, and have regard to our immediate conditions and surroundings. We appreciate the fact that we must move on towards the desired goal, and that social welfare, education and improved economic conditions will provide the necessary requirements in our scheme of things which would prevent the causes of such offences. At the same time we have to face the world as it is and the facts as they are.

As regards praedial larceny in a proclaimed district, there is nothing more heart-rending than that somebody who has toiled day and night in producing his vegetables should have his cabbages taken away by someone during the night. It is not the case that a Magistrate would necessarily impose corporal punishment, but it is one of these penalties which, in the existing circumstances, it is considered necessary that we should retain. Perhaps a word of wisdom came from the Member when he said that we should take these things in easy stages. I suggest that we have not gone very far as regards the other suggestions, and we are taking it off in the Bills which hon. Members have before them. We are living in an agricultural country, and a lot depends upon the crops we produce and upon persuading the farmers to grow more food. We do not want anything to be done to kill their enthusiasm zeal or desire to increase the production of crops at this time. For that reason hon. Members will perhaps agree to support the Bill as it stands.

The hon. Nominated Member (Mr. Gonsalves) asked about the abolition of whipping or flogging in the case of a person who is deemed an incorrigible rogue. I think on reflection he will appreciate that his argument is not really logical, having regard to the general reaction in the United Kingdom and the Colonial Empire in matters of this sort, and to our emphasis on social welfare work and the improvement of social conditions. That is one step forward, and those who are deemed incorrigible rogues would be awarded what is regarded as a sufficient penalty by the imposition of imprisonment for six months. I do not think that the full penalty is often imposed. I formally move that the Bill be read a second time.

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.—*Amendment of section 76 of the Principal Ordinance.*

Dr. JAGAN: As this clause seeks to amend section 76 which provides whipping or flogging in cases of praedial larceny, I move that the words "with or without whipping or flogging" be deleted from that section.

The CHAIRMAN: The hon. Member's amendment is that there should be no whipping or flogging even in cases of praedial larceny in a proclaimed district. That is the effect.

Dr. JAGAN: Yes, Sir.

Mr. DEBIDIN: I cannot understand how the minds of hon. Members are working. If the intention of the Bill is to

remove something which is barbaric it should be removed altogether. I feel that there is a lot of substance in what the hon. Member is asking, because I cannot agree with the hon. the Attorney-General when he refers to negative approach. There are certain offences for which whipping is still invoked in England—cases in which a person deliberately arms himself with a weapon to injure another. Why retain corporal punishment for praedial larceny and abolish it in respect of a person who may cut my throat or violate a member of my family?

The ATTORNEY-GENERAL: I do not quite appreciate the hon. Member's change of attitude because I understood him to say during the debate on the second reading that the penalty of corporal punishment is only a deterrent, and that the Courts exercise discretion in awarding it. I made a note of what he said.— "These penalties by being there might serve as deterrents. The time is not ripe to embark on these Utopian lines. I am opposed to any change." Those were the hon. Member's words. Having expressed himself in those very strong and emphatic terms the hon. Member now says that if we are taking off corporal punishment at all, we should take it off wholesale. The point has been made that these are gradual developments. The hon. Member did not want to make any change at all, but now that the Council has accepted the principle of the Bill he says he is in favour with other Members of removing everything. In the Secretary of State's despatch of October, 1946, he says:

> "I have noted with satisfaction that Colonial Governments have acted on the suggestions put forward in this despatch as and when opportunity occurred, and have, by legislation, reduced considerably the number of offences for which corporal punishment may be inflicted, both as awards by Courts and as prison punishments."

This is a gradual reduction of the application of corporal punishment.

Clause 2 put and agreed to.

Clause 6—Amendment of section 150 of the Principal Ordinance

Mr. DEBIDIN: I beg to move the deletion of this clause.

Mr. SEAFORD: May I ask the hon. Member to explain the effect of the deletion?

Mr. DEBIDIN: The effect is that flogging and whipping would be part of the penalty for an incorrigible rogue. I think the removal of this penalty would produce very unfortunate results, as it would in the case of praedial larceny.

The COLONIAL SECRETARY: May I ask a very simple question? If a man is incorrigible how can whipping improve him?

Mr. DEBIDIN: That is merely a term of art. If he is twice deemed a rogue and vagabond he would be an incorrigible rogue in the eyes of the law and that is the time he should be given an extra type of treatment.

The ATTORNEY-GENERAL: The hon. Member uses the word "treatment", does he mean whipping or flogging, or medical treatment?

Mr. DEBIDIN: I mean treatment on a particular part of the anatomy. There has been taking place in the City of Georgetown a particular type of crime which we should have eradicated. Society suffered severely as a result and it is dangerous to remove from our statute book something which would be a deterrent to a particular type of criminal. I recall a case in the Magistrate Court some time ago where a whipping was ordered for a man and he begged very hard that he should not be whipped. I do not remember the result of his appeal but it showed very clearly that people are afraid of whipping and that the provision would be a deterrent if allowed to remain. I am a member of society and I urge very strongly that society needs protection in this respect.

The CHAIRMAN: There are many different types of crime. The hon. Member has referred to one — the man who carries dangerous weapons and so on— but there are other types, like the man who sells or attempts to sell a lottery

ticket. Does the hon. Member wish him to be flogged or is he referring only to a certain class of crime?

Mr. DEBIDIN: I am speaking only of a particular class of crime.

Mr. LEE: If the hon. Member reads section 150 of the Principal Ordinance he would see that it covers all cases of minor offences.

Mr. DEBIDIN: I have already pointed out that this section, 150, would only operate when the individual wants to have a second bite — when there has been a previous conviction under this section. Then there is sub-section 150 (b) which deals with felonies committed by a person while being apprehended.

The ATTORNEY-GENERAL: The section says:—

"150. Everyone who—

(a) Commits an offence against this title . . . . . "

and the title—incorrigible roguery—includes the offence which the hon. Member has referred to. In other words, if a person commits one of the offences under this title for the first time it may be regarded as a simple offence but it makes him liable, if he goes back and commits that or any similar offence, to be deemed an incorrigible rogue and vagabond and to a sentence of six months' imprisonment and a flogging. The hon. Member is emphasising only the later part of the section and is losing sight of the fact that in the sub-sections there are minor offences which, if committed a second time, make the accused person equally liable to the same penalty. Does the hon. Member desire that the man who commits any of those offences a second or a third time should be liable to six months' imprisonment and a flogging also?

Mr. DEBIDIN: That is only in respect of sections 147 and 148. Section 147 says:—

"147. Everyone who does or suffers any of the following acts or things shall be deemed to be a rogue and vagabond . . . . . "

We have just removed whipping and flogging with respect to the practice of obeah and I do not think we should do likewise as regards this section—150.

The CHAIRMAN: I have pointed out that apart from the person who carries dangerous weapons, picks locks and so on, there are 11 other kinds of offences that may come under the section. Does the hon. Member wish a person convicted of any of those offences to be liable to whipping and flogging also?

Mr. DEBIDIN: I quite admit that there are some trivial offences which no Police Officer would use this section for in prosecuting. There is an alternative section in Chapter 13 which a Magistrate always suggests should be used in such cases. In a case like the practice of obeah, however, if a man commits it several times would it not be reasonable to give him extra treatment in this form? There is only one way to deal with an incorrigible rogue and that is to give him extra penalty. I am looking at the nature of the offences which may be committed under this section.

Mr. SEAFORD: I am prepared to support the hon. Member as regards this provision if it is confined to the carrying of dangerous weapons or firearms to do grievous bodily harm.

The CHAIRMAN: I think if would be difficult to insert the provision in a form which would meet the hon. Member's point.

Mr. DEBIDIN: I am prepared to accept the suggestion made by the hon. the First Nominated Member.

The ATTORNEY-GENERAL: In principle we have just dealt with section 77 and that is "praedial larceny with aggravating circumstances." We have taken out the words "with or without whipping or flogging as the Court orders," and that relates back to all the items we have just been dealing with as coming under praedial larceny in a declared area. We have agreed to retain flogging for praedial larceny in a declared area, but as regards a person being armed with a dangerous weapon we have taken out "whipping or flogging." So far as principle goes I

think the hon. Member would see the point I am making.

Mr. RAATGEVER: I do not agree with taking away the penalty of whipping or flogging for a man found armed with a dangerous weapon. Such a man should be flogged as much as one who commits praedial larceny.

The CHAIRMAN: That is the amendment moved by the hon. Member for Eastern Demerara.

Mr. RAATGEVER: The Attorney-General has just said that the provision has been removed. I do not agree with it and I would like the whole thing to be recommitted.

The COLONIAL SECRETARY: Wouldn't it be possible to meet the point by saying "save and except the offences provided in" such and such a section?

Mr. RAATGEVER: I would ask that clause 4 be recommitted because I understand that through clause 4 the provision has been wiped out, but some Members did not understand that.

Mr. LEE: In clause 3 which amends section 77 of the Principal Ordinance, the amendments include the deletion from paragraph (e) of all the words following the words "with intent to steal" to the end of the paragraph. The penalty clause in the section, 77, has also been wiped out.

Mr. WIGHT: If anyone desires the amendment suggested by the Chair it would be necessary to go back and recommit the clause because we have already deleted the same penalty for offences which are even more serious than this one. If we look at section 147 (vi) of the Principal Ordinance we would see that it deals with the question of being armed with a dangerous weapon, and if whipping or flogging is deleted in this respect then, logically, one should go back and deal with praedial larceny for which it is also suggested.

The CHAIRMAN: I raised that very point. The whole point is whether flogging should be removed in respect of a man who carries a dangerous weapon. Under the law as it stands—section 141 of the Principal Ordinance—such a man is liable on conviction to "imprisonment for six months and to whipping or flogging." We have passed clause 4 of this Bill, a short time ago, deleting the words "and to whipping or flogging." The hon. Nominated Member says he did not know and would not agree to the deletion. Section 147 (vi) includes a similar offence, but a person convicted under section 150 in relation to that offence can be whipped. The hon. Member for Eastern Demerara, however, does not agree with that. That is the position. If hon. Members do not agree that in these cases—under sections 141 and 150—flogging should be abolished, then they have to vote against clauses 3 to 6 of this Bill.

Mr. DEBIDIN: May I offer an amendment; and that is that clause 150 (a) be amended by the deletion of the words 'this Title" and the substitution therefor of the words "Section 147 (4) (iv) or (vi)".

The ATTORNEY-GENERAL: The hon. Member cannot put it that way.

Mr. DEBIDIN: It would read it this way —

Mr. WIGHT: To a point of order: Section 150 (a) creates an offence referable to the offences under the Title and the only way to effect the amendment is to put in a new sub-clause, but if we do that the other sections referred to by the Chair would have to be amended if the intention is to retain whipping and flogging for those offences in which dangerous weapons are carried or used.

The CHAIRMAN: There are three sections of the Principal Ordinance which would be affected, and those are sections 77, 141, and 150.

Mr. DEBIDIN: All I am asking is that section 150 (a) be amended to read this way:—

> "(a) commits an offence against section 147 (4) (iv) or (vi) which subjects him to be dealt with as a rogue and vagabond, he having been previously convicted thereof; . . . . "

If a person committed a similar offence before he should be whipped; that is the effect of the amendment.

The ATTORNEY-GENERAL: I wish to point out that the principle we have been dealing with when the second reading of this Bill was debated was the removal of corporal punishment as regards all these offences, but we asked the agreement of the Council to retain it in connection with praedial larceny in a declared area. The hon. Member is now re-opening the whole issue of all the offences and we have to refer back to the other sections which stand on the same footing. It would mean that we are annulling the principle which the hon. Member spoke in favour of, and that is that corporal punishment in regard to this particular offence should remain. Therefore, we have to decide whether we are following the principle for the removal of corporal punishment as hon. Members agreed to, or whether we are going to leave it.

The COLONIAL SECRETARY: I think there is a possible compromise which would suit all hon. Members and also meet the principle contained in the Attorney-General's point. It is that the Bill seeks to remove the penalty of flogging for all these offences, but as regards one particular type of offence—that of carrying dangerous weapons, etc,—if a criminal commits that offence twice then it might be open for consideration whether on the second conviction the penalty of flogging should be inflicted. A Bill which introduces and makes amendments purely by reference as this one does, is exceedingly difficult for a layman to follow. If Your Excellency feels that there is some point in reconsideration of the whole question of the abolition of flogging—the question whether we should retain that penalty for a criminal who carries a dangerous weapon and is convicted twice of that offence—then the Attorney-General might be ready to consider a suitable amendment to clause 6 without interfering with the other clauses.

Mr. WIGHT: May I point out, if the suggestion is adopted, we have got to this stage that there are certain Members—they may be in the majority—who feel that whipping and flogging should be a penalty to be imposed where dangerous weapons of any kind are carried in relation to any offence. That is, whether carried in relation to section 77 of the Principal Ordinance which relates to praedial larceny or the other section, 150, which relates to incorrigible roguery. Therefore if the Council feels that whipping and flogging should be carried out to implement a penalty already imposed, it would be necessary for the Attorney-General to recast the Bill. To deal with just clause 6 of the Bill you have to go back and deal with clauses 3 and 4, and that means recasting of the Bill that is placed before the Council. Perhaps Your Excellency may find out whether the Council in the majority will pass the imposition of whipping and flogging in such cases as referred to in section 141, the carrying of a dangerous weapon. If that is so, there is no alternative but to recast the whole Bill as presented to the Council. If the Council feels it would necessitate that, the only way not to throw the Bill out or get it in such shape as to be unable to be interpreted when actually incorporated would be to propose a Select Committee which would sit very shortly and in one meeting dispose of the whole matter.

The point I would like to make is, I am glad to see the hon. the Colonial Secretary—when I was in the Chair I had to state that on another Bill—has realised the difficulty of following this legislation by references. Not only, I may assure him, is it so in the case of a layman but also in the case of a lawyer. Every lawyer sitting around this table knows that in certain cases it is very difficult to follow the law unless you have a perfect system of annotation. It is very easy to ring up a department and ask what is the law governing a certain matter especially in respect of Rules and Regulations, but it is not possible for everyone to do so. I also acted in the Attorney-General's Office Office, and it was the easiest way for the Law Officers to find out by referring to the particular department what are the Rules and Regulations governing a particular matter.

The ATTORNEY-GENERAL: It is extremely difficult to draft at a moment's notice, and secondly amendments cannot be drafted until the principle is settled. I assume, and I think hon. Members must assume, that when the second reading of the Bill was passed the majority of the Members of the Council accepted the

principle of the removal of this form of corporal punishment, because I was at pains to tell them that the only point was that we were retaining corporal punishment in regard to praedial larceny in a proclaimed district. Some Members expressed the view that all corporal punishment should be abolished. I think the hon. Member for Central Demerara, Dr. Jagan, was of that view. Some other Members say we are going back really on the principle which we have already adopted in the second reading, and what we are doing in Committee by way of the amendment which has been proposed by the hon. Member for Eastern Demerara is to re-open the whole matter which I assume, was settled in second reading. To prepare any draft amendemen it has to be approached from a different angle. In other words, so far as the principle is concerned, the removal of corporal punishment has been accepted but the exceptions suggested become larger, and eventually become so large as to wipe out the principle. I do not mind myself endeavouring to work out something. I appreciate it is not an easy matter having regard to the opposite views expressed.

Mr. RAATGEVER: I appreciate the remarks made by the hon. the Attorney-General, but I would be wanting in my duty to the people of this Colony if I do not oppose the removal of flogging of vagabonds for carrying dangerous weapons in their possession. I am moving that the matter be referred to a Select Committee.

Mr. LEE: I think we are overlooking the fact in the introduction of this Bill that we are advancing socially in the Summary Courts. It does not say in the Supreme Court. It is only in the Summary Courts we are taking away from the Magistrate the discretion he has to exercise in respect of whipping and flogging. If we agree to that, save and except in the case of praedial larceny, that is the principle as it stands. As regards the remarks of the hon. Nominated Member, Mr. Raatgever, any person who commits an offence with a dangerous weapon can be charged indictably and that charge carries a flogging as the penalty. This relates to a summary trial. It is in keeping with the social advancement of the world, and so we give that discretion to the Magistrate only in respect of praedial larceny. Although I do not agree with whipping and flogging and think a penalty of a longer term of imprisonment should be imposed, I would ask hon. Members to consider it in that light. You are taking away the discretion of the Magistrate in ordering whipping and flogging and, therefore, any Superintendent of Police who feels that any offender deserves a whipping or flogging can proceed against him indictably and the case brought before the Supreme Court where in the discretion of the Judge such a penalty can be imposed.

Mr. DEBIDIN: My hon. friend is very wrong. Under Chapter 17 where one is charged with an indictable offence there are only three types of offences for which flogging and whipping can be imposed—section 59, feloniously wounding; section 61, the same thing with intent to commit an indictable offence; section 222, robbery with violence. Those are the three offences. It shows it is an entirely different thing where the commission of the offence has been brought about. What is aimed at by this clause is to prevent that further stage being arrived at of someone having his head cut off. That is what we are aiming at. I disagree with the hon. the Attorney-General when he says that while you are taking away this discretion from the Magistrate the principle remains the same.

The CHAIRMAN: The hon. Member for Essequibo River said so.

Mr. DEBIDIN: The Judge of the Supreme Court in dealing out a penalty of flogging or whipping is in no better position than the Magistrate. I think the Magistrate can exercise similar discretion as a Judge of the Supreme Court. I have this amendment to offer, and I think it will put an end to or avoid the question of referring this matter to a Select Committee:

> "That section 150 (a) be amended by the addition of the words "section 147 (ii), (iv) or (vi)" between the words "against" and "this" in the first line thereof."

I think the hon. the Attorney-General would admit, it would give effect to what has been discussed.

The CHAIRMAN: I see the hon.

Member's point. I can see no objection to the amendment being put in itself, but should this Council pass it it would be inconsistent with what the Council has already done in passing clauses 3 and 4. We will be rather inconsistent to pass the hon. Member's amendment as clause 6, without recommitting clauses 3 and 4, because it is quite clear from what hon. Members have said, they did not appreciate when we passed clauses 3 and 4 it did apply to firearms. They were not aware that was the effect of it. I think that is putting the case as fairly as I see it.

Mr. WIGHT: As I have already pointed out to the hon. Member, he has not dealt with section 77. We must realise the sort of legislation we pass is going out to the world. We have section 77 which is in respect of praedial larceny with the carrying of a dangerous weapon under which whipping and flogging have been dispensed with. Then when we come to this clause under which a whipping or flogging may be imposed. If the present amendment is carried and the whole Bill is not recast clauses 3 and 4 would operate to delete whipping and flogging. If the circumstances warrant whipping or flogging under section 150 then it would be warranted under section 77.

Mr. DEBIDIN: Except the difference is this — a second commission of the offence. That is the difference.

The CHAIRMAN: What about the other case of section 77? That would be on the first commission of the offence.

The ATTORNEY-GENERAL: It is not the first offence really. The first offence is a simple one, but for this second one he is dealt with as a rogue and a vagabond.

The CHAIRMAN: If it is the feeling of the Council to have reconsidered the other clauses of the Bill — section 141 relating to the unlawful carrying of a dangerous weapon and section 150 relating to incorrigible roguery — they are the same types of offences. If it goes to a Select Committee on the understanding that the Council wishes to further consider the retention of whipping and flogging in the case of this clause, it would mean that is what it wants the Select Committee to do. It may mean recasting the Bill. Hon. Members would realise what they have committed themselves to.

The ATTORNEY-GENERAL: I am sorry about that. I tried to put it to hon. Members and told them the only part to remain is the exception. Perhaps in a matter of this sort I should have read the whole section, but I thought that would have been too long. If it is the wish of the Council that this Select Committee should be appointed. I have no objection.

Mr. LEE: I am against the appointment of a Select Committee. The principle is definite as to whether we are going to have whipping and flogging ordered by the Magistrate or not, except in the case of praedial larceny. The object of putting these sections in this Bill is to wipe out flogging and whipping under them. I do not see why it should go to a Select Committee. We will be going against the principle of the Bill and the advice that has been sent out to us to carry out reforms in our laws, and I do not agree with that.

Dr. JAGAN: I agree with the last speaker. If we were to go back and redraft the whole Bill relating to the carrying of a dangerous weapon, I think the hon the Attorney-General would have to redraft the several other Bills. What is to determine whether blackmarketing is not also carrying a dangerous weapon? I do not think it is necessary at all. I think we should pass the Bill as it is.

Mr. ROTH: I beg to move that a Select Committee be appointed to go into this matter.

Mr. RAATGEVER: I have already moved that.

The CHAIRMAN: I hope hon. Members have the position quite clear as to the way they are voting.

Question put, and the Committee divided, the voting being as follows:

For: Messrs. Gonsalves, Phang, McDoom, Debidin, Raatgever, Roth, Wight, the Colonial Treasurer, the Attorney-General and the Colonial Secretary—10.

Against: Messrs. Peters, Kendall, Dr. Jagan, Fernandes, Thompson, Lee, Dr. Nicholson and Dr. Singh—8.

Motion carried.

The CHAIRMAN: I accordingly refer the Bill to a Select Committee for early report and suggest the hon. the Attorney-General as Chairman, the hon. Member for Essequibo River, the hon. Member for Eastern Demerara, the hon. Nominated Member, Mr. Raatgever, the hon. Member for Georgetown North, and the hon. Member for Central Demerara as members.

The Council resumed.

The President adjourned the Council until 2 p.m. on the following day.