

## LEGISLATIVE COUNCIL.

THURSDAY, 9TH SEPTEMBER, 1948

The Council met at 2 p.m. the Hon. C. Vibart Wight, O.B.E., Deputy President, in the Chair.

### PRESENT.

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

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.M.G., C.B.E.

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

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

The Hon. V. Roth (Nominated).

The Hon. G. A. C. Farnum (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. J. Carter (Georgetown South).

The Clerk read prayers.

The minutes of the meeting of the Council held on Thursday, the 2nd of September, as printed and circulated, were taken as read and confirmed.

### ANNOUNCEMENT.

#### VISIT OF SIR HUBERT RANCE.

The DEPUTY PRESIDENT: Hon. Members of Council, I have been directed by His Excellency the Governor to inform you that Sir Hubert Rance, Chairman of the Standing Committee on Closer Association of the British Caribbean Colonies, will arrive in the Colony on Thursday, the 16th of September, and will depart on Sunday, the 19th. He will be looking forward to meeting hon. Members during his stay.

#### PAPER LAID.

The COLONIAL SECRETARY laid on the table the Legislative Council (Elections) (Amendment No. 5) Regulations, No. 25 of 1948.

#### NEWSPAPER REPORT CHALLENGED.

Dr. JAGAN: Sir, before you proceed to the Order of the Day may I crave your indulgence to refer to an article which appeared in the **Daily Chronicle** of Friday, September 3. I know that one hon. Member has already referred to the Press in this Council and I feel that I should make a few statements concerning the Press. We realise that the Press is afforded the privilege to sit in this Chamber so as to give the public reports of the views expressed by Members in the deliberations of this Council, but I find that on Friday, 3rd of September, there is a report in the **Daily Chronicle** which is quite misleading, and I have had occasion to speak to the Sub-Editor or the News Editor, but I have not

seen any correction of it. If you will permit me, Sir, I would like to read an extract from the report.

The DEPUTY PRESIDENT: Is it a matter of a personal nature?

Dr. JAGAN: Yes, sir. It says on the first page:

"...The least he expected was that Mr. Debidin should support the motion, especially since he was among members who, less than a year ago at the time of the general elections, had told the electorate either by the written or by spoken word, that that as well as adult suffrage and other things were issues in their election platform."

The hon. Member for Eastern Demerara (Mr. Debidin) is not here at present but I know that he took the matter up with the newspaper in question more so from a personal point of view. What I did say in this Council was not that the hon. Member for Eastern Demerara had supported the recall, or that he had made a pledge to the electorate during the time of the election — in fact reading this report it seems to indicate that the hon. Member and other Members had made pledges to the electorate, which was not what I said in this Council. I said that I expected the hon. Member to support the motion since he had put up such a good argument for the recall, in mentioning that two Members had pledged support for universal adult suffrage but had not fulfilled their promise. So that this report in the **Daily Chronicle** is an entirely wrong report of the proceedings of this Council. I asked the Editor of the news columns to make a correction but a correction was not made. I therefore would like you to inform the Press that at all times they should make it their duty to give the public accurate reports of the views expressed by Members of this Council, because I would not make a statement here which, when reported, would be misleading, or which might injure hon. Members of this Council. If I may say so, the statement as reported definitely injures the reputation of certain Members of this Council, and I did not make such a statement in this Council.

The DEPUTY PRESIDENT: We will now proceed to the Order of the Day. I

call upon the hon. Member for Demerara River (Capt. Coghlan).

### ORDER OF THE DAY.

#### INCREASED COST OF LIVING ALLOWANCE FOR PENSIONERS.

The Council resumed the debate on the following amended motion by Capt. Coghlan:—

"WHEREAS by Resolution No. IX passed by Legislative Council on the 22nd day of April, rates of cost of living allowances to Government pensioners were approved; and

"WHEREAS with the steady rise in the cost of living, it is considered that these rates are far too low;

"BE IT RESOLVED that this Honourable Council recommends for the favourable consideration of Government that the following rates should be adopted:—

40% on the first \$720 per annum

8% on the next \$720 per annum and a flat rate of \$24 a month on all pensions over \$1,440 per annum.

Provided that—

- (a) no pensioner shall receive less than \$10 a month inclusive of cost of living allowance;
- (b) any pensioner who is in receipt of a pension from the public funds of any other Colonial Government shall receive as cost of living allowance a sum calculated *pro rata* on that portion of his pension derived from this Colony."

Capt. COGHLAN: I have already spoken on the motion and I am quite finished. I shall reply when other Members have spoken.

The DEPUTY PRESIDENT: I thought we had arrived at the stage when you would reply.

Capt. COGHLAN: No, sir.

The DEPUTY PRESIDENT (after a pause): Apparently I was right. Nobody else desires to speak.

Dr. JAGAN: I think the hon. Member for Georgetown South (Mr. Carter) had an amendment.

Mr. FARNUM : I certainly agree with this motion because I think pensioners are in the same difficulty as other members of the community on account of the very high cost of living, but I think that those pensioners who have been re-employed by Government and are now drawing very good salaries, plus cost of living allowances, should not be entitled to the increase proposed.

Mr. ROTH : To a point of explanation. I understand that when a pensioner is re-employed his salary is calculated less the amount of pension he draws. In other words he does not get his full pension. That is my impression of the position.

The COLONIAL SECRETARY : The hon. Member is correct. That is the normal practice, but there have been exceptions to that.

Mr. FARNUM : I withdraw my remarks if that is the case, but I do hope that now that Government is doing something for the civil servants something will be done for the other members of the community by the introduction of a Minimum Wage Bill. I do not know if it is known to many Members of the Council or to the Government, but there are certain persons in the community, working in certain parts of the City in small stores, who are earning between \$2.40 and \$3 per week. That is not even enough to buy their shoes, and they have to present a good appearance in order to keep their jobs. I do hope that Government will pay some attention to that aspect of the matter.

Dr. JAGAN : I too am in agreement with the motion. There is no doubt that the cost of living has increased greatly, and pensioners receiving small sums must necessarily find it very difficult to live. From the figures which have been given to us it will be seen that the pensions range from \$7 to \$92 per month, and it must be borne in mind that when they were calculated the value of money was not the same as it is today. Perhaps 10 or 12 years ago pensioners could live on those small sums they are receiving at the present time. I feel that this Council

has an obligation to those people to pass this motion, especially as the rates proposed are the same as those being paid to active civil servants. I do not think it would be a great burden on the finances of the country because, from the number of pensioners I have seen, the sum involved would not be very large, and I think the Council would be doing a very good thing by granting this increase which would help the pensioners to meet the increased cost of living.

Mr. McDOOM : I too support the motion, but I do not agree with the last speaker that it was intended that a pension was something that a pensioner could live on. I agree, however, that the value of money is much lower today, and that pensioners should be granted an increase of their cost of living allowance.

Dr. GONSALVES : I rise to say a few words in support of the motion. What I wish to say is related to the lower scale of pensions.

The DEPUTY PRESIDENT : The hon. Member has already spoken to the motion. Does he now wish to speak to the amendment ?

Dr. GONSALVES : I am sorry if I have spoken to the motion.

The DEPUTY PRESIDENT : Of course you can speak to the amendment.

Dr. GONSALVES : I am prepared to support the amendment which limits the increase of the cost of living allowance to the first \$720 of pension.

Capt. COGHLAN : May I ask whether the Colonial Treasurer will say something on the motion ?

The COLONIAL TREASURER : I am afraid I have no remarks to make, except to say that whatever motion is eventually passed by the Council will be carefully considered by Government, and if it is decided to invite the Council to increase the rates of cost of living allowance now paid to pensioners I shall be authorised to introduce a motion to that effect in Council after preliminary

discussion in Finance Committee. So that I need not really at this stage make any observations, on either the motion or the amendment. I would, however, like to say that the amendment, as Members should observe, rather considerably increases the cost of the original motion. As far as I recollect, the original motion asked for 40 per cent. on pensions up to \$360, whereas the amendment takes it up to \$720. I will not comment on the merits of either the motion or the amendment because, if and when the motion is introduced, I should then speak on it. I can promise the Council that whatever motion is passed will be given full and careful consideration by Government.

Mr. ROTH: As a pensioner myself it is with no little embarrassment that I rise to speak on the subject. If Government cannot see its way to carry out the terms of the motion I do ask that favourable consideration be given to that portion of it which concerns pensioners drawing not more than \$720 a year.

Capt. COGHLAN: As nobody has spoken against the motion there is very little for me to say in reply, except to thank hon. Members for having spoken in favour of it. I might, however, take this opportunity to compare our rates of bonus on pensions with those of Trinidad and Barbados. In Barbados the rates are 50 per cent. on pensions up to \$480, and 40 per cent. on pensions above \$480 per annum. In Trinidad the rates are 45 per cent. on the first \$20 per month and 20 per cent. on the next \$20 per month.

On the question of Government not having money I would refer to the minutes of a special meeting of the Finance Committee held on August 13, at which the Chairman reported that the revenue collected at the 31st of July was \$10,368,291 compared with \$7,451,734 for the corresponding period of 1947, an increase of nearly three million dollars. Those figures were given as a sort of preamble when the Colonial Treasurer was moving an increase of pensions for public officers from 33  $\frac{1}{3}$  per cent. on the first \$720 to 40 per cent., and 6  $\frac{2}{3}$  per cent. on the next \$720, so I am sure there is no harm in my quoting those figures.

The COLONIAL SECRETARY: Did the hon. Member say "pensions" or "cost of living allowance"?

Capt. COGHLAN: I am referring to cost of living allowance. I submit that the same argument advanced in the case of public officers should hold good as regards pensioners. It is only an appeal to Government with whom the final decision rests, but I have no doubt at all that the Colonial Treasurer will take that into consideration, and that the motion will receive the sympathetic consideration of Government.

Motion put, and agreed to.

#### BILLS IN SELECT COMMITTEE.

The ATTORNEY-GENERAL: Sir, before I deal with the items on the Order Paper I ask your leave to make a statement with regard to two Bills which are at present before Select Committees. The first is the Rent Restriction Bill, and I would like to inform hon. Members that the Committee has met several times and heard representations made on behalf of both landlords and tenants. The Rent Assessor was invited to attend and the Committee heard his views. In the light of the views of the Committee the Bill is being amended. It is in draft preparatory to submission to members of the Committee for approval, and then finally to this Council for approval, which, it is hoped, will be done shortly. I think it is desirable to let hon. Members know the position as far as that Bill is concerned.

I would also like to inform Members that with respect to the Bill relating to the Motor Vehicles and Road Transport Ordinance dealing with hire cars the report of the Committee has been prepared along with amendments to the Bill giving effect to the recommendations of the Committee. The Bill is ready, and it is hoped to present it at the next meeting.

#### SUMMARY JURISDICTION (MAGISTRATES) (AMENDMENT) BILL.

A Bill intituled "An Ordinance to amend the Summary Jurisdiction

(Magistrates) Ordinance with respect to Maintenance Orders.”

The ATTORNEY-GENERAL: As hon. Members will see from the memorandum of Objects and Reasons which accompany the Bill, Sections 2 to 9 of the Summary Jurisdiction (Married Women) Ordinance, 1905, (No. 19), now subsections (1) to (7) of section 41 of the Summary Jurisdiction (Magistrates) Ordinance, Chapter 9, contain, in substance, the provisions of the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).

That Act has been amended by—

- (a) section 5 of the Licensing Act, 1920 (2 Edw. 7, c. 28) ;
- (b) the Married Women (Maintenance) Act, 1920 (10 & 11 Geo. 5, c. 63) ; and
- (c) the Summary Jurisdiction (Separation and Maintenance) Act, 1925 (15 & 16 Geo. 5, c. 51).

Ordinance No. 19 of 1905 has never been amended. The objects of this Bill are

- (a) to introduce into this Colony the amendments made in England to the Summary Jurisdiction (Married Women) Act, 1895 ;
- (b) to make provision whereby moneys payable by a husband under a maintenance order may be paid by him to a collecting officer of a magistrate's court, and paid by him to the wife.

Clauses 2 (a), 2 (b) and 2 (c) of the Bill seek to include, as grounds on which a married woman may apply for an order or orders under section 41 of the Summary Jurisdiction (Magistrates) Ordinance, the following grounds—

- (a) that her husband while suffering from a venereal disease, and knowing that he was so suffering, insisted on

having sexual intercourse with her ;

- (b) that her husband has compelled her to submit herself to prostitution ;
- (c) that her husband is a habitual drunkard as defined by clause 2 (q) of the Bill ;
- (d) that her husband has been guilty of persistent cruelty to her children.

Clause 2 (d) of the Bill seeks to provide that an application by a married woman for an order or orders under section 41 of the Summary Jurisdiction (Magistrates) Ordinance on the ground of cruelty or neglect by the husband, may be made notwithstanding that the cruelty or neglect complained of has not caused her to leave and live separately and apart from him.

Clause 2 (e) of the Bill seeks to provide that where the husband has, in the opinion of the court, been guilty of such conduct as was likely to result and has resulted in the wife submitting herself to prostitution, he shall, for the purposes of section 41 (1) (ba) of Chapter 9, be deemed to have compelled her so to submit herself.

Clause 2 (f) of the Bill authorises the magistrate's court to make an interim order for maintenance pending the making of a final order under section 41 (2) of Chapter 9.

Clause 2 (g) of the Bill seeks to provide that a magistrate's court may, in proceedings brought under section 41 (1) of Chapter 9, make an order for the maintenance of each child of the marriage until such child attains the age of 16 years.

Clause 2 (j) of the Bill provides that an order made under section 41 (2) (b) of Chapter 9 may be varied to include such a provision.

Clause 2 (i) of the Bill seeks to provide that the amount which a Magistrate may order a husband to pay for

the maintenance of his wife shall be a sum not exceeding \$15 per week, instead of, as at present, a sum not exceeding \$10 per week.

Clause 2 (k) of the Bill is consequential on clause 2 (m) thereof.

Clause 2 (1) of the Bill seeks to provide—

- (a) that where an order under section 41 (2) of Chapter 9 is discharged on the ground that the wife has committed adultery, the magistrate's court may, having regard to the interests of the children, make an order committing them to the custody of the wife and providing for their maintenance;
- (b) that the magistrate's court may refuse to discharge an order under section 41 (2) of Chapter 9, where in the opinion of the court the adultery complained of by the husband was conducted to by the failure of the husband to make such payments as, in the opinion of the court, he was able to make under the order.

Clause 2 (m) of the Bill provides—

- (a) that a maintenance order shall cease to have effect if for a period of 3 months after it is made the wife continues to reside with her husband;
- (b) that a maintenance order shall not be enforceable, and no liability thereunder shall accrue, while the married woman with respect to whom the order was made resides with her husband;
- (c) that a maintenance order shall cease to have effect where a married woman resumes cohabitation with her husband after living apart from him.

Clause 2 (o) of the Bill provides—

- (a) for the enforcement of orders made under section 41 (2) (b) of Chapter 9 for the custody of the children;
- (b) that husbands who are liable to make payments under maintenance orders shall give notice of any change of address.

Clauses 2 (f), 2 (g), 2 (h), 2 (n) and 2 (p) of the Bill make provision for the enforcement of a maintenance order through the medium of a collecting officer of the magistrate's court.

Hon. Members will see a comparative table attached showing what amendments had taken place. I may add that His Honour the Chief Justice has agreed with the principles of the proposed Bill and considers that they will be beneficial. I beg to move that this Bill be now read a second time.

Dr. NICHOLSON seconded.

Question put, and agreed to.

Bill read the second time.

#### COUNCIL IN COMMITTEE.

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

*Clause 2—Amendment of Section 41 of the Principal Ordinance.*

The ATTORNEY-GENERAL: At (k) I move that the word "voluntary" which appears before the word "resumes" in subsection (4) of the Ordinance be also taken out. Also at (p) there is a misprint—instead of the word "providing" in (6B) (b) the word "provided" be substituted.

Amendments put, and agreed to.

The 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.

Dr. NICHOLSON seconded.

Question put, and agreed to.

Bill read a third time and passed.

Mr. FERNANDES: With your permission, Sir, I would like to express my gratitude to Government for having brought this Bill forward so quickly and to Mr. Duke, who prepared the Bill, for the very excellent job he did.

CROWN LANDS RESUMPTION  
ORDINANCE (AMENDMENT) BILL.

The Council resumed the debate on the second reading of a Bill intituled

“An Ordinance to amend the Crown Lands Resumption Ordinance with respect to lands which may be resumed by the Crown.”

The ATTORNEY-GENERAL: I have already spoken in moving the second reading of this Bill. With regard to the point raised by the hon. the Second Nominated Member with regard to occupation, the hon. Member has since submitted to me an amendment. I do not know whether he is pursuing it.

Mr. ROTH: I propose to move, as an amendment in the Committee stage, the addition of a third clause to read:

“In the first line of section 10 of the Principal Ordinance delete the words “within ten years from” and substitute therefor the words “at any time after”.

The ATTORNEY-GENERAL: I have already intimated to the hon. Member to let us see how this proposed amendment can be accepted.

Mr. ROTH: I am very much surprised to hear the hon. the Attorney-General is not favourable to my amendment!

The DEPUTY PRESIDENT: The hon. Member has already spoken.

Mr. ROTH: On the second reading?

The DEPUTY PRESIDENT: Yes.

Question put, and agreed to.

Bill read the second time.

COUNCIL IN COMMITTEE.

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

*Clause 2 — Section 2 of the Principal Ordinance apply to all lands whenever alienated*

Mr. DEBIDIN: May I ask a question of the hon. the Attorney-General, whether he has actual knowledge of any particular portion of land which will be affected by the Bill?

The ATTORNEY-GENERAL: No, Sir. I have no special knowledge of any particular strip of land which will be affected by the Bill. The hon. Member will recollect that on the last occasion I informed this Council that the Commissioner of Lands and Mines had made representations with regard to this aspect of the matter. I will repeat what he wrote:

“Most of the coastlands of British Guiana and certain strips along the navigable river fronts were alienated by the Dutch before the British occupation and are still regarded as privately held properties.

“In some cases certain of these properties have become abandoned, and frequently it is not possible to locate the owners of them. There is no provision under the Crown Lands Resumption Ordinance by which Government can acquire such abandoned properties, as section 2 of the Ordinance provides for the resumption of land alienated by or on behalf of the Crown but does not provide for lands alienated by the Dutch.

“From time to time applications are received for leases over the old abandoned Dutch estates and in view of the above we are not empowered to grant leases, but the applicants can go on the estates and squat on them and, if the owner does not show up for a period of 30 years, then the squatter would have a prescriptive right to the estate. This is obviously an unsatisfactory state and I consider that section

2 of the Crown Lands Resumption Ordinance should be amended forthwith by the deletion in the 2nd line of section 2 of the words "by or on behalf of the Crown". If this were done it would empower the Commissioner of Lands and Mines to resume any abandoned land on behalf of the Crown".

The point is, it is not desirable to have lands where somebody who has no right, title or interest in the lands can go and take possession to the exclusion of the Crown or anybody else. Therefore I wish to emphasize that it is desirable that the Crown should have the right to resume lands which have become vacant, as the person who can subsequently establish a claim will have a better chance to go to the Crown and say "I have a claim" and that claim investigated in accordance with the safeguarding provisions of the Ordinance. We do not want to have lands vacant and, when the Crown attempts to take control of them in the interest of the Colony, someone can come along and say "I have been here four or five years". It is in the interest of the Colony that it is being done.

Mr. DEBIDIN: In view of the reply of the hon. the Attorney-General which indicates that he does not know of any specific portion of land which will be affected by this Bill, may I ask him whether this Bill when passed will affect the rights of anyone who has already acquired prescriptive title or has got sufficient long occupation of any portion of those lands to give him possessive right.

The ATTORNEY-GENERAL: If the hon. Member refers to the Principal Ordinance he would see the procedure which is very clearly laid down, and that procedure obviously safeguards anyone who has a claim.

Mr. ROTH: Excuse me! A very limited claim!

The ATTORNEY-GENERAL: I say claim. Therefore whatever adjective the hon. Member is entitled to use—it may be the semblance of a claim—it is for the Governor in Council and the Court to decide. I will just remind hon. Members of the provision of section 5 which says:

"(1) If the Governor in Council, upon the report, or after any further inquiry he deems expedient, is satisfied that a *prima facie* right to the land has been established, all further proceedings under this Ordinance in respect of the land shall cease; but if the Governor in Council entertains any doubt as to that right, the Governor shall refer the claim to the Supreme Court, and a judge of that Court shall thereupon fix a day for the investigation of the claim, with notice thereof to the claimant and to the Attorney-General.

"(2) After hearing any evidence adduced by the claimant or the Attorney-General, or called for by the Court, the judge shall decide whether in his opinion the right has or has not been established, and shall make such order as to costs as he deems just. The decision shall be subject to an appeal to the Full Court by the Attorney-General or by the claimant, and the appeal shall be subject to the same rules which govern appeals to the Full Court in civil causes."

In other words, you have all your safeguards for the purpose of determining the claim. First it goes to the Governor, then to the Commissioner who has to hold an enquiry just the same as a Magistrate would. It is no mere perfunctory matter or precocious matter. It has to be done by regular procedure and that permits any claimant even with a limited claim to put forward his claim.

Mr. DEBIDIN: This is purely a matter of law, and I am of the opinion that prescriptive right may not be a right within the meaning of section 5. That is why I was trying to get an explanation. If, as a matter of law, I am satisfied there is the saving of prescriptive right to anyone having that, then I would not move the amendment which I have in mind. But I am sure the hon. the Attorney-General will not be able to say definitely now that the right referred to in section 5 of chapter 172 refers to prescriptive right as well. You, Sir, as Deputy President, are also a lawyer and may be able to give that assistance. It seems to me, a Bill like this having been brought up at this late stage after 1803, there may be people who have some right accruing to them by prescription or otherwise. If it had related to specific lands which we know are free, then the



resumption would be quite easy and all right, but where we don't know what lands are to be affected it might very well be that several people are in very good and peaceful occupation of those lands. We do not want them to find one morning that they have no claim. I certainly will move an amendment providing that the right of anyone acquired by way of prescription or otherwise is not affected by this Bill.

Mr. ROTH: Perhaps it may clarify matters for the hon. Member for Eastern Demerara if I bring up the amendment I have in mind now. It is in the form of a third clause. With all due deference to the hon. the Attorney-General, it is an exhibition of drawing a red herring across the trail to tell us it is to the benefit of the whole Colony to acquire the lands rather than to leave them vacant. That is not the question at all to my mind. The hon. the Attorney-General or any other Member can talk until doom's day and will not convince me that this draft Bill, as it stands, does not abrogate solemn covenants our ancestors made hundreds of years ago. It is true the Principal Ordinance permits anyone to claim but, as I said when we last discussed this matter, the 1803 Articles of Capitulation and subsequent Conventions of 1814 and 1815 laid it down clearly that all Dutch citizens had inalienable rights to their properties. Now, Sir, it is true that the Crown Lands Ordinance, section 10, provides that anybody who has a right to prove title can do so within 10 years after resumption by the Crown, but I think the matter can be got around quite easily by altering the words "ten years after" to "any time after" so that if one makes any mistake and fails to claim land to which he is legally the heir he can save his face and come without opposition. If we do that we would not lay ourselves open to a charge of going back on solemn and faithful promises made. Therefore, I now move an amendment for the addition of a new clause 3 to read as follows:—

"3. In the first line of section 10 of the Principal Ordinance delete the words "within ten years from" and substitute therefor the words "at any time from"."

The section will then read:—

"10. If at any time from the date of the notification of resumption being published in the *Gazette*, anyone establishes to the satisfaction of the Governor in Council that he is entitled to be paid the appraised value or any part thereof, it shall be paid to him by the Colonial Treasurer out of funds provided for the purpose by the Legislative Council."

That Sir, I think, covers the three objections to the Bill as it stands.

The ATTORNEY-GENERAL: I do not quite understand the hon. Member; he is attempting to amend an Ordinance which has been in existence for many years.

Mr. ROTH: To a point of correction: Government have themselves admitted that there has been some doubt for some time as regards the legality of that Ordinance.

The ATTORNEY-GENERAL: Not the legality.

Mr. ROTH: Or the justice.

The ATTORNEY-GENERAL: The point the hon. Member is putting forward is to enlarge something beyond what has been existing for a number of years, because section 10 of the Principal Ordinance says:—

"10. If within ten years from the date of the notification of resumption being published in the *Gazette*, anyone establishes to the satisfaction of the Governor in Council that he is entitled to be paid the appraised value or any part thereof, it shall be paid to him by the Colonial Treasurer out of funds provided for the purpose by the Legislative Council."

If a period of ten years elapses and there is no claim, then it is voided; and that is an ordinary well-known and established principle in law — the principle of laches — that to those who sleep on their rights the law does not come as a helper. It would be just like going into Court on an immoral transaction.

Mr. ROTH: To a point of correction: The law helps those who do not know

their rights — those who are not aware of them.

The ATTORNEY - GENERAL: If within 10 years a person is not aware of his rights then he is not only asleep but probably dead. The hon. Member says that in providing as we have done in the Principal Ordinance we are unethical and therefore he has suggested an enlargement or extension of the usual principle and of what was existing for a number of years. I am going to suggest that that is not logical because the 10-year period must step in. The question must have been fully investigated and 10 years must have been regarded as a satisfactory period during which a claimant should put in his claim and get compensation. If a man waits 25 or 30 years before putting in a claim it might not be possible to get the written records relating to the case and the people who would probably have been able to negative his claim might be scattered or dead. As a matter of fact, if he has a good claim he would appear at the earliest possible moment. I suggest that the amendment as it stands is satisfactory and that the amending Bill is quite in order.

As regards the question of procedure, in reply to the hon. Member for Eastern Demerara, I suggest that if he looks at section 2 of the Principal Ordinance he would find that it says:—

“2. When any land in the colony which has been or is hereafter alienated by or on behalf of the Crown appears to the Commissioner to have been abandoned by the owner thereof for eight years and upwards, and the owner, or anyone lawfully claiming under him, cannot be ascertained, notwithstanding every reasonably diligent inquiry made by the Commissioner, he may with the sanction of the Governor declare, by a notice which shall be published six times at least in the **Gazette** and in any two local newspapers and posted on that land, containing a description thereof which will enable it to be identified by reference to a survey or natural features, that if no claim thereto is made to him by or on behalf of anyone able to establish a title thereto within the period, not being less than six months, specified in the notice, the land will be resumed by the Crown.”

Then, in section 3 it is stated:—

“3. If no claim is made in pursuance of the notice the Commissioner shall make a report to the Governor of the proceedings taken by him, containing the description of the land, together with the boundaries thereof, and shall state that no claim has been made thereto; and upon receipt of the report, the Governor in Council may make order that the land shall be resumed by the Crown, and thereupon it shall be resumed by and become the property of the Crown free from all incumbrances.”

The procedure referred to by the hon. Member for Eastern Demerara is in section 4. It says:—

“4. (1) If, within the period specified in the notice, a claim is made, the Commissioner shall call upon the claimant to establish it within the time appointed by him, and shall inquire into it and record any evidence adduced before him in support thereof.

(2) The Commissioner shall thereafter make a report to the Governor of the proceedings taken by him, containing a description of the land, with the boundaries thereof, and setting forth the nature of the claim made in respect thereof, the evidence taken in support of the claim, and the finding of the Commissioner thereon.”

That is not final because you have when further proceedings would cease and so on. I think the hon. Member would realise that that gives a full opportunity to anyone who has a claim and has not discovered it overnight.

Mr. DEBIDIN: I have moved an amendment and I find that instead of any discussion taking place on that amendment the hon. Nominated Member has moved a new amendment for the insertion of a new clause, but before I and other Members can support it I think we need a far greater explanation from him as to the practical effect of that amendment. I have been trying to see what the hon. Member is driving at, and I am sorry that by moving it he has cut off discussion of my amendment which is entirely different from his. I would like to explain what I am after. The claim referred to in the Principal Ordinance is a claim by the owner. I asked whether it affected prescriptive title, and in my opinion it does not because the qualifying words are “the land will be resumed by the Crown”

— in section 2. I am speaking of cases where there has been abandonment by the Crown at places like Fyrish and Eversham in the Corentyne district. I have been there on recreation — shooting and so on — and I have seen old Dutch graves and other relics of the past on those lands. There are people occupying those lands and my view is that some of them might have prescriptive title. The hon. the Attorney-General refers to procedure, but the procedure here relates to claims under section 4. The claim, as stated in section 2, would be made by the person to whom the land was alienated; that is, where lands were ceded or alienated by treaty years and years ago. I say that this provision should be for cases where Crown lands are given to a person for occupation for a certain purpose and are not occupied but left abandoned. In such cases the Crown would take the lands back.

In the latter part of section 2 in the Principal Ordinance it is stated “that if no claim thereto is made to him by or on behalf of anyone able to establish a title thereto within the period, not being less than six months, specified in the notice, the land will be resumed by the Crown.” There again it refers to the question of a definite alienation at some time, such as a grant or lease. The hon. Nominated Member may be better able to explain the nature of those grants some of which are made absolute. If anyone can claim those lands the Crown cannot resume them. Even if a father passes any such lands on to his son or other relative they cannot be resumed by the Crown, and this clause would not affect any prescriptive title one may have. I urge hon. Members to consider my amendment favourably so that no injustice would be done to anyone occupying a piece of Crown land. If treaties and grants were being made since 1803 the natural inference would be that many persons were in a position to obtain prescriptive title since that time. I feel that my amendment is clear and precise, and that it should be adopted in order to safeguard the rights of people who might otherwise be affected.

Mr. ROTH: To a point of correction:

There is a schedule containing a vast number of lands which would be resumed from 1908. I may say that I myself have been instrumental in resuming some of these lands some years ago.

Mr. DEBIDIN: There are more lands to be resumed and we do not want the rights of anyone to be affected.

Mr. ROTH: The hon. the Attorney-General, like a good Government officer and a good lawyer, tried to make out a good case in support of the present Ordinance, but let us look at the facts. The majority of those alienated lands were alienated in the Dutch days; by advertising in the *Daily Argosy* or the *Daily Chronicle* for six months would that be a good and diligent search for people who might now be residing in Holland or some such place? It is within the bounds of possibility that there may be legal claimants to lands that would be taken over, but this provision would hamper any claim they may have. You, Sir, would know as a lawyer that prescriptive right refers to physical occupation. No man who owns a farm of say 2,000 acres can say he has prescriptive right to it; he might do so in respect of a 10-acre farm, however. I do say, Sir, that at any time a legal owner can prove his right as regards any of these lands he should be permitted to do so.

Capt. COGHLAN: I should like to know how this legislation is going to affect the owners of estates who have the first depth as freehold and the second and third depths under licences of occupancy by the Crown.

Mr. ROTH: To a point of explanation: Licences of occupancy are not freehold

Capt. COGHLAN: I am speaking about a case where the first depth is freehold and the second and third depths are held under a licence of occupancy. Perhaps there may be a fourth and extra depths also held under a licence of occupancy. I know of cases where the second and third depths were not being used by the owners of the first depths and Government leased those second and third

depths to persons other than the owners of the first depths, and after some time elapsed Government also sold the second and third depths to the same parties who had leased them. I say that the owner of the first depth of any estate has a title even if it is a licence of occupancy by the Crown and, as regards the second, third and extra depths, he has a greater right to them than any stranger. Just as a calf belongs to the cow so do the second, third and extra depths belong to the freehold.

Mr. ROTH: To a point of explanation again: The granting of the second and third depths depends on the proper occupation of the first depth; that has been well established from the Dutch days. If you abandon the first depth you are not entitled to the second and third depths.

Capt. COGHLAN: I am sorry that my hon. Friend was not listening to me. I never said that anybody had abandoned the first depth. As regards the Boeraserie lands, there are persons holding first depths freehold and if the Crown gives the second, third and extra depths to other persons the owners of the first depths would be placed in a peculiar position if the owners of the second, third and extra depths do not choose to allow them to have proper drainage. In the old Dutch days certain persons were the owners of an estate which I now own and Government gave me notice that the second, third and extra depths held under licence of occupancy were the property of the Crown. I contended that they were not and it was subsequently admitted that the second, third and extra depths were my property, and Government granted them to me. The owner of the estate next to mine was the owner of the first depth, freehold, and for the same reasons that obtained in my case he applied to Government and was granted freehold possession of the second, third and extra depths. I would like to know whether it is within the power of Government to alienate the second, third and extra depths of any lands from the owners of the first depth, and whether Government is empowered to sell those lands to persons other than the holders

of the first depth. My hon. Friend, the Second Nominated Member, suggests that it has been done over and over again. An opinion in the affirmative was given to me by the Attorney-General in 1921, but it was given on wrong premises supplied by the Lands and Mines Department. Even if that opinion was passed into law the fact that it was based on wrong premises still makes it wrong.

Mr. PETERS: This question which I intend to ask may be considered beyond the mark, but I desire to know whether the Colony as such holds any considerable portion of land within this territory of ours.

The CHAIRMAN: I understand that the Government has asked the Commissioner of Lands and Mines to come over and assist in any question of that nature and he would probably be in a position to answer the hon. Members.

Mr. PETERS: Whatever may be the answer to that question I intend to follow it up by this other question; whether in the discussion of this matter relating to Crown lands the Attorney General or the Government has considered the question of those lands coming formally and finally into the possession of the Colony rather than reverting back to the Crown, because we are in very pregnant days and one wants to know whether the time would ever come when the Colony, as such, would govern itself.

The CHAIRMAN: The hon. Member for Eastern Demerara has invited me to express my view as a lawyer on this point....As far as I can see, all that the Bill proposes to do is to enlarge the powers of the Crown to resume lands which have been alienated by the Dutch, in the same manner as it has the power to do under section 2 of Chapter 172. In other words, had those lands referred to in the Objects and Reasons been lands not alienated by the Dutch, but lands coming within the orbit of section 2, there would have been no need at all for this Bill, because they could have been resumed without any doubt whatsoever. The only thing I see clause 2 of the Bill proposes to do is to put in order the lands with

respect to which there has been some doubt with regard to their resumption by the Crown as though they were ordinary lands by the Crown. As I see it, clause 2 affects no rights whatever, prescriptive or otherwise, because if the lands which can be resumed by the Crown can be affected by prescription then this Bill in no way derogates from that right or alters the position in so far as the particular right is there to go to the Court. All it does is to extend the power of the Crown to resume possession of those lands because they were alienated by the Dutch. It seems very simple.

The hon. Member for Eastern Demerara (Mr. Debidin) spoke about alienation, and questioned whether there had been alienation or not, but the very fact that the word "alination" is used suggests that at some time or another there was an owner in existence. In other words, if the lands had been given by either the Dutch or the Crown to someone there must be an owner who must come into it at some stage of the proceedings. If that were not so it seems to me that the point made by the hon. the Second Nominated Member (Mr. Roth) is also disposed of, because if the owner cannot be found then of course there is power to resume. But if, as he is endeavouring to do by his proposed addition of a third clause, the owner is found at some stage or another, that owner's right under the ordinary terms of section 2 of Chapter 172 can always be invoked at any time, in the same way as it could have been invoked if it were an ordinary alienation by the Crown. It seems to me, therefore, that if it were an alienation by the Crown, and after a number of years a claim could be raised, the Governor-in-Council could be approached and title could be proved, then the party concerned would be entitled to that claim no matter how many years had elapsed. Therefore, if this Bill is passed a person to whom land has been alienated by the Dutch would be in the same position under the other provision of the Ordinance. Clause 2 of the Bill merely says :

"2. Anything contained in the Principal Ordinance to the contrary notwithstanding, section two of that Ordinance shall be deemed to apply and

always to have applied to lands alienated, prior to the cession to the Crown in the year eighteen hundred and three of the Colony of Demerara and Essequibo and the Colony of Berbice, by any authority exercising, before such cession, power to alienate."

It seems to me very simple and very clear. All this Bill says, to put it concisely, is that there are certain rights which can be resumed under certain conditions. There are certain lands which were alienated in the time of the Dutch, and all it is sought to do is to save those rights on the same basis and on the same footing. In the case of land alienated by the Crown, a certain procedure must be followed, and in the case of land alienated by the Dutch another procedure has to be adopted. With all due respect to the Second Nominated Member (Mr. Roth), it seems to me that we are going very far back when we talk about 1803. There is a Treaty, but we have moved so fast that we are now in 1948. After all, time has become a barrier which is not insurmountable.

Mr. ROTH: Justice and truth are not altered by age.

The CHAIRMAN: It is not a question of either justice or truth, because the alienation is there, and that is truth, and the document is there, and that is truth. Where the question of justice is concerned that seems to me to be a matter entirely for an International Court to construe the terms of the Treaty which was made in 1803. Certain rights have been conferred on certain parties by that Treaty, but this Bill does not attempt to, and in my opinion cannot take away the rights of those parties. They would have the same rights that they now have under the Ordinance. In other words, the rights of persons under that Treaty can in no way be jeopardised. Those persons to whom cession or grant was made, or to whom alienation was made by the Dutch, are in a stronger position by virtue of this Bill than they would have been had Chapter 172 remained unamended, because they are now given some right of claim under Chapter 172, whereas if this doubt exists as to whether the Crown could resume, and

whether there could be a claim if a person came forward who has land alienated by the Dutch, all the Attorney-General would have to do would be to advise Government that such a claim did not come within the terms of Chapter 172. What then would be the position of that person? In my opinion it strengthens the position of a person to whom the Dutch had alienated land, to press his claim.

Mr. DEBIDIN: I fully appreciate your explanation, sir, but it is just another explanation of the purpose of the Bill.

The CHAIRMAN: It is no question of explanation. The hon. Member suggested that I might give my opinion as a lawyer. I have not given an explanation; I have given my opinion as a lawyer, and if the hon. Member is suggesting that the opinion of a lawyer is an explanation well perhaps he might have a lot of support from amongst laymen.

Mr. DEBIDIN: I am not saying that your explanation did not touch upon the legal aspect, but I am saying that it amounted to another explanation of this Bill which we all accept. We appreciate the necessity for the Crown to resume lands alienated by the Dutch, but I am saying that I hardly think we can find anybody in this Colony, or many persons who could say they have a claim from the Dutch, in which case I think your legal opinion does not dispose at all of the point I have raised: that since we are dealing with lands which may be resumed after having been ceded 100 years ago, people might be occupying those lands today, and this Bill does not give the power to a person who has acquired title by prescription (that is after 40 years' possession) to a piece of land to assert his claim. In my opinion if such a person does assert his claim after this Bill is passed, whether by petition to this Council or to the Executive Council, the Council could hide under the Bill which is being put through today. I am suggesting a simple method. I do not think there is room for any doubt at all that it could do no harm if these words were added to clause 2 of the Bill:

"Provided any rights which have already accrued to any inhabitants of

the Colony by prescription or otherwise would not be affected by this Ordinance."

To borrow the phrase of the hon. Nominated Member, this appears to be an innocent Bill, but it may have a tremendous hook in it. Somebody might swallow the bait and get hooked.

The CHAIRMAN: Perhaps I did not make myself clear when I was giving my opinion. I wish to point out again that even if the suggested amendment by the hon. Member is carried, the position would be that the prescriptive right or title would only apply to clause 2 of the Bill in relation to the Dutch cession. In other words, if prescriptive rights do not apply now to a person to whom alienation has been made by this Crown, they could not apply then to that particular person. If prescriptive rights did apply in the case of Crown lands then of course there is no need for your amendment, which would only be protecting the alienation in the case of the Dutch. In other words, your amendment would only cover the Dutch alienation. Therefore, if prescriptive rights exist under Chapter 172 — and I suggest that they do — and they are available to anybody claiming title under Chapter 172, they are automatically available under clause 2 of this Bill as drafted, and therefore you have to protect them by your amendment to clause 2, then it means that anybody who comes under Chapter 172 is not protected by prescriptive rights. It is very simple to me.

Mr. DEBIDIN: I am asking you to bear with me. You say that it existed before now, and this Bill only takes it a little further. I wish to say that whereas before this Bill a piece of land may have been ceded by the Dutch before 1803 but has not yet been resumed, a person might have come upon land 42 years ago and could have a prescriptive title, but if this Bill is passed prescription would not run against the Crown, and immediately the Crown takes in that land that person would have no right. I think you will agree with the principle of law that no prescription can run against the Crown.

The ATTORNEY-GENERAL: It

seems to me that the real object of the Bill has been lost sight of. It is really to clarify and put beyond any doubt the fact that the Crown can resume. The hon. the Second Nominated Member (Mr. Roth) referred to the Treaties of 1803, and said that we were not following up our obligations. In Sir Cecil Clementi's book on "The Constitutional History of British Guiana" the Articles of Capitulation are reproduced as an appendix. Article 1 states:

"Article 1.—The Laws and Usages of the Colony shall remain in force and be respected, the mode of taxation now in use be adhered to, and the inhabitants shall enjoy the public exercise of their religion in the same manner as before Capitulation; no new establishments shall be introduced without the consent of the Court of Policy, as the Legislature of the Colony. The constituted Authorities and Public Officers, whether in the Civil Law or Church Establishments, as well as the members of the respective Courts (except the Governor-General), shall be continued in their respective offices and situations until His Majesty's pleasure shall be known."

I do not suppose that anybody would ever dream of saying that the mode of taxation at that time is being adhered to. Then Article 2 states :

"Article 2.—The inhabitants, those who are at present in the Colony, as well as those who may be abroad, shall be protected in their persons, and have the free enjoyment of their Properties, without being troubled or molested for any acts whatsoever, other than such as they might commit subsequently to the Capitulation, and in violation of the Oath of Fidelity they shall be required to take."

That, I submit must also be taken in its setting. At the time when the Articles of Capitulation were drawn up, the capitulating parties asked that respect be shown to those people who were either resident in the Colony or abroad, in connection with their property. What we are putting to the Council is that in respect of lands which have been abandoned for over a century, the Crown should have the right to resume, and there is a full and complete procedure allowing for any claims arising from those who possessed or owned any of those lands. That is all that is being sought in this Bill. To re-

duce it to clear logic, is it suggested that where lands have been left abandoned for over 50 years and the owners cannot be found, the Crown should leave them completely derelict and not take steps to resume occupation of them?

The hon. Member for Eastern Demerara (Mr. Debidin) has been making a point about prescriptive title. The hon. Member says that if a person has squatted and as a result has acquired prescriptive title to a piece of land, he should be protected by way of his proposed amendment. What I am suggesting is that in the case of a person who has occupied land 40 or 50 years, what Crown, what Governor or Governor in Council would attempt to take away the rights which have inured to such a person for that length of time? If such a person had only recently resumed he would come under this Bill, because the question of the Dutch would not arise. What the hon. Member is endeavouring to protect is protecting itself by equitable considerations. I submit to hon. Members that the Bill itself is fully satisfactory and, in the circumstances, very proper and desirable to achieve the objects which it sets out to achieve. I understand from the Commissioner of Lands and Mines that there are some owners of land who hold title from the Dutch.

The CHAIRMAN: May I ask the hon. Member for Eastern Demerara, using his own argument that in view of Chapter 184, the Limitation Ordinance, prescription does not arise in the Crown, what is the purpose of his amendment? Is the purpose of his amendment to amend that section of the Limitation Ordinance? If so, I would have to throw it out. I would not be able to allow his amendment. If he accepts the proposition that prescription does not run against the Crown then he is trying to introduce a provision that it should run against the Crown, and not only against this Crown but against the Dutch. It would be illogical.

Mr. DEBIDIN: I think you have missed my point altogether. A man might have been on a piece of land for 39 years with only one year to go to qualify for complete title, and if this Bill is passed before that year is finished, it would put

an end to the running of that title because prescriptive title does not run against the Crown. That is why I want to safeguard the rights of such people.

The CHAIRMAN: I think the Attorney-General and I have been trying to point out that that would not arise, because this Bill has nothing to do with alienation by the Crown. Chapter 172 deals with that.

Mr. ROTH: I am not so much interested in the question of prescription, because I am not against the Crown taking over abandoned land. All I am asking is that this Bill should permit the possibility of a legal heir turning up. It seems to me that this Bill simply confirms the kicking over of solemn covenants made years ago.

The CHAIRMAN: I cannot visualise a legal heir or successor turning up within 40 or 50 years from now and not getting consideration from the Government under the provisions of Chapter 172, except we became a totalitarian State. In view of the constitutional manner in which we are governed at present, and hope to be governed in the future, I cannot visualise any Government of this Country telling an heir who can prove his title under Chapter 172 within 50 or 75 years, that he has no further claim. In my opinion, Government would be bound in equity and justice to examine that claim, and if it is satisfied that he is a true descendant his claim would be entertained.

Capt. COGHLAN: After 39 years, if this Bill is passed, he would be deprived of his right.

The CHAIRMAN: The hon. Member for Western Berbice asked some questions, perhaps, he may repeat those questions now.

Mr. PETERS: My mind was being exercised by the question as to whether the Colony as such owns a considerable amount of lands in our interior here.

The CHAIRMAN: With the permission of Council I will ask the Commissioner of Lands and Mines to reply.

Lt.-Col. G. A. MOORHEAD (Commissioner of Lands and Mines): Colony Lands form a very small proportion of the total area. Even on the coastlands Colony Lands are very small. Most of the coastlands are Crown Lands. I should say 80 per cent.

Mr. PETERS: What about the interior?

Lt.-Col. MOORHEAD: The interior is all Crown Lands.

Mr. PETERS: Then I follow that up with another question, whether the Government — the Commissioner of Lands and Mines may not be able to answer — will consider the question as to whether those lands that may be resumed will in the long run pass into the ownership of the Colony as such. The days are rather prophetic that are passing now.

Capt. COGHLAN: May I ask a question? In 1792 licences of occupancy for the interior were granted by the Dutch. Would the hon. the Attorney-General or the Commissioner of Lands and Mines give us the conditions under which those licences of occupancy were granted in 1792?

The ATTORNEY-GENERAL: I am afraid at the present time I am unable to give the hon. Member the answer which he is seeking. I thought I would be assisted by the hon. Member in regard to that. I am relying on him for information on these historical questions. It will require a little investigation on my part. It is not in "The History of British Guiana" by Rodway and also Sir Cecil Clementi's book on "The Constitutional History of British Guiana." I do not think that point is dealt with in either of them.

Capt. COGHLAN: My reason for asking the question is that I believe all the conditions of occupancy given by the Dutch in 1792 have since been violated.

The ATTORNEY-GENERAL: May I be permitted to ask the hon. Member what are the conditions? I presume the hon. Member knows the conditions.

Capt. COGHLAN: It is for you as



Attorney-General to tell us. It is not for me to inform the Council as to any questions dealing with law. If it were for me to do so, I would give this information. I know a case in point where a Licence of Occupancy was granted by the Dutch in 1792, and the same lands naturally became Crown Lands under the British Government. I know that Government treating that as Crown Lands gave notice to the person who had the first depth that the laws cancelled that Licence of Occupancy. I contested it with the Government and the then Attorney-General who eventually had to give in that I was right.

The ATTORNEY-GENERAL: I am grateful to the hon. Member for his information. It is not that I do not appreciate the fact that it is incumbent on the responsibility of the Attorney-General to advise on questions of law. As the hon. Member is also a member of the legal profession with a considerable amount of experience in matters of this sort, I thought he would be only too willing to place his knowledge at the disposal of the Council.

Capt. COGHLAN: I have done so.

The CHAIRMAN: Is the hon. Member for Eastern Demerara pursuing his question?

Mr. DEBIDIN: I certainly do. I do not know where we are now, if we are in Committee.

The CHAIRMAN: No motion or amendment in Committee need be seconded.

Mr. DEBIDIN: I am insisting on it.

The CHAIRMAN: In that case I will have to put the amendment first, that moved by the hon. Member for Eastern Demerara which reads:

“Provided any rights which have already accrued to any inhabitant of the Colony by prescription or otherwise would not be affected by this Ordinance.”

Mr. ROTH: Will you not put the second amendment first?

The CHAIRMAN: Yours is really an addition you will have to move in after clause 2.

The ATTORNEY-GENERAL: I am wondering if the hon. Member has considered a certain amount of conflict which you, Sir, endeavoured to emphasize appears in the Limitation Ordinance.

Mr. DEBIDIN: It is because of that Limitation Ordinance I move the amendment.

The CHAIRMAN: If that is the hon. Member's idea then I rule it out, and he will have to move a subsequent motion to amend the Limitation Ordinance.

Mr. DEBIDIN: It does not affect the Limitation Ordinance. It merely saves rights accrued already. That is all I am asking. So far as the Limitation Ordinance applies, after the passing of this Ordinance it will still apply and no one can stop it from applying. The amendment merely seeks to save the rights of people who have rights accruing to them before this Ordinance is passed.

Capt. COGHLAN: With regard to that, the original owner might have abandoned his rights and a squatter came along and stopped there 40 years thereby getting title accruing to him, according to my learned friend. Therefore if the amendment is passed it means the original owner, and proper owner, would be deprived of his rights in favour of a squatter.

The ATTORNEY-GENERAL: The hon. Member who has just spoken appreciates the point I was trying to emphasize and put to Members at the beginning. It is better for the Crown to resume in the case of the original owner being absent and unknown.

Mr. DEBIDIN: That is an owner not by prescription. The hon. Member is thinking of Pouderoyen.

The ATTORNEY-GENERAL: The hon. Member has no right to say that!

The CHAIRMAN: My personal view is, even if it is carried it should not be on the Statute Book.

Dr. SINGH: I would like to know whether the principle of the amendment will be recognized by Government as to the question of a squatter?

The CHAIRMAN: I do not think it will be a question of principle. What I can see here is that if the amendment is put I do not really think there is anything in it. It will not be an elegant piece of legislation on the Statute Books of the Colony. It will be, to my mind, something incongruous.

The ATTORNEY - GENERAL: I appeal to the hon. Member in the circumstances. We have had a prolonged discussion and we all endeavoured to put before the other Members our views, some in conflict and some in agreement with what is put in the Bill, but I would suggest to hon. Members to leave the Bill as it stands. It must not be assumed that the Crown — when you say the Crown, you mean all the responsibility which is attached to that — in the case which the hon. Member referred to — people who have been in long occupation for 30 or 40 years — will not consider them. Those can always be taken as definite claims of ownership, despite how you read the particular section that it can only be limited to occupation or ownership accruing from the original Dutch ownership. It will be inequitable to remove those people who have been occupying the land for many years, and I am sure that is not the view or intention of the Commissioner of Lands and Mines.

It is not the case where the Commissioner of Lands and Mines capriciously wants a piece of land at Fyrish. It is a case where the land has been vacant and no one is occupying it. Therefore it is desirable and proper that the Crown should resume, and before actual resumption there is a statutory procedure which must be observed, and all the proper safeguards are provided for the matter to go ultimately to the Supreme Court. It is only for the purpose of an Attorney-General who is looking at the Ordinance when someone brings a claim. The hon. Member may interpret it one way and the matter is deferred to a learned Judge to decide in Chambers

who might say "You have been very long in occupation. This Court is not going to be a party to your removal". That is what I envisage to be the procedure that will be adopted.

Mr. DEBIDIN: A Judge in chambers will under this Ordinance throw out any claim under prescription.

The CHAIRMAN: I will not say what a Judge would or would not do. In answer to the hon. Member I can say what, I think, from experience may happen if this amendment is passed; and that is, His Excellency may well be advised by the Attorney-General that he cannot assent to the Bill with this proviso, because not that it is protecting the rights under the Bill but that a big principle will be involved by reference to the Prescription Ordinance and to Chapter 184. Therefore on that ground alone without giving any reason if that advice is given His Excellency will withhold assent, and even if it is referred to the Secretary of State for the Colonies he on well known constitutional lines known to every legal practitioner will not be able to abrogate Chapter 184. Personally I don't see it will ever arise in the Law Courts, but if it does then it just means that Chapter 184 will remain in force. We must understand that legislation when passed here must be fully appreciated by hon. Members especially in view of the fact of our constant cry for self-government. We must show we appreciate present constitutional principles and, therefore, will be guided by them if we pursue the policy of approaching the Government of the United Kingdom for self-government.

Capt. COGHLAN: I move that the question be now put.

Amendment by Mr. Debidin put, and the Committee divided and voted as follows: -

For—Dr. Gonsalves and Mr. Debidin  
(2)

Against — Messrs. Carter, Peters, Fernandes, Coghlan, Farnum, Roth, Dr. Nicholson, the Attorney-General — (8)

Did not vote — Messrs. McDoom, Kendall, Dr. Jagan, Dr. Singh—(4).

Amendment lost.

Question “That clause 2 stand part of the Bill” put, and agreed to.

*Proposed clause 3.*

Mr. ROTH: At this stage I move an amendment for the insertion of a new clause 3 to read as follows:—

“In the first line of section 10 of the Principal Ordinance delete the words “within ten years from” and substitute therefore the words “at any time after”.

The section will then read:—

“At any time after the date of the notification of resumption being published in the “Gazette”, anyone establishes to the satisfaction of the Governor in Council, that he is entitled to be paid the appraised value or any part thereof, it shall be paid to him by the Colonial Treasurer out of funds provided for the purpose by the Legislative Council.”

Capt. COGHLAN: I have very much pleasure in seconding it.

The ATTORNEY-GENERAL: What I cannot understand is the fact that the law is there, and you have this Crown Lands Resumption Ordinance which has been going over 40 years with ten years' limitation within which you can claim. That is operating quite satisfactorily so far as I am aware, and now in the good year, 1948, we are going to remove that limit and say “Forever hereafter come along and make your claim”. In other words, you are really amending the Principal Ordinance. You are really in effect saying “When all possible chance of rebutting or providing any evidence by way of record or oral evidence is unavailable a person can come along and say “This is mine.” Ten years, Sir, I suggest is regarded from a legal point of view and a reasonable point of view as a proper time, and I do not think it is really right to enlarge that period. Remove the ceiling, then the sky is the limit. It may sound all right on the surface, but people who have rights or think they have rights must endeavour to do something to get those rights perfected. I wish again to emphasize

that it is a principle of law that the law helps those who are vigilant and not those who sleep on their rights. It is a maxim which every lawyer knows and follows. I am surprised that the hon. Member for Demerara River has seconded that with that particular legal maxim in his mind.

Mr. ROTH: Nothing man-made is infallible. Because we had this law since 1808 is it justified? Are Justice and Truth modified by time? Is what was true, correct and just in 1808 not going to be so in 1948? I say “yes”. That is my whole objection to the whole thing. If you pass this law, without the amendment as I suggest, you can be accused of abrogating solemn treaties

The ATTORNEY-GENERAL: What I was trying to point out to the hon. Member is this: The section provides for the payment of claims after all steps have been taken. It is recorded what the property is appraised for and the money is there lying down in the Treasury and you can get the money within a period of ten years. You put money on the savings bank or you have goods in the Customs and after a time they publish a list of forfeiture. Those are only incidentals. There must be a time-limit to claims. There is a time-limit to bring a case in which you can take action. This is providing a time-limit. In a word, this provides a stimulus to a man who has a claim to bring his claim and get his money. If a man has got a claim for money lying down and does not go for it within ten years he does not deserve to get it.

Capt. COGHLAN: I would like to point out to the hon. the Attorney-General that this is a Colony in which the people do not always reside here, but go away for over ten years. There was a case here in the Supreme Court of this Colony brought by a Mr. Henery against the Davsons' Estates. Mr. Henery should have got judgment on his claim for \$1,000,000 but lost. The Chief Justice who gave decision in the case said “I am sorry, you are late”.

The ATTORNEY-GENERAL: You have supported the point I made.

Mr. ROTH: I am very grateful to my hon. friend for saying that. The term used was "You have slept on your rights". What happened then can happen again.

Capt. COGHLAN: It is not so much his sleeping on his rights, he was not aware of his rights.

The CHAIRMAN: That is not quite correct. If he had not said in the witness-box that he was aware of it at a certain time—it was from the date he became aware — his action would have gone through. I quite agree with the hon. the Attorney-General that this is a legal matter and, I think, even the commercial men know there are many debts in their books which are just legacies. I do not know if they can write them off as income tax, but they dare not attempt to collect them. They cannot be collected. It is what we call "Statute Barred". Three years ago a man may not be able to pay a debt but can do so today. The commercial men would like to change the Statute of Limitation so that they could at any time collect a debt. That would seem just as equitable but not for administrative purposes. You have to prevent incidents of a little injustice, or the creeping in of fraud, or misrepresentation, or things of that kind.

Capt. COGHLAN: I only seconded the amendment for the purpose of discussion, as I wanted to have the learned Attorney-General give us some of his wit. I know he can stand up to it.

The CHAIRMAN: I am not worrying with the exact wording of the amendment. If it is agreed to in principle it would be referred to the Attorney-General to be suitably drafted.

Amendment by Mr. Roth put, and the Committee divided and voted as follows:-

For — Mr. Roth — (1)

Against — Messrs. Carter, Peters, McDoom, Kendall, Dr. Jagan, Dr. Gonsalves, Fernandes, Debidin, Farnum, Dr. Nicholson, Dr. Singh, the Colonial Treasurer, the Attorney-General, the Colonial Secretary — (14)

Did not vote — Capt. Coghlan.—(1)

Amendment lost.

Council resumed.

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

Dr. NICHOLSON seconded.

Motion put and agreed to.

Bill read a third time and passed.

#### LICENSED PREMISES (AMENDMENT) BILL

A Bill intituled "An Ordinance further to amend the Licensed Premises Ordinance, 1944, with respect to the opening and closing hours of licensed premises and for purposes connected therewith."

The ATTORNEY-GENERAL: As will be seen, the memorandum of Objects and Reasons attached to the Bill states:-

"Except in areas of the Colony which are strictly rural, retail spirit shops are prohibited from opening on any public holiday within the meaning of the Public Holidays Ordinance, Chapter 270.

"Retail spirit shops in the city of Georgetown, the town of New Amsterdam, or in any rural area to which the provisions of the Licensed Premises Ordinance, 1944, (No. 22) are by Order under section 27 made applicable, are, during the period 15th to 31st December inclusive, permitted to open from 9.30 a.m. to 12.30 p.m. and from 4 p.m. to 9 p.m.

"2. In August, 1947, the British Guiana Licensed Spirit Dealers Association sent a petition to the Governor in Council asking that retail spirit shops in the city of Georgetown should be permitted to open on any public holiday (other than Sundays, Christmas Day, Boxing Day and Good Friday), and that the hours of opening and closing on other days be modified.

"The Association expressed itself as being in favour of employees being paid at the rate of time and a half when they worked on a public holiday.

"The petition was referred to the Committee whose majority Report

formed the basis of the Licensed Premises (Amendment) Ordinance, 1947, (No. 11). The Committee, by a majority, made certain recommendations.

"3. It is considered that any amendments relating to the hours of opening and closing retail spirit shops in the city of Georgetown should be made applicable to retail spirit shops in the town of New Amsterdam and in any rural area which, for the purposes of hours of opening and closing, is treated as an urban area.

"4. Clause 3 of the Bill provides —

- (1) that retail spirit shops in the city of Georgetown, the town of New Amsterdam, or in any rural area to which the provisions of Part 1 of Ordinance No. 22 of 1944 are, by Order under section 27, made applicable, shall be permitted to open from 8 a.m. to 12 noon on any public holiday (except Sundays, Christmas Day, Boxing Day and Good Friday); and
- (2) that the hours during which such a retail spirit shop may be open during the period 15th to 31st December inclusive shall be—
  - (a) on Christmas Eve and New Year's Eve, from 9 a.m. to 1 p.m. and from 3 p.m. to 9 p.m.;
  - (b) on Wednesdays (not being Christmas Eve or New Year's Eve), from 8 a.m. to 12 noon;
  - (c) on any other day except Sundays, Christmas Day and Boxing Day, from 9.30 a.m. to 1.30 p.m. and from 3 p.m. to 8 p.m. or 4 p.m. to 9 p.m.

"5. Clause 2 provides that employees in any such retail spirit shop shall be paid at the rate of time and a half when they work on a public holiday, or after working 8 hours on any one day."

I do not think it is necessary for me to say anything in addition to this explanation which is quite full. I beg to move that this Bill be now read a second time.

Dr. NICHOLSON seconded.

Mr. ROTH: I rise to support this

motion and to state that it seems to be a fact that one never knows where one is with Government. For some time past — for the last 18 months — I have been asking Government to consider a slight amendment to this Ordinance whereby what are commonly known as cakeshops would be permitted to sell beer to be consumed on the premises. Government have been saying that that would require an amendment of the Ordinance and I do ask Government to give some consideration to the request.

Motion put and agreed to.

Bill read a second time.

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

Mr. DEBIDIN: I am wondering whether we cannot have a deferment of this Bill to another time. I believe hon. Members would like to go into this matter very carefully in order to see how far it would affect the Labour Ordinance. I, at least, would like to do that.

The CHAIRMAN: You are moving an adjournment of the debate; has the motion been seconded?

Mr. FARNUM: I beg to send that.

Motion put, the Committee dividing and voting as follows:—

For: Messrs. Carter, Peters, McDoom, Kendall, Dr. Jagan, Dr. Gonsalves, Debidin, Farnum, Roth and Dr. Nicholson — 10.

Against: Messrs. Fernandes, Dr. Singh and the Colonial Secretary — 3.

Did not vote: Messrs. Coghlan, the Colonial Treasurer and the Attorney General — 3.

Motion carried.

Council resumed.

The DEPUTY PRESIDENT: This Bill remains in Committee but is deferred to a subsequent date.

Bill deferred.

9 SEPTEMBER, 1948.

## LEGAL PRACTITIONERS (AMNDT.) BILL

The ATTORNEY-GENERAL: I do not know, Sir, whether hon. Members are prepared to resume consideration in Committee, today, of the Bill intituled:-

“An Ordinance to amend the Legal Practitioners Ordinance with respect to Articles of Clerkship.”

Mr. DEBIDIN: I will ask that consideration of this Bill be deferred **sine die**. I was surprised to find that we cannot get in this Colony — either at the office of the Deeds Registry or anywhere else — a schedule of the preliminary examination for Solicitors and, therefore, I am not in a position to say what would be the effect of the changes proposed. I feel that this Bill should not be considered further until we get the necessary information, and if I cannot get it locally

I will write to the Law Society in England and get it.

Bill deferred.

## CONSTRUCTION OF AIRSTRIP NEAR CITY

The DEPUTY PRESIDENT: I now call upon the hon. Member for Georgetown Central to move his motion relating to the construction of an airstrip in close proximity to the City.

Mr. FERNANDES: I am going to ask that this motion be allowed to remain until the next meeting of the Council. It is now 18 minutes to five, and I would not like to start at this time.

The DEPUTY PRESIDENT: Very well. That being all the business before the Council, I declare the Council adjourned **sine die**.