

## LEGISLATIVE COUNCIL.

*Thursday, 21st April, 1932.*

The Council met pursuant to adjournment, His Excellency the Governor, SIR EDWARD DENHAM, K.C.M.G., K.B.E., President, in the Chair.

### PRESENT.

The Hon. the Colonial Secretary, Mr. C. Douglas-Jones, C.M.G.

The Hon. the Attorney-General, Mr. Hector Josephs, K.C., B.A., LL.M. (Cantab.), LL.B. (Lond.).

The Hon. T. T. Smellie (Nominated Unofficial Member).

The Hon. P. James Kelly, M.B., Ch. B., Surgeon-General.

The Hon. F. Dias (Nominated Unofficial Member).

The Hon. T. Millard, C.M.G., Colonial Treasurer.

Major the Hon. W. Bain Gray, M.A., Ph.D. (Edin.), B. Litt. (Oxon), Director of Education.

The Hon. J. S. Dash, B.S.A., Director of Agriculture.

The Hon. B. R. Wood, M.A., Dip. For. (Cantab.), Conservator of Forests.

The Hon. S. H. Bayley, General Manager, Transport and Harbours Department.

The Hon. W. A. D'Andrade, Comptroller of Customs.

Major the Hon. J. C. Craig, M.E.I.C., D.S.O., Director of Public Works.

The Hon. E. G. Woolford, K.C. (New Amsterdam).

The Hon. N. Cannon (Georgetown North).

The Hon. A. V. Crane, LL.B. (Lond.) (Demerara River).

The Hon. Percy C. Wight, O.B.E. (Georgetown Central).

The Hon. A. R. F. Webber, F.R.G.S. (Western Berbice).

The Hon. J. Gonsalves, (Georgetown South).

The Hon. A. E. Seeram (Eastern Demerara.)

The Hon. Jung Bahadur Singh (Demerara-Essequibo).

The Hon. G. E. Anderson (Nominated Unofficial Member).

The Hon. M. B. G. Austin (Nominated Unofficial Member).

The Hon. F. J. Seaford (Nominated Unofficial Member).

### MINUTES.

The minutes of the meeting of the Council held on the 20th April, as printed and circulated, were confirmed.

### GOVERNMENT NOTICES.

THE ATTORNEY-GENERAL (Mr. Hector Josephs) gave notice that at the meeting of the Council to be held on the 26th April he would move that "A Bill to amend the law with respect to the administration of Criminal Justice and otherwise to amend the Criminal Law" be read the second time; also that at the next meeting he would ask leave to introduce and have read a first time "A Bill to remove doubts as to the authority of the Georgetown Town Council to receive advances of money from the Government of the Colony for the construction of certain improvement works in Georgetown, to repay the moneys so advanced and to pay interest thereon until such repayment."

### UNOFFICIAL NOTICE.

Mr. WEBBER gave notice of the following questions:—

1. At what salaries have recent promotions in the Customs and other Departments been made, and what are the salaries now being drawn by such officers?

2. If such salaries are not such as have been passed by the Legislative Council, what is the reason for such change and authority for withholding the legal appropriations?

### PREFERENCE ON SUGAR.

Mr. SEAFORD: I ask permission to bring before the Council a question which

I consider is of sufficient importance to delay for a short time the Order of the Day. With that in view I move the suspension of the Standing Rules and Orders for that purpose.

THE PRESIDENT: What is the nature of the question?

Mr. SEAFORD: It is with reference to the granting of the increased preference on sugar to this Colony by the Mother Country. I now move the adjournment of the House to deal with the matter as of public importance.

Mr. AUSTIN seconded.

Question put, and agreed to.

Mr. SEAFORD: Sir, I beg to move the following resolution:—

That this Council respectfully requests His Excellency the Governor to convey to His Majesty's Government in the United Kingdom an expression of the grateful thanks of the people of British Guiana for the substantial assistance afforded the Colony's principal industry by the grant of the increased preference on sugar, and their appreciation of this timely help given, as it has been, at a time of severe industrial depression and financial strain in the Mother Country.

I do not think in moving this resolution I need say very much on the subject; it speaks for itself. It will not need any words from me, I think, to persuade hon. Members of this Council to give this resolution full and unanimous support. It is fully realised, I think, sir, what part the sugar industry plays in this Colony, and also that any assistance given to that industry is given to the Colony as a whole. We in this Colony, I feel sure, are very deeply grateful for this assistance that has been given. Perhaps I may say like some people we had hoped for more, because when I say so we had asked for more and our reason for that was that at the present time sugar is going through a much greater slump than was anticipated a year ago. The price to-day is worse than ever it had been imagined. I say, sir, that this preference, which has been granted and which is roughly about \$7 per ton, when added to to-day's world's price is still below the price which could have been obtained for our sugar at the beginning of the year. But, sir, that being the case it makes the help all the more timely,

because had it not been for this assistance which we have now succeeded in getting it would have been quite impossible for the majority of the sugar estates in this Colony to carry on. In fact, even with this assistance it is still going to be very difficult for the smaller ones to go on.

But, sir, I do not wish it to be thought, when we say we had hoped for more, that we say so in any niggardly spirit or that we are not grateful, because it must be borne in mind that we have been given this assistance at a time when the Mother Country is passing through very severe industrial depression. It must be borne in mind that in the Budget laid on the table in England the day before yesterday, although the taxpayers in the Home Country expected a certain amount of relief from taxation no such relief was given them at all. As a matter of fact, sir, in order to give us this help they will have to bear over £1,000,000 in further taxation. Therefore I do not wish it to go abroad that we do not appreciate what has been done for us, and I feel sure that this Council does appreciate it. I would like publicly to thank you, sir, and the Government on behalf of the sugar industry of this Colony, for the very ready and able help which you have given to the sugar industry in the struggle which it has made to get the preference given it. We quite appreciate and, in fact, we know only too well, that our task would have been very much more difficult had it not been for that able help and assistance which we have got from you and Government. We really do appreciate it, and I thank you and Government for it on behalf of the sugar industry. I do not think I need say more, except to hope that this resolution will go through the Council with a unanimous vote.

Mr. AUSTIN: Sir, I beg to second the motion. In doing so I cordially endorse all the remarks made by the hon. Nominated Member, Mr. Seaford. When it is realised that the United Kingdom is losing over £1,000,000 in revenue in giving this increased preference to the Colonies at a time when the people at Home are being called upon to make real sacrifices to balance their own Budget, this Colony should be very grateful for what the Home Government has done to assist us. I am sure, therefore, that the resolution will be unanimously passed in this Council,

Mr. ANDERSON : Sir, I would like to identify myself with the remarks made by the last two speakers.

Mr. WEBBER : Sir, I trust it will not go on record that the three Members, who happen to be Nominated Members and also to be identified with the profession which has received the relief communicated yesterday, are the only persons who wish to identify themselves with the motion. Least silence be taken to indicate that and interpreted merely that we do not wish to oppose the motion, I desire on behalf of my Elected colleagues to reiterate what has been said by those Members and to ask you to convey the grateful thanks not only of this Council but of the Colony as a whole for the effort made by the Imperial Government to save the Colony's staple industry. Whatever difference of opinion we may enjoy in this Council, or otherwise, as to methods and policies of the Plantocracy or "Sugarcrats," we feel sure that the sugar industry is the Colony's mainstay—its principal industry. When the sugar industry flourishes the whole Colony flourishes; when it goes down every house of commerce and industrial undertaking suffers. Therefore at all times—no matter how we criticise them sometimes—on the whole we realise what an asset the sugar industry is to the Colony and gratefully acknowledge the help given and identify ourselves with the thanks proffered.

THE PRESIDENT : I do not think I need add anything to what has been said by the hon. Member who has moved the motion, except to say that I am sure the whole Colony does realise and appreciate the substantial help that has been given at this time. I say "substantial" because in the text the same word is used by the mover of the motion in respect of the position at Home at the present time. That is where we feel particularly grateful that the Home Government should have been able to do something for us at a time like this. We do feel that they have given the maximum assistance at a time when it must have been difficult to find such assistance, and given it on a basis that will be valuable and helpful to this Colony and also to our neighbours in the Caribbean Sea. I think it is largely a gesture from the Imperial Government to the West Indies and other sugar-growing countries, and it has been made, as the hon. mover of the

motion has said, at a time in our history when it will be of special value.

Motion put, and agreed to.

## ORDER OF THE DAY.

### THE LEGITIMACY BILL.

THE ATTORNEY-GENERAL : I move that "A Bill to amend the law relating to children born out of wedlock" be read the third time.

Dr. KELLY seconded.

Question "That this Bill be now read a third time and passed" put, and agreed to.

Bill read the third time.

### DANGEROUS DRUGS BILL.

THE ATTORNEY-GENERAL : I move that "A Bill to amend the Dangerous Drugs Ordinance, 1929, with respect to powers of entry and inspection and to the punishment of offences against the Ordinance" be read the third time.

Dr. KELLY seconded.

Mr. CRANE : I move an amendment that this Bill be read a third time six months from date. I move the amendment in order to put myself within the rules for the purpose of making a request, I think I have authority for saying, on behalf of the Elected Members, when the third reading of this Bill was going through that the Governor be respectfully requested to withhold his assent to the Bill and to cause to be transmitted to the Secretary of State for the information of His Majesty the precise objections raised both on the second reading and in Committee yesterday. Those of us who took part in the debate had a consultation after the adjournment and are taking this step because we feel that our point of view should be put to those finally responsible for giving this Bill legal effect. The point which we desire to put specifically to the Secretary of State for the Colonies is that the reason for legislating as we have done in this Bill being to bring the law into conformity with what it is in England, as that law affords a person charged with a

summary conviction offence the right to claim trial by jury a similar right to claim trial by jury on a charge under this Bill should be given to His Majesty's subjects in these parts. We considered the matter as one of such great importance, in our humble opinion, to the safety and liberty of British subjects here that we could not allow any opportunity to pass and not register our protest. This is the last opportunity we shall have, therefore I am conveying to the Governor our respectful request that his assent should not be given to this Bill, and our representations submitted to the Secretary of State on the specific point that the right of the subject to claim trial by jury should also be given here.

Mr. WEBBER: I second the amendment. We all realise the impotence of the motion without Your Excellency's goodwill. We propose to hand to the Governor of the Colony a request signed, I trust, by all the Electives and I hope the Nominated Members who can see their way to identify themselves with the request, not to give your assent to this Bill until a further opportunity has been given to those from whom practically the instructions came for the amendment to the Bill to consider our representations. It is possible for Your Excellency to indicate to-day that you will take this as an informal request to withhold your assent and so save us the formality of handing it in in writing. Another Governor gave us that promise on another occasion. There is a provision in the English Validity Act that we cannot pass a law which is repugnant to the law of England. A subject from England may come here and find that he is being tried under a different law to what obtains in England.

THE PRESIDENT: I appreciate the point made by the hon. Members, but the difficulty of Government with regard to this Bill is the fact that the principle proposed is really a principle that depends in no way upon the Dangerous Drugs Ordinance. It would have been introducing a new principle of the law here. There is a Bill shortly to come before the Council of which notice was given to-day—a Bill to amend the law with respect to the administration of Criminal Justice and otherwise to amend the Criminal Law—in which this very point is raised. I think the fact

that it is raised in connection with that Ordinance does justify this point being given further consideration. I am quite prepared to put before the Secretary of State the representations made and send him a full report of the debate, and to put the point of view expressed in Council as fully as I can do so besides the remarks made by hon. Members, which are quite full on the point. I do not agree that there is any question really with regard to the validity of my assent to the Bill. I can see no reason why my assent should not be given, nor do I accept the point that it is repugnant to the law of England. I cannot accept that, and I do not think the hon. Member really thought that I would. At the same time the point raises an important question, which is deserving of further consideration, and I am therefore prepared not to assent to the Bill until it is sent to the Secretary of State with the representations made. But I think it should pass its third reading, and I ask the hon. Member if he would withdraw his amendment to the third reading.

Mr. CRANE: Yes, sir; I withdraw my amendment.

Question "That this Bill be now read a third time and passed" put, and agreed to.

Bill read the third time.

THE PRESIDENT: I declare the Bill has passed its third reading, and assent will not be given until it is sent to the Secretary of State.

#### FAWCETT PENSION BILL.

Mr. MILLARD (Colonial Treasurer): I move the third reading of "A Bill to make provision for granting a pension to Captain A. Fawcett, Bandmaster of the British Guiana Militia Band."

Professor DASH seconded.

Question "That this Bill be now read a third time and passed" put, and agreed to.

Bill read the third time.

#### POWERS OF ATTORNEY BILL.

The Council resolved itself into Committee and resumed consideration of "A

Bill to make provision with respect to the recording of powers of attorney, their effect and their revocation ”

THE ATTORNEY-GENERAL: A question was raised with respect to clause 3 (as renumbered) and it has been considered, and I am going to propose an amendment which I think will meet with the approval of hon. Members. In accordance with the view expressed by the hon. Member for Demerara River, I propose the insertion of the words “obtaining or” after the word “the” at the end of the third line. The clause will then read:—

**3. A power of attorney (other than a power *ad lites* or a special power providing for the passing of a transport, mortgage or lease or for the cancellation of a mortgage, or a power providing for the obtaining or recording of probate or letters of administration and for no other purpose), &c.**

Mr. DIAS: It strikes me that if this amendment is adopted, assuming that the power of attorney is only made for the purpose of obtaining or recording probate from abroad, less revenue will be entailed because to-day no power of attorney is exempted from payment of duty. All powers of attorney are required to be recorded. I know people keep them at home and do business without recording them. The purpose of this Bill is to put a stop to that practice. If a power of attorney for recording probate need not be recorded, you will be able to use that power without going through the usual formalities. In that case there must follow a loss of revenue.

THE ATTORNEY-GENERAL: The present law is contained in section 18 of the Deeds Registry Ordinance. It will be observed that it does not provide for the recording of all powers of attorney. It makes an exception of “those in judicial proceedings called powers *ad lites* and those providing for the passing of transports, mortgages, leases, or cancellations only and for no other purpose.” What is proposed is to vary that somewhat by adding to it powers of attorney in relation to probate or letters of administration. In the amendment the only addition that will be made to the present exemption is power of obtaining or recording of probate or letters of administration. I have consulted the principal officer concerned in the matter and he informs me that no

action is taken under those powers. The authority for the person to act is the probate granted to him or the letters of administration.

Mr. DIAS: Whatever virtue there may be in the proposed amendment it does not apply to power *ad lites*. Powers of attorney for the purpose of passing transport or mortgage are specially provided for and the tax is paid under the Tax Ordinance.

Mr. CRANE: I think the amendment is in the right direction. Where a power of attorney is for a special purpose and it is used it is bound together with the papers relating to the act performed under it. Registration of that nature is a sufficient record and the public should not be put to the necessity of doing it twice, which would be the case otherwise. In the interest of the public I am bound to support the amendment, and Government is going to get more revenue because two powers of attorney will have to be recorded when they are important. The only point which the Attorney-General has not concerned himself about is the use of the power *ad lites* or the power *ad litem*.

Mr. GONSALVES: I should like to know whether it is contemplated where you are transferring a lease that this clause will permit of its going through without the transfer being recorded. Is the provision wide enough to cover the transfer of a mortgage or the transfer of a lease?

Mr. WOOLFORD: The expression “power *ad lites*” is a comprehensive expression for the power or authority usually given by companies or large concerns which are likely to be little represented in a Court of Law and which have as a rule a permanent solicitor. I think that is the distinction between the expression of power *ad lites* and power *ad litem*. For a power of attorney which enables a person to execute a mortgage there is a charge of \$1 20 under the Deeds Registry Ordinance. The only lease to which this special power relates is, I take it, a lease required to be passed before a Court of Law, and that is a lease for 20 years and over. I do not think you ought to exempt every lease, and the word “lease” standing alone will have that effect. I have also risen for the purpose of calling attention

to a long-standing grievance of those who have to record these documents. It very frequently happens that a person instructs his legal adviser to prepare a power of attorney. On going to the office of the Deeds Registry with that power of attorney the person mentioned in it usually desires to get his document as quickly as possible. Although one may repair to that office not only with the main power but with a true copy of the document which is intended to be deposited, in the hope that it will be looked after speedily and given back as quickly as possible, the schedule of fees in the Deeds Registry requires the person to pay, in my opinion, a very exorbitant sum for the copy of the power which he himself has laid over. Considering the revenue and public convenience, where is the justice of the charge? If you are going to make it obligatory to place all these documents on record, I hope it will be found possible to alter the fees entailed. Bear in mind that you are not only increasing the cost to the public who desire to be represented in this way, but also compelling the addition of a fee according to the length of the document that has long been considered to be exorbitant. I think that in respect of all documents when a copy is furnished to the Department there should be some corresponding reduction.

**THE ATTORNEY-GENERAL:** I appreciate the argument of the hon. Member with regard to the last point raised. The position is that ordinarily when a document is presented a copy of it is made in the office in order to return the original, and the copy is kept in the office and the charge which is made now is a charge for the actual work of copying. The case as the hon. Member puts it is that a practitioner presents a copy along with the original for the purpose of its being certified as a correct copy. It seems to me that the question might be considered whether in such cases instead of charging a fee for copying the document there should not be charged a different fee for the mere certification (Hear, hear). I think that is a matter that might very well be considered. If it is required that these documents should be on paper of a certain size and quality that should be prescribed. I agree with the hon. Member that the interpretation of laws can mean anything else than what they purport to

be. A power *ad lites* is an authority to somebody to bring an action on behalf of his principal. Whether the power relates to a single action or actions generally I do not think there is any necessity to record it, because in each instance in which he sues the authority has to be put before the Court with the document and he can always be made to produce his authority, so there is no difficulty in ascertaining whether or not he is authorised. I do not think the loss to Government is going to be anything much. Under the Tax Ordinance the only powers which are exempt from stamp duty are powers *ad lites*, and all other powers are subject to duty. There will no doubt be increased revenue by reason of the fact that no person can act under a power without recording it and paying the fees. The hon. Member for Demerara River has pointed out to me that in view of the point raised by the hon. Member for New Amsterdam it is well to add to the exemption the words "or for the execution or assignment of a particular" between the words "transport" and "mortgage" in the second line. Having regard to the exemptions provided for this amendment might well be included, and it seems to me it will carry out the spirit of the exemption.

Question "That this clause as amended stand part of the Bill" put, and agreed to.

The Council resumed.

Notice was given that at the next meeting of the Council it would be moved that the Bill be read the third time (*Attorney-General*).

#### PENSIONS (VOLUNTARY RETIREMENT) BILL.

The Council resolved itself into Committee to consider "A Bill to authorise the Governor-in-Council to grant pensions or gratuities in certain cases to officers on the Fixed Establishment who voluntarily retire from the Public Service before they have qualified for pension."

**Mr. MILLARD:** During the course of the second reading of this Bill the hon. Member for Demerara River asked that the Council be given some information as to the use of this provision for the voluntary retirement of officers and some details regarding any decision taken or likely to

be taken. The provision for voluntary retirement, as I stated, was conditional on economy being secured. A circular was issued inviting officers to offer, if they desired, to retire voluntarily subject to the approval of their offer being conditional on economy being secured. As a result of that circular a great number of calculations have been made in the case of officers who have offered to retire voluntarily in order to enable Government to ascertain whether economy will be secured by the acceptance of the offer. Several cases have been considered and it was found that in some economy can be secured. In those cases action has been taken to secure that economy. Others have been examined and it has been found that economy will not be secured by allowing the applicants to retire voluntarily. I think hon. Members will realise that we have reached the point of retrenchment in staffing and in limitation of staff.

Since the second reading of the Bill was taken I have searched the records of cases dealt with and under consideration. Cases are regularly becoming ripe for consideration under the conditions governing voluntary retirement, and I have a note here of certain of those cases. The first case I have a note of is the Messenger in the Treasury, who was allowed to retire voluntarily on the ground that economy will be secured. He had not served the full period for pension and therefore came under a gratuity of \$285. His salary was \$30 per month and he has been replaced by a Messenger on the Unfixed Establishment at the same salary, which is the salary he received as Messenger of the Local Government Board. There is the case of the Bandmaster of the Militia which comes under the conditions of this Bill. In that case the Bandmaster was allowed to retire on pension of \$385 per annum. His services have been retained at \$1,200 a year, and his previous salary being \$2,100 there is a difference of \$515. Then there is the Pay and Quarter-Master of Police. He has been allowed to retire voluntarily. His reduced pension is \$852 14 and his lump sum \$4,872. This secures a saving of the salary of one Warrant Officer, \$1,920, and \$240 service allowance, also a difference of \$120 in the salary of the former and the present Pay and Quarter-Master. That saving is secured against the pension

liability. There is another case of a Surveyor of the Lands and Mines Department. He retired voluntarily as from the 1st July at a reduced pension of \$560 and a lump sum of \$3,040. This secures retrenchment of the office of a Surveyor, the salary of which was \$2,400 per annum. There are certain cases still under consideration, while others had to be refused because economy could not be secured by allowing the application.

Mr. CRANE: It seems to me a matter which this House will be justified in leaving to the discretion of Government, and I shall only express the hope that everything will be done in order to secure the public interest. We are giving Government the machinery for effecting economy and we hope real economy and not make-shifts will be effected.

Clauses of the Bill agreed to without further discussion.

The Council resumed.

Notice was given that at the next meeting of the Council it would be moved that the Bill be read the third time (*Mr. Millard*).

#### DEEDS REGISTRY BILL.

THE ATTORNEY-GENERAL: I move that "A Bill further to amend the Deeds Registry Ordinance, Chapter 177, with respect to Transports and Mortgages and the distribution of the proceeds of sales in execution" be read the second time. The particular provisions of the Deeds Registry Ordinance to be dealt with are contained in sections 26 and 27. Then there is a clause added, 4, with respect to transports subject to incumbrances. Originally the Deeds Registry Ordinance was passed in 1919 and in 1925 an amendment was made. That amendment was by no means satisfactory either to legal or commercial men and the defect is now being put right. There is to be a new sub-clause to section 26 which reads:—

Section twenty-six of the Principal Ordinance is hereby amended as follows:—

(a) by substituting the following for paragraph (ii.) of the proviso to sub-section (3) thereof:—

(ii) if the sale in execution is for the recovery or enforcement of a statutory claim, the title shall be free from all registered incum

brances, registered interests and registered leases, but any person may, within thirty days from the date of the sale (before which time judicial sale transport shall not be passed), pay to the Registrar the amount of the statutory claim and costs, and thereupon the sale shall be annulled; and

That makes it quite clear that whoever makes a purchase shall have an absolute and indefeasible title and it will not be subject to any registered incumbrance or anything else. That is in accordance with what the law is elsewhere. The next provision is to substitute a new paragraph for (d) in sub-section (4) of section 26 which reads :

(d) registered incumbrances from which the title is freed by operation of either of the provisos to sub-section (3) of this section or otherwise by operation of law in order of priority of rank, provided notice in writing of the amount due under any such incumbrance shall be given to the Registrar within fourteen days from the date of the sale.

What will happen under this clause is that only registered incumbrances will be paid from which the title is freed by operation of either of the provisos to sub-section (3) of this section or otherwise by operation of law in order of priority of rank. For section 27 is substituted a provision which I believe is very important from a commercial standpoint with regard to the priority of paying debts, and it reads :

27. A mortgagee under a mortgage passed after the first day of January nineteen hundred and twenty, shall be deemed to have had and shall have a right to make further advances or loans to the mortgagor to rank in priority to subsequent mortgages and with the same preference or priority as if they were included in the prior mortgage, if in such mortgage it is stated that the mortgagee may make such further advances or loans or that such further advances or loans are to be covered or secured by the mortgage or that the mortgage is to secure an overdraft or loan account, and some certain and definite sum is expressed in the mortgage as the limit beyond which the amount or balance (after crediting any payments made by the mortgagor thereunder) owing by the mortgagor at any one time shall not extend.

That is in accordance with the ordinary commercial usage of a mortgage covering further advances. Clause 4, as I said, relates to the effect of transport subject to incumbrance, and it is a very important and useful addition to our law. It reads :

4. Whenever a transport (including a judicial sale transport) is passed subject to any registered incumbrance, registered interest or registered lease, the transport shall be bound by all

the terms, covenants and conditions contained in the instrument creating that incumbrance, interest or lease and the holder of the incumbrance, interest or lease shall have the same rights and remedies against the transportee as if the incumbrance, interest or lease had been created by the transportee himself.

Dr. KELLY seconded.

Mr. CRANE: The importance of the amendments to the general law and practice is so great that I think very careful consideration should be given to them. I wish to say something with respect to the methods by which these amendments are secured from time to time. In matters of this kind the parties most concerned should be consulted before these amendments are made. The Civil Law Ordinance and all Ordinances connected with it require urgent consideration by a competent body of men no less than the Ordinance we are now amending. This Ordinance was passed in 1919, amended in 1925, 1929 and 1931, and it is now being sought to amend it in 1932. Tit-bits of amendments are scattered over the statute book and the public whom they affect are unable to ascertain what the law is. I am not blaming the hon. Attorney-General. Matters are attended to as soon as they are brought to his notice, but I think it is time that Government should appoint a proper Commission to go into the law of property with a view to effecting urgent and necessary reforms. We want certainty in the law; here we have mystery. It appears that the intention of clause 2 is that when a property is sold in execution for the recovery or enforcement of a statutory claim title shall be free from any incumbrance. I claim it is absurd to say that when a man buys a property at a public sale another man within 30 days should be in a position to disappoint him of the contract he has made. One can understand the case of the Town Council purchasing a property and allowing the proprietor to pay the taxes and re-acquire within 30 days. But we are making it difficult for creditors to collect their debts because intended purchasers will say that if they buy a property within 30 days the sale might be annulled. Government ought to get public opinion on these matters before they are brought to the Council. Clause 3 does not appear to be as objectionable as I first thought. The note I put against it was the word "Fraud" but I find it is provided for in the original



Ordinance. This clause permits a man to lend \$5,000 but he may actually lend no more than \$2,000. You may get a fraudulent mortgagee and a fraudulent mortgagor putting their heads together and making a mortgage deed for \$5,000 when only \$2,000 had been lent in actual fact. It is likely to lead to fraud. It will defeat the claims of other creditors who have debts just as sacred as those of mortgagees. If it were only companies that were lending money on mortgages there would not be the same objection because you can trace transactions through their books, but a large number of individuals lend money and keep no books. When you make a claim preferent it ought to be unimpeachable and not possibly be the subject matter of fraud. In the hands of unscrupulous money-lenders this provision might be the means of fraud. It seems to me that you are destroying the safeguard to give notice to a creditor that one proposes further to encumber his property and that the provision in the existing law should be retained. Time should be taken to consider the effect of these provisions.

The Council adjourned for lunch.

Mr. CRANE: I propose to add very little to my previous remarks. I say, firstly, that the sanctity of contracts must be respected, and it should not be open to anyone to make a statutory claim within 30 days to interfere with any transaction. Secondly, there should not be on the statute book a provision which enables advances to be made without any notice being given of the transaction, and if it is to remain there ought to be some provision that further advances must be declared before some public authority.

Mr. WOOLFORD: It is a matter of very great personal disappointment to me, not as an individual but as a member of the legal profession, that the opportunity for amending the Principal Ordinance in its most particular direction has not been sought. The proposed amendment, even if it is carried into effect, may not meet the aims and objects of those responsible for it and still leave untouched the far graver uncertainty, I might almost say injustice, to a purchaser who attends an execution sale in the hope of getting a free and absolute title to property. I have privately intimated to the Attorney-General that I

do not intend to put my knowledge against his as a jurist and whatever I say is the result of my own judgment in the matter. It is not to be taken as an *ex cathedra* pronouncement on the Ordinance, but I am consoled in my view by the knowledge that it was shared by Judges sitting on the Bench to-day and others who previously occupied it. That view is also augmented by the considered opinion of several members of the profession who have addressed their minds to the subject. In the first place the statement of the Attorney-General, that the purchaser at execution sale has conferred on him a free and absolute title to property knocked down to him, is in my opinion not a correct statement of the law. I do not think the Attorney-General himself would have been induced to say so if he had the benefit of argument on the subject, and I am sorry I had no opportunity of discussing the matter with him. Section 26 (3) of the Ordinance reads:

A judicial sale transport passed after the first day of January, nineteen hundred and twenty, shall vest in the transferee the full and absolute title to the immovable property, or the rights and interest therein, described in the transport; subject to (a) statutory claims; (b) registered incumbrances; (c) registered interests; (d) registered leases.

The words "subject to" are very important words. It has been urged, and I think it is the majority view, that the purchaser at execution sale acquires a property subject to a registered incumbrance if one exists at the time of the sale. If there is any doubt about that interpretation I invite the Council's attention to sub-clause (4) as to the duties imposed on the Registrar following upon a sale. That sub-clause supports the view that a sale at execution does not confer title free from hypothec. Both by expressed language and inferential language it would seem to be the better view that the property is sold subject to any registered incumbrance or statutory claim. A statutory claim can only arise if held by Government in respect of village rates, we will say, or by the Town Council in respect of taxes, or again by Government by way of Income Tax. In any way you look at it the duty is cast on the Registrar after the sale to recognise a statutory claim there may be or a registered incumbrance. I therefore urge on Government the necessity of postponing this Bill and so affording an oppor-

tunity of concerted opinion being taken. It was in 1921, shortly after the passing of the original Ordinance, that the question arose before the Full Court. In that matter I appeared for the petitioner and sought to get a judicial decision, but like most Courts of Appeal in cases involving several important reasons for appeal the real issue was avoided. On the second occasion, as late as November, 1929, Mr. Justice Savary had this very question before him, and after two days' argument by myself which nearly left me exhausted His Honour was unable, and counsel on the other side were themselves unable, to say what was the true state of the law. I have since heard that Mr. Justice Savary was inclined to support the view I now urge, and I believe I am correct in saying it was the majority view of both barristers and solicitors. If this amendment is to confer on the purchaser a free and absolute title and section 26, (3) and (4b), is retained it will nullify the object of the amendment. In other words, it is sought by this amendment that a purchaser of property levied on under some right under the statute shall have conferred on him title free from all registered incumbrances. That is not the view of many legal practitioners, therefore it is of the utmost importance that that view should be respected and that the opportunity should be taken of clearing the atmosphere in regard to the matter. It has been suggested to Government that the proposed amendment should be introduced to enable Government and the Municipality to enforce collection of their rates in order that they should not incur the risk of buying property with registered incumbrances.

The amendment in my view does not get rid of the clear and unequivocal language in section 26, therefore a person who buys a property will not be buying it free from the obligation to discharge a registered incumbrance in some form or other. The amendment says "any person" may, within 30 days from the date of sale, pay to the Registrar the amount of the statutory claim and costs, and thereupon the sale shall be annulled. I could understand the amendment if it were confined to the owner of the property, giving him 30 days within which to discharge his obligation, but it is not confined to him and is extended to anybody. The object

of the Ordinance was to ensure that whatever happened, however the sale was brought about, the property should not be sold to the detriment of the mortgagee by the sale *ipso facto* cancelling a mortgage. That is what hon. Members must address their minds to. Are you going to hinder the investment of capital in the Colony by not making it absolutely safe to a person to leave money invested in property? Are you going to allow such a dislocation in business dealings to take place by any uncertainty in the law? Are you making it known to the public by legislation of this kind that it is absolutely certain that property brought to sale is free from incumbrance? That is the statement made by the Attorney-General, and I ask Government not to be guided by what has merely been submitted to it without considering the opinions of several people, including the present occupants of the Bench. I ask that a very long pause should intervene between the introduction of the proposed amendment and the actual passage of the Bill. I will give the Council an illustration of what has happened. The Portuguese Pawn-broking Company sued a woman for \$140. The woman's property was levied on and sold for \$1,000. I think I am correct in saying that the person who bought was told that the property was mortgaged. Whatever his state of mind was he paid the mortgage claim, but the fact remains that there was a judicial sale which did not cancel the mortgage. At any rate the mortgagees put in a claim which they argued must be satisfied out of the proceeds of sale under section 26 (4). But what was the position of the owner of the property? The owner thought that when the property was sold she only owed \$140 and believing that she had paid her debt applied for the surplus proceeds. That is the true state of the law and Mr. Justice Savary himself told me he recognised the difficulties in it. Mr. De Freitas and other practitioners have also addressed themselves to the subject. It would be a grave error to proceed with the proposed amendment as framed. As I understand it one clause hinges on the other and one cannot be amended without the other. The question must be considered how far you are going to deprive people, some of whom are abroad temporarily, of rights established by law.

Mr. DIAS: I agree with a great deal of

what has been said by the two hon. Members who have spoken on this subject. I agree with them in the sense that it is necessary to consider some other important amendments than this Bill provides for. Nevertheless, I hope that those Members will withdraw any objections they have to the enactment of the proposed law because it will serve the purpose of tightening up certain doubtful questions which have arisen of late and help to abate the anxiety which certain mortgagees possess at the present moment. It should not be forgotten that the Ordinance came into existence introducing a new system. As a result of agitation a Committee of lawyers was appointed to consider what changes should be made in this matter, but while that Committee did its best it certainly did not produce exactly what was wanted and that has accounted for some of the amendments which have since become necessary. And there was some excuse for those amendments having regard to the fact that the Ordinance originally was introducing something new in the Colony.

Mr. WOOLFORD: Clause 26 was framed in the Court of Policy and it was worded in this way against the advice of the legal members. The acting Attorney General was very recalcitrant about it.

Mr. DIAS: Be that as it may, since then amendments have been made. I venture to think that the proposed amendment in clause 2 of the Bill is an improvement on the existing state of the law providing for two sales at execution in respect of the same property. The improvement suggested by this Bill is that there should be one sale only and it entitles the purchaser to a free title if the sale is for a statutory claim. The purchaser in that case gets a free title but with the reservation that any person may, within 30 days of the date of sale, pay to the Registrar the amount of the statutory claim and costs, whereupon the sale shall be annulled. And there is reason for it. In respect of all other sales the purchaser buys subject to the registered incumbrance, and if there is a mortgage he buys subject to the mortgage. Here it is intended to confer on the purchaser a free title in the sense that the registered incumbrance would not be attached to it if he bought

at a sale for a statutory debt. The provision of 30 days to pay the amount of a statutory claim is a safeguard to enable a mortgagee who fails to attend a sale and protect his interest to pay the debt and save his property. I suggest that is an improvement on the existing state of the law, though not an ideal one by any means. The new section 27 is, I venture to say, a useful provision and will not have the disastrous effect which the hon. Member for Demerara River anticipates. It relates to what is known as floating mortgages, puts on a sounder footing various transactions which occur to these mortgages, and removes certain difficulties which the Registrar has experienced.

It has been suggested that people might put their heads together for a mortgage for \$5,000 where only \$2,000 is involved. It is true that these things are possible but one has to consider whether it is rational for an individual to encumber his property with a liability of \$5,000 when he knows that he has got only \$2,000. My answer is that it is not a sane transaction and you will find people hesitating over passing mortgage for a debt in the manner suggested. There is a provision in this Bill that is very urgently needed. At the present time it is a doubtful question whether a man who buys a property subject to a mortgage is liable on that mortgage. Lending companies are very concerned over the matter because they are under the impression that if a property is bought on which they have a mortgage the new owner is obliged to carry out all the obligations of the original owner. This Bill settles that question and one of the purposes it will serve is to stimulate activity in the purchase of properties and possibly the lending of money by companies. With the aid of this section that doubt will no longer exist. I understood the hon. Member for New Amsterdam to say that a judicial transport must be subject to registered incumbrances. I submit that the proviso takes that out. The Ordinance requires full investigation into the whole of it and I hope that will soon come. I know that efforts are being made to deal with the matter, but I plead nevertheless that it would be useful to agree to the passing of the present Bill so as to afford greater security to matters mentioned in it which at the present moment are in doubt.

Mr. GONSALVES: I do not intend to traverse the ground covered by the Members who have spoken. I am in favour of the suggestion that the matter should be further considered. It seems to me that clauses 3 and 4 of the Bill might remain. Clause 3 seems very essential as I know from my practice that many difficulties have been created. If clause 4 is passed it will get over a controversial question and mortgagees would be more satisfied with their security. In those respects I agree that the Bill might be proceeded with and the two clauses might be passed in view of their importance.

Mr. WIGHT: I join in the plea for an extension of time to consider these amendments. I take the blame for the alteration made some time ago in connection with mortgages. I happened to be executor for Dr. Nedd whose property was mortgaged to an Insurance Company of which I was Chairman. I could not find a purchaser for that property as no one would take over a mortgage for \$10,000. I guaranteed the Company that they would not lose if they permit me to handle the matter. The property was put up for sale a second time for taxes and it failed to find a purchaser. It was then that the Registrar framed the section of the Ordinance to meet the particular case. The amendments might have a far-reaching effect to the local Insurance Companies, and I appeal for time as the thing is in a state of chaos at the moment. I am not going to deal with the legal aspect because that has been done, but I am going to say that the amendment in that respect is not an improvement on the present Ordinance, because properties are still being sold subject to existing mortgages. The British Guiana and Demerara Mutual Insurance Companies are largely interested in this matter and I suggest that it be deferred to enable them to consult their advisers. With regard to floating mortgages I am in entire agreement with the hon. Member for Demerara River. A man passes a mortgage on his property for \$5,000, then I advance him \$2,000 more, and he afterwards returns to the man who holds the mortgage for a further sum of \$5,000. Where do I stand? That is done almost daily. People want to get credit and in that way raise the money. There is no doubt that amendment of the Ordinance is urgently needed, but another week would

make no difference. We will go into the matter with the Secretaries and advisers of the Companies and return here and say we agree or disagree and proceed more expeditiously. We have heard the arguments of legal Members. The lawyers disagree and it is difficult for laymen to decide.

THE PRESIDENT: We have heard the legal arguments and, as the last speaker said, where lawyers disagree it is difficult to decide. Of course, Government must be guided by its legal adviser, and Government has no reason to believe that the law framed to meet the position as it stands at present is not the best in the circumstances. But the arguments brought forward make it advisable that further consideration of the Bill should be postponed to a later date. I think it is advisable to postpone it until next week but suggest that in the meantime any persons who are interested in the matter and have any points to bring forward should address themselves to the Attorney-General or the Registrar and put their representations forward. This is a question of law and must be decided as a question of law, but the people immediately concerned are the business men and their opinion we also want as well. If I may say so, I think this debate rather points to the necessity and advisability in this Colony for something in the nature of a Law Society which could deal with matters of this kind amongst themselves as a body and to which Bills of this kind should be sent. In my experience elsewhere the Council had a Law Committee. In cases of this kind Bills were referred to lawyers and one or two lay members—and there are one or two lay lawyers in this Council—and legal points were threshed out before they came before the Council. That procedure helped in the discussion. I do not know whether that is a procedure that will commend itself here but I think it would be useful. I welcome the contributions to this debate and think the best course is to postpone consideration of this Bill. The Attorney-General reserves to himself the right to reply to the speeches that have been made and an opportunity will be given to Members to address the Council further on the second reading apart from the points they have raised. I will postpone discussion until some day next week.

THE ATTORNEY-GENERAL: Perhaps I might add what I mentioned before on the occasion of the last amendment of the Deeds Registry Ordinance. It is recognised that the system of conveyancing requires amendment and elucidation. A good deal of preliminary work has to be done and is being done and as soon as it is ready a Committee will be appointed to deal with it.

THE PRESIDENT: The debate on this Bill is now postponed until next week.

CRIMINAL JUSTICE BILL.

THE ATTORNEY-GENERAL: Before the Council adjourns I give notice that when the Committee stage of the Criminal Justice Bill is reached I shall move the amendment of the Bill by the insertion of two new clauses.

The Council adjourned until the following day at 11 o'clock.