

## LEGISLATIVE COUNCIL.

*Wednesday, 24th August, 1932.*

The Council met pursuant to adjournment, His Excellency the Hon. C. DOUGLAS-JONES, C.M.G., the Officer Administering the Government, President, in the Chair.

### PRESENT.

The Hon. the Colonial Secretary, Major W. Bain Gray, M.A., Ph.D (Edin.), B. Litt. (Oxon), (Acting).

The Hon. the Attorney-General, Mr. F. J. J. F. McDowell (Acting.)

The Hon. F. Dias O.B.E. (Nominated Unofficial Member).

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

The Hon. E. F. Fredericks, LL.B. (Essequebo River).

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

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

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

The Hon. E. F. McDavid, Colonial Treasurer (Acting).

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

The Hon. J. Mullin, A.I.M.M., F.S.I., Commissioner of Lands and Mines.

The Hon. Q. B. De Freitas, M.R.C.S. (Eng.), L.R.C.P. (Lond.), Surgeon-General (Acting).

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. J. Eleazar (Berbice River).

The Hon. J. Gonsalves (Georgetown South).

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

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

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

The Hon. C. Farrar (Nominated Unofficial Member).

The Hon. Peer Bacchus (Western Berbice).

### MINUTES.

The minutes of the meeting of the Council held on the 23rd August, as printed and circulated, were confirmed.

### MEMBER SWORN.

The following Member took and subscribed to the Oath :—

Mr. W. Francis, Government Analyst.

### PAPER LAID.

The following document was laid on the table :—

Annual Report of the Post Office Savings Bank for 1931 (*Colonial Secretary*).

### GOVERNMENT NOTICE.

Notice was given that at the next meeting of the Council leave would be asked to introduce and have read a first time :—

A Bill to amend the Customs Ordinance, Chapter 33, in order to prohibit the importation of motor vehicles constructed with a left hand drive (*Attorney-General*).

### THE CONSTITUTION.

Mr. CANNON: I should like to have a pronouncement from you, sir, on my request yesterday to give the Council an opportunity to correct a mis-statement which was made in the House of Commons in relation to the Constitution. As requested, I furnished the Colonial Secretary with the information, and I propose to ask you to allow me to read a typewritten copy of Hansard of the House of Commons relating to the incident on the 1st July. It is as follows :—

Mr. Mander: I want to ask the Under Secretary some questions about different Colonies. First there is British Guiana. For a number of years that Colony enjoyed a special Constitution with wide powers. It was found to be rather cumbersome and not in accordance with the Colony's needs, and as the result of an enquiry held a few years ago a new Constitution was set up in 1928. But that does not seem to have put the matter right. There is very great dissatisfaction. The new Constitution actually withdrew some of the democratic powers that the people had got, at any rate for the time being. I understand that on July 6 of last year a large public meeting was held at Georgetown, Demerara, at which a resolution was passed that a deputation, consisting of three citizens of British Guiana, should be sent over to confer with the Secretary of State and to present a memorial which had been drawn up in the Colony, setting out their profound dissatisfaction with the state of affairs under the new Constitution, and a desire that further amendment should be made, including actual proposals as to what those amendments should be. Here is one example of the sort of thing they complain of. It was stated that in the Legislative Council, since the new Constitution of 1928 had come into force, on no fewer than 28 occasions did the Governor over-ride the unanimous wishes of all the Elected Members present on those occasions. I do not know whether any reply has been sent to their request for something to be done in the matter and for a delegation to come here. As far as I know no action has been taken. The Colony is in a bad way economically and in receipt of a State grant. I am sure that anything that the Government are able to say with regard to giving satisfaction to the very strongly held feelings of the people there it would be wise to say now.

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Mr. Mander: Can the right hon. Gentleman say anything in reply to my question about British Guiana?

Sir Philip Cunliffe-Lister: I think the suggestion was that a Committee should come over to this country. I looked into that some time ago, and I found that when a motion was put forward at that time, it did not receive much support in British Guiana. I think the suggestion was made, though it has received very little support there, that a Committee should come here at the public expense.

Mr. Mander: It has the support of the whole Elected Members of the House and of a very large public meeting at Georgetown.

Sir Philip Cunliffe-Lister: I think that the hon. Gentleman happens to be wrong on that point. The vote in the House did not receive the whole support. My hon. Friend tells me it was 14 to 6, and that was, as a matter of fact, my recollection. The hon. Gentleman, perhaps, is not aware that this House is making a Loan-in-aid of £120,000 this year—I think it was £220,000 last year—to British Guiana, and I do not think, in those circumstances, it would be a reasonable proposition that any alteration in the Constitution should take place. I do not think it would be a reasonable proposition, when money is so much required, that we should spend public money in order that such a Committee should come here.

I ask Your Excellency to say whether an opportunity would be given this House to contradict that statement, and I shall be glad to know whether we are at liberty to do so now.

THE PRESIDENT: It was only yesterday the point was raised and the hon. Member tabled some questions. The answers to those questions will be prepared and given in due course. The papers with reference to the matter referred to in the extract from Hansard were only sent to me to-day and I have not had an opportunity to consider them. An opportunity will be given the hon. Member to move a motion.

MR. CANNON: My friend the hon. Member for Berbice River has a motion to move on the subject.

MR. ELEAZAR: I give notice of the following motion:—

Whereas the political constitution substituted in 1928 for the Colonial constitution of 1891 was unwelcomed and undesired by the people of this Colony and has led to grave dissatisfaction amongst His Majesty's subjects in this Colony;

And whereas by reason of the present form of constitution the economy necessary to rehabilitate the Colony's financial position cannot be effected, and the material progress of His Majesty's said subjects in the Colony is greatly retarded:

*Be it Resolved*,—That this Council respectfully requests the Secretary of State for the Colonies to direct the local Government to appoint a Committee of this Council consisting of not fewer than five elected and not more than three official members to draw up the outline of the constitution which may be considered suitable to the needs of the Colony and calculated to afford His Majesty's said subjects reasonable participation in the Government of the Colony under proper safeguards of Colonial and Imperial interests and in such a form as is compatible with the aspirations and well-being of the inhabitants in general.

## ORDER OF THE DAY.

### EDUCATION AND LABOUR.

MR. SEERAM asked the following questions of which he had given notice:—

1. How many Education Officers are employed by Government?
2. How many of these are employed in (a) Essequibo, (b) Demerara (excluding Georgetown), (c) Berbice?
3. How many persons have been prosecuted throughout the Colony for the past five years for employing East Indian children; (a) of nine

years of age, (b) of twelve years of age during school hours ?

4. When will Government proclaim the Education Ordinance of 1932, in the *Official Gazette*, in order that the said Ordinance may be operative

THE COLONIAL SECRETARY (Major Bain Gray) replied as follows :—

1. Three. Two resident in Georgetown and one in New Amsterdam.

2. (a) and (b)—One of the officers resident in Georgetown is detailed for duty in Essequibo and Demerara (excluding Georgetown) when available.

(c) One.

3. There have been several reports of employment of children under both (a) and (b) but no persons have been prosecuted. Although no prosecutions have taken place, several employers have been warned. The following table gives details :—

	No. of warnings issued.
1927 ...	9
1928	Nil
1929	9
1930	6
1931	9

In October, 1930, an *Official Gazette* notice was published directing the attention of all employers, parents, and guardians to the relative sections of the Education Ordinance. Copies of this notice were sent to all estate managers.

Difficulty is experienced in obtaining sufficient evidence upon which to institute proceedings.

In addition to the reluctance of parents to give information when the child is earning wages, there is often difficulty in ascertaining the correct age of the child especially where East Indians are involved.

4. It is intended that the Education Ordinance of 1932, shall become operative during the next school year, probably on 1st January, 1933.

#### BILLS

The following Bills were read the first time :—

A Bill to repeal the A. Fawcett Pension Ordinance, 1932.

A Bill to repeal the Plantation Shops Ordinance, Chapter 156 (*Colonial Secretary*).

A Bill to make provision for the regulation and use of motor vehicles.

A Bill to make provision for the repayment to Government of amounts advanced by Government to defray the cost of the operation and maintenance of drainage and irrigation works constructed before the application to such works of the Drainage and Irrigation Ordinance, 1927.

A Bill to authorise the Governor in Council to reduce the total cost of works in certain cases under the Drainage and Irrigation Ordinance, 1927, for the purpose of affording relief in the proportion to be paid by proprietors and local authorities.

A Bill to secure the Exhibition of a certain proportion of British Films, and for purposes connected therewith.

A Bill to amend the Cinematograph Ordinance, Chapter 105, by making provision for the appointment and duties of Censors (*Attorney-General*).

A Bill to amend the Animals (Breed and contagious Diseases) Ordinance, Chapter 272.

A Bill to provide for the control of Sugar Experiment Stations.

A Bill to amend the Rice (Export Grading) Ordinance, 1930, by providing for the blending of rice for export and the making of Regulations in connection therewith (*Professor Dash*).

A Bill to allow and confirm certain expenditure incurred in the year ended thirty-first day of December, 1931.

A Bill to amend the Stamp Duties (Management) Ordinance, Chapter 43, with respect to the cancellation of adhesive stamps.

A Bill to amend the Life Assurance Companies Ordinance, 1930, by providing that registered Friendly Societies and registered Trade Unions are not subject to the provisions thereof (*Mr. McDavid*).

Notice was given that at the next or a subsequent meeting of the Council it would be moved that these Bills be read the second time.

#### COMPASSIONATE ALLOWANCE.

THE COLONIAL SECRETARY: I move :—

That, with reference to Message No. 16 of 1932, from the Officer Administering the Government, this Council approves of the grant of a compassionate allowance of \$15 a month to Miss Gertrude Irene Bishop, uncertificated assistant teacher of Charlestown Roman Catholic School, from the date of her retirement, 1st June, 1932.

The circumstances of this case are fully set out in the Message and I formally move the motion.

Mr. DIAS seconded.

Mr. WOOLFORD: Is it intended that \$15 a month shall be paid from month to month and year to year until the person dies? If that is the intention it is not expressed in the motion.

THE COLONIAL SECRETARY: That is the intention. It is intended to be a permanent annuity. It is in the nature of a pension but it is described as a compassionate allowance.

Mr. WOOLFORD: I prefer myself to see the words "an annual compassionate

allowance of \$15 a month" or words to indicate that it is to last until the person dies.

Mr. CRANE: I think the hon. Member is quite correct in calling the attention of the House to the verbiage of this motion, because later on we might find some official who is called upon to interpret it for the purpose of making payment claiming that it is not an annual payment. My view is that this is the form to be restricted to a single lump sum payment.

Mr. FREDERICKS: I very much appreciate what has fallen from the two hon. Members, but I certainly dissociate myself from anything which would keep this person from her money any longer. It is true one can constructively say the motion might have been clearer, but practically these matters have been dealt with in this form. I would have said nothing but for the fact that the hon. Member for Demerara River has suggested that the motion should be withheld for some amendment. This woman and others have been without the money for three months and while I appreciate that every technicality should be removed every good would be done if the motion is passed as it is and there is no further delay.

Mr. ELEAZAR: I am going to suggest that the people dealt with in the next motion be put in the same category as in this and given a pension rather than a gratuity.

THE PRESIDENT: I think the objection can be met by the substitution of the words "\$180 per annum" for the words "\$15 a month."

THE COLONIAL SECRETARY: I move that amendment.

Motion, as amended, agreed to.

#### COMPASSIONATE GRATUITIES.

THE COLONIAL SECRETARY: I move:—

That, with reference to Message No. 17 of 1932, from the Officer Administering the Government, this Council approves of the grant to the undermentioned uncertificated assistant teachers of compassionate gratuities as set out against their names:—

Name.	Name of School	Gratuity to be Paid.
Mr. A. Bovell	Maib rough Roman Catholic School	\$ 180
Miss C. C. La Rose	New Amsterdam Congregational School	120

The circumstances of this case are also set out in the Message referred to. I will not take up the time of the Council by repeating them unless there is any particular point on which I can give information.

Mr. ELEAZAR: I second the motion. Miss La Rose has been a teacher all her life, notwithstanding that she has been teaching only 11½ years in a Government aided school. She was one of my contemporaries. In those days the estates' authorities had to keep schools by law and pay the teachers themselves. For a long period Miss La Rose was engaged in an estate school at Everton. She is now 60 years of age and Government might see its way to give her, instead of a gratuity, a pension for the balance of her life. Instead of a lump sum I am suggesting \$10 a month during her lifetime.

THE COLONIAL SECRETARY: I am afraid that suggestion cannot be adopted. This teacher has served for less than half the statutory period, so it is quite impossible to give her a pension or a compassionate allowance.

Mr. SEERAM: I support the appeal of the hon. Member. Miss La Rose has greater service than Miss Bishop and I think the request is a reasonable and equitable one.

THE PRESIDENT: I appreciate the views of hon. Members but I am afraid I cannot accept the suggestion. It would open a very wide field for requests from people in a similar position whose cases have been already decided.

Motion agreed to.

#### PARCELS REGULATIONS.

THE COLONIAL SECRETARY: I move that Regulations relating to rates of postage on parcels to Martinique, French West Indies, be made.

Mr. DIAS seconded.



The Council went into Committee and approved of the regulations without discussion.

The Council resumed and the regulations were passed.

#### MOTOR VEHICLES BILL.

THE COLONIAL SECRETARY: I am instructed to withdraw "A Bill to make provision for the regulation and use of motor vehicles." A new Bill on the subject has been published and will be submitted to the Council.

Bill withdrawn accordingly.

#### APPROPRIATION BILL.

Mr. McDAVID (Colonial Treasurer): I beg to move the second reading of "A Bill to appropriate the supplies granted in the last session of the Legislative Council." This Bill provides statutory authority to expend the money granted by this Council. It follows the usual course, and therefore it is not necessary to say much about it.

Mr. MULLIN seconded.

Question put, and agreed to.

Bill read the second time.

The Council resolved itself into Committee and considered the Bill clause by clause without 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. Mc David*).

#### THE MITCHELL TRUST.

THE ATTORNEY-GENERAL (Mr. McDowell): I beg to move the following motion:—

That, with reference to Message No. 19 of 1932, from the Officer Administering the Government, this Council approves of a case being prepared and submitted to the Supreme Court for a legal decision as to the correct interpretation of the will of Walter Mitchell, deceased, on the question whether legitimacy at time of birth is a necessary qualification of those

receiving benefits under the will, and other questions arising out of the interpretation of the will.

To explain this motion I have to touch shortly on the legal history and legal position of this Trust, and we have to go back to 1784 when De Saffon made a will that is known to all of us. In his will, which was written in French, De Saffon gave certain instructions as to the class of persons who were to benefit, natives of the Colony without distinction of sex. The administration of the Trust was vested in the Court of Justice, but in 1896 the Judges of the Supreme Court refused any longer to nominate the orphans for the Foundation. Regulations were made by the Court of Policy, and ultimately Ordinance 5 of 1904 was passed. In the preamble of that Ordinance was recited a translation of the will and the beneficiaries are interpreted to be children "born of lawful wedlock." I have very grave doubts indeed whether those words were correctly interpreted. The words "born of lawful wedlock" have a perfectly definite meaning. They have been judicially construed many times in England, and they exclude all cases of legitimation by subsequent matrimony. The actual meaning of the words used in the will I should not like to pronounce because I think the only person competent to pronounce on them is a French lawyer. The question is of considerable importance when we come to consider the will of Walter Mitchell. This will was made on the 24th March, 1862, and Mitchell died twenty days after. The material portion of the will is:—

I request that the Legislature of the Colony will have the investment continued as I have herebefore mentioned for a period of fifteen years from my death when the capital and interest shall be at the disposal of the Legislature of the Colony in order to form or found a Church College or other charitable institution in this Colony similar to the Saffon Establishment though not with the same exclusion but under similar rules for such purpose appointing the Legislature my residuary heir leaving the arrangement to the superior judgment of the Governor and Court of Policy.

I have been unable to trace any regulations until we come to the year 1928. Regulation 3 (a) says: "A Mitchell foundation may be held only by a boy or a girl born in lawful wedlock, whose parent or guardian is in poor or necessitous circumstances." My own personal opinion is that that regulation is not justified, quite

apart from the translation of De Saffon's will, by the terms of the will itself (Hear, hear). We have to go to the will for instructions, and the will says "similar to the Saffon Establishment though not with the same exclusion." "Lawful wedlock" seems to be one of the conditions Mitchell excepted. Had this question come before me without seeing the regulations, and without having the legal opinion of a very brilliant lawyer in this Colony, I should unhesitatingly have said that Mitchell never intended to make legitimacy a cardinal point of his will (Hear, hear). There has been no Ordinance, as in the case of the Saffon Trust, and there has been given no power to the Legislative body to make regulations. I am not sure that these regulations are not *ultra vires*. The Legislative Council in this case is not a law-making body but is simply in the position of a body of private trustees. That seems to me to be the legal position. The hon. Member for New Amsterdam has given notice of a motion by which the whole thing should be regularised by a Committee. I think that in a disputed question like this the only body to give a ruling for our guidance as to whether there is a limitation or not to legitimate children is the Supreme Court, which would do the same thing as if we were private trustees administering a will and had the right to apply to the Court for directions. That is all this motion is for.

Mr. CRANE: This matter was brought to the notice of Elected Members by means of a round robin, which asked whether we were prepared to sanction the proposed application to the Supreme Court. My view is that the matter is too important to be decided by a round robin, which deprives Members of an opportunity of hearing what each other has to say. I give Government credit for good intentions but suggest that it has not adopted the right course in proposing to go to the Supreme Court for an interpretation of the will. We have two exclusions in the will of De Saffon, one that it should not extend to illegitimate children and the other to persons of colour. Whatever is the precise interpretation of De Saffon's will it is clear that there is an exclusion in respect of illegitimate children. But Mitchell comes along and says "No. On similar lines my bounty must be disposed of, but not with the same exclusion." It

appears to admit of no doubt that illegitimacy was to be no bar to any child enjoying the foundation which he was about to establish. In 1928 we find the Government casting about for some interpretation as to what the words meant, and the adviser of that date gave it as his opinion that illegitimate children could not enjoy the benefits. On the Governor and Court of Policy was imposed the duty of exercising its supreme judgment and I cannot agree that the Governor and Court of Policy there meant the Legislature not in the ordinary sense of the term but as a body of trustees. It is a distinction which has no juridical foundation. The Legislature expresses its will in the form of a statute, and what it should have done in 1928 was to pass a statute. My opinion is that the regulations are *ultra vires*. I prefer to regard them not as *ultra vires* but as a nullity because no power was given to make regulations. Doubts having arisen Government is advised, as though it were a private individual administering a will, to go to the Supreme Court to interpret those doubts. It is not the custom or proper procedure to suggest where doubts have arisen in legislation that Government should go to the Law Courts to settle them. Doubts are not settled by judicial decision; judicial decision merely confirms doubts. There is a principle of the British Constitution that where doubts exist it is the legislative body that sets them right, because what the Legislature says is the law cannot be denied by any man. There is no other authority than this House to set at rest the doubts which have arisen.

This House is being asked to abdicate its functions and to commit them to a tribunal to which I pay the greatest deference and respect, but which I respectfully submit is inferior in authority to this House. I claim that the question of whether we are going to admit legitimate or illegitimate children to the benefit of this foundation is one of policy to be decided by this House. The will says "I leave the Legislature my residuary heir leaving the arrangement to the superior judgment of the Governor and Court of Policy." In 1928 Government decided to accept the interpretation of this House in framing regulations. Is the Legislature to be asked to incur expenditure to get an

opinion which is less valuable than an enactment of this House? I object to it on the ground that it is not the best legal determination of the matter you can get. I view it with great jealousy from the point of view of privilege of this House, and also on the ground that it is not the best decision you can get. The hon. Member for New Amsterdam has raised a very important question. By his will Mitchell never intended that his foundation was to be used for the purpose of making grants to students as has been the case. There is much in the contention that if it is impossible to carry out a Trust precisely as the creator of that Trust intended equity will always enable the trustee to administer it as nearly as possible to the intention of the person creating the Trust. It appears to me that what Government has been doing is to carry out as near as possible the intention of the party creating the Trust. The hon. Member for New Amsterdam is quite right in saying that Government is not carrying out the intention of the Trust, but I think he will agree that if it is to be carried out it should be carried out as nearly as possible to the expressed intention of the donor. I submit that all that is required at the present moment is that Government should set out what it considers ought to be the policy in dealing with the matter. Then when it is brought here we will discuss whether that should be the policy or whether it be revised in some manner. This is a public Trust, but if I am to be allowed to make a suggestion it is that the public at large who are interested in it do not desire it to be limited merely to legitimate children. When the Legitimacy Ordinance was before the House I was the champion of illegitimate children. In my opinion a child whether born in wedlock or out of wedlock is entitled to the same treatment at the hands of Government, and no distinction should prevail when it comes to the enjoyment of public benefits. A child is not responsible for the circumstances of its birth and I will be no party to depriving illegitimate children of the benefit of a good education. I suggest that Government should prepare a draft Bill embodying its own opinions and giving the Governor-in-Council power to make rules.

Mr. FREDERICKS: This is a matter of public importance and I think the motion before the Council should be

delayed until the other by the hon. Member for New Amsterdam has been discussed. If the matter goes before the Supreme Court that may not be the end of it. I am forced to ask Government to adopt the course I have suggested, this matter being of the importance it is. These scholarships have for years been enjoyed by all and sundry, and if suddenly certain sections of the community are to be denied the right of enjoying them the motion of the hon. Member should be given preference. There is no reason why a child who wins the scholarship should not enjoy it until six months or a year afterwards. I again ask that the motion of the hon. Member be given preference before a decision is arrived at on this motion.

Mr. GONSALVES: So much has been said by the hon. Member for Demerara River on this question that it will be sufficient to indicate the difficulty of deciding it on this motion. The motion of the hon. Member for New Amsterdam is one which will afford the House an opportunity of getting the views of the legal Members, and perhaps of one or two laymen who might be able to assist them. The principal point to be considered is that if we decide to go to the Supreme Court to have the question settled the judgment would not be what lawyers would call "a fully considered one" from the point of view that the arguments would be put forward by one party only, unless it is suggested by the hon. Attorney-General that somebody would be appointed to represent some other person and argue the other side of the question. Even if the Supreme Court decided the question favourably to Government's view and a Bill is brought forward to give effect to it, it does not necessarily follow that that opinion of the Court would be accepted by all the Members of this House, who perhaps would have their own views in respect of the Court's interpretation. There is also the question whether the regulations are in order or not. A good deal of time and energy could be saved by the adoption of the suggestion to appoint a Committee to consider the matter. If when that Committee reports the Council feel not satisfied with that view and there is any doubt in our minds we could still then get the decision of the Supreme Court.

Mr. SEERAM: I am supporting the



suggestion that preference be given to the motion of the hon. Member for New Amsterdam. If I were asked to say whether illegitimacy was an exclusion under the will I would say "certainly not."

THE PRESIDENT: I should like to hear the hon. Member for New Amsterdam on the suggestion that we should take his motion first.

Mr. WOOLFORD: I have very definite views myself both as to the interpretation that may be given to the will of De Saffon as well as the intention of Walter Mitchell himself. Altogether apart from the legal aspect of the motion itself, it occurs to me, having regard to the past administration of the Saffon Trust and the intention of Walter Mitchell himself, that a period should be put to what I feel bound to say have been very many abuses of the intention of De Saffon himself, and I am very anxious that those abuses should not be perpetrated in the case of Walter Mitchell. It may be very interesting to several Members to know that I made enquiries of several Michell Scholars whether they knew who Walter Mitchell was, and I found that none of the beneficiaries under the will was able to tell me who he was, whether he was born in the Colony or where he came from, and under what circumstances he gave this very handsome bequest to the Colony. It would appear that Mr. Mitchell was a Scotsman and at the time of his death De Saffon had been long dead. As a matter of fact the institution known as the Saffon Institution had already started on its course of instruction, maintenance and the general uplift of orphan children, and it seems to me that what Walter Mitchell had in his mind was the image of a similar institution that would perpetuate his memory and also benefit the same class of persons of both sexes that he had himself witnessed had become beneficiaries of the Saffon Institution. His bequest was not sufficient to create an institution of such magnitude as the Saffon Institution, but he made the stipulation that for a period of fifteen years the capital and interest shall be funded for that purpose. It was clearly his intention that some school should be established to his memory as an incentive to others to do likewise, and it is greatly to be regretted that when the regulations were made that was over-

looked. Mitchell never intended to exclude natural children from the benefit of his bequest (Hear, hear).

Unfortunately, the preamble of Ordinance 5 of 1904 is omitted from the last revised edition of the laws, and it only shows how compilers differ and how men entrusted with this work approach the question. From the preamble of that Ordinance it appears to me that there were two exclusions intended by De Saffon. First of all, there was the exclusion of anyone who was not a native of this Colony. De Saffon was himself of French descent, but he came here and made a little money, and his intention was to benefit natives of this Colony, the descendants of those who had assisted him to make good. His first limitation or exclusion was clearly that no one should benefit but natives of the Colony. Then the interpretation of his will goes on to say "without distinction of sex, but nevertheless of lawful wedlock." It appears to me that when Mitchell was making his will he bore in mind those two exclusions. Whatever may be the doubt that has arisen in anybody's mind as to the correctness of the French translation of De Saffon's will, there can be no doubt that Mitchell accepted that interpretation as being correct. He had it before him. If Mitchell had that translation before him it would be clear that he meant that illegitimate children be not excluded. It only goes to show how careful you have to be when not knowing all the facts. I do not think the circumstances surrounding the will of Walter Mitchell justify us in approaching the Court unless this Council has had an opportunity of arriving at some settlement of what was in his mind when he made that will, and it is for that purpose I am inviting the Council to say whether there should be a Committee of this Council to determine the question. It was his intention that we should be the determining factor in settling the distribution of his will and the issue to be created by it, and the chief legislative body has never had an opportunity to do so. Mitchell intended that the final arbitrator should be the Legislature of the Colony and we would be surrendering one of our privileges if we do not take advantage of it.

THE COLONIAL SECRETARY: A question has arisen in respect of a boy



who should be starting his course of secondary education on the 1st September, and that is the reason why Government is asking that the matter be proceeded with.

Mr. WOOLFORD: I am asking that Government should not press this motion this afternoon and that I be allowed an opportunity to move my motion formally to-morrow.

THE PRESIDENT: I appreciate the remarks of the hon. Member and thank him for what he has said. I think it would be a very good thing even before the House proceeded any further to have a Select Committee go into the matter.

Mr. ELEAZAR: I should like to point out that when De Saffon's will was made slavery had not yet been abolished, hence the question of illegitimacy was a prominent feature of social life. When in the late 'eighties the will of Mr. Mitchell was

made, slavery had been abolished and social conditions had greatly improved, and there was therefore no necessity then for any exclusion. There is no reason why this matter should engage the attention of the Supreme Court when it was the intention of the benefactor that the rules should be subject to the superior judgment of the Legislature.

THE PRESIDENT: I think it is only right that before the Council commits itself any further it should know more about the whole position. That being so I am prepared to ask the Colonial Secretary to move the adjournment of the debate and give the hon. Member for New Amsterdam an opportunity to move his motion to-morrow.

THE COLONIAL SECRETARY moved the adjournment of the debate.

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