LEGISLATIVE COUNCIL.

Wednesday, 2nd January, 1929.

The Council met pursuant to adjournment, *His Excellency the Governor,* BRIGADIER-GENERAL SIR GORDON GUGGISBERG, K.C.M.G., D.S.O., 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. A. P. G. Austin (Nominated Unofficial Member).

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

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

The Hon. T. Millard, 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. R. E. Brassington, (Senior Member for North-West Essequebo).

The Hon. R. V. Evan Wong, B.Sc., (Senior Member for South-East Essequebo).

Colonel The Hon. W. E. H. Bradburn, Inspector-General of Police.

Major The Hon. J. C. Craig, D.S.O., Director of Public Works.

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

The Hon. S. H. Bayley, Managing Director, Colonial Transport Department.

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

The Hon. N. Cannon, (Senior Member for Georgetown).

The Hon. H. C. Humphrys, (Member for East Demerara).

The Hon. A. V. Crane, LL.B., (Lond.), (Member for West Demerara).

The Hon. Percy C. Wight, (Junior Member for Georgetown).

The Hon. J. Eleazar, (Junior Member for New Amsterdam).

The Hon. J. Gonsalves, (Member for Georgetown).

The Hon. A. E. Seeram, (Member for Demerara).

The Hon. S. McD. DeFreitas, M.A., (Junior Member for North-West Essequebo).

The Hon. J. Smith, (Nominated Unofficial Member).

The Hon. S. H. Seymour, A.M.I. Mech. E., (Nominated Unofficial Member).

MINUTES.

The minutes of the previous meeting of the Council on the 21st December, 1928, which had been printed and circulated, were taken as read and confirmed.

ANNOUNCEMENT.

NEW YEAR'S HONOURS LIST.

The COLONIAL SECRETARY (Mr. C. Douglas-Jones): I have to announce that His Excellency the Governor has received the following telegram from the Secretary of State:—

Owing to the King's illness the Prime Minister is at present unable to make the customary submissions to His Majesty for New Year's Honours List which will in consequence be postponed.

GOVERNMENT NOTICES.

INTRODUCTION OF BILLS.

Notice was given that the following Government Bills would be introduced and read a first time at the next meeting of the Council:—

Bill to provide for the registration in the Colony of Trade Marks registered in the United Kingdom.

Bill to provide for the registration in the Colony of Designs registered in the United Kingdom.

Bill to amend the Summary Conviction Offences Ordinance, 1893, with respect to the suppression of the circulation of and traffic in obscene publications.—(*Attorney General*).

Bill to empower the Mayor and Town Council of Georgetown to levy a rate during the year nineteen hundred and twenty-nine to raise the sum of two hundred and thirty-nine thousand eight hundred and fifty dollars, in order to pay the Government interest which has accrued and to accrue during the said year on amounts advanced to the Town Council by the Government for the execution of certain improvement works and to defray the maintenance and upkeep of completed parts of the said works.—(*Mr. Millard, Colonial Treasurer*).

Bill to provide for the control of Sugar Experiment Stations. — (*Professor Dash, Director of Agriculture*).

AUTHORISING EXPENDITURE.

Mr. MILLARD (Colonial Treasurer): I give notice that at the next meeting of the Council I will move the following motion:—

That this Council hereby authorises the expenditure of all such moneys as are essential for carrying on the Government of the Colony, pending the voting by this Council of the Annual Estimates of Expenditure for 1929.

UNOFFICIAL NOTICES.

AMENDMENTS TO BILLS.

Mr. CRANE: I give notice that when this Council resolves itself into Committee to consider the Bill to make provision for appeals from the decisions of Magistrates I shall move the amendments indicated on the memorandum which I hand in. I further give notice that when the Council is in Committee on the Bill to make provision with respect to the discipline of Legal Practitioners I shall move the amendments indicated on the memorandum.

ORDER OF THE DAY.

BILLS.

Motion made, and question put and agreed to, that the following Bills be read the first time:—

A Bill to fix a tariff of duties on goods imported into and exported from the Colony.

A Bill to impose certain taxes for the public use in the Colony—(*Colonial Secretary*).

Bills read the first time and notice given of their second reading at the next meeting of the Council.

LIQUOR LICENCES BILL.

The ATTORNEY GENERAL (Mr. Hector Josephs): I am down to move the third reading of "A Bill to make provision for the granting of licences for the sale of intoxicating liquor and for the regulation of such sale and the control of licensed premises." The hon. Junior Member for Georgetown (Mr. Wight) proposes to move an amendment, and he ought to move it before I proceed.

Mr. WIGHT: I wish to move an amendment but I find that I cannot get it passed, so there is no use wasting the time of the Council.

The ATTORNEY GENERAL: In consequence of the reading having been deferred a clerical change has to be made in clause 1 by substituting 1929 for 1928, as the Bill will be passed in 1929 instead of 1928. Subject to that I move that the Bill be read the third time.

Mr. WOOD seconded.

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

Bill read a third time and passed.

APPEALS FROM MAGISTRATES' DECISIONS.

The ATTORNEY GENERAL: I have, sir, to move the second reading of "A Bill to make provision for appeals from the decisions of Magistrates." Fortunately, we are assisted in this Council by ten or eleven members of the legal profession, but there are laymen to whom it is necessary to make some explanation as to the objects and purposes of this Bill. Provisions with regard to appeals from the decisions of Magistrates are contained in Ordinance No. 13 of 1893. That Ordinance was made with reference to a condition of affairs which no longer exists. Even then it was difficult to understand why there were so many limitations and restrictions in connexion with it. For instance, the lodging of appeals cannot be effected by the time one can get the notes of Magistrates. The limit is five days in the original Ordinance and it is difficult to get copies of evidence within five days. There is a saving provision by which you can go to the Supreme Court, which involves a great deal of expense and extra labour for really no useful purpose. The Legislature at that time treated the Magistrate as if he were a sort of party to an appeal, and notice had to be served on him as if he were one of the parties. All that is changed. The Clerk of the Court will get the notice and prepare the records. The position is that a man can give notice of appeal on decision being given in the Court or within fourteen days thereafter, and he must give proper recognisance. Then the Magistrate will have to give his reasons for judgment, and notice of those reasons is given to the parties. The appellant then prepares and files his grounds of appeal, which are set out in the law, and when he does that then the matter goes before the Supreme Court. There is some extension of the grounds of appeal which I think would be very useful; there is also an alteration. Under the old Ordinance there was power which entitled the Attorney General to obtain as of right from the Supreme Court an order of review within three months of the hearing of a case, if the Attorney General was of opinion that there was a case for appeal, but the object of that was spoilt by subsequent provisions because instead of the control of the appeal being in his hands it passed into the hands of the parties concerned. A matter might be of such importance that the Attorney General thinks it is necessary for him to take action, and the prerogative is taken for him to apply to the Court for an order that such decision shall be brought by way of review before the Court. The Bill modernises the practice and its sole object is to make the procedure in the Court simpler and easier and so get away from the existing complication.

Mr. CRANE: I second the motion. I think I need only congratulate Government on the step it has taken in order to perfect this statute, which is in almost daily use with legal practitioners, for the benefit of the public. There are, however, one or two amendments which I hope Government will accept when we go into Committee. The chief amendment is one which will result in restoring to one branch of the legal profession a privilege which was taken away from it in 1922. I will not detain the Council by stating the reasons at this stage because they can very well be stated when the particular point is reached.

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

Clause 5 (1)—Security.

Mr. CRANE: Sub-clause (1) introduces a new feature in the procedure of appeals from Magistrates to the Supreme Court. It requires an appellant on giving notice of appeal or lodging notice in writing to deposit with the Magistrate the sum of $3 as security for the due prosecution of the appeal. Under the present practice, which has been in force for a long number of years,—certainly before I was born—on a party giving notice of appeal he entered into a recognisance to prosecute that appeal. Now it is in-

tended that in addition to the recognisance he will be required to deposit the sum of $3, which will be forfeited if he does not prosecute the appeal but will be returned to him whether the appeal succeeds or fails if he prosecutes it. It seems to me an unnecessary requirement—a requirement calculated, no doubt unwittingly, to prevent persons from having the opinion of the Supreme Court in any matter which they consider has not been properly ventilated. I think there is no real reason why this provision should be inserted in the Bill. Sub-clause (2) provides for the usual recognisance of $25. Here the provision is clear that the appellant must give security for payment of any costs that may be awarded against him, and there seems to be no reason why he should deposit a sort of earnest to carry on the appeal. Nobody suffers because notice of appeal does not stay execution; the security provided for in sub-clause (2) has to be given before execution is stayed. It is an innovation which I think ought not to be incorporated in the Bill, and I hope Government will see its way to delete sub-clause (1). I therefore move that sub-clause (1) be deleted.

The ATTORNEY GENERAL: The amount of $3, as stated in the Bill, is security for the due prosecution of the appeal and it is only forfeited in the event of his not prosecuting the appeal, otherwise the sum is refunded whatever the result. The reason for it is that in many cases, not only here but elsewhere, it has been found that people give notice of appeal which they do not really intend to follow up. These things cause a good deal of trouble and worry to the office and the clerk. It will be found to serve a very useful purpose in that respect. I should like to say, sir, that the Bill deals both with civil and criminal appeals, and it may be that an exception should be made in regard to criminal appeals. With regard to civil appeals the position is different. Criminal appeals really touch the liberty of the subject and everything should be done to facilitate the testing of the decision of the Magistrate. A good many people give notice of appeal without rhyme or reason and the amendment is merely to ensure *bona fide* appeals. I should like to meet the views of the hon. member and I propose that it should be amended by adding in sub-clause (1), line two, between the words "appeal deposit" the words "other than in a criminal cause or matter."

The CHAIRMAN: I take it that the object of the deposit of the $3 is to make a man think before he jumps up and says "I appeal."

The ATTORNEY GENERAL: That is so, sir, and it has worked very well elsewhere.

Mr. ELEAZAR: I am afraid that the addition of the words suggested by the hon. Attorney General does not alter the situation at all. Clause 4 (a) provides that notice has to be given before the other party leaves the Court. That is a distinct advantage because it is possible for the party to leave the Court and it is impossible to find him to give notice of appeal. The reason why a party should give notice before he leaves the Court is to know of his intention to appeal. A man may not agree with the decision of the Magistrate at the time it is given, but within half-an-hour after he may find that the Magistrate is right and he is wrong and therefore may not desire to prosectue the appeal. Notice should be given at the earliest possible moment, and that notice given before the other party leaves the Court. It may happen in the case of a layman who has given notice of appeal that he afterwards consults a lawyer who advises him that he has no appeal on the facts. In such a case that man is mulct in $3. I do not think that was the intention.

Mr. DIAS: I venture to point out that the hon. member has taken an erroneous view of this matter. There is no hardship whatever in delaying to give notice under sub-clause (b) with-

in fourteen days after the decision. As a matter of fact every cautious practitioner would always wait for fourteen days to determine whether he has an appeal rather than do so on the spur of the moment. The point that it is necessary to give notice of appeal at the time of the pronouncing of the decision because the respondent may not be found afterwards is of no avail. There is on the appellant the obligation to serve the respondent with the reasons of appeal and the reasons and notice of appeal can be served at one and the same time. I think it is a very desirable clause to introduce in the Bill. I have been in Court and heard notice given of appeals which have never been given a thought and nothing more was ever heard of, and this provision would make practitioners more careful before giving notice of appeal.

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

Clause 8 (3).—Copy of proceedings and notice of grounds of appeal.

Mr. CRANE: Sub-clause (3) requires that the appellant shall within ten days after receipt of notice draw up the grounds of appeal. I suggest for the consideration of Government the extension of that period to fourteen days. Usually the draftsman of a notice of the grounds of appeal would hardly get into action before he gets the reasons for the decision of the Magistrate and some allowance ought to be made for his having other work. An extension of four days would hardly affect the position and it certainly gives a little more time to consider the Magistrate's reasons.

The ATTORNEY GENERAL: Having regard to communications in the Colony, I have no objection to the amendment.

The CHAIRMAN: Government has no objection to the amendment.

Mr. CRANE: I also wish, sir, to move the insertion of a new sub-clause to clause 8 which reads:

> Service of a notice of appeal or a notice of the grounds of appeal may be made, in addition to any other existing mode, by delivery of the same to the counsel or solicitor of the opposite party.

Those of us who in our daily practice come up against this question of serving notice of appeal or notice of the grounds of appeal in writing have been confronted over and over again with the device of the other side to evade service of notice of appeal. In a recent case a man in order to evade service did not appear in the street as a cabman for fourteen days. Service might have been effected by leaving the notice at his house but it was said that he was not living there. I had to get a neighbour to swear to an affidavit that he lived there and was seen there. Our experience is that the Ordinance as it stands contains loopholes through which an evasive opposite party might defeat an appeal by keeping outside the reach of the party who wants to appeal. There is an abundance of decisions as to what is proper notice and proper service. We ought to remove the possibility of a party keeping out of the way and evading service. What I am asking for is now the practice in the Supreme Court. There all that is required is to deliver the notice to the solicitor acting for the opposite party.

Mr. HUMPHRYS: It gives me great pleasure to support this amendment. I myself have been a great sufferer in serving notice and reasons of appeal. It is unbelievable how great is the number of objections taken that reasons for notice of appeal have not been properly served, and numerous good cases on their merits have been summarily disposed of because the Appeal Court has no option but to determine the question on the law as it stands. Within the last two years a case occurred where the respondent went to the Mazaruni River and service was made on his solicitor who actually ac-

cepted the reasons of appeal, but on objection taken at the trial out went the appeal. There should be some safeguard enabling an appellant to serve notice on the solicitor or counsel who acted for the party in the Court below. It sometimes happen that the solicitor or counsel who appeared in the Court below does not appear in the appeal.

The ATTORNEY GENERAL: The hon. member has just stated what the real difficulty is and it is one that is not new to myself. It frequently happens that a litigant appears in the Court below by a number of legal practitioners. The contract is only for service in that Court as a general rule and when the case is finished his retainer is terminated. I quite appreciate the point that has been raised, and it has given me some thought before. The difficulty about it is that it is going to put an obligation upon the legal practitioner, whom the litigant chooses to desert, to communicate the notice to a person who is no longer his client. If we do not impose upon this legal practitioner the duty to communicate the document to somebody else then it would be difficult to make the service valid. If you are going to make an amendment of this kind it will be necessary to go a step further and put that legal practitioner under the liability to communicate the service of the notice to the litigant, because no Court is going to put a hardship on the legal practitioner and on the other hand the litigant would not have had any notice of the service.

Mr. GONSALVES: The hon. Attorney General in opposing the amendment has used an argument which I think does not help him. He says the difficulty in serving notice on a solicitor is that the contractual relations between the solicitor and his client cease at the time of judgment in the Magistrate's Court. If he admits that is the correct rule then it seems to me that we are doing something in the Supreme Court which is not correct, because the Supreme Court Rules provide that service can be effected on the solicitor who appears up to the time of judgment. If it is wrong to do it in an inferior Court it is still more so to do it in a superior Court, and the sooner that rule is repealed in the Supreme Court the better for practitioners. I should like to suggest a further provision to the effect that in the case of a prosecution by the Police notice of appeal or notice of the grounds of appeal need not be made on the particular policeman but on the Inspector General or Deputy Inspector General. Similarly, I apply that suggestion to the Customs Department. Provision should be made that where an officer brings a charge under the Customs Ordinance service should be on the Comptroller of Customs or the officer immediately under him.

The ATTORNEY GENERAL: I should just like to point out that there is considerable difference between an action in the Supreme Court and proceedings in the Magistrate's Court. A solicitor requires an authority to act before he can do so in the Supreme Court and he continues to be the solicitor on the record until there is notice of a change of solicitor. That is the practice here and I think it is the practice in England and elsewhere. He is an officer of the Supreme Court and those are the rules affecting him in regard to an action which he originated, so that the position is not at all analagous. Having regard to the hardship that it is going to create on some lawyers, I venture to think that the propósal may be covered by clause 38 :

> Any notice, or other document required to be served or transmitted under this Ordinance may be served or transmitted by registered post.

The answer of the hon. member to that view will no doubt be that I do not know the Colony as well as himself, but I know some of it better than himself. I know that clause 38 meets the general requirements. It does not work any oppression or hardship, and it would also meet the case put forward by the hon. Member for Georgetown.

Mr. CRANE: Service by registered post obtains at the present time and it is practised to a certain extent, but there are certain districts in which there is no registered post and also districts in which there is no house to house delivery of letters. My amendment is one which no practitioner would object to: that is to communicate to his client that notice has been served on him. It is not a matter in which Government policy is involved. I can assure the learned Attorney General that very great difficulties are experienced in the working of the Ordinance, and when practitioners point out these difficulties they ought to be given some consideration.

The CHAIRMAN: I shall defer this clause for consideration. The amendment may or may not be acceptable to Government.

The ATTORNEY GENERAL: The amendment would really be more suitable in clause 38 as it relates to that clause.

The CHAIRMAN: Then we will take clause 8 as amended.

Question "That clause 8 as amended stand part of the Bill" put, and agreed to.

Clause 9 (8).—Available grounds of appeal.

Mr. HUMPHRYS: Sub-clause (8) reads:—

> That the decision is altogether unwarranted by the evidence, in like manner as, if the case had been tried by a jury, there would not have been sufficient evidence to sustain the verdict.

There have been some very vexed arguments as to what this sub-clause does mean. I think this reason should be worded "That the decision is unwarranted by the evidence," and leave it at that. It would be better to leave it as a question of fact. If you appeal from a decision of a Judge of the Supreme Court the Judges on appeal go into the facts, and while they do not readily disturb the Judge's decision on facts they nevertheless do so if they find it can be done.

Mr. CRANE: I agree with the hon. member. This clause means nothing. The sufficiency of evidence is a question that the Appeal Court would not consider at all. This clause is perpetrating what is not the law. A Magistrate sits as a jury and the sufficiency of the evidence is a matter for him, but you can always appeal on the ground that there was no evidence to support the decision. On the other hand, the time has come when this barrier, or this mode of protection, which surrounds Magistrates' decisions on the question of fact should be removed. You get decisions of Magistrates which are wholly unwarranted by the evidence and when you take them to the Appeal Court the Judges say "We would not have come to the same decision ourselves but we cannot disturb it." It seems to me that we should either adopt the amendment of the hon. member—though I hardly believe the hon. Attorney General would accept it as it gives a roving commission—or change the clause to read that there would have been no evidence to sustain the verdict, or something of that sort.

The ATTORNEY GENERAL: I venture to think that the amendment proposed by the hon. Member for East Demerara does not take the position any further, and it would probably involve the Court of Appeal in much greater difficulty. To begin with, when you get a decision altogether unwarranted by the evidence the Supreme Court will lay down hard and fast rules that they will consider a decision is not warranted by the evidence. The question is not a new one and there are lots of decisions dealing with it. It does open up a case to a sort of roving commission, which is not a right thing to do in matters of appeal. The point might be met by substituting for sub-clause 8:

(8) That the decision is one which the Magistrate viewing the evidence reasonably could not properly make.

It is a well-known principle in our law, and perhaps it would be better if that phraseology is adopted.

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

Clause 19.—Appearance of parties.

Mr. CRANE: This is one of the clauses in the memorandum of amendments of which I gave notice this morning. Ordinance 13 of 1893, Section 21, deals with this matter, and this is really a reproduction of that clause with certain words omitted. When this matter was before the Legislature in 1893 the position of the two branches of the legal profession was considered. In order that Your Excellency may appreciate the proposal I am making, I must explain that in actions of $250 or less either a barrister or solicitor might appear, but in actions over $250 both must appear. In England— and I believe in Jamaica and Trinidad—a barrister's work is restricted to advice, consultation and opinions, and he is essentially an advocate. In this Colony it is not so. In the wisdom of our ancestors barristers can do any kind of work except the issuing of writs. In 1893 when the Appeals Ordinance was passed they drew a distinction in the Supreme Court between audience in civil and criminal appeals. In a civil appeal either a barrister or solicitor may appear: in a criminal appeal a barrister alone may appear, probably because it was thought that the Court should have the assistance of counsel. The two branches of the profession have gone on so well that it is undesirable to make any disparaging remark, but it is only fair to say that a solicitor's training is far more stringent and longer than that of a barrister's.

In 1923 the present hon. and learned Attorney General made amendments in the Magistrates' Decisions (Appeals) Ordinance. In those days appeals from a Magistrate went to a single Judge, thence to the Full Court. That was an undesirable practice and it was rightly considered that all appeals should go directly from the Magistrates' Court to the Full Court, where you will get a pronouncement which Magistrates must respect and follow. I agree with that procedure, but in doing that the draftsman struck out the words in the 1923 Ordinance "or in the case of an appeal from a decision of a Magistrate under the Petty Debts Recovery Ordinance, 1893, by a solicitor." This Bill intends to perpetuate that amendment. My amendment is that we should keep on what is in the 1923 Ordinance. The practical reason for that outweighs any other consideration. The jurisdiction of a Magistrate is limited to $100. In such a suit a litigant has to pay one fee before the Magistrate's Court, whereas he has to pay two fees for a barrister and solicitor before the Supreme Court, and therefore he suffers a hardship. To limit the practice of a solicitor disturbs the even distribution of legal work between the two branches of the profession, which they have been accustomed to for a long number of years, and the question will have to be gone into by consultation with the two branches of the profession or the position put on the same plane as it is in England and in some of the Colonies. To deny solicitors audience before the Full Court would be doing a substantial injustice to one branch of the profession by depriving them of a certain amount of work.

The ATTORNEY GENERAL: The point raised by the hon. member was raised in the Court of Policy and was argued there, and it was decided in the way in which the Ordinance stands. In the $250 jurisdiction of the Supreme Court the right of audience was given to a solicitor and he could appear before a Judge and argue in civil matters. So far as criminal matters are concerned a solicitor never had the right of audience before a Judge of the Supreme Court. Also an appeal to a single Judge did not in practice produce a decision which was binding on another Judge. That was the reason

why there was a change when the 1922 Ordinance was enacted, because you went direct to the Full Court for an authoritative decision and it probably meant that greater care was exercised in regard to decisions which would constitute binding law, and there was not the opportunity of discrimination between decisions as there was when an appeal went to a single Judge. A solicitor never had the right to appear in the Full Court but had to appear with counsel, therefore the present rule really works no hardship and it prevents reckless appeals and ensures more care and thought before undertaking the prosecution of appeals, and these decisions stand out as an authoritative guide to Magistrates and to legal practitioners in advising their clients whether or not they should appeal to the Full Court. The history of the existing rule is sound, and, as a matter of fact, the rule is also sound. Viewed from that standpoint the alleged hardship really does not exist, and I think that in the interest of the public appeals should go to the Full Court.

Mr. ELEAZAR: The present procedure is a waste of judicial energy. It has been made law but what little benefit it affords nobody can tell. The decision of a single Judge was very seldom questioned. Litigants were always more or less satisfied with the decision of the Magistrates' Court, but the learned Attorney General in amending the law has deprived solicitors from their right even where only a sum of $10 is involved. Because a litigant has to go to the Full Court he has to employ a barrister and pay a higher fee than he paid his solicitor, only because it is considered that if he went to the Full Court he would get what is called an authoritative decision. It has caused dissatisfaction, it has caused people to abandon their appeals, or it has cost considerably more expense than people care to incur. That must work hardship not only on the solicitor but on the client. I quite appreciate the major portion of what the hon. Attorney General has propounded, but we say give the solicitor the privilege which he enjoyed and not restrict him.

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

Clause 32 (1).—Awarding of costs.

Mr. CRANE: In line 2 the word "Magistrate" occurs. If a man appeals and later decides not to carry it on "the Magistrate may, on application being made in that behalf, order any costs occasioned by the appeal to be paid to any person by whom any such costs have been reasonably incurred. In actual practice it has been known, and I regret to say of late too frequently, that a Magistrate has placed difficulties in the way through a pique against appeal from his decision. If a person abandons an appeal he has to go back to that Magistrate to fix the costs and there might be oppression. Some other functionary should be substituted, and in discussing it with the Attorney General he is inclined to name the Registrar. I suggest that instead of "Magistrate" the word "Court" should be substituted and after the word "application" the words "by summons" be inserted.

The ATTORNEY GENERAL: The difficulty about that is that "the Court" means "the Full Court." On the other hand a Judge has not got the knowledge and experience of taxed costs in the Magistrates' Courts. There might be something in the apprehensions of the hon. member, but, however the vanity of the Magistrate may be affected, I think he is bound by the schedule of fees.

Mr. CRANE: It would seem anomolous for the Magistrate to fix fees payable to the Registrar, of which he knows nothing, and I think that is an additional reason.

Mr. GONSALVES: Clause 16 (1) provides that the Registrar shall notify the Magistrate of a case where an appeal is abandoned. If he takes that

step I see no objection to his taxing costs in the Magistrates' Courts.

The ATTORNEY GENERAL: As hon. members seem quite anxious about the matter Government might accept the change of "Registrar" for "Magistrate."

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

Clause 38.—Service of documents.

Mr. CRANE: Clause 38 will be subject to the amendment which Your Excellency said you will consider.

The CHAIRMAN: We will defer consideration of clause 38 in view of its possible amendment after the adjournment.

The Second Schedule—Table of fees and costs.

Mr. CRANE: Prior to 1922 all the single Judge had before him was the record prepared by the Magistrate's Court and sent over to the Registrar. Since 1922 we have a more up-to-date practice, the record not being used at all but is kept as a record of the Registrar's Office, but the practitioner is required to prepare and submit for the use of the Judges three sets. In addition he has to prepare one for counsel. The practitioner receives one copy from the Magistrate's Court and has to make five copies from that, but no provision is made for including in his bill of costs the expenses of preparing those copies. It is a genuine grievance in the profession that you have changed the practice and compelled the practitioner to do more work but do not pay him for it. The amendment I propose is that between items 12 and 13 there should be inserted as item 13 "Copying, preparing and lodging each of the necessary records of appeal for the use of the Judges of the Full Court or of any party, the sum of 25 cents per folio of 120 words."

The ATTORNEY GENERAL: Twenty-five cents is the Supreme Court tariff, which would hardly be applicable to the Magistrate's Court. Copies are usually carbon copies and you are only allowed six cents for carbon copies, because they are not the same as original work.

Mr. CRANE: Item 14 may be amended to include "any party."

Mr. DIAS: It is quite correct to say that carbon copies are prepared, but my experience is that the Judges refuse to use carbon copies.

The ATTORNEY GENERAL: From my experience when carbon copies can be conveniently read there has been no objection to them by counsel. To meet the objection I move the insertion of the words "including counsel" between the words "copy" and "per" in the third line of item 14.

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

The Council adjourned for luncheon.

Clause 38.—Service of documents.

The ATTORNEY GENERAL: With respect to clause 38, sir, I venture to think that the position would be met if there is added to it the following: "or may be served by delivering or leaving the same at the last known place of abode of the party to be served."

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

The Council resumed.

The ATTORNEY GENERAL: I move that the Standing Rules and Orders be suspended in order to take the third reading of this Bill.

Mr. AUSTIN seconded.

Question put, and agreed to.

The ATTORNEY GENERAL: I move that the Bill be read the third time.

Mr. AUSTIN seconded.

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

Bill read a third time and passed.

DISCIPLINE OF LEGAL PRACTITIONERS.

The ATTORNEY GENERAL: I move the second reading of "A Bill to make provision with respect to the discipline of Legal Practitioners." The position is that there are three Ordinances dealing with legal practitioners in this Colony. The principal is Ordinance No. 18 of 1897, which is amended by Ordinance No. 28 of 1918 and another of 1921. Those Ordinances deal generally with the status and rights of legal practitioners as therein described, and the expression embraces a barrister as well as a solicitor. The hon. Member for West Demerara (Mr. Crane) in the course of the morning with reference to another matter mentioned the fact that in this Colony it has evolved that members of the Bar practise as solicitors—I believe almost as fully as solicitors—except that they cannot issue a writ. But they can write letters and do all sorts of things. I agree with him also that solicitors do not get a full share of legal work which is done by members of the Bar, but perhaps the time may not be very far distant when members of the Bar would find that it is a very great advantage to their order to restrict their practice to the work which comes to them through the medium of a solicitor. It would be better for both branches of the profession—but that is by the way. By practising as a solicitor a barrister acquires one advantage and loses one disadvantage. As a member of the Bar he has no legal right to his fees—you will notice that at the back of a barrister's gown there is a sort of sack, and the client steals behind him and drops some money in that bag by way of honorarium —but by practising as a solicitor that disadvantage no longer attaches to him and he gains the privilege of maintaining the legal rights to his fees, and he may tax a bill of costs and may sue for them. That being so he finds himself very often in the position of an officer of the Court.

Section 8 of Ordinance No. 18 of 1897, which deals with the enrolment of barristers and solicitors, reads:—

> A person admitted to practise as a barrister or solicitor in the Court shall be enrolled on the roll of the Court hereinbefore mentioned, and he shall be entitled to a certificate of enrolment under the seal of the Court, and no person except the Attorney General and Solicitor General, in the cases specified in section 4, whose name is not enrolled as aforesaid, shall be entitled to practise as a barrister or solicitor in any of the Courts of the Colony.

Section 10 says:—

> The Court shall have power for reasonable cause, upon petition or motion, to suspend a barrister or solicitor from practising within the Colony during any specified period, or to order his name to be struck off the roll of the Court.

Difficulty has arisen as to the question of procedure. There the procedure is by way of petition or motion. That means that the matter is brought before the Court on a motion supported by affidavits, or by a petition similarly supported, and the Court has to try the issues and hear evidence. Unfortunately, the legal profession, like other professions, has got some black sheep in its fold. One cannot keep them out and they are there, and it is necessary for the profession to purify itself and adopt all means to get these people out of it. It is necessary for the honour of the profession because, by reason of the position of its members in relation to the public and in relation to the people who consult them, members obtain a great deal of confidence from their clients and it follows therefore that they should be men of the utmost honour and that there should be no member of the profession who has the opportunity of soiling the honour of

the profession. There is another point. Nobody knows ordinarily that a man is dishonest until you have had the experience of his dishonesty. Some people who have been bitten do not speak of it or only assert it. But so long as a practitioner has the power, the licence and and qualification to practise, he has the opportunity to prey upon unsuspecting members of the public. Such a state of affairs does exist here as it exists in every other country that I know of. The public have to be protected.

It is the duty of the Government to see that proper measures are drawn up for the protection of the public and to simplify the procedure in that respect. The procedure here is very complicated and there are very few cases on record where proper proceedings have been taken. There is a superstition in this Colony—and it is extraordinary how many people of intelligence are included in that respect—that it is part of the duties of the Attorney General to deal with this matter. It is no more the duty of the Attorney General of this Colony than it is of the Attorney General of England or of any other Colony. The object of this Bill is to provide an easy means of dealing with complaints. Of course, where the complainant is a man or woman of some standing, intelligence and position the matter can be more easily dealt with, because he will have legal advice and the best assistance in putting his case forward; but I am sorry to say, sir, from knowledge which comes to me at times, that a good many people who suffer are the honest, poor, trusting clients who are somewhat inarticulate and who do not know how to present their cases. There are also, of course, some individuals who make complaints and the burden of their complaints is that they ought to get far more service than they ever paid for or dreamt of paying for, or even were entitled to. That is a detail which will be dealt with in the proper way. In process of time the procedure which has been evolved in British communities has been that complaints of misconduct come before a Committee of legal practitioners.

The Committee it is proposed to have in this Colony will comprise of two *ex officio* members—the Crown Solicitor and the Attorney General—and not more than five other members who shall be appointed by the Chief Justice. They will hold office during pleasure and their appointment may be revoked. The Registrar of the Supreme Court is made clerk of the Committee and among other things it will be part of his duty to instruct people who wish to make complaints of the manner they should do so. The matter will go before the Committee, notice will be served on the person complained against, and opportunity will be given for presentation and disclosure of the documents connected with the case. Then the parties will appear before the Committee and evidence will be taken. The usual procedure is that the complainant would appear and give evidence in support of the formal complaint, which is the originating matter setting out the grounds of his complaint, and then he supports those grounds by his own sworn testimony and the evidence of other people and documents. If the Committee think that a *prima facie* case is made out evidence is given in reply. The advantage of that is that the complaint is heard by a body of legal practitioners—men who have had experience in matters of this kind, practical experience in the working of the law, and practical experience of human nature—and if in their opinion a *prima facie* case has been made out they would made a report in writing which would be filed. The matter is then brought before the Court and evidence heard. The person who is complained against will appear either in person or by counsel and urge whatever he may desire, and the Court would make such an order as it thinks fit. It may be an order striking the practitioner off the roll, or suspending him for a limited time, or an order as to payment of costs.

There is also provision, where the Committee think there is not a *prima facie* case, that the matter might be brought before the Court for the payment of costs, because it has been found in practice that a practitioner may incur costs in defending a charge brought before the Committee. That is, shortly, the nature of the Bill. I should add that there is a schedule to the Bill containing rules which may be amended. A simple procedure of this kind ought to have been in existence long ago. It is in accordance with well known practice elsewhere, not quite as advanced as it is in the Mother Country, but it has taken years there to get to the stage where a solicitor is struck off the roll by order of a Committee and not by the Court. It will be some time before we get to that stage, but I am sure that it will have a very valuable moral effect. A statute like this will no doubt act as a controlling influence over those weak-minded people who probably find it is easier to get along by not being honest. Honesty is a very good virtue but a good many people in the world are honest by reason of policy rather than of virtue. I commend the Bill to the favourable consideration of the Council.

Mr. CRANE: I beg to second the motion for the second reading of the Bill. I take the opportunity of doing so because as a humble unit of the legal profession I desire it to be recorded as an earnest by the profession of its desire to see things properly regulated and to have any delinquent member who may offend against the proprieties of the profession brought promptly to justice. (The President: Hear, hear). But I do think that the great stress which the hon. Attorney General laid on dishonesty, perhaps unwittingly, is calculated to give currency to this public and the public abroad that there is a very large number of such practitioners in this community. I don't believe the hon. Attorney General intended to imply that, but that imputation the legal profession resent. There are members who behave improperly and those members should be punished, but dishonesty is not rampant in the legal profession. Whilst it would be improper for me to refer to it here, if the opinion of those in a position to judge was taken you would be told, sir, that 70 per cent. of the complaints against members of the legal profession are unjustified. In the other 30 per cent. there were grave cases of misconduct and those are the cases the legal profession desire to assist Government to deal with. Certainly there is not in this Colony as in England cases of men who convert large sums of money. There is not the opportunity for such conversion. But I agree that there have been cases in the past where practitioners have dealt with clients in a way that the Supreme Court and the public would not countenance at all.

It is necessary in providing machinery for disciplining legal practitioners that the Ordinance should not manufacture an engine of oppression. Let the public have the means of redress, but frivolous, vexatious and malicious complaints to reduce practitioners to an undignified position should be visited with payment of costs or compensation. Costs should follow the event as in any other case where a complaint is made against any other person. I notice that the Bill does not provide for awarding costs to the practitioner where no *prima facie* case is made out. The hon. Attorney General himself says there are cases where a practitioner would be put to great expense in defending frivolous complaints. What we hope in hammering this matter into shape is to do justice to all parties and oppression to none. I am not urging that we should have the latest legislation in England. I quite agree with the Attorney General that we cannot set up in this Colony a body with the prestige of the Law Society in England, but in the list of amendments which the profession has suggested, notice of which I gave this morning, it is asked that the Committee's powers be extended further than merely reporting whether there is a *prima facie* case or not. There are cases in which the

penalty would be striking off the roll or suspension. There are also cases where a practitioner may have taken too much money for his services. In such cases there should be an order for a refund of the money.

It is conceived by the profession that the Committee ought to be given power to deal with all matters of lesser importance than striking off the roll and suspension. Only matters involving striking off the roll or suspension should be referred to the Court and the Committee should be empowered to deal with cases warranting lesser punishment. If the legal profession is satisfied to leave the matter in the hands of the Committee the Government ought not to insist on a safeguard which the profession does not require. I am hoping that the Committee stage of the Bill be not reached to-day because the memorandum contains matter to which very full consideration ought to be given. I cannot conceive that the foremost members of the legal profession having got together and suggested amendments they will be treated in an off-hand manner and no consideration given to them, particularly in a matter in which Government have no concern except the protection of the public. I hope after the second reading is taken it will be found convenient to give the Attorney General an opportunity to consider the amendments. They are amendments many of which I venture to suggest will find acceptance of Government. I do not know if the hon. Attorney General has had an opportunity of looking at the memorandum yet. The Christmas holidays prevented me from putting them in his hands before this morning, but I hope the Committee stage of the Bill will not be taken until the memorandum is considered.

Mr. ELEAZAR: I rise to support all that has been said by the hon. Member for West Demerara, all the more because it affects only a section of the community, the legal practitioners. Some of them are residing in the County of Berbice and have had no opportunity of seeing the amendments. I have not myself seen the amendments up to now, but looking at the Bill as it stands I think it needs a good deal of amendment. Surely the majority of the profession should be capable of giving their views as to what safeguards will be necessary in weeding out, if it becomes necessary, or at least keeping in check, those who are disposed to act in the way suggested. The most experienced members of the profession, several of them King's Counsel, have met and made recommendations which up to now have not been considered. I think there is very little reason against the request that the Bill be deferred until the Government themselves have had an opportunity to enquire into the amendments and see whether they are feasible or not. If the public are protected against members of the profession practitioners cannot be made prey of the public. It is conceivable that an ill-disposed person from sheer pique and spite may bring complaints against practitioners. Clause 8 says that in such a case "the Court may, without finding any misconduct proved against the legal practitioner, nevertheless order him to pay the costs of the proceedings." There is nothing, on the other hand, to make the person making a complaint pay for putting a practitioner to the trouble and expense of defending himself. That does not seem to be equitable. Utility as well as equity should always be the foundation of our laws. However useful this Bill may be I cannot say it is equitable. All through it the penalty is against the practitioner and not against an evil disposed person.

The CHAIRMAN: Government does not propose to take the Bill in Committee now so that will save any further unnecessary speaking on the subject. We will take the second reading and not go into Committee.

Question "That the Bill be read the second time" put, and agreed to.

Bill read the second time.

The Standing Rules and Orders having been suspended for the purpose, the following Bills were read a first time:—

A Bill to provide for the registration in the Colony of Trade Marks registered in the United Kingdom.

A Bill to provide for the registration in the Colony of Designs registered in the United Kingdom.

A Bill to amend the Summary Conviction Offences Ordinance, 1893, with respect to the suppression of the circulation of and traffic in obscene publications—(*Attorney General*).

A Bill to provide for the control of Sugar Experiment Stations—(*Professor Dash, Director of Agriculture*).

SPECIAL SEWERAGE RATE.

The COLONIAL SECRETARY (in the absence of Mr. Millard): I move the suspension of the Standing Rules and Orders to enable "A Bill to empower the Mayor and Town Council of Georgetown to levy a rate during the year nineteen hundred and twenty-nine to raise the sum of two hundred and thirty-nine thousand eight hundred and fifty dollars in order to pay the Government interest which has accrued and to accrue during the said year on amounts advanced to the Town Council by the Government for the execution of certain improvement works and to defray the maintenance and upkeep of completed parts of the said works" to be taken through all its stages.

Mr. SMELLIE seconded.

Question put, and agreed to.

The COLONIAL SECRETARY: I move that the Bill be read a first time.

Mr. SMELLIE seconded.

Question put, and agreed to.

Bill read the first time.

The COLONIAL SECRETARY: In moving the second reading of the Bill I think it requires very little explanation on my part. It is to enable the Town Council to raise a special rate for the interest which is due to Government with respect to the Sewerage Scheme. The total amount to be raised is $239,840. Clause 3 provides that the Council shall have power by resolution to be passed on or before the first day of February, 1929, to fix, levy and collect the rate to be levied upon and in respect of all premises in the City except premises owned or controlled by the Council, or any premises used as a Church and not connected with the sewerage system. It goes on to say how the rate should be collected and how it should be paid. The rate shall be levied and collected in the same way and by the same procedure as town taxes and in default of payment the Council may proceed at any time in the manner provided by the principal Ordinance for the recovery of the rate together with interest thereon at 6 per cent. per annum.

Mr. SMELLIE seconded the motion.

Question put, and agreed to.

Bill read the second time.

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

Preamble and Title.

The COLONIAL SECRETARY: I move that the figure $212,278 be substituted for $207,850 and in the total sum to be raised, instead of $239,850, the sum of $244,278

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

The words "two hundred and forty-four thousand two hundred and seventy-eight" were substituted for the words "two hundred and thirty-nine thousand eight hundred and fifty" between the

words "of" and "dollars" in the title.

The Council resumed.

The COLONIAL SECRETARY: I move that the Bill be read a third time and passed.

Mr. SMELLIE seconded.

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

Bill read the third time and passed.

REGISTRATION OF TRADE MARKS.

The ATTORNEY GENERAL: I move the suspension of the Standing Rules and Orders in order to take the Bill to provide for the registration in the Colony of Trade Marks registered in the United Kingdom and the Bill to provide for the registration in the Colony of Designs registered in the United Kingdom through their remaining stages.

Mr. AUSTIN seconded.

Question put, and agreed to.

The ATTORNEY GENERAL: I move that the Bill to provide for the registration in the Colony of Trade Marks registered in the United Kingdom be read the second time.

Mr. AUSTIN seconded.

Question put, and agreed to.

Bill read the second time.

The Council resolved itself into Committee and considered the Bill clause by clause.

Clauses agreed to.

The Council resumed.

The ATTORNEY GENERAL: I move that the Bill be read the third time.

Mr. AUSTIN seconded.

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

Bill read a third time and passed.

REGISTRATION OF DESIGNS.

The ATTORNEY GENERAL: I move that "A Bill to provide for the registration in the Colony of Designs registered in the United Kingdom" be read the second time. This Bill is on the same principle as the Bill which has just been disposed of and carries out a similar procedure.

Mr. AUSTIN seconded.

Question put, and agreed to.

Bill read the second time.

The Council resolved itself into Committee and considered the Bill clause by clause.

Clauses agreed to.

The Council resumed.

The ATTORNEY GENERAL: I move that the Bill be read the third time.

Mr. AUSTIN seconded.

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

Bill read a third time and passed.

SUGAR EXPERIMENT STATIONS.

Professor DASH: I move the suspension of the Standing Rules and Orders to enable "A Bill to provide for the control of Sugar Experiment Stations" to be taken through its remaining stages.

Mr. BRASSINGTON seconded.

Question put, and agreed to.

Professor DASH: In moving the second reading of the Bill I need only say that the facts are pretty generally known. The sugar planters in the past allowed themselves to be taxed for the upkeep of the Sugar Experiment Station. This Bill merely provides for more efficient control generally, and it is non-contentious and only affects the sugar planters and the Department of Agriculture.

Mr. BRASSINGTON seconded.

Question put, and agreed to.

Bill read the second time.

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

Clause 3 (2)—Appointment of Committee.

Professor DASH: I propose that the second part of sub-clause (2) should read:

In the absence of the Director the Deputy Director of Agriculture shall be Chairman or in the absence of them both the members present shall elect one of their number to be Chairman of the meeting.

Mr. BRASSINGTON seconded.

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

The Council resumed.

Professor DASH: I move that the Bill be read the third time.

Mr. BRASSINGTON seconded.

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

Bill read a third time and passed.

MOTION.

The COLONIAL SECRETARY: I move the suspension of the Standing Orders to enable the following motion to be passed:

That this Council hereby authorises the expenditure of all such moneys as are essential for carrying on the Government of the Colony, pending the voting by this Council of the Annual Estimates of Expenditure for 1929.

Mr. SMELLIE seconded the motion.

Question put, and agreed to.

The COLONIAL SECRETARY: It is fairly obvious to hon. members that a motion of this sort is necessary in order that salaries, weekly wages and other payments can be met before the Estimates are actually passed. We had to do something of a similar nature last year before we got to the stage when we finally disposed of our estimates of expenditure. Hon. members are conversant with the reasons for a motion of this sort and I do not think I need detain the Council any more with regard to it. I beg to move the motion.

Mr. SMELLIE seconded.

Question put, and agreed to.

BILL.

OBSCENE PUBLICATIONS.

The ATTORNEY GENERAL: I move that the Standing Rules and Orders be suspended to take through its remaining stages "A Bill to amend the Summary Conviction Offences Ordinance, 1893, with respect to the suppression of the circulation of and traffic in obscene publications."

Mr. AUSTIN seconded.

Question put, and agreed to.

The ATTORNEY GENERAL: I move the second reading of the Bill. The object of it is clearly stated in the explanatory memorandum. It is in consequence of our obligations under an International Convention for the suppression of these publications and it is necessary that this Bill should be enacted to give effect to those obligations.

Mr. AUSTIN seconded.

Question put, and agreed to.

Bill read the second time.

The Council resolved itself into Committee and considered the Bill clause by clause.

Clauses agreed to.

The Council resumed.

The ATTORNEY GENERAL: I move that the Bill be read the third time.

Mr. AUSTIN seconded.

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

Bill read a third time and passed.

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