

LEGISLATIVE COUNCIL

THURSDAY, 30TH OCTOBER, 1952.

The Council met at 2 p.m., His Excellency the Officer Administering the Government, **Mr. John Gutch, C.M.G., O.B.E.**, President, in the Chair.

PRESENT :

The President, His Excellency the Officer Administering the Government, **Mr. John Gutch, C.M.G., O.B.E.**

The Hon. the Colonial Secretary, **Mr. J. L. Fletcher, O.B.E.** (Acting).

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

The Hon. the Financial Secretary and Treasurer, **Mr. E. F. McDavid, C.M.G., C.B.E.**

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

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

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

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

The Hon. **G. A. C. Farnum, O.B.E.** (Nominated).

The Hon. **Capt. J. P. Coghlan** (Demerara River).

The Hon. **J. Fernandes** (Georgetown Central).

The Hon. **Dr. G. M. Gonsalves** (Eastern Berbice).

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

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

The Hon. **G. H. Smellie** (Nominated).

The Hon. **J. Carter** (Georgetown South).

The Hon. **L. A. Luckhoo** (Nominated).

The Hon. **W. A. Macnie, C.M.G., O.B.E.** (Nominated).

The Clerk read prayers.

The minutes of the meeting of the Council held on Friday, the 24th of October, 1952, as printed and circulated, were taken as read and confirmed.

UNOFFICIAL NOTICES**DISSATISFACTION WITH CONTROLS.**

Mr. Fernandes gave notice of the following motion:—

"Be it resolved that this Council recommend to Government the rescinding of Order, 115/32 dated 15th October, 1952, issued by the Controller of Supplies;

"Be it resolved that this Council request Government to investigate the voting of members on the various Advisory Committees to the Controller of Supplies on matters in which they are interested parties".

Mr. Fernandes: In view of the urgency of this matter I should like to say, with your permission, Sir, that I intend to move the suspension of the relevant Standing Rules and Orders before the Order of the Day is reached at tomorrow's meeting of the Council, so as to enable the motion to be debated. It is very urgent because if it is found that this matter comes within the situation I spoke about last week,

it is essential that Government should decide the matter once and for all, and that this Council should let Government know as early as possible what it thinks about the whole situation.

EXTENSION OF WEST COAST ROAD.

Mr. Farnum gave notice of the following motion:—

"Whereas the village of Bartica situate on the Essequibo River is the entrepot for communication to the interior of the Colony and the centre from which working parties move to the various mining, timber, stone areas and beauty spots of the hinterland;

"And whereas experiments have shown that Bartica is suitable for rearing cattle and that large areas there are available for that purpose;

"And whereas communication to Bartica from the City of Georgetown is slow and inadequate;

"And whereas the extension of the West Coast Road from its terminus at Maripa along the East Bank of the Essequibo River to a point opposite to Bartica—a distance of about 28 miles—would give quick transportation to Bartica and will aid the working and development of the industries mentioned to the benefit of the Colony;

"And whereas the extension of the road would open up extensive regions of cultivable land and would enable the large deposits of stone lying along the banks of the Essequibo River, suitable for road building, to be extracted on an economic basis;

"Be it resolved that this Honourable Council recommend to Government:—

"(a) That the West Coast Road be extended from Maripa on the East Bank of the Essequibo River to a point opposite to Bartica on the Essequibo River; and

"(b) That the project be undertaken at an early date"

ORDER OF THE DAY

DEVELOPMENT OF HYDRO-ELECTRIC POWER.

Mr. Fernandes on behalf of Dr. Jagan asked and the Colonial Secretary

laid over replies to the following questions:—

Q. 1 Has Government granted the Consolidated Goldfields Company, Limited, the right to develop hydro-electric power at the Tumatumari Falls in the Potaro River? If so, will Government state conditions of this grant?

A. 1 Government has approved in principle of permission being granted to the Company to use the Tumatumari Falls on the Potaro River for developing hydro-electric power subject to Government's interests being adequately safeguarded by legislation for the control of water power. Draft legislation for this purpose and to govern the conditions under which a licence may be issued for the control and use of water power is now being prepared.

ANNUAL HOLIDAYS WITH PAY

Q. 2 Will Government state what categories of workers have been granted annual holidays with pay and for what periods since the passage of the Ordinance in 1952 to grant certain categories of workers annual holiday with pay?

A. 2 No orders have been made under the provisions of the Holidays with Pay Ordinance, 1952, since the Ordinance came into effect on 8th March, 1952. Orders are in preparation to provide holidays with pay for certain employees engaged in the following occupations:—

- (i) Cinemas;
- (ii) Drug Stores;
- (iii) Dry Goods Stores;
- (iv) Groceries;
- (v) Hardware Stores;
- (vi) Hire Car Chauffeurs;
- (vii) Watchmen.

In each case the period of holiday to be made under the Order will be equal to one day for each completed month of service, i.e. twelve working days per annum.

LEGAL PRACTITIONERS (AMENDMENT) BILL.

The Attorney-General: I ask leave to defer further consideration of the Bill intituled:—

"An Ordinance further to amend the Legal Practitioners Ordinance."

As hon. Members would recollect, certain points were raised during the consideration of the Bill last week and I pointed out that it was desirable to refer the matter to His Lordship the Chief Justice. I have done so and the points raised are now being considered. It is hoped that I will be able to proceed with the Bill shortly.

Bill deferred.

The President : We will, therefore, proceed with the next item.

INCOME TAX (AMENDMENT)
BILL, 1952.

The Attorney-General: I beg to move the second reading of the Bill intituled:—

"An Ordinance further to amend the Income Tax Ordinance, Chapter 38, with respect to the imposition and collection of income tax, and matters connected therewith."

In so doing, I would remind hon. Members that last year the Income Tax (Amendment) Ordinance, No. 18 of 1951, was passed. This Bill now before hon. Members seeks to clarify certain ambiguities in the Principal Ordinance which is the Income Tax Ordinance, Chapter 38, and to facilitate the proper administration of the Ordinance. Clause 2 of the Bill seeks to define the term "earned income" in the proviso to section 5 of the Principal Ordinance as enacted by section 2 (b) of the Income Tax (Amendment No. 2) Ordinance, 1947 (No. 6 of 1947). As set out in this clause, 2, "earned income" means:—

"(1) any income which is immediately derived by an individual or by his wife from the carrying on or exercise by him or by his wife of a trade, business, profession or vocation either as an individual, or in the case of a partnership, as a partner acting therein, and

"(ii) any income arising from any gains or profits, including any allowance from any employment held by an individual or by his wife, or in respect of any pension, superannuation or other allowances or deferred pay given in respect of the past

services of such individual or of the husband or wife or parent of such individual in any employment or given to such individual or his wife in respect of the past services of any deceased person, whether such individual or husband or wife or parent of such individual shall have contributed to such pension, superannuation allowance or deferred pay or not;"

I do not think that requires any explanation; it seems to be very clear.

Clause 3 seeks to exempt from income tax any sum expended by an employer for the medical or dental care of his employees or for passage allowances granted to his employees. The Commissioners of income tax found themselves legally bound by the strict interpretation of section 5 (b) of the Income Tax Ordinance which reads:—

"(b) gains or profits from any office or employment, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise";

They are also bound by a decision of the Supreme Court in this Colony, in an appeal heard before Chief Justice Worley. He considered that these useful concessions should be encouraged and, accordingly, a provision has been made in this clause, 3, whereby the following words will be added to paragraph (b) of section 5 of the Principal Ordinance:—

"other than an allowance for medical or rental expenses or for any passage to or from the Colony of British Guiana."

I think hon. Members will agree that this is a desirable provision.

Clause 4 seeks to clarify the position that pensions or annuities paid to a non-resident person through a trust resident in this Colony in respect of services rendered wholly outside of this Colony would not, except such pensions or annuities are received in this Colony, be subject to tax in the Colony; and to provide further that where such pensions or annuities are paid to such persons in such circumstances in respect

of services rendered in the Colony shall be taxable in the Colony. In clause 4 (2) it would be seen that the Commissioner is in power to deal with this matter and to levy such tax as he thinks is just and reasonable, having regard to the circumstances of the matter.

Clause 5 seeks to exempt from income tax the income arising from investments of any superannuation fund or scheme approved of by the Governor under paragraph (b) of subsection (1) of section 18 of the Principal Ordinance. That, in effect, means that income arising from investment of any fund or scheme approved by the Governor shall be free from all tax while the income is in the hands of the fund or scheme; that is to say, before it is paid to the recipient. As soon as it is paid to the recipient, this income becomes liable for tax. The object is to allow the fund to build itself up without paying tax which would be effective as regards its growth.

Clauses 6 and 7 seek to correct certain typographical errors made in the Income Tax (Amendment No. 2) Ordinance, 1951, No. 18 of 1951. Clause 8 seeks to increase the rate of tax deductible in respect of interest payable to a non-resident company, to the same amount payable by a Company other than a Life Assurance Company under section 23 of the Income Tax Ordinance, Chapter 38, as substituted by section 2 of the Income Tax (Amendment) Ordinance, 1951 (No. 4 of 1951). The principle is that the amount to be deducted from a non-resident Company is always the same as the rate payable by a local Company. This rate was increased in 1951 to 45 per cent. Accordingly, the rate to be paid by a non-resident Company shall be increased from 40 to 45 per cent.

Clause 9 seeks to clarify an ambiguity in section 41C of the Principal Ordinance. Clause 10 is a general provision which has been suggested by the Secretary of State, and I might say

that this provision obtains in nearly all the Colonies. It is a very desirable provision as it empowers the Governor-in-Council to remit the whole or any part of a tax payable by any person if he is satisfied that it would be equitable and just to do so. Clause 11 seeks to give similar powers to the Commissioner to compound offences under section 57 of the Ordinance as are given to him under section 56A. Under the 1951 Ordinance power was given to the Commissioner of Income Tax to compound all the lesser offences in a motion to give the required information, but no provision was made to empower him to compound in respect the more serious offence of fraud. This power is required so as to enable an erring taxpayer to confess his sins to the Commissioner—sins of omission and commission perhaps—and to enable the Commissioner to fine an individual taxpayer without recourse to the Court. Very often the fear of the consequence of being brought before a Court might be so great as to prevent him from going to the Commissioner and making bare the full facts of the case. This therefore gives the Commissioner the power to collect the tax payable and, at the same time, to impose a fine.

Clause 12 seeks to empower the Governor-in-Council to make regulations for the deduction and payment of tax at the source in respect of emoluments and pensions generally and not only as at present from emoluments and pensions payable out of the revenue of the Colony.

There is one other point to which I would refer and that is with respect to clause 5. It has been suggested that paragraph (t) should be further clarified by the addition of certain words at the end reading as follows:—

“whether or not such investments represent or are derived from contributions of persons or companies not resident in the Colony.”

I have discussed the matter with the Commissioner of Income Tax and

he is agreeable to the addition of these words. Without further comment I beg to move that this Bill be now read a second time,

Mr. Wight seconded.

Mr. Smellie: Before the motion is put I would like to get an explanation with regard to the Objects and Reasons set out in the Bill. It is stated therein that—

"11. Clause 12 seeks to empower the Governor in Council to make regulations for the deduction and payment of tax at the source in respect of emoluments and pensions generally and not only as at present from emoluments and pensions payable out of the revenue of the Colony."

The hon. the Attorney-General did not say very much about that except that the tax would be deducted at its source. What I would like to ask him is whether this is an introduction of the "pay-as-you-earn" system into British Guiana?

The Financial Secretary and Treasurer : Maybe I can explain that. It is not every case of payment that will be dealt with. At the present time, as hon. Members know, the Governor-in-Council has power and has made regulations to enable all civil servants to have their tax paid by monthly deductions from salaries. The tax is still paid on income earned in the previous year but at the end of each month deductions are made and a final adjustment is made subsequently of the assessment computed. Civil servants find that a very valuable arrangement. They prefer to pay in instalments rather than have a lump-sum deduction and payment. As I understand it, the employees of certain commercial houses would like to have the same privilege. The object of this clause is to permit regulations to be made so that a similar arrangement could be made for business houses. I would like to say that it is not compulsory; it is voluntary. The clause will permit the Treasury

to make arrangements with certain firms who desire to have monthly deductions made from the wages of their employees so as to meet their obligations with respect to income tax.

Mr. Fernandes : On that point I am not very clear. The Financial Secretary has said that in the case of civil servants the amount is deducted in accordance with the assessment of the previous year, but a civil servant is not allowed to do business outside. If it is the intention of Government to collect the tax monthly from commercial employees under the scheme on a basis of one-twelfth of what he earns every year, would it not be going outside the principles of income tax collection? Would it disclose to a person's employer and others who have nothing to do with it, the income of the employee's wife, for instance? Would it disclose the income of a lady who, perhaps, has some little earnings of her own and pays contrary to the spirit of the Income Tax Ordinance? In the same way as it is passed on to employer the cashier will have to do the deduction and, of course, the information will be far and wide. I think Government should be careful where that is concerned.

The Financial Secretary and Treasurer : I suggest that this discussion be held over to the Committee stage. Even in the case of the Civil Service the procedure is voluntary.

Question put, and agreed to.

Bill read a second time.

COUNCIL IN COMMITTEE

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

Clause 5—*Amendment of section 8 of the Principal Ordinance.*

The Attorney-General : As I had pointed out, I want to make an addition

at the end of the paragraph "(t)" of the following words:—

"whether or not such investments represent or are derived from contributions of persons or companies not resident in the Colony."

That, as I intimated, clarifies the position in regard to this provision.

Mr. Wight : I do not know how far it is the intention of Government to tax any Trust Fund or funds held in trust in the Colony for a non-resident or held in trust in the Colony for a resident. It seems to me that we should have a declared policy through the hon. the Financial Secretary and Treasurer as to whether it is the intention of Government to exempt from taxation trust fund held in the Colony for non-residents, or whether it is the intention to tax them, and similarly with the converse. This clause can be read that it is the intention of Government to exempt trust funds held in this Colony for non-residents. Whether that is so, I would like to get a clear explanation from the hon. the Financial Secretary and Treasurer.

The Financial Secretary and Treasurer : I think we are at cross purposes. The particular section of the Income Tax law to which this amendment applies deals solely with Pension Schemes, which are trust funds but of a very special character. It applies where a business firm creates a fund under definite regulations for the payment of a pension as superannuation, or at death, to the employee. As the paragraph implies, the scheme has got to be approved by the Governor before it becomes eligible for this particular benefit, and I may say that these schemes are very closely examined by the Income Tax Authorities to see that they have all the provisions of a proper pension scheme. I take it, the hon. Member is referring to the ordinary personal trust fund. That is not being dealt with here at all. This relates purely to a

fund analogous to our own Widows and Orphans Fund, and the Rules and Regulations of that Fund are carefully examined before it is recommended to the Governor that he should approve of it as a scheme for exemption.

Mr. Wight: Does it mean that the ordinary private trust fund will be liable to taxation?

The Financial Secretary and Treasurer : Naturally so, private funds come within the four walls of the Income Tax laws. This is merely a provision to exempt from Income Tax on employees' pension scheme and so prevent it being mulcted unnecessarily by the Government. The answer is, in the sense of being charged Income Tax before it goes into the recipients' hands for whom the benefit is intended.

Clause 5 as amended put, and agreed to.

Clause 13. — *Commencement of Ordinance.*

Mr. Wight: This is the operative section as to when this Ordinance comes into force. Does it come into force in the year of assessment 1951 or 1952? It does seem that if we are bringing it in to give power to the Governor in Council to remit the tax where deemed just and equitable, that we should have some retroactive operation and not merely bring it into force for the future, because there must be people who are concerned and will be affected by this provision. If that is so, I think that, perhaps, we may pre-date the time of operation of the Ordinance.

The Attorney-General : The hon. Member has read the Bill. The point he is raising is whether clause 13 which states:

"This Ordinance shall be deemed to have come into operation with respect to and from the year of assessment nineteen hundred and fifty-two."

should remain as it is, or whether provision should be made whereby the Ordinance should go further back in its operation. I think that is what the hon. Member intends. The point is, how far back it can go. It can only take into consideration the current year and cannot go further back. The hon. Member's question, I believe, is directed to clause 10 which empowers the Governor in Council to "*remit, wholly or in part, the tax payable by any person if he is satisfied that it will be just and equitable to do so*". It is very difficult to say how far back the provision should be made for retroactive effect. I do not know exactly what the hon. Member has in mind, but the provision is as stated. It is fair, but there may be cases of which the hon. Member is thinking, which may require consideration for the purpose of relief and which may come within the terms of the provision of clause 10.

Mr. Wight: The point I am making is that clause 10 gives power to the Governor in Council to remit in certain cases where it is considered just and equitable. If you do not deal with it logically and equitably you may find a person having to pay on one assessment the full amount for, say, the year 1950, and when it comes to the year 1951 having been mulcted in 1950 being in the happy position of not being mulcted. If he should be relieved it should be given from the very inception, from the time he was being mulcted, otherwise it seems logical that, as he has been paying for four or five years and suddenly you turn around and say it is not fair to collect the tax, he should be given remission for those four or five years. If the collection is fair, then you should go on collecting the tax. If it is fair to relieve him at this moment, it is fair to relieve him from the inception of his paying of the tax. I think one has to be careful in this matter that an anachronism is not committed.

The Financial Secretary and Treasurer : I do not think I can con-

tribute anything useful. I am in the same position as the hon. the Attorney-General as regards how far can one go, I know we want to go back. I was not in the Colony when the acting Financial Secretary delivered his Budget Statement, but in that Statement minor remissions were promised in connection with certain elements of Income Tax. I have a note that in the case of a married person without children whose gross income does not exceed \$2,400, it was proposed to remit the tax. It is not intended actually to amend the Ordinance to allow this remission, and this provision will be used for those cases. Therefore it is desirable that it should certainly apply to 1952, but as to whether there are any cases which require special powers of the Governor in Council to authorize remission before the assessment of 1952, I do not know. At the same time there is nothing wrong about it, and I have no objection to retroactive powers being granted beyond 1952, but one does not know where to begin.

Mr. Wight: My observations were not directed towards placing the hon. the Financial Secretary and Treasurer in the difficult position of being a Siamese twin. They were just directed towards giving the Governor in Council the power of using discretion in certain cases without having an amendment of the law. That is what I am trying to guard against. We do not want a particular individual's case to arise and then having to come to this Council to allow a particular discriminatory clause to meet it. That is all I want to avoid.

Mr. Fernandes: A very interesting situation has arisen, because it seems to me from the answer given by the hon. the Financial Secretary and Treasurer on the question of increased allowances that it will be no longer necessary for this Council or any future Council to decide on any changes of allowances, for instance. That will be entirely a matter for the Governor in Council. I would like a statement to be made that that is or is not correct, be-

cause in my opinion that is not the intention of this law, as I see it. As I see it, this is to give the Governor in Council powers to deal with special individual cases and not with matters like the one referred to by the hon. the Financial Secretary and Treasurer. That is a very complicated system which has been put before us, and it is one I do not think will work. If it works it would not work equitably. I do not think it is intended to give power to do things of that kind, like what the acting Financial Secretary had put before us. I am sure that is not it, but if that is the intention I was under a misapprehension when I passed the clause. I was thinking of something else. I would like a statement that it is not the intention but that it is only to give the Governor in Council powers to deal with specific hard cases and not generally as the hon. the Financial Secretary and Treasurer seems to suggest.

The Attorney-General : So far as the point raised by the hon. the Deputy President (Mr. Wight) is concerned, it seems the provision of clause 10 is to enable the Governor in Council in appropriate cases to remit wholly or in part the tax payable by any person on being satisfied that it is just and equitable to do so. The hon. Member is emphasizing the point that there may be cases where it is just and equitable that the tax, regarded as payable and may have been paid over a period of years, should not have been payable and paid. Provision is being made to enable the Governor in Council not only to remit but to provide the necessary relief by repayment. But again I ask "How far back can we go?" And, therefore, to decide as to a date from which this particular provision may become operative is most difficult at the present stage. The hon. Member, I am sure, realizes that. The hon. Member is giving us hypothetical cases. One case is, this Council may decide that the year 1950 may be the proper date, but then on enquiry and investigation it may be found that a

similar case occurred in 1949 and, therefore, we do not know what the position is. The clause as drafted and as presented in this Bill enabling the Governor in Council to make remission provides that the Ordinance shall be operative for this year.

The Financial Secretary and Treasurer : May I say at once that I support the proposition of the hon. Member for Western Essequibo (Mr. Wight). I certainly know at least two cases which are so difficult of solution that it seems to us that the only hope of arriving at some decision as to what is honourable, proper and right is for the Governor in Council to rule on it and decide what remission or relief should be given. There are one or two cases where the Income Tax of the individual is being assessed which are so complex and so burdensome that it has been felt that it would be very desirable that the Governor with the advice of his Council should have this power. Consequently I would be glad indeed if this clause can apply in such a way that these outstanding assessments can be dealt with. I speak subject to correction. I am afraid that clause 13, drafted as it is, will preclude that except for the year 1952. Consequently I would be glad if there can be some means by which this particular clause—10—can be so redrafted to meet it. I am very grateful to the hon. Member for having raised the point. So I do suggest that we leave the Bill in Committee so as to allow the hon. the Attorney-General and the Income Tax Commissioners to consider some formula.

As regards the point made by the hon. Member for Georgetown Central (Mr. Fernandes), I entirely agree with him that it would be entirely wrong for any such provision to be used either to defeat the tax and the allowance provisions of the Ordinance or to amend them outside of the law. I may say that the Income Tax administration is very hard-headed, very obstinate, and will

certainly not, I think, make assessments outside the strict provisions of the law. It was never intended for that purpose. I had mentioned these strange reliefs which were propounded in the acting Financial Secretary's Budget Statement. They were not applicable to one individual but to a certain small group of individuals, and I had hoped myself it may be proper to deal with them under this clause. If it is not so, then we should not use this clause at all to vary fundamentally the scope or application of the Income Tax laws. I give the assurance at once that it will never be so used. It is designed to give relief in impossible cases where by no means the law can be amended or interpreted to give the proper kind of relief from a very heavy burden.

Mr. Fernandes : I would like to support the recommendation of the hon. the Financial Secretary and Treasurer that the Bill be left in Committee in order to find a solution. I know of at least one case where the individual who had left the Colony had his entire profits divided up between British Guiana and the other country where he resides in Income Tax. All that would happen now is that he would remove his capital from British Guiana, the place of his birth, and we would lose everything. I am sure it is not the desire of any Government to take from a person in Income Tax more than he earns. That case goes back over a number of years. I am sure some means can be found to put in the amendment something which will give the Governor in Council the power to decide what is fair and reasonable. The tax is imposed so as to raise money, but is never meant to kill anybody or to rob him of what he is normally entitled to.

Mr. Wight: I agree with the hon. the Financial Secretary and Treasurer. If we can get clause 10 so drafted as to permit the exercise of the discretion of the Governor in Council, that would meet the case. In other words, what I

think is necessary is that clause 13 be so drafted that under clause 10 the Governor in Council is able to exercise discretion in any particular case and even remit, if necessary, the tax which had to be recovered by Government in a manner which was not in accordance with the law legally recovered. Clause 10 should give the widest possible latitude without any restriction. The hon. the Attorney-General knows fully well that if you put a restraining clause or break on clause 10 and this Ordinance comes into force on a particular date, anything which has taken place previous to that date one would actually be precluded from exercising one's discretion in respect of it under clause 10 except for such purpose as after the Ordinance has come into effect.

The Attorney-General : I think it is desirable that we postpone further consideration of the Bill, as all the other clauses have been passed. Clause 13 which provides for the commencement of the Ordinance will have to be redrafted so as to enable the Governor in Council to exercise discretion which is given by clause 10 in any case over a period of time wherever it is thought just and equitable to do so. Accordingly it may be necessary for the redrafting of clause 13, leaving out the operation of clause 10 and dealing with that specifically and the remaining clauses of the Bill to be dealt with as proposed under the provision of clause 13. That is to say, in the year of assessment 1952. I ask leave to defer further consideration of the Bill so as to enable me to make the necessary draft and bring the Bill back. I beg to move that the Council resume with leave to sit again on this Bill.

Mr. Wight seconded.

Question put, and agreed to.

Council resumed.

LAW REFORM (MISCELLANEOUS
PROVISIONS) BILL, 1952

The Attorney-General : I beg to move the second reading of the Bill intituled:—

"An Ordinance to amend the law relating to the capacity, property, and liabilities of married women, and the liabilities of husbands; to amend the law relating to proceedings against, and contribution between tortfeasors; to amend the law relating to contributory negligence; to amend the law as to the effect of death in relation to causes of action and as to the awarding of interest in civil proceedings; to amend the law relating to the admissibility of evidence as to access; and to amend the law of evidence."

This is one of the Bills which the Law Revision Committee has submitted for the consideration of this Council and for ultimate enactment. It seeks to introduce into this Colony the provisions of the Law Reform (Miscellaneous Provisions) Act, 1934, (24 and 25 Geo. V. Ch. 41), the Law Reform (Married Women and Tortfeasors) Act, 1935, (25 and 26 Geo. V. Ch. 3) and the Law Reform (Contributory Negligence) Act, 1945, (8 and 9 Geo. VI. Ch. 28). in accordance with the recommendations of an *ad hoc* Law Revision Committee appointed by His Excellency the Officer Administering the Government on the 6th June, 1951, to consider and report what amendments of matter and substance in the Law of the Colony should be enacted before the publication of a new edition of the Ordinances.

Parts I and II of the Bill seek to enhance the provisions of the Law Reform (Married Women and Tortfeasors) Act, 1935, so as to—

- (a) clarify the position of a married woman in relation to her property by putting her, in relation to such property in the same position as an unmarried woman; and
- (b) abolish a husband's liability for his wife's torts, ante-nuptial contracts, debts and obligations; and

- (c) abolish the rule that a judgment against one joint tortfeasor is a bar to any action against the others, subject to the condition that where more than one action is brought in respect of damage against tortfeasors liable in respect of the damage, the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given.

With respect to contribution between tortfeasors, whether joint tortfeasors or otherwise, it is provided that in any proceedings for contribution, the amount of contribution shall be such as the court shall find to be just and reasonable, having regard to the extent of the responsibility for the damage on the part of the person from whom the contribution is sought to be recovered. Provision is also made whereby, in respect of actions for damages brought by or on behalf of any parent or child, an illegitimate child shall be treated as being, or having been, the legitimate offspring of his mother and reputed father. That provides the necessary safeguard, having regard to the particular circumstances and the particular amount of liability of each party. It is more or less based upon the principle which is applicable in cases of maritime law—running down cases with regard to ships. The principle is now being followed in similar cases arising out of negligence, and in cases relating to tort.

Part III seeks to abolish the present rule whereby a person who suffers damage as a result partly of his own fault and partly of the fault of any other person, is debarred from recovering damages against such other person. It is sought to provide that, in such a case, the damages recoverable shall be reduced to such an extent as the court thinks just and equitable, having regard to the claimant's share in the responsibility for the accident. These provisions are based on the Law Reform

(Contributory Negligence) Act, 1945, and apply a principle which has been for a long time applied in Admiralty actions. That is, as I have just pointed out.

Part IV seeks to introduce the provisions of the Law Reform (Miscellaneous Provisions) Act 1934, by providing that all causes of action subsisting against or vested in any person on his death shall survive against, or as the case may be, for the benefit of, his estate. Certain causes of action of a peculiarly personal nature are excluded, that is to say, causes of action for:—

- (a) defamation;
- (b) seduction;
- (c) inducing a spouse to leave or remain apart from the others; or
- (d) damages for adultery.

Hitherto, an action died with the person who had suffered the damage, but this provision in the law seeks to get beyond that so that an action may be continued for the benefit of the deceased's estate except, as pointed out, in certain matters of a very personal character. Provision is also made whereby no proceedings in tort shall be maintainable against the estate of a deceased person unless either:—

- (i) the proceedings were pending against him at the date of his death; and
- (ii) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation.

Clause 12 (4), however, seeks to create an exception to the foregoing provisions in the case of the death of the party whose negligence gives rise to a cause of action, where such party dies before or at the same time as the damage was suffered by providing that if a cause of action would have subsisted against the negligent party had he not died before or at the same time as the damage was suffered, such cause of action shall be deemed to have been subsisting against him before his death.

In other words, where a man through negligence causes damage to another, and himself dies immediately as a result of such negligence, an action would be maintainable against his estate, as such cause of action would be deemed to have been subsisting against him before his death.

Part V seeks to enable a court to award interest, where judgment is given in any proceedings for the recovery of any debt or damages, at a rate not exceeding 6 per centum per annum, and to enable a party to recover interest on any judgment at the rate of 4 per centum per annum. All these provisions have been made in the changes and improvements of the law in the United Kingdom, and I think it would be agreed that it is desirable that these very wholesome provisions be introduced into the law of this Colony. Although they may be technical matters of law, I think hon. Members can fully appreciate the reasons for them and the desirability of passing them into law here. As I have told hon. Members, the Law Revision Committee in this Colony has gone very carefully into these matters and has recommended that they be introduced and enacted in British Guiana. I beg to move that this Bill be now read a second time.

Mr. Wight seconded.

Mr. Luckhoo: I heartily endorse what the honourable the Attorney-General has said—that it is pleasing to find that we are incorporating in our local law these very desirable features of the English statute law. Maybe it is a pity that this was not done earlier, yet one is thankful that they are being introduced into our law today. This offers me an opportunity of repeating something which one has heard in this Council Chamber for a long while, but which can well stand repetition because of all the reforms we are having in our law. I refer to the preparation of a revised edition of the laws of this Colony. One is presumed to know the law,

but when one finds it difficult to know where the law is, it provides a situation which is not tenable. It is very difficult, when one cannot even buy Ordinances or volumes from Britain in order to ascertain what the law is.

Since 1949 the Ordinance—No. 26 of 1949—was passed, in order “to make provision for the preparation, printing, publication, coming into force, and legal validity of a revised edition of the Ordinances of the Colony and of the subsidiary laws thereof.” Provision has also been made for the Governor to appoint a Commissioner or Commissioners for the purpose of preparing a revised edition under the Ordinance. That was in 1949 and I do not know whether the Commissioner has been actually appointed, but it is common knowledge that Mr. Justice Duke at one stage had actually commenced the revision of the Ordinances preparatory to the revision of the laws, and it is also common knowledge that he did an enormous amount of work in this connection, work which would have been invaluable to this Colony as a whole. One hears these things and it would appear that efforts were made to get Mr. Justice Duke to come from Trinidad and complete the work which he so ably began but, for some reason or reasons, permission was evidently not granted to him. I take this opportunity to mention the matter because I feel that attempts should be made again except there are new Commissioners in view, to see that the person who had done so much work in connection with the revision of our Ordinances should be permitted to come and complete the work.

It seems to be a selfish policy to prevent a person who can complete a work from doing so after having spent much time on it already, whether it is Mr. Justice Duke or not. I only make mention of his name because it was in Trinidad he began to work on this matter and if it is not made possible for him to return and complete the work,

the alternative *would* be the appointment of a Commissioner or Commissioners. I urge that that should be done by virtue of the Ordinance to which I have just referred. It seems to me that with this law reform that we are having—in the passing of various amendments and so on—the time is over-ripe when we should have our laws revised and properly consolidated.

To refer again to the particular Bill which we are considering, I heartily endorse the remarks made by the hon. the Attorney-General. In most cases the amendments have been taken entirely from the Law Reform Act of England and it is reasonable and right that they should be introduced to form part and parcel of our own law. I feel that my humble suggestion can bear repetition and that its efforts should be made again to see whether Mr. Justice Duke could be available to complete the revision of our laws, since he has already devoted so much time to the commencement of the work as envisaged here.

The President: I should just like to interpose and tell the hon. Member what the position is. I think it was during the discussion of the Draft Estimates this year that I, as Colonial Secretary, made a communication to this Council on the subject in answer to the hon. Member for Georgetown South. I said then that an attempt had been made again to secure the services of Mr. Justice Duke in view of the work he had already done on the revision of the laws. Since then a further attempt has been made to secure his services, but I am afraid the Government of Trinidad is quite adamant on the subject. The suggestion was that he might have been able to carry on the work on his leave, but the reply was that they could not consider it favourably. Now another Commissioner is in view and I think he will be here before the end of the year. Mr. Justice Duke has said that if the Commissioner

now coming requires it, he would make the material he has already prepared available to him.

Mr. Wight: I myself have found great difficulty in following the laws of the Colony in the present circumstances, and I am glad to hear that the hon. the Sixth Nominated Member, through pressure of legal work, is so filled up that he is now appealing for the work to be done. What made legal work very difficult in the past is the lack of consolidation of the Ordinances. I remember that some time ago when I was in the Attorney-General's office, if we wanted to draft anything relating to Rules, Regulations or Ordinances, we always had to ring up the Department concerned for information which would help to guide us. Even though the Attorney-General's office is turning out legislation like sausages, I do not know if it has progressed in that respect and does not have to adopt the same course of ringing up various Departments to find out whether they know anything about Rules and Regulations and so on. I agree with the hon. Nominated Member (Mr. Luckhoo) in saying that we should bring into being in this Colony certain amendments in the law in England, such as the Law Reform Act. I would like to remind him, however, that we have a piece of legislation in this Colony which is in advance of all the members of the Commonwealth, and that is in relation to the dog bite. I think this is the only place where, in the case of a dog bite, scientia has not got to be proved. Perhaps the United Kingdom, in turn, might have to follow us in that particular bit of legislation which obtains in this Colony.

Question put and agreed to.

Bill read a second time.

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

COUNCIL IN COMMITTEE

Title and enacting clause.

The Attorney-General: I ask leave to make an amendment by the deletion of the following words from the Title:-

"To amend the law relating to the admissibility of evidence as to excess; and to amend the law of evidence."

That has been put into a separate Bill which will be dealt with at a later stage, today.

Amendment put, and agreed to.

Council resumed.

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

Dr. Nicholson seconded.

Question put, and agreed to.

Bill read a third time and passed.

EVIDENCE BILL

The Attorney-General: I beg to move that a Bill intituled—

"An Ordinance to amend the Law of Evidence in proceedings between husband and wife and in civil proceedings."

be now read a second time. This Bill seeks to introduce as a part of the law of this Colony the provisions of section 7 of the Law Reform (Miscellaneous Provisions) Act, 1949, (12, 13 & 14 Geo., VI., Ch. 100), so as to enable a husband or a wife to give evidence of access in any proceedings between them. The section reads:—

"(1) Notwithstanding any rule of law, the evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.

(2) Notwithstanding anything in this section or any rule of law, a husband or

wife shall not be compellable in any proceedings to give evidence of the matters aforesaid.

(3) Section four of the Adoption of Children Act, 1949, shall cease to have effect."

This provision became necessary in the light of the decision in the well-known case of Russell and Russell, which was decided in the House of Lords in 1924 and reported in Law Reports, Appeal Cases, 1924, on page 867. After much litigation the judgment was delivered by the Earl of Birkenhead. It was held by a majority of the Court :—

"The rule of law that neither a husband nor a wife is permitted to give evidence of non-intercourse after marriage to bastardize a child born in wedlock applies to proceedings instituted in consequence of adultery and is not affected by 32 & 33 Vict. c. 68. s. 3. which makes the parties to such proceedings, and the husbands and wives of such parties, competent witnesses.

"So held by Earl of Birkenhead, Viscount Finlay and Lord Dunedin; Lord Sumner and Lord Carson dissenting."

The object of this provision in this Bill is to change the Common Law to which I have referred and with which the judgment of that Court dealt. The second part of this Bill introduces the provisions of the Evidence Act, 1938, (1 & 2 Geo. VI, Ch. 28) with minor modifications to suit local conditions. That is to say, these provisions permit secondary evidence to be given under certain safeguards. This is one of the Bills which have been recommended by the Law Revision Committee, and it is hoped that these provisions will be enacted in this Colony. As I have said, the provisions have already been enacted in the United Kingdom and can be found in the Law Reform (Miscellaneous Provisions) Act of 1949 and the Evidence Act of 1938. I beg to move that this Bill be now read a second time.

Dr. Nicholson seconded.

Question put, and agreed to.

Bill read a second time.

The Council resolved itself into Committee and considered the Bill clause by clause without amendment.

The Council resumed.

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

Dr. Nicholson seconded.

Question put, and agreed to.

Bill read a third time and passed.

CUSTOMS (AMENDMENT No. 2) REGULATIONS.

The Colonial Secretary: I beg to move:—

"That, this Council approves the Customs (Amendment No. 2) Regulations, 1952, which have been laid on the table."

These Regulations are made under the Customs Ordinance and prescribe the fees payable by merchants for the services of Customs Officers outside the legal hours of the Customs Department. The purpose of these revised Regulations is to set out in detail the fee payable for each type of service for which a merchant or a shipping agent will require the services of an officer. The advantage is that such shipping agent or merchant will know in advance exactly what it is going to cost him to obtain the services of officers outside the normal legal hours of the Customs Department. The rates proposed by the Comptroller of Customs, which are contained in these Regulations, have been discussed by the Comptroller of Customs with shipping interests in Georgetown and agreed to by them, and have also been discussed with representations of the Chamber of Commerce and also agreed to by them.

I beg to move that these Regulations be approved.

The Financial Secretary and Treasurer seconded.

Question put, and agreed to.

Regulations approved.

**MEDICAL PRACTITIONERS (TEMPORARY)
REGISTRATION ORD.**

The Colonial Secretary: I beg to move the following motion—

“Be it resolved that the Medical Practitioners (Temporary Registration) Ordinance, 1947, (No. 24) shall continue in force for a further period of one year from the 1st of January, 1953.”

The Medical Practitioners (Temporary Registration) Ordinance of 1947 provides for the registration at the discretion of the Medical Board of medical practitioners whose qualifications are not normally registrable locally. The Ordinance was introduced at a time when there was an acute shortage of doctors and great difficulty was being experienced in recruiting practitioners with registrable qualifications. The Ordinance was due to expire on the 31st December, 1951, but there is a provision in the Ordinance to the effect that by a resolution of this Council the Ordinance may be continued annually for further periods of one year. In accordance with that provision in November, 1951, this Council by resolution extended the period for one year which expires at the end of this year, 1952. The Council is now invited to extend the period for a further period of one year from the 1st January, 1953, as there are still doctors in the public service and in one of the commercial firms whose qualifications are not normally registrable and whose services in the Colony are still required.

The Financial Secretary and Treasurer seconded.

Question put, and agreed to.

Motion unanimously adopted.

1951 SUPPLEMENTARY ESTIMATE.

The Financial Secretary and Treasurer: I regret to have to bring before the Council in October, 1952, a Statement of Supplementary Estimate for the year 1951. That is due to administrative difficulties. The accounts at the Treasury are closed and presented in the form of a report which has to be printed and, I am afraid, the preparation of this Statement took more than it should. The Schedule itself contains a large number of items—some small, some large—which represent excesses disclosed after the closing of the accounts of the Treasury. They have, of course, no bearing on the financial position as already reported to this Council on more than one occasion. This is merely securing a formal authority from the Council. Although the total figure appears so large—\$938,000—Members will appreciate that one or two items make up most of it. The deficiency in the Transport and Harbours Department alone accounts for \$452,928. That is a figure which does not appear until after the books of that Department are closed. Although hon. Members have been made aware of what has been happening, yet the figures are not actually brought into account in this Statement until long after the event. There are one or two other items this Council is aware of—the Cost of Living Allowance which was increased last year, \$104,000; Departmental transactions; Unallocated Stores which is a running account and the excess on which is included in this final schedule. I therefore ask that this Council pass this Schedule formally. It does not have any effect on the financial position which was reported long before the end of the year.

The Colonial Secretary seconded.

Mr. Fernandes: I would like to ask the hon. the Financial Secretary and

Treasurer to give this Council some idea of the approximate time when we are likely to deal with the Estimates for 1953.

The Financial Secretary and Treasurer: I had been hoping to be able to present the Budget about the middle of November and I still hope that is possible, but I am beginning to doubt it owing to printing difficulty. Naturally Members know that the preparation of the Budget Statement is a work of some labour, but it cannot be begun until all the departmental estimates are ready and until the estimates on both sides can be finalized. Even now we are still getting urgent requests for the inclusion of various items in the Estimates. I still think that we shall be able to take the Budget meeting before the end of November and not in December.

Question put, and agreed to.

Motion unanimously adopted.

PETROLEUM (AMENDMENT) BILL

The Attorney-General: I beg to move that a Bill intituled—

“An Ordinance further to amend the Petroleum Ordinance, 1930, with respect to the storage of petroleum.”

be now read a second time. Hon. Members will recollect that in December, 1948, the Fire Advisory Board made certain recommendations. This Bill seeks to amend the Petroleum Ordinance, 1930, (No. 7), to give effect to some of those recommendations so as to reduce the risk of fire arising from the storage and handling of petroleum and other inflammable substances. Clause 2 of the Bill repeals and re-enacts section 2 of the Principal Ordinance and deals with the definition of “dangerous petroleum”, “licensed building”, “ordinary petroleum” and “warehouse”. Subclause (2) of that clause provides that the Governor in Council may by Order published in the *Gazette*

declare that the provisions of this Ordinance shall apply to such other inflammable liquid or substance as may be specified in the Order, subject to any modifications as may be prescribed therein. That is a general provision and it is desirable because it enables the Governor in Council from time to time, having regard to any particular liquid or substance which is inflammable so to be declared and published in the *Gazette*, so that the provisions of this Ordinance should apply to such liquid substance. This clause makes it clear to the public that methylated spirits and carbon bisulphate, both of which have a flash point of less than 85 degrees Fahrenheit are within the definition of “dangerous petroleum”, and also includes carbide of calcium which under conditions of humidity generates the explosive gas “acetylene.” It also brings within the provisions of the Principal Ordinance petroleum having a flash point greater than 150 degrees Fahrenheit by defining as “ordinary petroleum” all petroleum other than dangerous petroleum and omitting the proviso inserted in section 2 of the Principal Ordinance, No. 13 of 1934. At present the Principal Ordinance, No. 7 of 1930, does not apply to petroleum having a flash point exceeding 150 degrees Fahrenheit, although that type of petroleum once ignited burns, as everyone is aware, with very great intensity.

Clause 3 prohibits petroleum other than lubricating oil and similar types of petroleum, imported into the Colony, from being kept on any wharf from one day to the next. At the present time the Comptroller of Customs may in his discretion permit “ordinary petroleum”, as at present defined in the Ordinance of 1930, discharged on to a wharf after 3 p.m. to remain on such wharf overnight. This is considered to be a dangerous practice, and we should endeavour to avoid it. Clause 4 repeals and re-enacts section 5 of the

Principal Ordinance, and clause 6 provides for the repeal of certain provisions of Ordinances No. 19 of 1932, No. 28 of 1952 and No. 13 of 1934. I beg to move that this Bill be now read a second time. I am sure hon. Members will agree it is very desirable that every safeguard ought to be taken so as to avoid fires or the cause of fires in this town and other places or built-up areas.

The Financial Secretary and Treasurer seconded.

Mr. Fernandes : I would just like to ask one question. This Ordinance covers petroleum of all types—"Diesel oil" is far less inflammable than "alcohol". I would like the hon. the Attorney-General to tell me what restrictions, if any, are contemplated to be put on rum, say, of 40 per cent. overproof which has a very sharp flash point, whether it is proposed to say that rumshops in the City should not carry more than 100 gallons of rum at any one time? One has to be very careful in legislation of this kind. I am one who would like to see the laws tightened up as much as possible, but I do not want to legislate in respect of one set of articles and permit other articles more dangerous to remain untouched. I am sure I am correct in saying that what is known to us as "high wine or overproof rum" is far more dangerous in a case of fire than the articles of petroleum which are covered by this law and of which, I see, one is only permitted to carry 100 gallons at any one time on any premises. I operate launches in the course of my business and use gas oil. It may mean that I will not be able to supply that fuel for refuelling on the way other than during the day, and then one will no longer be able to have that fuel resting on one's wharf for even five minutes without breaking the law.

The Attorney-General: At present I am unable to give the hon. Member a definite answer so far as high wine and alcohol are concerned, which the hon. Member said may be equally dan-

gerous or perhaps more dangerous than petroleum which we are dealing with now. But as the result of the recommendations of the Fire Advisory Board the whole question of legislation in regard to inflammable materials is and has been examined in order to avoid dangers arising out of the storing of such inflammable materials. Arising out of that, various legislative provisions are being brought to this Council in order to ensure proper precautionary measures being taken. This Bill deals with petroleum at the moment, but there are other questions to be dealt with, and I venture to say that the hon. Member's point will be dealt with in due course. I am not unmindful of his comment that it is undesirable to provide any sort of discriminatory—I use that word advisedly—legislation as regards any inflammable materials such as petroleum as against high wine and alcohol of very powerful strength.

Question put, and agreed to.

Bill read a second time.

COUNCIL IN COMMITTEE.

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

Clause 4—*Repeal and re-enactment of section 5 of the Principal Ordinance.*

Mr. Fernandes: In paragraph 5 (1)

(a) there is an item which reads:—

"(a) carbide of calcium in any quantity exceeding five pounds; . . ."

That looks all right at a glance, but there is nothing prohibiting one from having several cylinders of this gas which would do more damage than the 6 lbs. of carbon bisulphide. I do not say we should have a law preventing one and not the other, because it would tend to force certain persons to use a certain drug which is equally dangerous. It is true that it is stored in a steel cylinder but, nevertheless, if it gets into the fire it would do more danger than a few pounds of carbide.

The Attorney-General : Provision is being made here to prohibit the keeping of crude calcium in any quantity exceeding 5 lbs. I think the hon. Member is satisfied about that, and, if I understand him rightly, he is referring to the relative safety of these materials, but I think that aspect has been fully covered.

Mr. Fernandes : If the hon. the Attorney-General cannot tell us whether gas which is generated by carbide of calcium and stored in a steel cylinder is not really dangerous, then I would have to object to the consideration of this Bill in Committee until we get the information. Certain persons use carbide of calcium for the purpose of generating their own gas, but if we pass this Bill it might force people to buy something else—gas already manufactured by somebody else and which is bound to be more expensive. If that gas is equally dangerous I do not see why there should be this discrimination. In other words, the quantity of 5 lbs. is definitely too small, as I see it.

The Attorney-General: I would like to know whether the hon. Member feels that the quantity of 5 lbs. provided here is too small and whether it should be increased, or whether it would be a source of danger as regards fire on a premises. As I understand the hon. Member, if it is kept at this maximum of 5 lbs. it may mean that a user of this substance would be forced to purchase some other substance and that would mean driving him away from the market and giving increased custom to those who sell alternative substances. I think that is what the hon. Member means, but I am sure he would appreciate the fact that there is no such intention underlying the provision. The only point is to provide some safeguard as regards the storage of these inflammable materials.

Mr. Fernandes : This provision would do more than that. It would prevent any firm in B.G. from selling carbide of calcium because it is stored in

drums of 100 lbs. and if only 5 lbs. can be kept nobody would buy and everybody would be forced to buy the ready-made gas.

The Attorney-General: I would like to know whether there is any alternative material in quantities comparable to the 5 lbs. of carbide of calcium as mentioned in this Bill. Further, what would be the difficulty on the part of these people if they do not want to use carbide of calcium?

Mr. Fernandes : They would be compelled to use gas in cylinders which is just a substitute. It is the same calcium of carbide, with water added.

The Attorney-General : The hon. Member's approach to the question is that not only is it desirable that there should be better safeguard in connection with the storage of these substances, but that unintentionally this provision may result in those who sell calcium of carbide having a reduction in their business and allowing others to have an increase in their business. So far as I am concerned, I cannot make one thing or the other of that point. This provision was not considered from the commercial aspect at all, but as a precautionary measure to prevent people from storing too large a quantity on their premises.

Mr. Fernandes: I am afraid the last couple of fires we had set persons panicky and every one was keenly expecting the passing of legislation of this kind. We must be careful, however, not to pass legislation that would cause unnecessary hardship, for when it is put into operation it might make us hold our heads down in shame. I have been handling petroleum for quite a while and I think I was one of the first storers, but I am not asking that any restriction in the Bill be removed. Nevertheless, I do not think that should prevent me from warning this Council against legislation of this kind which

looks at one side of the picture but ignores the other.

The Chairman : The hon. the Fifth Nominated Member (Mr. Smellie) is the Chairman of the Fire Advisory Board and I do not know if he can throw any light on this question.

Mr. Smellie : I am afraid I cannot throw any light on the point, especially as regards the danger relating to solid calcium of carbide as against gas. What I know is that members of the Fire Advisory Board have made up their minds as regards the draft legislation put to Government, to endeavour not to throw any hardship on the Commercial Community. The intention is to pave the way step by step for making Georgetown safer as regards fires. This, I think, is the first measure that has come before this Council. We will take them one by one and as time goes on endeavour to adjust matters without any objection being taken. If we are going to throw out all the Bills that this Fire Advisory Board suggests to Government, we would never get anywhere and would get back into the same position as before the fires took place last year. I do submit that the provisions of this Bill are reasonable and should be passed.

Mr. Fernandes: I do not think the remarks of the hon. Nominated Member are quite fair to me because I supported the second reading of this Bill and that must have indicated to him that I accepted it in principle. Therefore, the question of throwing out Bills put forward by the Fire Advisory Board does not arise. All I want to be sure about is that the details of the legislation do not create any hardship, taking into consideration the existing circumstances. If I was against the Bill I would have said so in the course of the debate on the second reading. I am with the Fire Advisory Board as regards trying to make Georgetown

safer from fires, but if this Council accepts everything put before it then we would find out one day that it has made certain things which are essential in British Guiana impossible. That is why I made the suggestion to the hon. the Attorney-General, but that does not say I am against the recommendations of the Fire Advisory Board and should withdraw what I said. It would be recorded in Hansard and if anything occurs I would have pleasure in referring to Hansard — not that it would do much good — and point out that I told Government so.

The Chairman: The only way we can meet the hon. Member's point is to allow people to keep ordinary petroleum in quantities exceeding 100 gallons.

Mr. Fernandes: I am not offering any more suggestions; we will see the effort of this provision later on. I would just make the point that we can pass it and later on bring an amending Bill to put it right. I would like to see these things in the Bill go through as early as possible. This Bill has been in our hands since September 20, and I want to see it put into operation. I would also like to say that I am an agent of a Fire Insurance Company.

Clause 4 passed as printed.

Council resumed.

The Attorney-General: With the consent of Council, I beg to move that this Bill be now read a third time and passed.

Mr. Wight seconded.

Question put, and agreed to.

Bill read a third time and passed.

**IMMIGRATION (AMENDMENT) BILL
1952.**

The Attorney-General: I beg to move the second reading of the Bill intituled:—

"An Ordinance to amend the Immigration Ordinance, 1947, to make provision for certain information to be given by masters of vessels arriving from any place outside the Colony or departing from the Colony."

This Bill seeks to make provision for the supply by the master of a vessel arriving from any place outside the Colony or departing from the Colony, of information relating to the members of the crew of such a vessel for the purposes of the Principal Ordinance. As the law now stands, the master of such a vessel is only required to supply such information in respect of passengers and, as a result, the immigration authorities have found considerable difficulty in preventing the illegal entry of prohibited immigrants into the Colony who arrive here in the guise of members of the crew.

Clause 2 of the Bill seeks to make provision for the necessary information to be given by the master of such a vessel relating to members of the crew. Clause 3 seeks to make it an offence, punishable by fine or imprisonment on summary conviction for a member of the crew of such a vessel—

- (i) to supply false information for the preparation of the list of the passengers and members of the crew required under the provisions of the Principal Ordinance;
- (ii) to give an untrue answer to any of the questions put to him for the purposes of the Principal Ordinance by an immigration officer; and
- (iii) to make a false statement in the prescribed declaration.

I think hon. Members will agree that these provisions are very desirable. They give to the Immigration authorities an opportunity of keeping a proper check on those who arrive on ships and members of the crew. The

authorities would thereby be enabled to prevent members of the crew from remaining in the Colony rather than leaving with their ships. Ordinance No. 42 of the 1947 is, of course, the Immigration Ordinance and it deals with the provisions relating to persons coming into this Colony. I think these are very necessary provisions to be put into the law. I beg to move that the Bill be now read a second time.

Mr. Wight seconded.

Mr. Fernandes: I have had considerable experience in this respect and would like to endorse everything that the hon. the Attorney-General has said. This Bill will end one of the best means of bringing undesirable immigrants to British Guiana. Sailing vessels play a great part in that, because the masters do not make all the members of the crew sign the necessary articles. I think this provision will stop most of the undesirables who attempt to come into this Colony.

Motion put, and agreed to.

Bill read a second time.

Council resolved itself into Committee and considered the Bill clause by clause without amendment.

Council resumed.

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

Mr. Wight seconded.

Question put, and agreed to.

Bill read a third time and passed.

**GOVERNMENT WHARVES (AMENDMENT)
BILL.**

The Attorney-General: I beg to move a second reading of the Bill intituled—

"An Ordinance to amend the Government Wharves Ordinance by extending its application to certain wharves"

This Bill seeks to empower the Governor to declare, by notice in the *Gazette*, any wharf on which public moneys have been expended to be a Government wharf under the Government Wharves Ordinance. As the law now stands, this power is restricted to wharves erected or constructed by order or direction of the Governor out of public moneys. Clause 2 provides that section 3 of the Principal Ordinance be amended by the substitution of the words "*on which public money have been expended*" for the words "*erected or constructed by order or direction of the Governor out of public money*." I think that formula will find favour with hon. Members, because oft-times it happens that this Council is called upon to agree to a vote of money in respect of public wharves. This Bill empowers the Governor to declare by notice any wharf on which Government moneys have been spent to be a Government wharf under the Ordinance. The Government Wharves Ordinance, chapter 117, is a very short Ordinance consisting of five sections. In the interpretation, section 2 it reads:—

"government wharf" means any of the wharves mentioned in the schedule hereto, and any other wharf which the Governor, as hereinafter provided, declares to be a government wharf".

As I said, the formula now is that a Government wharf means a wharf on which Government moneys have been expended. In the Schedule is set out the various wharves which are regarded as Government wharves, and section 3 of the Ordinance provides for the declaration by the Governor of Government wharves. I think hon. Members know the various wharves better than I do. I beg to move that this Bill be now read a second time.

Mr. Wight seconded.

Mr. Smellie: I had hoped for some clearer explanation from the hon. the Attorney-General in regard to the ob-

jects and Reasons of this Bill. It is stated therein:

"As the law now stands, this power is restricted to wharves erected or constructed by Order or direction of the Governor out of public moneys."

Then it says this Bill seeks to empower the Governor to declare any wharf on which public moneys have been expended to be a Government wharf under the Government Wharves Ordinance, I do not understand it. I had hoped it would have been explained.

The Attorney General : . . When we get into Committee, perhaps, it may be explained.

Question put, and agreed to.

Bill read a second time.

COUNCIL IN COMMITTEE.

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

Clause 2—Amendment of section 3 of the Principal Ordinance.

The Attorney-General : The hon. the Fifth Nominated Member (Mr. Smellie) has raised the point as to the reason the formula is changed. Some time ago it was drawn to the attention of Government that the Transport and Harbours Department's wharves were frequently being used for mooring by vessels, and eventually consideration was given to the question of providing Rules in regard to those wharves and the berthing of ships on to those wharves. One of the Rules vested in the Management of the Government Steamers power to grant permission for the use of any Government Stelling to which Government steamers called, and another Rule stated that no vessel or craft except a steamer or craft of the Government should be allowed to use the stellings in the Demerara River and suggested that charges be instituted.

Eventually it was considered desirable to have Government Wharves Charges Rules which were for the purpose of implementing a proposal from the Transport and Harbours Department to institute charges for the use of Government wharves by vessels other than those loading or discharging there. Eventually this whole matter came up for consideration and it was found that the Government Wharves Ordinance, Chap 117—

Mr. Smellie: I think I can save the hon. the Attorney-General a lot of time. What it boils down to is this: The Transport and Harbours Department wharves are not erected or constructed by order or direction of the Governor out of public moneys. I can understand the position now. I am indebted to the hon. Member for Georgetown Central (Mr. Fernandes) for having made it clear to me.

Council resumed.

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

The Colonial Secretary seconded.

Question put, and agreed to.

Bill read a third time and passed.

PENSIONS (AMENDMENT) BILL

The Attorney-General : I beg to move the second reading of a Bill intituled —

“An Ordinance further to amend the Pensions Ordinance, 1933, with respect to transferred officers.”

This Bill seeks to remove the condition that for the grant of pension from the funds of the Colony a transferred officer must have held a pensionable office in the Colony for a period of at least twelve months. It is considered a hardship that a transferred officer who

has served in the Colony for a period less than twelve months and has eventually qualified for pension on retirement from the public service, should be ineligible for the grant of a pension in respect of such period of service. The Bill seeks to remove that condition.

As will be seen from clause 2 of the Bill which provides for amendment of the Schedule to the Principal Ordinance, paragraph (a) deletes the words:—

“and he has held a pensionable office in the Colony for a period of at least twelve months”

which appear in sub-regulation (1) of Regulation 19 as substituted by section 4 of the Pensions (Amendment) Ordinance of 1934. Paragraph (b) deletes the words: —

“and the officer has held a pensionable office in the Colony for a period of at least twelve months”

in Regulation 20. Paragraph (c) deletes the words:—

“and he has held a pensionable office in the Colony for a period of at least twelve months”

in Regulation 21, and paragraph (d) revokes Regulation 25.

Those are the necessary amendments to be made to the Schedule to the Pensions Ordinance in order to make provision whereby a transferred officer is not required to serve twelve months before he is eligible for pension from this Colony. I think it is very fair that if an officer is transferred from this Colony before he has served a period of twelve months he should be entitled to be considered eligible for pension in regard to that period of service in this Colony. I beg to move that the Bill be now read a second time.

The Colonial Secretary seconded.

Question put, and agreed to.

Bill read a second time.

COUNCIL IN COMMITTEE

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

Clause 2 — *Amendment of the Schedule to the Principal Ordinance.*

Mr. Macnie: There is just one question I would like to ask the hon. the Attorney-General. I think most of us here know that the existing Pensions laws of the Colony are based on a model Ordinance which has been enacted in most of the other Colonies. What I wonder is, whether a similar amendment is being made in the other Colonies so that officers who are transferred here from the other Colonies where they have served less than twelve months and retire, will be similarly treated by those Colonies.

The Attorney-General : The hon. Member's point is whether the provision we are seeking to incorporate in our laws is to be found in the Pensions legislation of other Colonies. The answer to that is, I think it is. But this suggestion was made by and the provision is at the request of the Secretary of State for the Colonies. I presume from that, there is legislation of a similar kind in the other Colonies. I think it recommends itself on account of its fairness, otherwise there will be a gap in an officer's service not counted for pension.

Mr. Fernandes: Just looking at this one is tempted to oppose it on the ground that we should do everything we can to discourage officers working here less than twelve months, but looking at it from the broad point of view if an officer is appointed his pension should be based on the number of years he served throughout the Colonies. I did not oppose it on the second reading, but I am wondering whether the Pensions Ordinance does not state that a person gets so much for every year of service, because in that case you may need some further amendment to say "the equivalent of part of a year." I do not know how the

pensions are calculated in the case of officers transferred from one place to another. For instance, an officer spends two months in British Guiana and 10 years somewhere else. I am just asking that if such an amendment is necessary that it be looked after, as such an officer cannot get a whole year's pension for two or three months' service.

The Financial Secretary and Treasurer : Pension is based on a fraction having relation to months and not to years. I would like to say, since Members are interested in a subject of this kind, we pay a small fraction of those officers' hypothetical pension computed as if they had served in one place, and our share is based on the total emoluments for the period of years served here. It removes the gap in the service which may otherwise not be calculated.

The Council resumed.

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

The Colonial Secretary seconded.

Question put, and agreed to.

Bill read a third time and passed.

CONSTABULARY (AMENDMENT) BILL.

The Attorney-General : I beg to move that a Bill intituled —

"An Ordinance further to amend the Constabulary Ordinance with respect to the date of which certain Non-Commissioned Officers and Constables may exercise their option with regard to Pensions."

be now read a second time. It appears that certain Non-Commissioned Officers and Constables were allowed until the 31st of August, 1951, to notify the Commissioner of Police in writing whether they wish the provisions of the Pensions Ordinance, 1953, and of the Pensions (Amendment) Ordinance, 1944, in so far as they are applicable,

to apply to them. Notification of the latest date on which the option could be exercised was made in the Police Force Weekly Orders, but there was some confusion as to what the Non-Commissioned Officers and Constables should do. Further, it was found in some cases members of the Force exercised the option, but unfortunately the documents were retained by the Non-Commissioned Officers in charge of the stations and were not forwarded to the Commissioner of Police before the 31st of August, 1951, the last day for the exercise of the option. Consequently they were out.

Hon. Members would see that in those circumstances it was not due to the default of those persons exercising the option, but through some inadvertence or carelessness the documents had not been forwarded, and that should not be allowed to operate against them exercising the option. I think it is fair that they should have that opportunity, and consequently this Bill has been brought before this Council. I beg to move that the Bill be now read a second time.

The Colonial Secretary seconded.

Mr. Macnie: One assumes that this Bill is only to correct the default of the Non-Commissioned Officers who failed to send in the options which were exercised before the 31st of August, 1951. It is only for that purpose.

The Attorney-General: Yes.

Mr. Macnie: Or does it open the option to members of the Force who are in effect outside?

The President: It merely extends the time.

Mr. Fernandes: I happen to know a little bit of the reason. It is really

an extension of the date of the exercise of the option. I can assure Members of this Council that it is a move in the right direction, and it will help to put right quite a lot of hardship created.

Mr. Macnie: To a point of correction! I am not questioning it is a move in the right direction, but I only want to be clear whether the option is being extended to every member of the Force whether he has suffered by the error or not. I am supporting the Bill.

Question put, and agreed to.

Bill read a second time.

Council resolved itself into Committee and considered the Bill with an amendment to the title—the substitution of the word “By” for the word “On”.

Council resumed.

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

The Colonial Secretary seconded.

Question put, and agreed to.

Bill read a third time and passed.

SUPPLEMENTARY APPROPRIATION (1951) BILL

The Financial Secretary and Treasurer: I beg to move the second reading of the Bill intituled—

“An Ordinance to allow and confirm certain additional expenditure incurred in the year ended the thirty first day of December, 1951.”

This Bill represents the final formal act of this Council in authorizing and confirming supplementary expenditure incurred in the year 1951.

The amounts shown in the Schedule to the Bill are the net excesses over the original sums appearing in the approved Estimates of the year. All of them have been passed first by the Finance Committee and secondly in the quarterly schedules which appeared before this Council from time to time, and the final schedule for the year 1951 was passed by this Council this afternoon. I beg to move that this Bill be now read a second time.

The Colonial Secretary seconded.

Question put, and agreed to.

Bill read a second time.

The Council resolved itself into Committee and considered the Bill clause by clause, without amendment.

Council resumed.

The Financial Secretary and Treasurer: With the consent of Council, I beg to move that this Bill be now read a third time and passed.

The Colonial Secretary seconded.

Question put, and agreed to.

Bill read a third time and passed.

Council adjourned until 2 p.m. on Friday, 31st of October, 1952.