

THE

House of Assembly Debates

(OFFICIAL REPORT)

SESSION 1956

HOUSE OF ASSEMBLY

7th August, 1956.

Pursuant to adjournment, the House of Assembly met at 3 o'clock p.m. today.

Present:

His Honour Mr. K. N. R. HUSBANDS (*Speaker*); Hon. G. H. ADAMS, C.M.G., Q.C., B.A., (*Premier*); Mr. J. E. T. BRANCKER; Hon. Dr. H. G. H. CUMMINS, C.B.E., M.D., C.M., (*Minister of Social Services*); Hon. M. E. COX, (*Minister of Communications, Works and Housing*); Mr. L. E. SMITH, J.P., (*Chairman of Committees*); Mr. F. L. WALCOTT, O.B.E., Mr. J. A. HAYNES, B.A.; Mr. E. St. A. HOLDER; Mr. V. B. VAUGHAN and Hon. C. E. TALMA, (*Minister of Agriculture, Lands and Fisheries*);

Prayers were read.

MINUTES

Mr. SPEAKER: I have the honour to inform the House that the Minutes of the last Meeting are not yet ready for circulation.

PAPERS LAID

Hon. G. H. ADAMS: Mr. Speaker, I am commanded to lay a Statement showing Gross Customs and Excise Receipts for three months ended 30th June, 1956.

GOVERNMENT NOTICES

Hon. G. H. ADAMS: I beg to give Notice of a Resolution to place the sum of \$3,000 at the disposal of the Governor-in-Executive Committee to supplement the Estimates 1956-57, Part 1 — Current, as shown in the Supplementary Estimate 1956-57, No. 16, which forms the Schedule to the Resolution.

I propose to ask the leave of the House to deal with this Resolution in all its stages today because of

the urgency of the matter. There are cyclo-styled copies of this Resolution to be distributed, and I therefore intend to move for the suspension of Rules 88 & 89 in order to deal with it.

Hon. C. E. TALMA: Mr. Speaker, on behalf of the Hon. Minister Trade, Industry and Labour, I beg to give Notice of a Resolution to place the sum of \$5,000 at the disposal of the Governor-in-Executive Committee to supplement the Estimates 1956-57, Part 1 — Current as shown in the Supplementary Estimate 1956-57 No. 17 which forms the Schedule to the Resolution.

SUSPENSION OF RULES 88 & 89

Hon. G. H. ADAMS: Mr. Speaker, I beg to move that Rules 88 and 89 be now suspended. There has been a dispute between the Income Tax Department and the Solicitors for the estate of a person who was domiciled in Barbados and who had property in America as well as in Barbados. It is an intricate matter and this question came to a head only a very short time ago. It is necessary to bring a Lawyer from the United States of America as an expert witness, to give evidence in this case. This is a case in which the Government is seeking to obtain Death Duties and the claim is being disputed. It is an urgent matter, and as I have said, I am asking the House to agree to the motion for the suspension of Rules 88 & 89.

Hon. Dr. H. G. H. CUMMINS: I beg to second that.

Mr. ALLDER entered the House and took his seat.

Mr. SPEAKER: The suspension of the Rules cannot be done at this stage, because twelve hon. members are not present. [After a pause.] I see that the hon. senior member for St. John has now taken his seat.

The question that Rules 88 & 89 be now suspended was put and resolved in the affirmative without division.

Hon. Dr. H. G. H. CUMMINS: As regards the other Resolution of which Notice has just been given, I beg to give notice that it is my intention

to move the House into Committee of Supply at its next meeting in order to deal with that Resolution.

COMMITTEE OF SUPPLY

Hon. Dr. H. G. H. CUMMINS: I beg to move that Your Honour do now leave the Chair and the House go into Committee of Supply, and that it be an instruction of the House when in Committee of Supply to deal with the Resolution for \$3,000.

Hon. M. E. COX: I beg to second that.

The motion was put and agreed to.

HIS HONOUR left the Chair, and the House went into Committee of Supply, Mr. SMITH being in the Chair.

Income Tax and Death Duties Legal Expenses

Hon. G. H. ADAMS: Mr. Chairman, as I said a moment ago, there is one very important case which will shortly come before the Courts, in the course of a week or two, in which the Government claims that the estate of a person domiciled here who had property both here and in the United States of America should pay Death Duties in respect of certain property over which the Government claims she had the right to make a disposition. The matter seems to turn on the interpretation of a legal document made in America dealing with the Law in respect of the particular estate. I am informed that the lady's Executor's Counsel and the American Counsel who has been advising the Government as to the state of the Law, differ; the Government is advised that the Government's point of view is the correct one, and that the matter should be fought. 3.25 p.m.

A substantial amount of money is involved and the Government considers that there is reasonable chance (I will put it no higher than that) of the Government obtaining same. If I remember rightly, it is something within the neighbourhood of £10,000 to £12,000; therefore, it was thought advisable to get this gentleman. This sum of money is needed to bring this witness to this Island and to make use of him as an expert witness for Barbados. I beg to move that this Resolution do now pass.

Hon. Dr. H. G. H. CUMMINS: I beg to second that.

Mr. HAYNES: Mr. Chairman, I will like to have some information on this matter. I take it that if this amount of death duties is paid the Barbados Government will get these death duties provided this Government can show some case for taxing them in Barbados. At least that is what I gather from the Hon. Premier's remarks. I take it that this American lawyer is coming to see if he can extricate this amount of death duties for Barbados. I would like to know if that is the case.

Hon. G. H. ADAMS: Mr. Chairman, I am sorry if I did not make myself clear. Sometimes these cases arise where as the law stands you claim that persons should pay death duties (or income tax for that matter) although the income may be earned outside, because it is brought into the Island and made use of by the person living in the Island. Similarly is the case with death duties.

The point does not arise if death duties are claimed; the point arises as to whether the testator—the dead person—had the absolute right to dispose of certain property in America. If she had that absolute right, our law says she will have to pay this Government death duties. It is disputed as to whether the document executed in America gave her that absolute right. Her solicitor says that according to American law, it does not give her that absolute right. The Government has an opinion from an emi-

nent American lawyer that it does give her that right. Government therefore considers that it is a reasonable case to fight.

That American lawyer is coming down here to prove what is the American law as an expert witness. I may say, when there is foreign law to interpret in a British Court, some lawyer who is qualified to give an opinion is allowed to come and give that expert evidence, as every Barrister is not an expert in international law. That person is allowed to come and give evidence in a British Court as to what is the state of the foreign law. If we are fighting this case we must have a witness who can give expert evidence as to the state of the American law that is applicable in this case—that is, as to whether the Government can recover this money or not. These expenses cover cost of passages, hotel expenses, local travelling and fees. As I have said, that is the sum of money which we are now asking for in this Resolution.

I may state this, Mr. Chairman. Once or twice recently, cases affecting income tax have arisen and in some cases Government has not considered it prudent to pursue some of them. Government however feels that this case is a reasonable one for the Government to fight and that there is reasonable chance of winning it. That is why the Government in this particular case has decided to go on with it.

Mr. VAUGHAN: Mr. Chairman, I would like to ask for a little information on this matter. What is the amount evolving to Government's credit in this case?

Hon. G. H. ADAMS: The hon. member was not present when I said that it was something in the neighbourhood of £10,000 to £12,000—may be more.

The question that the Resolution do now pass was put and resolved in the affirmative without division.

On motion of Hon. Dr. H. G. H. CUMMINS, seconded by Hon. M. E. COX, Mr. CHAIRMAN reported the passing of one Resolution in Committee.

Mr. SPEAKER resumed the Chair and reported accordingly.

On separate motions of Hon. Dr. H. G. H. CUMMINS, seconded by Hon. M. E. COX in each case, the Resolution was read a first and second time and agreed to.

3.35 p.m.

SOLICITORS' AMENDMENT BILL

Mr. SPEAKER: The first Order of the Day stands in the name of the Hon. Premier; second reading of a Bill to amend the Solicitors Act, 1896.

Hon. G. H. ADAMS: Mr. Speaker, this is a Bill to amend the Act dealing with the examination of Solicitors in order to remove the time limit which is today fixed for would-be Solicitors and also to put an end to Government paying examination fees for articulated clerks sitting the Solicitors examinations. As the law stands now in Barbados an articulated clerk must sit the intermediate examination within five years from the time he passed the preliminary examination subject to the extension of one year at the discretion of the Chief Justice, and the final examination must be sat within nine years of the date of passing the preliminary examination. Government considers that these limits work a hardship on some candidates who are sometimes prevented through illness or otherwise from sitting the examination within these prescribed times. There may exist somewhere some profession with similar limits; but as far as I know in the case of barristers they sit until they get through.

Another point is that as the law stands the expenses incurred in sitting and conducting examinations are paid from public funds. Government considers that it should no longer pay and that if solici-

tors and articled clerks have the right to sit dozens of times, they must pay for the luxury of continually sitting. That is all the Bill intends to do; to remove the time limit and to make it no longer necessary for Government to pay. The opportunity has been taken to add to the list of exemptions. There are practically no exemptions today, and this is to create a list of exemptions from the law part of the intermediate examination. If a person has the degree of LL.B. from the several Universities mentioned or the degree of B.C.L. of the University of Durham or Oxford, or Honours in the Final Honours School of Jurisprudence at the University of Oxford, or Honours in the Law Tripos at the University of Cambridge, or a certificate that you were ill and could not take the examination, they serve as exemptions from the law part of the intermediate examination. These are the three points of the Bill.

I beg to move that the Bill be now read a second time.

Hon. C. E. TALMA: I beg to second that.

Mr. BRANCKER: Mr. Speaker, it seems that, so long as I stress a point in this House at least half dozen times in different sessions, the Government manages to catch on and to act in conformity with the wise counsel which they are given; and so at last they have seen the wisdom of letting candidates bear the expenses themselves of the examinations. As I have so many times said, when a profession is as lucrative as the solicitors profession in Barbados is today, there is no reason at all why they should not only have to pay their fees for examinations but they should also pay substantial premiums, Sir, to be taken on as articled clerks. One local solicitor whom I know, holds a high Government appointment and had the keen business acumen to realise that the fee of one hundred guineas is nothing for one's parents or guardians to pay to have one of their family placed in the legal profession, as the two gentlemen facing me know what it really is. I must confess that the objects and reasons could be more elegantly worded then by saying that they may sit the intermediate and final examination as often as they like. One could easily conceive much better English than to speak of sitting the examination as often as they liked; they do not like to sit the examinations at all, but as a necessity one must submit to the examiner's decision. I wonder Sir, if the hon. member, the Introducer of the matter would say if there is any particular reason why Schedule "A" excludes or fails to mention Dublin University. A Dublin University degree in law is very highly esteemed and I am wondering whether there was any particular reason for omitting it or if it were just a matter of inadvertence; but apart from that, Sir, this Bill is very much overdue.

Hon. G. H. ADAMS: I suppose it is only an oversight, and you may think, Sir, of other Universities. It might even have said in any University in the United Kingdom, Great Britain or Northern Ireland. I presume it is purely an oversight as I suppose this was taken from some other legislation which exempts certain degrees from the Universities by name and it has not been thought that others should be added.

The question that the Bill be read a second time was put and resolved in the affirmative without division.

On the motion of Hon. G. H. ADAMS seconded by Hon. Dr. H. G. H. CUMMINS, Mr. Speaker left the Chair and the House went into Committee Mr. SMITH being in the Chair.

*Clauses 1 to 6 inclusive were called and passed
Schedule Section 6 was called and passed.
Schedule Section 19 — was called.*

Hon. G. H. ADAMS: I had forgotten at the time to mention that the Law Society of Great Britain gives these exemptions and we have merely copied them. That is the explanation for these being there by name.

I beg to move that this Schedule do now pass.

Hon. Dr. H. G. H. CUMMINS: I beg to second that.

The question was put and agreed to.

On the motion of Hon. G. H. ADAMS seconded by Hon. Dr. H. G. H. CUMMINS, Mr. CHAIRMAN reported the passing of the Bill in Committee and Mr. SPEAKER resumed the Chair and reported accordingly.

On motions of Hon. G. H. ADAMS, seconded by Hon. Dr. H. G. H. CUMMINS in each case, the Bill was read a third time and passed.

MAGISTRATES BILL

Mr. SPEAKER: The next Order of the Day also stands in the name of the Hon. Premier to move the second reading of a Bill to amend and consolidate the Acts of this Island relating to the jurisdiction of and the practice and procedure before Magistrates' Courts and appeals therefrom and to matters connected therewith.

Hon. G. H. ADAMS: Mr. Speaker, at long last we have reached what, to use a current expression is the last lap of putting our Judicial Organisation on a proper footing. I hope that hon. members have studied this Bill carefully. Just as important, if not more so, than in the Supreme Court of Judicature Bill, are the changes which are being made affecting the Jurisdiction of Magistrates' Courts and the procedure for trials of a summary nature. If hon. members have read carefully the "Objects and Reasons" which are rather fuller than is customary, I think they would have gathered, even although they are mostly laymen, the purport and the likely result of such changes as are to be made.

I do wish to say that although the Government has considered this matter very carefully and for a long time — it is now getting to 9 years since the Bill was drafted by the present Chief Justice of British Honduras together with the present Chief Justice of Barbados, and it has been before Barristers and Solicitors in this Island from time to time, — we have only now reached the stage of getting general agreement as to how the Courts should be reorganised, both the Supreme Courts, the Civil and Criminal Courts and Magistrates Courts. I hope I am not being insular, but I do sometimes feel that I do not always like to say that we are following the Laws of Trinidad or Jamaica or some other Caribbean Territory, because it might give a wrong impression, but one has got to remember that some Laws of general application follow the Laws of England, and as long as we are British, whether we are an Independent Dominion or not, it is easier and safer and conducive to less litigation, to follow laws which have been passed and which have been the gamut of disputes in the Law Courts of Great Britain and the Colonies and the Dominions. As long as we are still using the Privy Council as our ultimate Court of Appeal, it seems to me to be commonsense to follow with such modifications as may be necessary to suit local conditions, the cases as established in the Courts of Great Britain.

Although it may appear that we are merely copying what has taken place in some other Colonies, it is a fact, as hon. members will see from what has been set out here, that the main amendments which are dealt with in this Bill before the House, follow the

most recent English Legislation with regard to the Magistrates' Act of 1952 which brought together all the different amendments which came about over a long period of time in Great Britain. Following Great Britain we have had Magisterial Courts, I would say, for about 300 years, although I have not checked the first one. In our Magisterial Courts our procedure and practice has followed the English practice; as a matter of fact, you had to go to the English textbooks in order to know what a particular phrase or expression meant and how it was described in Courts of Law. Therefore, if we are now following the recent English Magisterial Legislation it is nothing to be ashamed of, and in fact, it is common sense to do so.

Honourable members and some members of the community might deplore the abolition of the Assistant Court of appeal as it exists now; it was excellent after the Emancipation to find that persons could get a re-hearing, (although it was a great surprise to them) of every trial which took place before a Police Magistrate. In many, if not in every case, a Police Magistrate was just recently the owner of an emancipated slave which might come before him. That has been the main virtue of the Assistant Court of Appeal for the past century or so — that everybody who felt that he would not get a square deal in the Police Magistrates' Court could go to the Assistant Court of Appeal where, from comparatively early days after slavery, the Judges were Lawyers.

I do not think, however, that anybody could deplore the fact that we are getting rid, through this Bill, of matters which are obvious anomalies. You can win a case before a Police Magistrate now and still appeal; you can appeal whether you win or lose without any pre-payment of fees. You prosecute a man who is fined 40/—, you are annoyed because the man was not sent to prison, and can appeal. That is being cured in one of the provisions of this Bill. A person who is aggrieved, and feels that he has to suffer as a result of a conviction has the right to appeal. The promiscuous right of appeal whereby you do not know until the trial is heard in the Court of Appeal on what grounds a man has appealed, is also going to be the subject of the provision of this Bill. It will be necessary in giving notice of appeal for a person to set out the reasons given for the appeal within a reasonable time.

This Bill also propose to abolish the Irish practice which has existed in Barbados and which, as far as I know, does not exist anywhere else in the British Commonwealth, that is, dismissal without prejudice. It is anomalous if you examine it, to have the Court of Appeal saying that. If you do not prove a case against a man, you have failed; and even if you may have failed to succeed in your contention in a civil action for the lack of witnesses or documents, it is not right that in a criminal case a person should be in jeopardy over again if a Magistrate continues to feel that there is no evidence to warrant a conviction and he dismisses the case without prejudice. An appeal is made immediately the Magistrate has given his decision.

3.55 p.m.

We proposed in this Bill, as hon. members must have seen, to abolish that too. I do not think that there is anything more outstanding than the matters which I have just mentioned which deserves particular reference at this stage.

What is a departure from the practice of these many years is the fact that for Bridgetown there will be no longer a separate Civil Court for small actions (although that Court is not a Petty Debt

Court only, it also deals with jurisdiction in tort). The Police Magistrates of all the outlying districts are also Petty Debt Court Judges because they do the work that is done by the Magistrates of District "A" and also that of the Judge of the Petty Debt Court of Bridgetown.

It is also proposed in view of the fact that the limited jurisdiction which exists as to where cases involve amounts of not more than £10— and it has existed for between 60 to 70 years—should be ended because of the change in the value of money; and it is proposed that the jurisdiction should be raised to an action up to \$250, the reasoning being that the original jurisdiction of the Assistant Court of Appeal represents the County Court of Great Britain which has jurisdiction up to £50. If the Assistant Court of Appeal is going to be abolished, as exists at present, and Judges become Puisne Judges, and as such members of the Supreme Court, the right to bring actions intermediate between the Petty Debt Court and the Supreme Court and for less expense will have disappeared: and it is considered right that the original jurisdiction of the Court of Appeal which is now £50 should be given to the Magistrates who will be doing civil jurisdiction of the Petty Debt Court and civil jurisdiction of the Court of Appeal.

The following argument is used, though some honourable members may not feel that it is very strong in itself; on the other hand it depends on the angle from which you look at it. Now that we are coming into line and we are having a Federation the question of a Federal Court is manifest. If we can get some sort of approach to uniformity in the several colonies that have agreed to federate, it is better than to have differences in the jurisdiction of these Courts and, may be, in the procedure of these Courts. I say again that it is an argument which is said to be a very strong argument while some people may say that it is not a very strong argument but one which is worthy of consideration.

As regards minor matters of procedure, hon. members will see that provision is being made to bring the practice of the magistrates' court more up-to-date, and in fact, quite up-to-date with British legislation. Hon. members will see this in the several Sections of this Bill with which the House will deal when it goes into Committee. Again I say that I do not need to pick out any proposed amendment because it is no real departure from the jurisdiction which we now have; it is merely bringing a scale of punishment higher and getting rid of one or two anomalies.

Hon. members should know that the fraudulent conversion of a penny is an offence for an Assize Court to deal with; but if you steal anything up to twenty shillings—anything up to £10—you can decide whether you want the Police Magistrate to try you. That is so for larceny but not for fraudulent conversion. If, say, you took a penny out of a man's pocket, you can be tried for larceny by a Police Magistrate but if the man gave you the penny to give somebody or to buy something for him and you wilfully converted it to your own use, that is an indictable offence. If you pocketed something which somebody gave you to give somebody else, that is not a larceny case for historical reasons: and therefore a special Act has been made whereby it was called fraudulent conversion and was known as an indictable offence. Why should we waste the time of the Higher Courts with something which because of historical reasons is no different from that of larceny? In future, these magistrates will be able to try these

cases of fraudulent conversion as it is in the case of larceny.

I do not propose to say anything more because I cannot think of anything, except one thing which is really comparable to the points which I have raised. Hon. members will remember that in the case of the Supreme Court Bill, it became necessary to change the law as regards contempt of Court. At present, contempt of Court is tried before a judge and jury and the jury are not only judges of facts but but also judges of the law. It was proposed in the other Bill and it is proposed in this, to change the law relating to contempt of Court in so far as it affects the practice in the Police Magistrates' Court.

Appeals will now be taken not to the Assistant Court of Appeal, but to the Supreme Court of Judges, just as they are taken today to the Assistant Court of Appeal with two judges. With the Supreme Court, provision is made whereby if the two judges fail to agree, the matter can be heard again with three judges in order to get rid of what is not always a healthy practice—the decision of the lower Court remaining in force if the judges differ.

In Part 10—Miscellaneous Provisions, there is a provision which of course is necessary and that is what is to happen to cases now pending when this Act comes into force.

I have referred, Mr. Speaker, to the important points of this Bill; and I repeat, I hope hon. members have studied it carefully and that they will ask questions or make comments on such points as may appear to them not to meet with their approval.

I beg to move that the Bill be now read a second time.

Hon. Dr. H. G. H. CUMMINS: I beg to second that.

Mr. BRANCKER: Mr. Speaker, I am giving general approval to this Bill, but there are certain very important aspects and certain modifications and adjustments of it which I am going to propose in Committee. I think the important features of this Bill might be regarded on the one hand as the institution of the two-level system, and the other as the abolition of what has for so long been so very dear and cherished amongst us, the automatic rights to appeal from the decisions of the Police Magistrate or Petty Debt Judge to the Assistant Court of Appeal. As you well know, Sir, under Section 51 of the Assistant Court of Appeal Act, 1899, it is provided that "it shall be lawful for any person, whether he be complainant, plaintiff, or defendant in any criminal or civil proceeding who shall be dissatisfied with any decision of any Police Magistrate or Judge of any Petty Debt Court, to appeal therefrom to the Assistant Court of Appeal, and any person, who shall desire to appeal to the said Court from any such decision, shall make known such his intention to the Police Magistrate or Judge of any Petty Debt Court with whose decision he may be dissatisfied." That is as it stands today, Mr. Speaker, and I feel that we are only justified in agreeing to the dispensing of that automatic right to appeal today because we have some years ago (and very wrongly so) dispensed with the three-judge system in the Assistant Court of Appeal. Probably, Sir, the best speech the hon. and learned member for St. Joseph has ever made or will ever make in this House was made in supporting the retention of the three-judge system in that Court; and in the course of his speech he quoted from the late lawyer Walter Reece whose experience in these Courts was so vast and whom the hon. member for St. Joseph said in the House at that time was a member of the Bar before the member for St. Joseph was even born. As a practitioner at the present time I will say this: it is merely because you now have

had for many years a two-judge system of appeal that the Court of Appeal system certainly has not worked and will never work. That is the only reason why I am agreeable to the abolition of that Court and the acceptance of the proposals contained in this Bill. You know, Sir (as the hon. and learned member for St. Joseph pointed out on that occasion when he spoke on that subject in this Chamber; he said then and there was no one to contradict him) that when the two judges differed, then it was the Police Magistrate who decided the case. The Police Magistrate gives the decision when you go to the Assistant Court of Appeal and the judges do not agree, and the original decision of the Police Magistrate is given in case of a tie: but so long as the people in this island are not prepared to accept the two judge system in the Assistant Court of Appeal that is so unsatisfactory, there is no point in allowing it longer to be perpetuated, because you will find that what happens is this: whoever the two judges may be—and when I started to practise the Court was called the Court of the Clydes, the two judges being Mr. Clyde Williams and Mr. E. Clyde Dear—there was always a tremendous urge between the two Judges however violently or uncompromisingly they disagreed, to find some means of evading the Magistrate, against whose decision the appeal was made, having again to decide the case. They had to try to avoid the disagreement and you saw after some intellectual and mortal combat between themselves (as there was and could only be in the matter), they strove strongly to agree lest the Police Magistrate became more important than themselves and his decision was upheld in the case of a tie. Therefore you get in the appellate jurisdiction the two judges, however they may disagree, with the innate inherent feeling that "we must somehow or other try to agree." There was also a case cited by the hon. senior member for St. Joseph in those fifteen or so years ago when one of the learned judges was for imprisonment regardless to whether the offence was serious or not, and the other felt the matter should be dismissed on its merits: and so what did they do? They had recourse to a fine, an intermediate thing. A fine does not carry the disgrace of imprisonment, but on the other hand satisfies the other judge in preference to dismissing the case altogether. So you find after preliminary skirmishes and with the obvious aid of information, a short adjournment or a few short adjournments occurred, and then you found that a spirit of agreement had saturated and impregnated the jurists and they arrived at a decision which was the decision of each and all of the two of them.

4.15 p.m.

Therefore, for that reason, I am disposed not to oppose the abolition of the Assistant Court of Appeal with this two-Judge system. I have had the good fortune to practice under the three-Judge system. I remember it was said in a debate in this House that when we had three Judges in the Assistant Court of Appeal, there was only one Judge who did the work and arrived at decisions. The overwhelming personality of Sir William Chandler decided the issue, while of the other two Judges, one was signing cheques and dealing with letters to his Chief Secretary while the other Judge was taking the opportunity of having a judicial nod.

I will say this: in the House of Lords, you will find, whatever the issue is, that there is for instance, a famous Commercial Lawyer assisting his four colleagues to arrive at a decision. If it is a criminal matter, there will be an outstanding criminal Lawyer who would guide the others at arriving at a decision. In any case, each of those Judges corresponded to Sir

William Chandler when he was a Judge of the Assistant Court of Appeal years ago. When a Judge or a Speaker appears to be sleeping, he is not really sleeping; he just contemplating with his eyelids down. A judicial nod is an entirely different thing from the slumbers of the ordinary laymen.

Since we have come to this stage with this two-Judge Appeal Court system being perpetuated, and there being apparently no feeling or desire to return to the three-Judge system, I am prepared to support the abolition of the Assistant Court of Appeal as I see no hope of the reversion to the three-Judge system which is a most admirable and best suited system. But, Sir, as I have already said, the two main features in this Bill are the introduction of the two-level system and the abolition of the automatic right of appeal. That is the thing with which I am most concerned, and I might digress here for a minute to remind the House that the automatic right of appeal has not been abolished in every part of the British Commonwealth. You will find that in Northern Ireland it is possible for an accused person to make what is called a straightforward appeal against conviction or against sentence imposed by a Magistrate, or to appeal on both grounds against convictions and sentence.

As is the case with our present Assistant Court of Appeal in Barbados, such an appeal is by way of a complete re-hearing. You may not be familiar with the evidence at the original hearing of the case, but the evidence taken before the Magistrate is re-read before the Judges, and anybody who gave evidence at the original hearing and is present in the Court of Appeal may be asked any number of questions, and sometimes the case takes a very different shape from before. The appeal is by way of a re-hearing, and therefore we should not envisage that the reason for abolishing this automatic appeal in Barbados is that we are the last judicial Institution in the Empire in which it persists, because it still persists today in Northern Ireland. That is the innovation about which I am most concerned in this Bill, and on which I shall have to dilate most fully when we go into Committee on this Bill.

Those of us who practise in the Courts will find that a decision is given by a Police Magistrate or a Petty Debt Judge; one side is completely dissatisfied with that decision and the mere fact that that side, by the exercise of her lungs can shout: "I appeal," that prevents the other dissatisfied litigant from going outside and starting a battle royal. In a case where you have an automatic appeal, three weeks after you are summoned to attend the Assistant Court of Appeal; and six weeks later, even if the decision of the Magistrate is confirmed, tempers would have had sufficient time to cool. People know in the back of their minds how it feels to lose their case; and even although they may lose it in the Assistant Court of Appeal, you will find that those people who are furious when the decision was originally pronounced, walk out of the Assistant Court of Appeal just mumbling and saying: "They have only confirmed that decision because we have not got three Judges." There is no disturbance and people are as satisfied as they are expected to be.

I realise that with my contention, it might be thrown at me, or I might be reminded of Clause 135 of this Bill in which it is stated that one of the grounds of appeal may be that there is no evidence to support the decision or that the decision is against the weight of evidence. I know it can be argued with considerable cogency that that ground which is sub-paragraph (c) of paragraph (vi) of this Clause 135 is sufficient to cover any case: that it is almost as wide as an automatic ground of appeal; and that

in these somewhat more advanced days, it should be sufficient to satisfy even that type of litigant who would appeal, that the decision may be reversed if there is no evidence to support the decision in the opinion of the Supreme Court, or if the decision is against the weight of evidence.
4.25 p.m.

I would say this, Sir, that it will depend upon how the judges of the Supreme Court interpret the phrases "no evidence to support the decision" or "the decision is against the weight of evidence." Those of us who practise know that the first phrase can be interpreted very narrowly. It can be interpreted as there is nothing at all there to support the decision. As to the phrase "the decision is against the weight of evidence" that can be interpreted to mean: unless the decision is overwhelmingly against the weight of evidence the appeal court will not disturb the decision of the Police Magistrate. That is my argument on this Section. It all depends on how widely, sympathetically and intelligently the learned Judge who will be called upon in the Supreme Court to administer appellate jurisdiction will interpret these provisions. That is really the more far reaching feature of this new Bill. You will be called upon to set out your reason under Section 135.

Then there is Clause 137 which states that within three days after giving notice of appeal, the appellate shall, unless he remains in custody under the provisions of Section one hundred and thirty nine of this Act enter into a recognizance in the sum of twenty-five dollars with one or more sureties acknowledged before a Magistrate and conditioned to appear and prosecute the appeal and abide by the judgement of the Supreme Court thereupon and pay such costs as may be by the Supreme Court awarded. I will deal with this Clause more specifically when this House goes into Committee on the Bill. The views of the honourable and learned senior member for St. Joseph will have to be directed then towards this matter. According to this section, every time you appeal you must have one or more persons to sign the recognizance. Of course I may be told that people find it very easy to sign cheques even though the Banks do not display the same facility in cashing them. As regards this \$25 surety, the Clerk of the Court has to be satisfied that person or persons who would be brought to offer surety are going to be persons who will honour them. As hon. members know, the persons whom these people will be bringing are persons whom you cannot see written on them that they are worth a quarter million pounds. They will not be all persons like the hon. junior member for St. Andrew. You must satisfy the Clerk of the Court that the person or persons whom you bring to sign the recognizance is one from whom you can collect \$25 in case the appeal is not proceeded with. I say that that amount should be one-fifth of \$25, or at the most, a recognizance of \$10. It should not be that comparatively substantial figure of \$25 because you are dealing with persons in the poorer walks of life. You are not dealing with the idle rich; you are dealing with people from the impoverished category of persons who because of their impoverishment obviously find themselves in that category.

I notice in this Bill that it is stated that the places and times for the attendance of magistrates for the hearing of all cases or matters shall be such as may be prescribed. Sir, at least 75 per cent of the present practitioners will agree with me, as well as most of the occupants of the Bench, that you should provide an earlier hour for the sitting of the Courts. When practitioners come from the other colonies, they are disappointed to find that our

Courts do not sit before ten o'clock a.m. I see no justification why we cannot sit from 8 o'clock in the morning, or at the latest 8.30 o'clock, and carry on until 3 o'clock p.m. In certain cases now, magistrates agree to start at 9 o'clock and it is amazing how much more work is got through at that early hour than when you begin later in the day. It is cooler and everybody seems to be more capable of giving of his best; and so, whoever will be called upon to prescribe the time for the attendance at magistrates' courts, I am throwing out for their suggestion that the latest time for them to begin sitting is at 8.30 o'clock a.m. Certainly to continue this 10 o'clock sitting would be unjustifiable in connection with the sitting of magistrates.

Now that we are repealing the old Act and replacing the Magistrates' Act of 1905 by a completely new Act we should consider every possible thing. Certainly, it is not good enough to have notes taken of evidence by the magistrate trying a case. Of course, we have been very fortunate to get some really able people as Police Magistrates; it may be because we have drawn our Magisterial Bench from practitioners all over the Caribbean. We have a magistrate from St. Lucia and another magistrate from Grenada. We have another from Montserrat, and another from St. Vincent. Therefore we can say that in making our choice of magistrates we have them from all around the Caribbean, and we seem to have the best. At any rate, it is very difficult to get a duly qualified one to undertake a magistracy when they would have this drudgery of writing down almost verbatim evidence which comes before them for at least six hours a day. It is very boring and wearisome. I think the time has come when there should be some efficient note-taker in the Police Magistrates' Courts because you may not be able, owing to the work being so boring, to get competent legally trained people to accept magisterial appointments when they realise what they will have to undergo hour after hour. To sit down and write down what is said in a Court is a tiresome, boring and terrible ordeal for a Magistrate to go through, say, for about six hours—which is a day's sitting.

4.35 p.m.

Now, Sir, these hints I have dropped in connection with the hope that may get the attention and, I believe, find the support of many of the practising members of the Bar and the attention of those persons who may be prescribing the places and times for such.

Now, Sir, what I have to say about automatic appeal is what the hon. and learned Premier has referred to as the promiscuous right to appeal. Promiscuous is not as good a word as automatic and I prefer the latter. Now, we talk about dismissal without prejudice. Well, it is unfortunate that that has been so greatly overworked and abused in certain instances by weak occupants of the Bench that there is no alternative than to get rid of it altogether. It was meant obviously to be used in very restricted cases, but it has now become where there are two judges, a compromise decision; where there is one judge, it has become a humane decision. A decision which is hoped will annoy neither party, where the complainant is told he can bring the case again and the defendant knows he has not been convicted. It is a decision in which neither party knows he has won or neither party might feel he has lost because he can go again, and the defendant would not record himself as having lost, because no conviction is recorded against him. It has become a subject of misuse and I can see no alternative than to delete this form of dismissal from the Statute Book. It will be

said that if an important case is tried at the Assizes and a person is acquitted, that is the end of it. If that is the end of an important case in which some serious damage has been done to somebody or to somebody's property this is less trivial and is a lesser offence; and a person should not have to stand in jeopardy of another case being brought and dismissed without prejudice and a third case being brought and dismissed without prejudice. It was alright in the Courts of this island when that extremely able lawyer was Attorney General of Barbados, Mr. John Whyatt, because the Police Commissioner was given instructions that the Police must not appeal unless he is consulted and he advised the Appeal. It is true there are one or two cases of a persistent and vindictive prosecutor—there are two whom I would not name of the ex-Sgt. Jones type still in the Force—who on every occasion if they lose a case and a timid bench says "dismissed without prejudice," automatically they put it in again with the idea that the person will be so inconvenienced by having two trials, of having to pay two legal fees or be unrepresented or perhaps having to pay three legal fees and be unrepresented on the fourth occasion, that the prosecutor hopes if he does not have the expenses for legal advice, there would be a conviction and he would have to pay something to the Courts; and so he lodges and relodges the case. I have known a case a year or two in which the Police persisted in not less than six lodges and relodges, and that Sergeant is still in the Force! As a matter of fact, only a few days ago I heard he was seeking promotion to Inspector. Well, that at least would be removing him from Station Sergeant, and that is one means of getting rid of any one from an office which he is not filling in a proper manner, but I have nothing against the individual. Whether you transfer them as Commissioner of Police in St. Lucia or Superintendent in Trinidad, so far as I am concerned we have got rid of them from Districts E and F in Barbados.

Now, Sir, there are one or two other points which I would like to mention and which I prefer to deal with more fully in Committee and one is the matter of finger-prints. You know it is provided here (and that it is an important innovation not to be overlooked by any person): "Where any person not less than fourteen years old who has been taken into custody has been charged with an offence before a Magistrate, the Magistrate may, if he thinks fit, on the application of a Police Officer not below the rank of Inspector, order the fingerprints of that person to be taken by a constable." Of course it goes on to say that these fingerprints, if the person is acquitted, any copies thereof shall be destroyed, but you see it would be very hard to convince the average Barbadian that the said fingerprints and all copies have been destroyed. They would remain in his mind that for all time, photostatic copies of them and duplicate copies and records remain very safely and securely put away. It is an innovation which we should not concur in without serious consideration and without realising what we are concurring in. The other important matter, Sir, is to do with bail and we have to consider that because it involves no less important a point than the liberty of the subject; and you know it is proposed in this Bill, Sir, that a Police Officer from the rank of Sergeant upwards or the Police Officer in charge of a Station unless the offence appears to be a serious one should release the person on bail. Well, that is left to the opinion of the Officer in charge of the Station to decide whether the offence appears to be a serious one. You might have heard what happens

now. There may be a warrant issued for someone's arrest: the Police do not make a serious search for you until Friday afternoon; they discover where you are likely to be on Saturday from twelve noon and then at twelve-thirty when the Magistrates have gone home or to cricket or to their Clubs, then the same constable goes at one o'clock and arrests you and if the Police Officer at the Station regards the offence to be a serious one, there you will remain until eight or ten o'clock the following Monday morning.

4.45 p.m.

That is something which we have to bear in mind, that we do not fritter away the liberty of the subject when we are considering sub-section 1 of Section 86 of this Bill. As you know, Sir, since a certain Magistrate was dismissed for granting bail to someone, the Police Magistrates are very circumspect about allowing bail now; and you occasionally get a Magistrate who will come out of bed at night. There is only one Magistrate who told me that he is willing to ensure that the liberty of the subject is not infringed by leaving his home and coming out instead of what was done in the past when a Magistrate would remain at home and ask what is the nature of the evidence.

In the past, a Magistrate would say: "I authorise you to grant bail." Nowadays, a Magistrate has to leave his home, open the Court and turn on the light in cases where there is electric light. I will say here that I am not sure if there is that amount of light at District "F" Police Court which one would expect to find in view of the representation in this House. I can hardly imagine a Magistrate leaving his home at mid-night, even to prevent any infringement of the liberty of the subject, and going to Bissess Hill at that hour when it is so much easier to say: "Wait until 10 a.m. tomorrow." We want to ensure that everything is done in open Court, bearing in mind the fate of Mr. McLeod who did what others before him had done, but who was not *persona grata* with certain officials in this Colony, and whose act was the subject of arbitrary action being taken against him, whereas other people who are more fortunately placed or who had firmer roots in this Island, have been doing the same thing in the past, but who were apparently committing no fault and no criticism was attached to them.

I think I have mentioned the most important innovations in this Bill, and perhaps as regards any matter which I have omitted or in those respects where we have differed, at least there is one member of the long robe in this Chamber and the House may have the benefit of hearing his view on the matters as to the important provisions and new departures proposed in this Bill to which, on the whole, I will give my support; but there are certain things I intend to advocate being adjusted and modified when we go into Committee on this Bill.

Mr. BARROW: Mr. Speaker, there are several matters which have been omitted from the Bill which is now engaging the attention of the House, which we feel should have been included in the provisions of the Bill in order to make the Magistrates' Courts, both in the civil and criminal jurisdiction, function more smoothly. On the other hand, there are one or two Clauses in the Bill to which I will draw reference at a later stage which, in our opinion, should not have been included in the Bill because they run either contrary to established principles or justice or because of the anomalies which they will undoubtedly create. I do not intend to make the kind of speech which has been made so ably by the

hon. senior member for St. Lucy, but I would like perhaps to draw Your Honour's attention the fact that very soon the Island is going to be divided into local government districts and it would perhaps have been a good idea, especially since this Bill is not likely to come into operation or be put into force before the Local Government Act, that certain metropolitan District Magistrates should have been appointed and also that in the early Clauses of the Bill where all the Magistrates are Stipendiary Magistrates, we should have emulated the system which exists both in the United Kingdom and in the neighbouring Colony of Jamaica where you have unpaid Magistrates exercising jurisdiction in a lot of petty criminal work and work of a quasi-social welfare nature, such as the probation of offenders in Juvenile Courts.

There are 16,000 Lay Magistrates in the United Kingdom. These Magistrates are not paid, but they do relieve the Stipendiary Magistrates of a great deal of the petty work which any layman who has either had administrative or judicial experience, would be able to do without any great tax either on his resources of time or on his legal knowledge. There are many Civil Servants who have, either as qualified Lawyers or as laymen, sat on the Bench who could be only too glad to relieve the Courts of the burden of some of this petty work. It is true that from time to time you hear members of the legal profession fulminating against the ignorance of Lay Magistrates, but in Jamaica and in the United Kingdom within the limits of their jurisdiction, because of the appointment of such a Body of persons who actually hold the office of Justice of the Peace, and who never sit alone, and who always have at their disposal the good offices of the Clerk who is himself a man of long administrative experience in the Courts, the system has been found to function smoothly and inure both to the benefit of the community and to the better administration of justice.

4.55 p.m.

So, the first point which I would like to make is that far from its being an anachronism to have auxiliary Courts presided over by unpaid Justices of the Peace, it would be an innovation which we should not only seek but which we should consider at the earliest possible date.

The second point which I would like to make is this. In Section 10 of the Bill a magistrate is required to keep or cause to be kept in the form prescribed a record of all proceedings brought in his district. What we have found is that a magistrate who has to take the detailed notes of all the evidence which is given before him between 10 o'clock in the morning and four o'clock in the afternoon is not in a position either to study the demeanour of the witness in a proper manner or to divert his time and attention to the legal aspects of the case which he may be trying, especially after he has been sitting on the bench for some three or four hours. You will find that a magistrate is fresh between 10 o'clock and half past twelve and he functions with greater efficiency then; but when it gets on to half past two and half past three in the evening many of the magistrates are seen to let their attention waiver and to become irritable. We have reduced the office of Magistrate in Barbados by Clause 10 of this Bill to the status of a glorified note-taker. He is not a judicial functionary when he has to sit down and write reports and take every single note of evidence which comes before him. Very often, one particular section of the evidence may seem to him irrelevant or redundant, and as a result he does not bother to write down; he is then bounded upon by Counsel

and in a frightful manner admonished that a detailed note should be taken, in case the matter is taken to the Appeal Court.

In Jamaica and all the other West Indian islands, a magistrate does not take notes; he makes notes for his own edification on points which he may want to consider when he comes to deliver his decision. Those notes are not the copious copy which a magistrate is required to keep according to Clause 10 of this Bill.

Not only should he have a note-taker in every civil and criminal court, but we should go a long way towards aiding the Social Welfare Department and relieving those who are less fortunate than their fellow brethren by training blind persons who, by their incapacity would be impartial in typing notes of evidence on suitable machines while proceedings are taking place. It is done in the Bow Street Magistrates' Court in the United Kingdom. At most of the Courts, the Institution for the Blind has actually trained able-bodied men and women to act as note-takers. It is a job which does not have to be done by Civil Servants in the Long Grade, and it is a suggestion which I feel should be taken up by this Government. I am sure that the Magistrates will be very grateful if some provision is made for the taking of notes in cases under their trial.

When it comes to offences which a magistrate should entertain and which he has jurisdiction to try (you will find them under Part IV—Summary Jurisdiction) — I notice one important omission. This is an omission analogous to the omission of fraudulent conversion from the existing Police Magistrates' Act, because as the Introducer of the Bill has explained, a magistrate can try the larceny of a bicycle of \$48 in value, but he cannot try the fraudulent conversion of a pack of cigarettes. I am sure that omission was not intentional when the Police Magistrates' Act of 1905 was drafted, but unfortunately, it has tied down magistrates to trying those cases purely as preliminary enquiries. From Clause 35 onwards, there is nothing dealing with obtaining credit by false pretences although Clause 35 deals with the obtaining of chattels, money, and valuable securities by false pretences. This is a matter which was closely investigated by other colleagues and myself, and we have come to the conclusion that since it is separate and distinct for one to obtain credit by false pretences that obtaining credit by false pretences should be inserted under the provisions of this Bill.

A great deal of the taxpayers' time and money, and the time of Medical Officers of Barbados and of the General Hospital is wasted by doctors wasting gasoline and coming down to the law courts to give evidence. When we come to Clause 45, I intend to move an amendment on the existing position so far as evidence of medical practitioners is concerned.

If the Police brings a case, you have to pay him \$2.50 to give evidence, and he comes into Court and says he examined so and so in the Casualty Department of the General Hospital on such and such a day and found the patient to be suffering from a swelling over the right eye which he calls an intrusion and he goes on to say that it could or could not be inflicted by a blunt instrument.

5.05 p.m.

Now, I feel that if a man has spent seven or eight years training to be a doctor, and he is actually employed by the Government of this colony to work at the Hospital and receives his emoluments out of the Treasury, that it is almost an insult to ask him to come to Court to give evidence of that kind; and I feel that in all cases a certificate from a registered Medical Practitioner should be sufficient evidence

unless the Party on the other side demands that the doctor comes to Court to be cross-examined. In most cases nobody calls medical evidence to contradict the testimony given by the doctor, and we feel that the doctor should be allowed to send his certificate to the Court or to make the Medical Superintendent a Justice of the Peace and let him swear to the certificate and let it be produced in Court; and if the defendant or the party on the other side then elects to have the doctor summoned, the Magistrate should have the power to summon the doctor on the payment of the necessary fee; and if it turns out that attendance of the doctor was completely unnecessary in the case, that person should be condemned as to costs, and the necessary expenditure incurred in the loss of the Medical Officer's time in the Casualty Department of the General Hospital, but the only important improvement in sub-section two of Section forty-five of the Bill now before the House, in Clause 45 I should say, is that now the certificate of any registered Medical Practitioner is sufficient to prove that a wound is inflicted with or without a sharp or pointed instrument. That is all. But a certificate is not admissible in evidence even under the Bill engaging our attention to prove that a person suffered an injury with a blunt instrument; it is of no evidential value and is not received in evidence.

Now, there is a provision here in Clause 62 which I am rather shocked to see. I thought we had passed the stage in Barbados where we considered that corporal punishment is a good means of inflicting or carrying out a penalty against any person, far less a boy under sixteen; because in Section 62 they say "where any boy, who in the opinion of the Magistrate is under the age of sixteen years but above the age of seven years and of sufficient capacity to commit crime, shall be convicted of an offence punishable upon summary conviction, the Magistrate, in his discretion, in lieu or addition to any punishment to which he may be subject, sentence him to be privately whipped by a member of the Police Force, in the presence of a registered Medical Practitioner and a Sergeant of Police with a tamarind or other similar rod, with not more than twelve strokes. The parent or guardian of such boy shall be allowed to be present at such whipping if he so desires." I understand that even at Dodds today where you have this sort of hardened young juvenile offenders—I would not like to call them criminals—the rod is used on very, very rare occasions if at all; and yet you are giving a Police Magistrate the power to order, in addition or in respect of which you think corporal punishment is boy under sixteen to be whipped. That means that he may have cuffed another boy at school, or he may have stolen one tamarind off a tree, because you have not put the lower limit on the type of offence in respect of which you think corporal punishment is deserved. In Trinidad, for instance, certain crimes of violence are still punishable by the Cat. I have not known of a single case in Barbados in which a grown-up man committing a crime, robbery with violence or any sexual offence has been given the Cat in the last five or six years; and yet here we are giving Magistrates power with discretion to order children under sixteen, whether it be first offence or not and irrespective of the nature of the offence which they have committed, to be flogged by a member of the Police Force. Now, that cannot be right. There is another anomalous provision in that section which I should like straightened out, because in the United Kingdom a child under the age of eight

years is supposed to be what we call *doli incapax*, that is, incapable of doing wrong; but in Section 62 if a child is over the age of seven, he is deemed to be of sufficient capacity to commit a crime. The common law in Barbados today is if you are under the age of eight. There is a great deal of difference in that; there is a difference of eleven months and twenty-nine days if you are over the age of seven, or you might be seven years and one day old. You have abrogated the common law provisions and are saying that over the age of seven a boy is capable of crime. In the United Kingdom they say a boy over eight; in Barbados you say a boy under eight; he might be seven years and eleven months. He is not capable of crime and you can bring him up neither in a Juvenile or other Court. And yet in Section 62 a child over the age of seven can be whipped giving him twelve strokes with a tamarind rod! That could never be right because we have altered and have extended the boundaries of criminal liability; so that the next thing that would happen is that infants in arms who cannot speak would be finding themselves flogged by a Police Magistrate. If you allow this concession, next time the age will be six, then five; and you will be ever diminishing the boundaries of criminal liabilities until infants in the cradle would come under Section 62. I do not need to say more than that; I am sure hon. members who, like me abhor the idea of corporal punishment as being degrading and humiliating, take the view that certain crimes of violence—indecent assault, carnal knowledge, robberies with violence, slashing with razors—those kind of things are matters which are fit for a greater degree of punishment than ordinary crime such as simple larceny and matters of that kind, but I would never join any league of voters that has as an avowed object the retention of corporal punishment; and if it is the first time I have said it in public, I do not agree with the Mosaic Law and I do not agree with corporal punishment of any kind because I do not feel it proves anything.

5.15 p.m.

It reduces a man to a level which is lower than that of the average proverbial dog in the street. You cannot flog children under sixteen years or children of seven years one month. That is entirely a private view; it does not necessarily represent the view of my Party, nor does it necessarily represent the view of all the members of the legal profession, although it may represent the view of the majority of them. As to the question of immediate liability, that is a question of law which should not be dealt with as it is proposed to be dealt with.

The next Clause to which I would like to draw Your Honour's attention, is Clause 119. In the other Islands, a Magistrate has power to make orders as to costs, and to award a successful litigant not only the costs of summoning his witnesses, but also the costs of Legal representation. That is so in Trinidad and in the Windward and Leeward Islands; and that is practically the whole of the West Indies. In Sub-Clause 7 of Clause 119, this is what is stated:—

"No order for payment of costs made under this section shall include any fees to counsel or solicitor."

I have no pecuniary interest in this Clause at all, for the reason that is a matter of public and general knowledge that when a Legal Practitioner appears in a Police Magistrate's Court, especially a Barrister, since his fees cannot be sued for, they are already either in his bank account or in his pocket, or in the pockets of his creditors. If a Barrister appears in Court and he has not been paid, he will

usually inform the Magistrate that he has not been properly seised of his brief, or that he is not fully instructed or some other such term, and he will get an adjournment of the case until his client is able to sell the pig or whatever it may be, so as to compensate him for his efforts.

It is not that we, in the legal profession, hope to make money out of it, but we think it is iniquitous that a man should be hailed into Court unnecessarily, and when he wins his case, the other person walks out of Court without feeling any financial loss, either because he did not have any Counsel or because he is in a better position to afford any pecuniary loss as regards his attendance at Court, though he may have suffered more than the litigant on the other side. If he wins the case because of the technicality involved in defending himself, or if because of the lack of knowledge he has to resort to the payment of a legal practitioner, we should fall into the example of Trinidad and the Windward and Leeward Islands and award a moderate sum as compensation for the trouble to which he has been put by way of costs. It is ridiculous in this year of grace 1956 to have Barristers going into Court for nothing; the tradition is that Barristers do not really collect fees, that they cannot sue for them because there is nothing to collect, and that they are gentlemen of leisure who frequent the green sward of Lincoln's Inn or the terraces of the Middle Temple to disport themselves drinking tea at luncheon time and then go into Court if they find that there is anything interesting. That is the only hypothesis one can explain for the absence of the provision of costs to a litigant for the services of someone which he has obtained. This Section of the Bill should be amended within the discretion of the Magistrate as to costs if the successful litigant happens to engage the services of Counsel.

Clause 135 deals with the admissible grounds of appeal. No provision has been made for a ground which is in similar Legislation in all the other West Indian Colonies—I say "all" advisedly this time. There is a ground of appeal to the West Indian Court of Appeal, in some cases, on grounds which may be urged at the trial. Very often a person goes forward to the Appeal Court with some substantial ground of appeal, and when the case is argued in the Appeal Court, it appears to the judge that there is a point on which he would like to hear Counsel on either side, which may probably go to the root of the conviction or the penalty imposed. We feel that provision should be put in here to this effect. "Any other ground which may be urged at the trial". You cannot now go to the Court of Appeal on the tenth provision; my ground of appeal would be, "any other ground which may be urged at the trial", which may be the ground on which you may be electing to go on appeal.

With the conclusion of my general observation on this Bill, I would like to say that we would have welcomed some specific provision for the establishment of some other Juvenile Courts, Traffic Courts and for what they call Family Courts, because the present arrangements is not a satisfactory one. The Magistrates, especially those in Bridgetown, are overworked, and these are matters which are increasing in volume from day to day, matters to which no separate and distinct attention is being given.

For years we have been talking of separate juvenile courts, separate traffic courts and separate family courts. The volume of litigation under the law of separation and maintenance is phenomenal and it is increasing from day to day. I do hope that

the Government will give some consideration to increased accommodation though it does not necessarily come within a Bill of this nature, in accordance with what I have outlined.

ADJOURNMENT

Mr. E. D. MOTTLEY: Mr. Speaker, I beg to move that this House do now adjourn for half an hour.

Hon. H. G. H. CUMMINS: I beg to second that.

The question was put and resolved in the affirmative without division, and Mr. SPEAKER adjourned the House accordingly.
5.30 p.m.

On reassembling,

MR. J. F. GORMLY APPOINTED AUDITOR, SUGAR INDUSTRY AND AGRICULTURAL BANK

Hon. Dr. H. G. H. CUMMINS: Mr. Speaker Mr. P. D. Mc. Dermott left the Island sometime ago and has resigned the post of Auditor of the Sugar Industry and Agricultural Bank. His place has not been filled and I am now, with your permission, that Mr. James Francis Gormly be appointed Auditor of this Bank.

Hon. M. E. COX: I beg to second that.

The question that Mr. J. F. Gormly be appointed Auditor of the Sugar Industry and Agricultural Bank was put and resolved in the affirmative without division.

MR. H. A. C. THOMAS APPOINTED MEMBER, SUGAR PRODUCTION AND EXPORT CONTROL BOARD

Hon. M. E. COX: Mr. Speaker, there is a vacancy which occurred owing to the resignation of Mr. H. O. Emtage from the Sugar Production and Export Control Board. With Your Honour's permission, I am moving that that vacancy be now filled by Mr. H. A. C. Thomas.

Hon. Dr. H. G. CUMMINS: I beg to second that.

The question that Mr. H. A. C. Thomas be appointed as Member of the Sugar Production and Export Control Board was put and resolved in the affirmative without division.

THE MAGISTRATES' JURISDICTION AND PROCEDURE BILL 1956

Mr. SPEAKER: On the adjournment the hon. senior member for the City was addressing the House.

Mr. E. D. MOTTLEY: Mr. Speaker, although I am not a legal luminary of the House and unless it be that the Government only want legal members of this House to speak on this Bill, I am going to add my quota. The first thing that struck me when I received a copy of this Bill and which I note with great satisfaction is that the Clerk has taken the opportunity to put it in order by his making 150 odd corrections. It speaks very well for the Clerk. I observed that not only were corrections made by him but apparently Sections were put properly. I would say that this one occasion upon which the Other Place was not given the work of making those corrections, but I am afraid that if they were not noticed by the Clerk who apparently has taken the

place of the Legal Draftsman of this colony, they would have gone unnoticed by this Chamber.

There is not much which I can say on a Bill of this magnitude. It is very overwhelming; but one thing which I can say, speaking from a layman's point of view, is that I would like to counsel Government as regards the departure they have made from usual custom in putting in this Bill that a person who appeals against the decision of a magistrate must enter into a recognizance in the sum of \$25 with one or more sureties to appear and prosecute the appeal. I am saying that that is a departure from usual custom and it cannot make it easier for people to appeal. Mr. Speaker you cannot take it for granted that when you hand things to members, we do not read them. There are those of us who read everything sent to us because we like to know what we are voting for.

There are so many occasions that we had matters dealing with appeals that I personally regret that although apparently the legal luminaries of this House have given voice to some objections to the Assistant Court of Appeal, we should so agree to its absolution; because indeed from the earliest inception, the Assistant Court of Appeal has performed a very useful purpose in this community. This Court has given the right to Barbados litigants, whether they be complaining or defending, to appeal without entering into a bond; and this they cherish very greatly. I am not disputing the right which you have of putting in this Act that litigants must now enter into a bond to appear and prosecute an appeal, nor is there any use my crying over spilt milk, but although this seems to be the wish of the Government and of the Law Society, I would like record that it is not the wish of the majority of the inhabitants of this country.

It is true that you want to adjudicate certain cases in accordance with that of other colonies, but there are institutions which you have in this community which though unique and in some cases obsolete you should preserve. I do not agree with the abolition of the Assistant Court of Appeal. It is very much regrettable.

Sir, I do not want to echo the views of the last speaker, but I would say that he anticipated me because I have on more than one occasion in this House raised the question of the establishing of a domestic court. I remember on the last occasion that I took the matter up with the Hon. Premier he advised me to take it up with the Attorney General. There is nothing in this Bill for the establishing of a family court. While it is true that when family cases are tried in the Courts that those Courts are cleared, I do not think that it is good enough. I am thinking more of the delay which is caused in the adjudicating of those cases and which makes one to feel that justice delayed is justice denied. I do hope that Government in the not too distant future will see to it that a Family Domestic Court as distinct from a Traffic Court is set up in this country.

In the discussion which we had before on Section 62, and I am prepared to say I do not know the Premier's explanations of it—if it is true that the common law of the island says that a child under the age of eight cannot be convicted, and cannot be made responsible for any misdemeanour or offence, it is very difficult for us laymen to understand how this section could say that "where any boy, who in the opinion of the Magistrate is under the age of sixteen years" — well, suppose that can be proved by a certificate of birth, "but above the age of seven years"; if what the hon. member has said is true, I take it that the Premier will be able to enlighten

us on that, but the child might be seven years and 1 month. If in the United Kingdom a child is not convicted for an offence until it is eight, surely this needs some amendment. That is worrying me more than anything else, and I will go further than that and draw to the Premier's attention that, further on, it says "and of sufficient capacity to commit crime, shall be convicted of an offence punishable upon summary conviction, the magistrate may, in his discretion, in lieu or in addition to any punishment, to which he may be subject, sentence him to be privately whipped." Well now, I have always been in opposition to giving out so much authority and power that you can convict a child and also flog it. I go further and say that even in your own home you would not want to flog your child for the first offence unless it was a case of disobedience, but in this Bill it says "in lieu or addition to any punishment to which he may be subject, sentence him to be privately whipped by a member of the Police Force". Well, Sir, I know the Premier will say one must use his discretion, but let us take for example the case of stealing a piece of cane or throwing a stone across the road and see how many of us would not have been in prison. That means that for the first offence you would be whipped, and an older boy, say, at the age of fifteen would be subject to the possibility of being whipped. We have had a case of a minister prosecuting somebody for carrying away a few limes or lime leaves or something. Under this Bill the Magistrate can subject the child to the indignity of being whipped for a first offence. In my opinion the magistrate might be purely of the plantation manager type — a person who does not like children. First of all, let me put it this way; I do not agree with the last speaker about not having corporal punishment; you must have it for certain offences; because, I believe, for knife-slashing and wounding and things of that sort, I agree and will always agree that one of the best means of dealing with these people is by using the Cat. I do not agree with him at all in abolishing corporal punishment. I am not disagreeing that someone should be flogged, but I am wondering whether it should be done by a magistrate and for a first offence. We like most of them have thrown stones across the road and have stolen apples; yet we are going to subject them to a flogging and conviction, or both. I am wondering whether the Premier would not think of an amendment. An amendment would be necessary when he comes to it. You might bring the type of magistrate who has no use for children; there are some people who cannot stand a child around them and who might therefore for the slightest offence order a whipping and subject a child of 15 years to the indignity of being whipped by a Police Sergeant. I am not saying that you should cut it out, but what about first offenders? And I go further and say since you have got a Probation Officer, Mr. Speaker, do you not think that it wants going into more seriously? I fully appreciate when you are drafting, —maybe I should say copying, because from what the Clerk of this House has done you can see it is copying,—when you are copying legislation it means more than copying, and that is that it must come before this Chamber for us to be able to bring to bear local conditions and see how best Government with its local advisers could bring out preliminary points. Therefore, I contend that I should not like to support that as it is, and I hope the Premier will see the wisdom in making some amendment there, because nobody is perfect and you may not have seen that it is eight. What the hon. senior member for St. George said is correct and there is obviously an amendment necessary. It is unfortunate that the

Clerk has not seen that because there are several errors in the Bill and members are asked to note the corrections. In my ten years here, Sir, I have not seen a document like this so done by the Clerk with corrections and amendments and sections left out, and with the greatest respect.

Mr. SPEAKER: That is the fault of the printers.

Mr. E. D. MOTTLEY: Did the printers leave out the sections too? There are others they did not leave out; but anyway, Sir, the main thing about this is that I have recorded my appreciation of the manner in which this able work has been done, and I say it would be infinitely better in preparing a Bill of this sort—and I think the Premier will agree—to have amendments to sections and so on to correspond with them on the opposite page and finished with, rather than have them tucked away in the schedule where it is very difficult for hon. members to follow. It is alright for hon. members who are not particular about reading it or about knowing what they are passing, but some of us take it quite seriously when amendments are made to the Statutes of the colony, because you want to know whether there should not be an amendment to section 62, the question of whether the age should be seven or eight, if the law as quoted by the last speaker is correct, and I do not think it should say you should fine and confine or flog and fine, and then further that such power should only be given to any magistrate like in other cases; and whether in the first offence any boy should be flogged, especially when you say today there is a different method of handling juvenile delinquents.

6.25 p.m.

Mr. VAUGHAN: Mr. Speaker, this is a voluminous Bill and indeed I will not pretend that I have studied it in detail.

It really requires a sort of affinity to things legal; it requires a mind attuned to the judicial really to give this Bill the study which it needs. All I want to do is to comment on one thing and I have to do it from a personal experience. I suspect that in our Courts, there is not sufficient provision made for the examination of prisoners mentally; in other words, I have a strong suspicion that a lot of or a few people are in Glendairy Prison who should be at a Mental Home. In modern Countries, psychiatry is a very late and important science, but it has an important place in the trial of criminals and others who are brought before the Bar. I will tell you why I rose to my feet. I had a personal experience recently, and I will recount it now. I received a message from a prisoner whose name I do not know at all, but he sent a message to me by his sister saying that I owed him \$15, for what she could not say. I received a letter from him, and I had no recognition of his name. I received a third message sent by a taxi driver asking me to pay this \$15 which I did not know of, neither did he say for what it was. I later came across a woman to whom I was re-counting my experience, and she told me: "He is lunatic, he has been to the Mental Hospital several times."

As a member of the Visiting Committee of the Mental Home, I remember signing a sheet with the name of that person down there. The Visiting Committee has, along with the Doctors of the Mental Hospital, periodically, to review temporary cases and sign documents and immediately, the name of that man came back to me. I remember signing a sheet with that name at the Mental Hospital with Dr. Lloyd-Still and the name came back to me. That person saw me down there, and it flashed back to me who the man was. He was a madman

who had been convicted and sentenced to Glendairy Prison. I do not know how many cases there are like this one. I repeat: I suspect that there is not enough mental investigation into criminality in this Country; it is just assumed that people are evil by design, and many psychiatrists will tell you that people have certain uncontrollable impulses for which they are not responsible.

If it is a question of murder, it is very often the result of these uncontrollable impulses for which persons are not mentally responsible; and I think that in our Courts there is room for a deeper and wider investigation in to certain cases. This particular experience had me entirely baffled until this particular woman told me that this man was a madman, and everything came back to me as to how I had signed this document with the Visiting Committee at the Visiting Home. When I heard that this man had been convicted, I said that he is really not a criminal; he is a madman, but he is up there.

Mr. ALLDER: I should only like to substantiate the suggestion of the hon. junior member for St. John. It is a fact that in the larger Countries psychiatrists are called in to examine and interpret the mental condition of persons who have broken the law, and I feel that it is very necessary that with these proposed changes we should consider the possibility of getting the services of psychiatrists when they are needed. The fact that so many people regardless of the punishment and of the length of time for which they are imprisoned continue when released to commit themselves again, shows that they may be some psychological weakness in such persons. Of course, this might be one instance when we do not want to follow the practice in other progressive Countries, but the thought need not be left without being given consideration.

It is certainly time for us to consider this matter. I have been reading "Fabian of the Yard" in the *Advocate*, and he has brought forward some cases which show clearly that the culprit had no alternative but to follow his psychological weakness. It is said that the change of the moon and things of that sort have a great effect on some people who commit crimes, and even within a couple of minutes after the crimes have been committed, the culprit is as sorry as the greatest moralist. Therefore, in meting out punishment, all of these things should be taken into consideration in view of the fact that science has developed today, and that that part of science has been considered as a very important aspect in the treatment of criminals.

There is another point which I want to raise, however, and it is the question of finger-printing. I have not seen any specific stipulation providing for that, and I would therefore like to have the matter clarified.
6.35 p.m.

Clause 68 does make provision for a magistrate on the application of a member of the Police Force not below the rank of Inspector to order fingerprints to be taken of any person over 15 years of age in custody if charged with an offence and where the charge has been dismissed that the fingerprints must be destroyed.

I do not like that Section being worded so baldly. I think it should be that when certain crimes are committed fingerprints should be taken; but as I have read the Section, I have not noticed any provision qualifying the type of crime. I do hope that those who know more of the law than I do will get up and explain it. It does look very dangerous to me if somebody might commit himself and the crime is not great enough to have his fingerprints taken.

I am hoping that when the Hon. Premier gets up he will explain that for me.

Hon. Dr. H. G. H. CUMMINS: Under this Bill, hon. members feel that there is no such provision made for mental cases at Glendairy coming before the Courts. But if a magistrate or a judge has the faintest suspicion that a defendant is a mental case, he has the right to summon a Board of Lunacy and refer that patient to the Board of Lunacy.

Mr. BRANCKER: Did the hon. member second the motion?

Mr. ALLDER: Mr. Speaker, I will be glad if the Hon. Minister of Social Services will say why he got up. I am still on my feet.

Hon. Dr. H. G. H. CUMMINS: I am sorry. That is not correct. The hon. member sat and I then got up.

Mr. SPEAKER: The hon. member is not seconding the motion.

Mr. ALLDER: Mr. Speaker, I dislike the explanation which the Hon. Minister of Social Services attempted to give us. What my colleague and I are worried about is not the behaviour of a prisoner which would cause a magistrate or the Police authorities to be suspicious. What we are worried about is that we have read of cases where due to the unbalanced mental state of a would-be prisoner he commits a crime sometimes of a very heinous character, but after that crime has been committed it seems as if some change takes place in his behaviour; it therefore becomes very difficult for anybody to judge him by any yardstick different from the measure of sanity which the average individual displays. We are not worried about a Board of Lunacy being held on a prisoner because of his behaviour before a Court of Justice, we are worried about the numerous crimes committed by the same individual of a specific character and which show that something is wrong with his mental make up.

I hope the Hon. Minister has followed my argument. We have read where people have certain weaknesses; that is to say, wherever they see an item of a particular nature, they try to acquire it. I have read of cases where wealthy ladies had to be given private detectives to go around with them to prevent them from taking up jewellery and such articles, not that they could not give themselves the items they wanted but because they have a psychological weakness.

I see the Hon. Minister is staring at me! I do not know if he reads anything of these offences in the *Advocate*. Sometime ago I saw in that news paper that a legal gentleman of Jamaica was apprehended in a store in London for stealing a patent knife. I do not know if the Hon. Premier is a friend of his but that was a case in which an influential lawyer of Jamaica went up to England and went into a store and stole a patent knife worth only about five cents. Surely, there is something wrong with that gentleman and you have similar cases here. There is reason to believe that people who every other day have to be carried to Glendairy for certain offences, although the punishment is severe, are normal; because when you speak to those individuals they appear to be normal. There are men who will go and break and enter a house, but who would part with a sixpence if they thought that it will help somebody. It definitely calls for something higher than a Policeman giving evidence in respect of a person like that.

I am hoping that just as we are developing ourselves in other avenues, in these cases there should

be provision for a psychiatrist to be attached to the Judiciary and we should have such provision in the not distant future. I do not know if that would be possibly too much to do for those unfortunate perpetrators of crime, but I hope we will travel fast enough as to see the necessity for such an office to be set up.

Mr. CRAWFORD: Sir, there is one thing which worries me in the matter before the House and that is the manner in which we are increasing the cost of litigation in Barbados to the poor type of person. It is not at all surprising, Sir, that this type of legislation should come from the present Government.

In the opening paragraph of the "Objects and Reasons", we are told that this is a companion Bill to the Bill for the Supreme Court of Judicature Act, 1956, which we passed earlier this year and the object of these proposals is to abolish the existing arrangement and number of Courts and to abolish a two-level system consisting simply of Magistrates' Courts; with both an increased Civil and Criminal jurisdiction and a Supreme Court of Judicature vested with the jurisdiction of all the existing superior courts and with an appellate jurisdiction over the Magistrate's Courts.

6.45 p.m.

In other words, you are abolishing the ordinary Court of Appeal, with the result that a litigant will go from the Magistrates Courts under this Bill straight to the Supreme Court. Well, now, while in theory that may sound alright, in actual practice it is going to work a very great hardship on the average poor person who is compelled to go to Court in order to get justice. From time immemorial in England, there have been various methods through which the average poor person who could not afford the cost of litigation could get all the legal assistance he wanted from the State. The practice, Sir, of making an application for State assistance has been wide spread in England for centuries, and within recent times there has been passed additional legislation in Great Britain—I think the most recent Act is called the Poor Persons Legal Aid Act passed about ten years ago—under the provisions of which a person without financial means who found himself compelled to go to Court to obtain justice could get legal assistance and other financial assistance from the State to pursue his case.

Now, I mention that, Sir, because while this legislation seeks to follow the English Legislation on the various points, we have at the same time omitted all reference to any possibility of providing State aid for a person for litigation who can not find the money out of his own pocket. It is all well and good to say that the legislation before the House and the Companion Bill already passed will conform more or less to the United Kingdom Legislation; but when you get down to actual practice, since we deny litigants the financial assistance under the circumstances in which they get it in Great Britain, it means in Barbados that a person will not be able to go to Court at all; and if he goes to the Magistrates Court and is not satisfied with the verdict he will have to stop there. Normally, if you are not satisfied with the Magistrate's decision and you go to the other Courts, the average Barrister would charge about \$30, the Solicitor about \$30 making a total of \$60, and if you won the case the taxed costs you would get back was around £6, that is around half the amount you spent; but after we have done what we are proposing to do here, the moment you lose and go straight to the Supreme Court, there is not a single Barrister who would go to the Supreme

Court for less than £50, a Solicitor £50 making a total of £100 and your taxed costs, if you won, may be somewhere around £40; so in any case you lose around £60. The average poor person in Barbados cannot afford to go to the Supreme Court and it means when you lose a case in the Magistrates Court, and there is the proposal to send you straight from the Lower Court to the Higher Court, you are placing such a financial stumbling block in the way of litigants that many a man who feels he has been denied justice in the Lower Court will have to accept the Magistrates' decision because he or she is financially unable to go to the Higher Court. It is not fair, Mr. Speaker, to Barbados bearing in mind the level of existence in our Society. It is not fair or reasonable to ask the average person involved in litigation to find the money involved in opening the Supreme Court if he or she has failed to get justice in the Lower Court. In other words, I am entirely in agreement with the suggestion previously made that there is no reasonable ground for abolishing the Court of Appeal and simply to step up jurisdiction of the Magistrates' Courts to the higher level, and so to speak bring down jurisdiction in certain respects of the Supreme Court to the level at which the Courts operated. While it may simplify the practice and decrease the number of Courts in the Island, at the same time it cannot operate to any extent in assisting the average litigant and assisting justice; and that is what the Courts exist for. We in this Chamber should oppose more strenuously any attempt to reduce the number of Courts and in so doing place stumbling blocks in the way of litigants on the grounds of economy. All it means is this, Sir, that the average Barrister who would not be content with a \$30 fee which is the fee they charge for an Appeal from the Magistrates Court will now open their hands for a £50 fee for a case because it has to go to the Supreme Court. If that is fair and right, there is something wrong with my way of thinking.

Apart from that, Sir, it is hardly necessary for me to add my own personal conviction that the section dealing with the flogging and whipping of young children in which the minimum age is seven should not meet with the support of reasonable people; and after all, a child at seven regardless of its natural bent is still a child of tender age. The Premier himself attends every now and then some convention and I should be very surprised to hear that the I.L.O. Convention on this matter permits flogging of children for the offences enumerated here at the age of seven. [A VOICE: Shame!] It seems to me to be a tender age and though I have not checked the I.L.O. Convention to see what it states I should be very surprised to find out that it permits it. Finally, Sir, there has been this increase in fines in part IV of the Bill. While I agree that the present fines might be low, bearing in mind the increase in the value of money between now and when these fines were originally fixed, I still believe, Sir, that the 100% increase is too high. Where the fine was \$50, it is now \$100; and while the law in its penal sanctions should act as a deterrent, yet there can be no case for making the fines in any given instance unreasonable or extravagantly high.

6.55 p.m.

Hon. G. H. ADAMS: In view of the fact that the Hon. Minister of Social Services did not have the chance of finishing all that he was saying, I want to say that it is clear that no Court, whether we have psychiatrists or not, would fail, in the interest of justice, if it thought that from the appearance or the conduct of a man who is charged with an offence, there is any indication that he is a mental case, to

adjourn the case and get his conduct examined. I need not make any more reply on that point. The honourable member said that I sneered at his remark, but I did not sneer; I laughed, because one can think of the woman with diamonds hidden and carrying around a private detective, in case she gets caught, as a witness. One can have half a dozen things in his pocket to prove that he is mad.

There has been so much dispute among members of the legal profession and others and among members of the medical profession and others that this whole question will be a matter more of academic debate than of practical interest. We all know that there is a certain standard laid down by law as regards madness, and if you do not come within that standard, then you are not mad; certain Judges say that it is all very well after the offence has been committed, and you are brought into Court, to say:—"For the moment he lost control of himself to such an extent that he did not know himself." The good old test of Mr. Justice Darling still holds good: "Would he have done it if a Policeman were at his elbow?" The law must say: "This is madness and that is not" because the doctors themselves do not know. It is almost true to say that if we were to send to a Mental Home all the mentally-unbalanced, we would have to build a wall around this island [Laughter.] So much for that matter.

I suppose we ought to cease wondering by now at anything which the honourable senior member for St. Philip ever says, because he makes some of the most preposterous statements, most of which we know to be nonsense. He says a poor man has a case in the Police Court today and he goes to the Court of Appeal and carries a Barrister and a Solicitor for \$30 each: Well, Solicitors do wax fat, but they do not get appeal work. You do not carry a Solicitor in the Police Court in an ordinary case. What is happening is that instead the Judges are being called Puisne Judges, and the same two Judges may be Puisne Judges in the Superior Court. Just as there is no scale of costs for appeals from Magistrates, you are not entitled to Lawyer's costs; therefore when Regulations are being made, even if any costs are allowed in ordinary appeals from Magistrates, it will be necessary to have Solicitors instructing Counsel. A man gets a month's sentence, and he appeals; he goes to the Supreme Court, and where is the necessity for carrying along a Solicitor? No rules will make the Law any dearer than it is now.

Mr. CRAWFORD: *rose to speak.*

Hon. G. H. ADAMS: Mr. Speaker, is he speaking on a point of order?

Mr. SPEAKER: Is the hon. member on a point of order?

Mr. CRAWFORD: If the hon. member waits, he will see. I was merely emphasizing the position where one is carrying a Solicitor in each Court.

Mr. SPEAKER: The hon. member must not interrupt. If he has been misrepresented, he will be allowed to speak on a point of order and for no other reason. The hon. member must state his point, and show how he has been misrepresented.

Mr. CRAWFORD: The hon. member has emphasised that there is no necessity for any Solicitor—

Mr. SPEAKER: The hon. member is out of order; that is not a point of order.

Mr. CRAWFORD: What I said was this: in so far as my interest is concerned, the necessity for carrying a Solicitor in every Court was not important. What is important, is that the scale of fees in the Lower Court is there, and the scale of fees in the Appeal Court is higher; The scale of fees

in the Supreme Court is higher, I defy the hon. member to say—

Mr. SPEAKER: Defying the hon. member is out of order.

Mr. CRAWFORD: Could you get a Barrister or a Solicitor to go before the Supreme Court for the same scale of fees for which he would go before the existing Court of Appeal? The moment a Barrister or a Solicitor goes to the Supreme Court, he will want double or treble the fees which he charged in the Court of Appeal.

Hon. G. H. ADAMS: It would have been far better if the honourable member had not said anything. The scale of fees allowed in Barbados is notoriously lower than it is in St. Lucia. If a Barrister chooses to charge a man \$1,000, and the client chooses to pay that fee, it is a matter for them. If a Barrister chooses to go before a Magistrate for \$5.00, and he chooses to go to the Court of Appeal for the same fee of \$5.00, that is a matter for himself and his client. I repeat that we are merely transferring from the Magistrate's Court to the Supreme Court, and Rules and Regulations have to be made. The scale of costs does not prevent a man from getting a Barrister to work for him for nothing.

When it comes to the other point, the Supreme Court today has a jurisdiction of £50 plus; you are now giving a Magistrate a jurisdiction of \$250.00, therefore you are making it cheaper for a man, because he can go into a Court with a collision case and sue another for \$250.00.

Mr. CRAWFORD: That is sheer dishonesty.

Mr. SPEAKER: The honourable member is interrupting with his loud asides; he must not continue to do so.

Hon. G. H. ADAMS: I was saying, Sir, that far from making it dearer for a man to go into Court, we are making it cheaper. Today, you have to go to the Supreme Court with a certain jurisdiction. 7.05 p.m.

Mr. CRAWFORD: I want to explain, Mr. Speaker, that my remarks were primary addressed to the possibility of persons getting justice who were dissatisfied with the decision in the lower court. Whether or not you have increased jurisdiction of the lower court is unimportant.

Mr. SPEAKER: The hon. member will stick to his point.

Mr. CRAWFORD: My point is this, Mr. Speaker. I am concerned with the opening of an appeal court if you are dissatisfied with the decision of the lower court. Where you should carry this is unimportant to me. Normally, you can go with a decision from a magistrate's court to the Appeal Court without any cost. Now, according to this Bill, you must go to the Supreme Court and if that is so, it must be infinitely higher than going to an appeal court.

Mr. SPEAKER: The hon. member will not be allowed to repeat that.

Mr. CRAWFORD: But the Hon. Premier does not understand it.

Mr. SPEAKER: The hon. member will not be allowed now.

Hon. G. H. ADAMS: Mr. Speaker, I apologise to the House but I hope the Committee will not take any notice of what the hon. senior member for St. Philip says. As regards the point made by the hon. senior member for St. George and the hon. senior member for the City, it is surprising that on an important point like that that those two hon. members did not secure all of their facts first. I am referring to the contents of Section 62. I think one member said common law and the other said law. Let me say that Section 62 is worded in the same way as the law is today. Had I the slightest

intimation that this point would have been raised, I would have looked up the Laws of Barbados to see when it was first the law of Barbados but it was the law when the Police Magistrates Act of 1905 came into force; in short, it was the law for the last 50 years and it is line for line in this new Bill, the single exception is to use the word "magistrate" for the word "Police" I would be inclined to say that it was the law of Barbados for a century. Of course, I have not checked up when it was brought into force before.

Section 44 of the present Act says that "where any boy who in the opinion of the Police Magistrate is under the age of sixteen years but above the age of seven years and of sufficient capacity to commit crime, shall be convicted of an offence punishable upon summary conviction, the Police Magistrate may, in his discretion, in lieu of or in addition to any punishment to which he may be subject, sentence him to be privately whipped by a member of the Police Force in the presence of a Sergeant of Police with a tamarind or other similar rod, with not more than Twelve strokes. The parent or guardian of such boy shall be allowed to be present at such whipping if he so desires. We have not changed that. If up to the age of eight years' is the law for one not capable of committing a crime, you will have to say above the age of eight years and of sufficient capacity to commit crime. That is the answer and I suggest that there is nothing wrong about that. I do not think—there is any other point made to which I should reply.

The question that the Bill be now read a second time was put and resolved in the affirmative without division.

On motion of Hon. G. H. ADAMS seconded by Hon. Dr. CUMMINS Mr SPEAKER left the Chair and the House went into Committee on the Bill, Mr. SMITH being in the Chair.

Clauses 1 to 7 inclusive were called separately and passed.

Clause 8 was called. It reads as follows:—

"The places and times for the attendance of magistrates for the hearing of all cases or matters which they are competent to hear and determine shall be such as may be prescribed."

Hon. G. H. ADAMS: I beg to move that Clause 8 stand part.

Hon. Dr. H. G. H. CUMMINS: I beg to second that.

Mr. BRANCKER: Mr. Chairman, may I enquire of the Hon. Premier who is it proposed that should prescribe the place and times for the attendance of magistrates for the hearing of all cases?

Hon. G. H. ADAMS: Mr. Chairman, the hon. member will see that provision is made for an Judicial Advisory Council which is comprised of the Chief Justice, the Attorney General, the Puisne Judges, the Queen Solicitor a Magistrate appointed by the Governor, and a barrister-at-law or a solicitor who is a member of and nominated by the council of the Barbados Law Society. That Council will prescribe the time and places where these magistrates will sit.

The question that Clause 8 stand part was put and resolved in the affirmative without division.

Clauses 9 to 26 inclusive were called and passed.

Clause 27 was called.

Mr. BRANCKER: Mr. Chairman, sub-section 3 of this Section reads "where a person is charged with any offence other than those mentioned in the last two preceding sub-sections, the Magistrate shall admit him to bail, unless there is evidence sworn before the Magistrate that the accused person either intends

or is likely to leave the Island, or by any other means evade trial, or unless such person shall have previously been convicted of a felony."

Well Sir as I see it, in actual practice somebody has to swear whether they have the least grounds for saying that the person, has intentions of leaving the Island, and that does not admit him to bail. It does not say that the Magistrate is to be satisfied with the person who swears. It may be presumed, but it is too wide a presumption to be left out of the Act of the Legislature.

Hon. G. H. ADAMS: I do not think it is too great a presumption for somebody to get into the Box and say I am John Brown and I swear to it. That cannot be enough and the Magistrate should ask him why he says so. I do not see for a moment that a Magistrate would be doing justice merely to have somebody to get into the Box without any knowledge of the accused persons intention and say that it is satisfactory evidence on which to refuse bail. What I would say is this: there is nothing in the section which implied that the accused cannot cross-examine him as to the grounds on which he is swearing this evidence, and if it appears that his evidence cannot be believed the Magistrate would not take that as evidence on which to refuse bail. I do not want to express my personal opinion but I notice the refusal to grant bail has increased since the time when I was a young practitioner.

Mr. BRANCKER: Sir, I would just say this, that since the hon. member was a young practitioner or even in recent practice Lord Justice Goddard's famous pronouncement made in respect of house-breaking cases which says where the offender is liable to repeat the crime he should not be granted bail because he is likely while on bail to repeat the offence. That was a few years ago, but in order to ensure under this Section that there is no unfair refusal of bail, I am going to suggest that the word "before" be deleted and in its place be substituted the words "to satisfy". It would therefore read with this minimum amendment "where a person is charged with any offence other than those mentioned in the last two proceeding sub-sections, the Magistrate shall admit him to bail, unless there is evidence sworn to satisfy the Magistrate that the accused person either intends or is likely to leave the Island.

Hon. G. H. ADAMS: This is stronger than the present practice. Today, a Policeman has not got to swear. A Policeman has only to object by saying a man will leave the Island and the Magistrate will say "I am not giving bail." This amendment is stronger than if the evidence is sworn before the Magistrate, and I repeat if you begin to swear evidence you open yourself to cross-examination as to why you think he is going to leave the island, whether he has made some attempt to get to some steamship. As soon as the Magistrate sees he is talking for the sake of talking it is not evidence to be taken seriously and I repeat it is stronger in the present form.

Mr. BRANCKER: Let me put it this way: a Magistrate feels he is complying with the Section under that by simply doing certain formalities. If the person says the accused is likely to leave the Island or by other means evade trial and he takes the Book, kisses it and giving his name, swears before the Magistrate, he will feel that he has complied with the law, I would move as an amendment that the word "before" be deleted and the words "to satisfy" be inserted.

Hon. G. H. ADAMS: The hon. member does not see that the position is worse now. The Policeman

has only got to whisper he is likely to go away and the magistrate says "I am not granting bail." If the Policeman swears he is likely to go away although he may have a lawyer the magistrate will say "I am not going to give you bail". Bail is not a matter of right because everything depends on the loyalty of the man standing trial, but it is far more difficult to get bail now than ten or fifteen years ago. I do not see any danger in the hon. members objection
7.25 p.m.

Mr. BRANCKER: As it is now, if you apply to a Magistrate for bail, and it is not granted, you apply to the High Court; and if this sub-Section becomes Law, the position will be that the High Court will not have any jurisdiction in the matter at all. The High Court will say that the Magistrate has taken evidence that this man intends to leave the Island and avoid trial. If you go before the High Court, all the High Court Judge will say, is that the Magistrate has complied with the Law; he has done what the Law says is to be done, and the Court will not interfere with his discretion unless he has acted perversely. The application was made to the High Court for bail to be granted, when Mr. McLeod refused to grant it, and when Mr. McLeod gave bail, the authorities objected to it, and Mr. McLeod was fired.

The question that Clause 27 stand part of the Bill was put and resolved in the affirmative within division.

Clauses 28 to 61 inclusive were called and passed. Clause 62 was called.

Hon. G. H. ADAMS: I beg to move that Clause 62 stand part of the Bill.

Hon. M. E. COX: I beg to second that.

Mr. ALLDER: This Clause reads as follows:—

"Where any boy, who in the opinion of the magistrate is under the age of sixteen years but above the age seven years and of sufficient capacity to commit crime, shall be convicted of an offence punishable upon summary conviction, the magistrate may, in his discretion, in lieu or addition to any punishment to which he may be subject, sentence him to be privately whipped by a member of the Police Force in the presence of a registered practitioner and a sergeant of police with a tamarind or other similar rod, with not more than twelve strokes. The parent or guardian of such boy shall be allowed to be present at such whipping if he so desires."

I feel that administering a couple of lashes with a tamarind rod to a boy does not merit the presence of a medical practitioner; I feel that that is unnecessary. Such things take place daily; boys get whipped, girls get whipped, and no doctors are present to see such floggings administered. I feel it would be too costly on the Government if they have to summon a doctor and probably give him a guinea or two guineas to see a boy get half a dozen or a dozen lashes.

I am going to suggest that the words "in the presence of a registered medical practitioner" be struck out. I do not see the necessity for such.
7.35 p.m.

Hon. G. H. ADAMS: Mr. Chairman, first of all, I must apologise to the Committee. I repeat: word for word this is the present state of the law. Actually, "in the presence of a registered medical practitioner" has been deliberately inserted on humane grounds. The registered medical practitioner may find that the boy may be terrified. It may be that he may faint. The present state of the law says in the presence of a sergeant of police and

boy's parents, if he likes. I believe it is good to have a doctor there because it may be necessary, even though a judge orders twenty strokes, for the doctor to stop the flogging after five or six strokes have been given. I think that is a necessary addition.

Mr. E. D. MOTTLEY: Mr. Chairman, I must agree with the Hon. Premier on that score. If you do not have a medical man and a policeman starts flogging that boy and that boy dies, that policeman can be charged for manslaughter.

What I want the Hon. Premier to say is this. Is what the hon. senior member for St. George said actually the situation in England? I am referring to a boy over seven years. What is the legal position in England? The hon. senior member for St. George said that it goes on to the age of eight years. If they extend it to the age of eight years I am asking the Hon. Premier if he does not think it wise to extend this to eight years also. I accept what the hon. senior member for St. George said and I accept that this is the law here; but if the law in England is that the boy should be above the age of eight years, why not make it that the boy should be above the age of eight years here too. Why flog him after he becomes seven years in Barbados, and in England he is only responsible after he becomes eight years.

Mr. BRANCKER: Mr. Chairman, before the Hon. Premier replies I will deal with another aspect of this Section. I do not remember offhand, but frankly I cannot think enviously of flogging a boy under the age of sixteen years. After all, these are boys of baptismal and birth certificates. We do not want the opinion of a magistrate as to whether a person is to the age of 16 years. It is not a question of whether the magistrate is satisfied that he is under the age of 16 years. If a magistrate is getting old so that his eyesight is failing him or he is not a good judge of ages, it should be that he should refer to a birth certificate.

Hon. G. H. ADAMS: I am somewhat inclined to think we have made provision for that. I cannot tell offhand, but I think it is that a magistrate has to inform himself of a person's age by a Baptismal Certificate. I do not think there is general provision about knowing a person's age; you cannot guess. Even though he may look, he must inform himself as to whether a child is this or that age. I do think it is specifically laid down that a judge must try and get a Baptismal Certificate, or if it is missing, he must get people whom he can rely on to certify (as a judge) the person's age.

"At common law, a child under fourteen years is presumed not to have reached the age of discretion and to be *doli incapax*, but this presumption may be rebutted by strong and pregnant evidence of a mischievous discretion, expressed in the maxim "*malitia supplet aetatem*"; for the capacity to commit crime, do evil and contract guilt, is not so much measured by years and days as by the strength of the delinquent's understanding and judgment." That is the common law. You can bring evidence. In England, it is between the ages of eight and fourteen, and in all the present Statutes passed in 1933, the age remains at eight. That is perfectly true as to the case in England; but as I have said, what we have in this Bill is already the Act of this Island. That was what we started with.

The mere fact that it was on the Statute Book for at least fifty years and nobody complained that it has worked a hardship, and the very fact that it was raised in here today by Counsel that the case or cases in which a child of seven years plus

has been badly treated because he has been sentenced and in addition flogged are few, goes to show that it could never have stood on the Statute Book very long after if it had led to any abuse. I am therefore suggesting, since no reason has been shown that since its enactment it has not proved to be a hardship, that we should let the law stay where it is.

7.45 p.m.

Mr. E. D. MOTTLEY: Now, Look here Sir, I quite appreciate what the hon. member has said. One thing he has cleared up is that what the hon. senior member for St. George has said is true by a Statute of 1933. As far as I am concerned, I would move the deletion of "eight," but the hon. member further says he would look it up and see why it was started. That was started in those days when if you went and picked pond grass or if you took up a piece of cane, you could be flogged. If in England they have been sane enough to amend "eight", what is wrong with our amending it? The hon. member said it has not worked any hardship in the past, therefore let it remain. Are you not amending the whole Judiciary Acts and bringing them up to date? If therefore, you are now amending to bring them up to date with the English Act and you have yourself admitted this provision was amended in 1933, therefore in fairness to the people of this colony, let us make it eight. If one type of thing is good for Barbados because England has it, let us have this changed also, because there should be no division upon this at all. We are dealing with children, and the Premier has said what the hon. senior member for St. George stated is true. Should we pass legislation with this with the age of "seven" when in England we say it is "eight"? They must have studied the matter in England. The difference between the years "seven" and "eight" must make a tremendous difference in a child. In some places in the States you remain an infant from babyhood until the age of seven or eight; and a "child" up to the time you go to the Army—at about the age of eighteen. I appeal to the hon. member who although he says it has not worked any hardships in the past. When you come to the question of eight and if you admit that it is the law in England, we should amend it and put it as from eight, because it cannot take one long to see the reason why in the old days the age for flogging was placed at "seven".

I remember going to Bissex Hill and seeing the authorities wanting to flog a child of seven for doing something wrong. If in England it has been amended to read "eight", it should be eight in Barbados also; but because you say it seems not to have worked any hardship and nobody took advantage of it, you want to let it remain. Now in England you do not consider a child responsible for doing anything wrong until it is eight, so what is the difference between the English child and my child and your child? If you have admitted that this is the practice in England, why do you not do it too? I make an appeal to the Hon Premier that this is one of those small things which the people feel very strongly about. There is not one point in favour of this section and I would make an appeal to him to change it.

There is one further point, and that is the inclusion of a Registered Medical Practitioner and I agree with that. You see, you may get the type of child whom the Magistrate does not like, or perhaps someone might consider that going up in a mango or ackee tree is a crime, but I would laugh at that. I do not see how you could have these things. Some people feel they should not do it. A boy will steal

a piece of cane or a mango off a tree (and I would consider a child to be sick if he does not attempt it or that he is not a boy), and I agree you should have a Registered Medical Practitioner present because you get some people who could be very cruel. Though it effects no hardship, I feel it should be changed. It should be changed to "eight" instead of remaining at seven. I would go further here and say there is another point which the Premier might answer.

"Where any boy, who in the opinion of the magistrate under the age of sixteen years but above the age of seven years and of sufficient capacity to commit crime, shall be convicted of an offence punishable upon summary conviction, the magistrate, may, in his discretion, in lieu or addition to any punishment to which he may be subject, sentence him to be privately whipped by a member of the Police Force....." I would like to ask the hon. member this: do you think that it should be the magistrate's discretion even for a first offence? I am perfectly willing to be guided on that. I know the hon. member may feel that a magistrate is a reasonable man, but we have seen a lot of things. Do you think you should give this authority to a person for a boy committing a first offence. Going through the Laws of Barbados you come across various Statutes. For a first and second offence a boy may be fined, or a fine may be put on his mother; but to have him flogged I am asking the Premier whether he should not consider that. I am going to move therefore, Sir, that in line three of Section 62 where the word "seven" occurs that it be deleted and that the word "eight" be inserted therefor. We cannot without any justification say after what the Premier has said that our children in the West Indies should be considered to be responsible for committing an offence at the age of seven, when an English child is not responsible for committing an offence until he is eight. For God's sake! I do not think you can face the public with that. How would you feel, Mr. Chairman; would not it appear that this is an admission in one way or another that it is not right at all. I am moving first of all, that in line 3 where the word "seven" occurs it be changed to "eight", because to pass it here tonight as it is would be an admission that our children are inferior and therefore our children are responsible for committing wrong at the age of seven, but for the English child they saw fit to argue that that age was too young because there is a tendency to get children to remain as children as long as they possibly can; that is the reason why people want to see their sons and daughters remain children among them. Only those who want to drive them from around us would not want them to remain as children.

I beg to move that this be amended.

Mr. TUDOR: I rise to second the amendment made by the hon. senior member for the City. Although I am pleased to give him my support by seconding his motion, I nevertheless do so with a certain amount of misgiving. I am not impressed, Mr. Chairman, by the argument that because in England the age above which corporal punishment is administered a child is eight years, it must now be seven years. I support the amendment because I do feel that it is even shameful that we have to contemplate it at all; and on that respect, eight is better than seven, as nine would be better than eight and ten would be better than nine. I think it has to be remembered, Mr. Chairman, that the children for whom it is contemplated that this whipping by a tamarind

rod or anything else will be administered, will not be, in the large majority of cases, the children of members of this Chamber or of the Other Place; and they are not likely to be, except in rare cases, the children of the well-to-do. It therefore goes without saying that, for the most part, it is contemplated that this Clause will apply to people who come from poor homes and who for want of a sense of security, often turn out to be bad through no fault of their own.

I am willing to conceive that there must be some punishment of some sort for small offenders, and that punishment must be so designed as to correct whatever may express itself in young people, and to correct it as quickly as possible. However, if you read this Clause carefully, you will see that this proposed whipping of twelve strokes by a tamarind rod will be administered either in place of some other kind of punishment or in addition to it, and therefore, it is not suggested that the giving up of the whipping or the raising of the age will in any way make whatever punishment a Magistrate might deem fit to impose any less severe. I know that there is a wise precaution in the Law which orders it so, that the whipping is given either in place of something else, or in addition to something else.

There is no sense in the argument that a doctor should be present. I think that is nonsense; the presence of a doctor cannot affect the consequence of the whipping of a nervous child. It does not follow, because a child has committed an offence, that it is not necessarily a sick child. It is also provided that the parent or guardian of a child can be allowed to be present at a whipping if he so desires, but that does not alter the fact that it is corporal punishment that you are imposing on young persons. We are living in an enlightened age, and some punishment must be inflicted; but it is for the Protection Officers or such people to prescribe the punishment of any young offender exclusive of corporal punishment. I have to emphasise that the overwhelming majority of offenders will be young persons who come from very poor homes where the conditions of security and of well-being will not be as evident as in other homes. It is true, of course, that Juvenile Delinquency is not necessarily confined to poor children, but it is the children of poor people who are more prone to be delinquent than those of the well-to-do people, or those of well-to-do people as I would say that is the children of the well-to-do population who can be restrained more so than any others.

Therefore, we should devise a means of punishment more in keeping with the 'humaner' elements. I would like to see the abolition of the flogging entirely, but since it is unlikely that this can be achieved, I am willing to support the motion for the deletion of the word "seven" and the substitution of the word "eight". I wish in seconding the hon. member's motion, to emphasise that I do hope that the time will not be long before attention is paid to this matter again, so that a more humane and perhaps a more enlightened attitude can be brought to bear on this whole question of Juvenile Delinquency, and a less likely return to corporal punishment. I hope we will hear of punishment suitably designed for young persons which does not necessarily mean the abolition of corporal punishment. For the reasons which are given I have much pleasure in seconding the motion of the hon. senior member for the City.

Hon. G. H. ADAMS: The hon. senior member for the City must feel rather awkward after hearing the speech made by the seconder of his motion.

The hon. member feels that whipping is good for some children, but the seconder of his motion does not believe in whipping at all. Now, this matter needs a little further investigation; any infant is a child up to seven years of age, and a minor is a child between the ages of eight and twenty-one. This age is not universal to start with. You cannot compare conditions in these matters elsewhere with conditions in Barbados. I believe in capital punishment, and in flogging; but when it comes to the ages of children, look at the difference. A child in the Tropics ages more quickly than a child in cold England. [Mr. E. D. MOTTLEY: What do you mean by ageing more quickly?] I mean that a child in the tropics matures more quickly than a child in England. A boy under fourteen is deemed to be impotent and to be below the age of discretion; but what Barbadian boy at the age of fourteen is impotent? He is not an Eskimo; he starts early in Barbados. [Mr. E. D. MOTTLEY: I take it you are speaking from personal experience.] I have practised in the Law Courts for nearly thirty years.

8.05 p.m.

You cannot possibly compare the two. Eight years may be a suitable time to start off with in England, but it may not be a suitable time to start off with in Barbados. In India, the age for marriage is much lower than fourteen; but it is known that those in temperate climates.

I am sorry if I gave the impression that this is the law of England today because from 1948 there is no whipping in England. They have just recently abolished capital punishment. They abolished all kinds of flogging since 1948 but does that mean that we should follow England in that? [A VOICE: Why not?] Well, I do not agree.

You get a child at the age of seven years stabbing in Barbados. Suppose a little boy of seven years stabs another boy, you send him to Dodds or an approved school, and give him a flogging for using a knife. Only in certain cases you impose the additional punishment of flogging. Suppose he steals a bit of cane, and somebody brings a case against him; the magistrate ought to chase the person out of Court. There may be instances in which he should be punished by being put in a Borstal institution, or the Government Industrial School; and in very bad cases, he should be flogged, say, for stabbing.

The point I wish to make is that it is not enough because in England they say that, to presume that a child of eight years and upwards can commit a crime. Before, they used to say that a child under fourteen years cannot be presumed to commit a crime. Now they say "eight years". We are not going as far as that. I repeat: there is a difference in laying down ages.

I suggest in our dealing with children generally, when we reach the stage where we can modify our law, that will be time enough; but as I have said before, this was the law for a long time; and nobody has complained of the age of seven years being too young. The hon. senior member for the City has found himself in the ludicrous position of being seconded by a member who does not believe in punishment at all. Remember, the age of eight years was not the law in all instances in England. Because of humanitarian reasons, or softness, whatever you may call it, they say that not even a habitual criminal can be flogged. That is the state of the law today in England. Therefore there is no point in making comparisons. I repeat: all abuses and anomalies were wiped out, but I suggest that this is not an anomaly.

Mr. TUDOR: Mr. Chairman, of course the Hon. Premier is quite right in saying that the hon. senior member for the City has been seconded by a person who does not believe in punishment at all. I am going to wait and see if Government will reduce the number of young offenders by saying that they should be flogged.

My reason for seconding the motion is: since it is impossible to do away with it altogether, the only thing I can do is to compromise by supporting the hon. member in his motion to get the age higher. The only justification for Government not accepting this amendment is if it can be shown that by accepting it, the number of possible young offenders will rise phenomenally. I think it is too small a point for controversy, but yet large enough for a concession to be made. Bear in mind, I was only thinking primarily of the interest of young children themselves in pressing the Government to accept the amendment; but the Hon. Premier is quite right in what he said because my own view is that I would abolish flogging altogether. Since that cannot be agreed to, I am supporting the amendment.

Mr. BRANCKER: There is one thing which has occurred to me. If this flogging has to be done it should be done not only in presence of the parent or guardian, but certainly in the presence of the Probation Officer. As you know, the law is that if you propose to lodge a case against a minor, you must carry your complaint to the Probation Officer for his sanction, otherwise you cannot get sanction. I submit that it is more imperative before the sentence of flogging is carried out and more particularly since we are not abolishing it in this island, it having been outdated in other countries, that the Probation Officer should be in attendance.

Mr. Chairman, I am moving an amendment for the insertion of the words "Probation Officer" in line 9 after the words "Medical Practitioner".

Mr. TUDOR: I beg to second that.

Mr. ALLDER: Mr. Chairman, I am moving a further amendment for the inclusion of His Lordship the Bishop and the Rector! After all, this is ridiculous. There must be some measure of discipline, and we know that due to the breaking-up of many a home that children are thrown on the streets at ages more tender than when we were children. We know too well that the attempt to treat children with too much leniency is causing a lot of trouble in the United States of America in dealing with gangsters, not only in the adult population, but even among teenagers. There must be some deadline and limit to which we must go. Youngsters themselves administer blows to each other with sticks and stones on the playing fields, and no parent or doctor is there to see whether they will suffer from heart failure. In the home itself, some parents take up a stick or cow's skin and strike their children with it, and there is no regard for the physical condition of the child.
8.15 p.m.

No doctor is asked to be there, but now we are saying in passing this Bill a doctor must be there, a Probation Officer must be there, as well as a Police Constable and Police Sergeant. It is ridiculous; there must be some deterrent and the best deterrent in handling children is to flog them. [A VOICE: Not necessarily!] Not necessarily what! If unfortunately they commit crime they must be punished. I am not saying that the punishment should be extreme, but why say that a doctor should be there and that a Sergeant or Police Constable would be so brutal to use more force than is necessary? You have made provision for the parent or guardian to be

there and personally I would not have a doctor there at all because Magistrate could see whether the child was able to bear a flogging; and the child who could not bear a couple of lashes with a rod would not be able to commit a crime. A man would do anything; even if he did not have hands or feet, he would still find a way to do something wrong. No child who would commit a crime is beyond bearing a couple of lashes with a rod, unless the case was delayed so long that he has taken ill since. You get parents who worthlessly ignore their children, throw them on the streets where children associate with others; and today there is nothing from the point of view of embarrassing people by abusing them. I forgive stealing in a measure because hunger would drive the best person to steal something because it is nature; but there is scarcely any respect in certain circles of children to-day, and there must be a deterrent. When we were boys, we only used an abusive word when an adult was not present; but today the smallest child—and of seven years too—looks into your face and calls you anything he likes; and there must be some deterrent. If a parent does not want the law to fall on his child, he will keep him and train him as a parent should do. There is a limit as to how far we should go.

Mr. E. D. MOTTLEY: I am not opposed to corporal punishment, but I do not agree with the hon. member. His opinion is a very silly one, and I am awfully sorry he has made such a speech. I am of the opinion that every parent has the same feeling towards his child, and the hon. members must remember that many broken homes today are due principally to the economic position of the people. In big countries where the standard of living is higher and the economic position is higher, it is a question of broken homes more or less that contribute to the problem of delinquency. Certain delinquents come from the slum areas, but most of the people believe they must raise children to believe in God and raise them as true Christian children. These children seldom get into trouble. I am always in sympathy with people's children getting into trouble, because I realise how often I have seen women come before me with three or four children—maybe with two fathers, in many instances the fathers not supporting them—and in many instances mother has to go out to work and leave a child of seven or eight attending to the smaller children, and in this instance you will find this is principally due economic reasons. No one is merely thinking of the child who goes in the playing field or assaults the other child. What worries me is if a child of eight or nine is assaulted by a child of twelve or fourteen: if that happens, you would not go to the school for that child. I would tell the child to try and get it back on him somehow some day. If one of my children were beaten by another boy at school, I would ask him how old the boy is: and if he says he is twelve years I would ask him "how old are you are" and instruct him to get it back out of him and not to come to me with that nonsense. That is not worrying anybody at all, because that is not the offence that comes before the Court. The usual offence is that of a boy of seven, eight or nine who has left home by his mother and goes down the road and hops a bus and who was held and brought before the Court; in former days they did not have buses, they hopped anything. You get the case of children who because of their economic position went into somebody's garden and carried away guavas, mangoes or apples and have never seen one Magistrate in this country except Magistrate Ban-

croft who had the guts to say when a child was brought before the Court for stealing mangoes or guavas; "you ought to be ashamed of yourself for bringing a child before the Court for stealing guavas," and would ask how much they want for them. There was not one man in this country who breathed discontent because that Magistrate sent the person off for bringing a child before the Court for the first offence, whether it be stealing fruit or throwing stones across the road. I am not against corporal punishment myself, and I know it only too well because I see it around me every day. You have children who must have corporal punishment in order to make them understand they can do better. I believe the Hon. Minister of Health would know something about this. I know a little boy about eight or nine whose mother had about seven children; and he would get away and go to the sea and do all sorts of things; but he was a bright boy, and since there is no compulsory education, and there was no means whereby he could get any meals in school, he never went to school.

About four weeks ago a man came to me with this boy and this is the most pathetic tale I have heard. He told me he had a letter from the schoolmaster asking him to help the child, and in the letter the master said he had just had to punish him and he threatened not to come back to school. What actually happened is the boy had gone to school and stolen another boy's lunch. Why did he steal the lunch? Because he was hungry. And the father looked at me and said "when he told me that, I did not have the heart to flog him." Why do you think a boy of eight or nine would steal another boy's lunch? I saw the schoolmaster a few days ago and remonstrated. I could not flog a boy for stealing another boy's lunch. [A VOICE: And the boy whose lunch was stolen went without lunch;] Yes. If a boy stole my boy's lunch or your boy's lunch he could go without. The father of this boy, Mr. Chairman, did not have the courage to flog him because he said he sent him to school without anything to eat that morning, and he had had no dinner the night before I have seen it several times. My boy could go without lunch that day because the boy who carries lunch to school possibly has money in his pockets.

8.25 p.m.

I do not disagree with the Section which says that a Registered Medical Practitioner should be there; but the suggestion which the hon. senior member for St. Lucy made about the Probation Officer, should be incorporated into this Section. Just as it is set out in the Schedule to this Bill that you are amending certain Acts, here again with serious thought this Section would not have been put back in this Bill just as it is in the old Act, merely stating that a Registered Medical Practitioner should be present at the whipping of a child. With the knowledge that you have a Probation Officer now, and that you must actually acquaint the Probation Officer before you bring a case before a Court, you should not have brought back this Section as it is. The whole idea is to prevent a child from being brought into contact with any Police Court at all, but this proposal will bring the child into contact with a Police Officer. I quite agree with corporal punishment, but it is not the idea to bring the child into the atmosphere of the Police Sergeant and the Police Court.

You are fifty years behind hand in putting in this Section; if you want to put a child in Court you have to notify the Probation Officer; but here the child is coming into Court, the Magistrate convicts him, and the Police Officer takes him in charge

and flogs him. I have often seen in my time, Scholarships being taken away from children; I will give you one instance. I remember well a few years ago, a report being placed before a Committee of which I happened to be a member, which strongly recommended the taking away of a Vestry Scholarship from a child. It struck me that I should look back at the old reports; I looked back and saw that the boy had been doing well. I have never promised, however bright a boy may be, that he should be rude to a Master or anything like that; but what did I discover? The Headmaster of the school recommended that the Scholarship should be taken away, and I urged the Committee to wait on the Director of Education and they would not see with me. I asked one thing; it was this: Would you have the Probation Officer or some other responsible person to see why this boy who had been doing well should so suddenly change, so that you had to recommend that the Scholarship be taken away from him? Before the Officer could submit his report, the report was made that it would not serve any useful purpose in his going on. What happened was that they were converted when the *Advocate* published that the boy had nine subjects to his credit, and there was a surprise. He was a boy in a family of eight children; his father was in Hospital, and he developed the manners he developed because he did not have proper meals.

You could not take it that, on the face of it, the child would change suddenly; that is the reason why you have a Probation Officer. You cannot make fun when the hon. senior member for St. Lucy refers to the Probation Officer; just as you could set out side by side in the Schedule to this Bill the Acts which have been amended, if serious thought had been given to this matter, you would not be putting back this Section in this Bill at all. The reason for having a Registered Medical Practitioner is that the child might be ill, but I do agree with the hon. senior member for St. Lucy that this matter has a tremendous lot to do with the Probation Officer. The Probation Officer has to do with reporting the circumstances of the child, what went wrong with him, the surroundings at his home; and he should be the person to let the Magistrate have the information before any conviction can go against the child at all.

I am at one with the Government in having corporal punishment. The hon. junior member for St. Lucy has been a Schoolmaster; he has been to the modern schools in England and he does not believe in corporal punishment. I believe that if you cannot get it in one way, you should drive it in somewhere else. I am suggesting to the Hon. Premier that he should agree to the postponement of this Section; I think that the idea of having the Police Sergeant should be removed and have the Probation Officer, because the idea is that you do not try children at all; you go to the Probation Officer in Roebuck Street.

This Section is obsolete; it was here before we had a Probation Officer. You do not send a Police Officer to a child's parents and drive the fear of God in them; you have the Probation Officer, and he goes into the circumstances so as to see what is wrong. However, this Section says that the Police Officer must have a tamarind rod, bamboo or cow's skin or something like that and flog children. I think that the hon. senior member for St. Lucy should have moved that the whole idea of the Police Sergeant being present be deleted and let this Section be re-drafted. I do not support the idea of having the presence of the Police Sergeant; I suggest that the idea of having the Police Sergeant should be cut out, and let the Probation Officer be

brought in. The hon. senior member for St. Lucy might not win with his amendment, but he would have discharged his duty.

Mr. TUDOR: Mr. Chairman, this matter is one of those whose nature you just cannot prove. It is like one of those questions where all the arguments are on one side and fundamental human instincts are on the other. It is like family planning; you cannot prove it is a good thing; you either know it is or you do not know. All of these things are big theorems in geometry, and this is one of them. Either you feel that somehow it is bad to flog children who are not your own and that it is a kind of barbarity, or you do not feel so: but you cannot prove it.

The more I go into the matter the more I see what a hideous thing it is if a child of seven years commits an offence and is sentenced by a Magistrate to be punished, in addition to whatever that sentence is, that the child can be flogged. But flogged by whom? Here it says "privately whipped by a member of the Police Force." Do you mean to tell me that a young child should be punished by whipping by a person with whom it has no emotional contact and whose authority for that very reason it must repudiate? Can you think, Mr. Chairman, of anything more wicked and bloody than that? Even if you were not a parent, you know that you never flog a child in cold blood because of the element of callousness involved; therefore, it would not impress on the child that you know what you are doing or better still, that he knows. You always correct a child (if you believe in that sort of thing) when you have a certain amount of allegiance within you so that you can associate yourself with the child in the child's mind.

But that is not what is contemplated here. There is no warm and close association, emotionally and otherwise, between the person inflicting the whipping and the person upon whom it is inflicted. It is a member of the Police Force to whom the child owes no allegiance and with whom the child is not emotionally connected. That is the person who has to administer the flogging. If members of this Committee cannot see there is something exceedingly wrong with that, there is no argument you can bring to bear. You either feel it or you do not.

There is something worse. We are here in this Committee legislating not for our own children but for other people's children and there is no member of this Committee who, if he searches his mind thoroughly, would not see that what he is pressing here for is for other people's children, and that the Government in taking the attitude it has taken, recognises either indirectly or subconsciously (and that is the whole argument behind my point of view) that if you have to flog a child you must have a medical practitioner and you still must have the child's parent or guardian in attendance; that the parent ought to be the person you should ask to do the flogging, or that somehow you do not wish the punishment to be administered in different circumstances. You are conceiving that if the medical practitioner and the parent were not present, it would be the most brutal act you can imagine. Even the Government is admitting that there is something wrong with that.

To go even further, we are supposed to live in an enlightened age, and I am not arguing that there must not be punishment; but I am arguing that severity of the punishment has nothing to do with the form. The children against whom this is being done are for the most part children who have never had a chance in life and are not likely to have a chance. I know of a case which is personally known to one or two members of this House—a case of a

little boy and girl both under the age of ten years who had to stay on the front step of their mother's on nights, perhaps until 11 o'clock or 12 o'clock until their mother had finished entertaining such guests as she has. That to my mind is a hideous thing: but if you can multiply that kind of circumstances by one thousand, you will see that there will be large numbers of children who are deprived not only of night rest or part of it, but of the example which parents should show.

8.45 p.m.

They would be forced to seek to express themselves, as an outlet for the frustration and the lack of security which they feel, and for all the things which have been denied them. Are you going to tell me the way to deal with them if they should erupt into juvenile delinquents is to prescribe this sort of punishment for them as if this is the only thing that could meet their case? And if you are enlightened at all, Mr. Chairman, you must cast about for different ways of meeting this particular trouble because they will be different children with different temperaments and different aspects of delinquent behaviour. I am not afraid to say I am opposed to corporal punishment to these children, because I do not think it helps them to me better and it cannot be proved so to do. I think that the inclusion of this entire clause in this Bill where it has no right to be shows a lack of humanity in the Ministers of this Government and all who support them today. I am asking that a more tender and humaner point of view be adopted which does not necessarily make the punishment less severe in content, but which at the same time robs it of this most degrading aspect. That is the stand I take and I think it is quite clear. I think it is cruelty we are upholding here and cruelty against children who are not the children of members of this House.

Mr. ALLDER: We are making a mountain out of a mole hill. [A VOICE: Why don't you sit down?] What we are saying now, Mr. Chairman, is that what members are speaking against has been in existence for generations. There has always been a measure of chastisement for those who did something wrong whether in the family circle or against the public; and the only difference in this Bill, Mr. Chairman, is, instead of your father or mother or your guardian flogging you the public authorities will delegate a member of the constabulary to do it, and if you do not run amuck of the law you would not have been there. What makes it more a waste of time on this issue is that if you looked up—I do not know why the hon. senior member for the City....

Mr. CHAIRMAN: What are you to do with the hon. senior member for the City?

Mr. ALLDER: I have something to do with him if his asides annoy me. I am not asking the hon. member when to speak and when not to speak; let him sit there; let him listen or go outside if he does not want to be present. What I am saying is this: it is nothing new, and there must be some means whereby you can deter persons—whether they are seven years or seventy—from doing wrong, and what makes it more a waste of time is because if you looked up the records you would not find a seven year old child so carried there. [VOICES: Shame!] It is not true, and I cannot remember seeing or hearing a child of so tender an age carried to the Courts and flogged; but I do know that there are seven year olds who make themselves very intolerable and very embarrassing not only in their homes but on the streets, though I am not willing to say that the fault is ab-

solutely theirs. Sometimes, the parents carelessly disregard their obligations to the children, but nevertheless I do not see anything wrong with the Bill or in that particular Clause other than that you are asking a Medical Practitioner to be there which I feel is unnecessary and that is what is causing the junior member for St. Lucy and the senior member for the City to feel it is something like corporal punishment.

Mr. E. D. MOTTLEY: On a point of order Sit down, sit down. The hon. member said that because and only because a Medical Practitioner has to be there at the flogging it is causing me to feel it is something like corporal punishment. I do not know what he means because I have never said any such thing. As a matter of fact, I think I have made myself quite clear by saying I agree there is nothing wrong in having a Medical Practitioner there. I went further to say if anybody should go it should be the Sergeant, and put in the Probation Officer.

Mr. ALLDER: Today, Sir, trying the case of a juvenile has so improved that a juvenile does not reach the Police Magistrate, and a flogging would not be recommended for him unless he was habitual in breaking the law and therefore it is not necessary to argue over this. I will say this, too: that I do not see any lot of wrong because a Police Sergeant is present. Personally, if I were a Magistrate, I would tell the parents or the Police to give the boy a couple of lashes and let him go; but you make it look as though you are carrying him to the gallows with a Police Sergeant, a Medical Practitioner, and the like being present, and these things make it look as if it is something wrong. It is nothing wrong at all. Every hon. member has got a flogging in his youth, and on many occasions when they were ill and very little able to bear it, but he had to take it; he has not died. Anyhow, Mr. Chairman, this is one occasion upon which I hope, Government will not change; the only change I would recommend is that the doctor be not present because it is not necessary; and if you demand a doctor to be present when a boy is given six lashes, you might deprive that doctor from going to attend to somebody who might have a ruptured appendix and who might die before he got back. Do you think that a doctor has nothing more to do than to run up Coleridge Street to see a boy lashed? I am wondering how Government could on the one hand, say the Hospital service is bad—they cannot get Medical Practitioners and nurses and so on—and still compel a Medical Practitioner to leave his more serious duties to come and sit by and see a boy gets six lashes for throwing a stone across the road. To get out of it, I would abolish the whole Section; I do not mean a boy should not be flogged if he breaks the law, and I am going to say now to the hon. junior member for St. Lucy, philosopher as he is, that no man-made law could be as stringent as natural law. But for hon. members to be saying you should not have a Police in uniform to give a boy six lashes, and you should not do this and that, they know if the same boy runs across the street at an inopportune moment he would lose his life, or if he went on a roof he might fall down.

Here it is that with this Clause and I will say that there is no law where, in its execution, a person has never been given the opportunity to use his discretion. We are just wasting time.
8.55 p.m.

Mr. BRANCKER: I would just like my amendment to be quite plain. It is that in line 10, the words "Probation Officer" be used in lieu of the words "Sergeant of Police."

The question that the words proposed to be deleted stand part of the Bill was put and resolved in the affirmative, the Committee dividing as follows:

Ayes: Hon. G. H. ADAMS, Hon. Dr. H. G. H. CUMMINS, Hon. M. E. COX, Hon. C. E. TALMA, Messrs. HOLDER and BRYAN—6.

Noes: Messrs. BRANCKER, TUDOR, ALLDER and E. D. MOTTLEY—4.

The question that word "Seven" stand part was put and resolved in the affirmative.

A division was taken as follows:—

Ayes: Hon. G. H. ADAMS, Hon. Dr. H. G. H. CUMMINS, Hon. M. E. COX, Hon. C. E. TALMA, Messrs. HOLDER and BRYAN—6.

Noes: Messrs. BRANCKER, TUDOR, ALLDER and E. D. MOTTLEY—4.

The question that Clause 62 stand part of the Bill was put and resolved in the affirmative without division.

Clause 63 to 65 inclusive were called and passed.

Clause 66 was passed.

Hon. G. H. ADAMS: I beg to move that Clause 66 stand part of the Bill.

Hon. Dr. H. G. H. CUMMINS: I beg to second that.

Mr. BRANCKER: Mr. Chairman, this is a Section which, I am sure, will be very dear to the hearts of the members of the Other Chamber; it is just what they would be enamoured with as regards people of an unfortunate section of the Community. I would like to say that nothing constitutes in this Bill a greater attempted infringement of the liberty of the subject than this section. This Section says that a person will be taken into custody for an offence without a warrant. In these days, when we do not have a Mr. Archer or a Mr. Innuiss, we have to be satisfied with what we get. This Section goes on to say this:

"A police officer not below the rank of sergeant, or the police officer in charge of the police station to which the person is brought, may, and if it will not be practicable to bring him before a magistrate within twenty-four hours after his being taken into custody, shall enquire into the case and unless the offence appears to the officer to be a serious one, release him on his entering into recognizance, with or without sureties, for a reasonable amount, conditioned for his appearance before a magistrate at the time and place named in the recognizance."

We are enacting a new Act which is intended to be a better one to be put in place of the old Act, and we are giving the Police Officer in charge of a Station—a Corporal or he may be a Private—the right to enquire into a case, and we say that he can release the offender unless the offence appears to be a serious one. I know a Police Officer below the rank of Sergeant who regards anything as serious if it appertains to a member of the Police Force. In other words, if the slightest assault is made on a member of the Police Force that particular Officer holds it to be a very serious thing; "it is the one thing," he says, "I will never agree to give bail for." This particular Officer whom I have in mind, is otherwise a very genial man, but he will say "the whole Force will see if I will grant bail for an assault which is made on a member of the Force."

9.05 p.m.

As you will see, that officer who is so highly placed in the Force will say as soon as he enquires into the case and is told that the accused is charged with assaulting a member of the Police Force that that offence, so far as it appears to him, is a serious one and immediately the liberty of the subject is taken away and he remains in custody. It will not be practicable. I can well understand it if the Court

is not sitting. That is a phrase which is very wide and open to many constructions. A Policeman may say that it is not practicable to bring him before a magistrate. "It is not practicable to take him from the Charge Room to the Court. We do not have a man available to do that." That phrase is much too wide.

It goes on to say (subsection 2 of Section 66):

"Where a person is taken into custody for an offence without a warrant and is retained into custody, he shall be brought before a magistrate as soon as practicable."

That again is something which I dislike. That may be a very long time. We must limit this; we must whittle it down. If you care, add to it, "in any event not later than forty eight hours afterwards." To leave it as it is, particularly as this is new legislation, it would provide a loophole through which the subject will be seriously endangered. If it stands as it is, the subject may be kept in custody for a considerable period of time, because you will not be putting any limit to the period of time to which the Police may bring him up before the magistrate, because they will be able to say that it is not practicable to bring him before the magistrate before the time they decided to do so.

Mr. Chairman, I do not know if you at this stage feel that further discussion might be deferred on this matter until you have a certain amount of recess and be revived. I will be disposed at this stage to move the motion that you do now report progress and ask for leave for the Committee to sit again. One has to consider your tact and patience and one must not try either one of those.

I therefore move that you do now report progress and ask to sit again.

Hon. G. H. ADAMS: Mr. Chairman, I was suggesting that as we started this Section let us finish it. One is accustomed to the hon. member's wanderings. If one thing is clear, it is the meaning of the word "forthwith" and the phrase "as soon as practicable". There can be no dispute as to what they mean in the eyes of the law; therefore the hon. member needs not be in any way afraid to vote for that. The hon. member talks of a bad draughtsmanship; I would like to know what bad draughtsmanship this is? If a policeman takes a man into a Police Station and all the man has is little bruises on his face a magistrate though not sitting would say "I am going to give you bail". If on the other hand the man has a cut, the Act gives the policeman power to say that it is serious.

The other point which the hon. member made is an administrative one. I myself have drawn to the Police the stupidity of thinking that every assault means that you cannot get bail. Take the case of somebody arrested at midnight for a little drunkenness. Of course, you give the policeman the right to bail him out. The fact that every policeman thinks seriously of a case of assault on a policeman is no reason why that should be looked upon differently. That is a matter for the Head of the Administration. You cannot use that as an argument for not having this Section. This Section is put in so that in case a Monday is a Bank-holiday and the Tuesday is a Bank-holiday, or one day is Christmas Day and the day after is a Bank-holiday, you must give the subject a chance to get bail. I repeat there is no difficulty in this. Cases after cases have established what "as soon as practicable" means. These cases have been proved in the Courts of this Island by the late Sir Herbert Greaves. Of course, that is an old one. The words "as soon as practicable" have been com-

pletely threshed out as to their meaning in Courts of this Island.

Mr. BRANCKER: Mr. Chairman, I can only conclude that the Hon. Premier who has just spoken has completely failed to understand what I have said. In line 9 of Section 66 (1) it says "unless the offence appears to the officer to be a serious one." That can only mean to him and to him alone. If it appears to him a serious one, it becomes a serious one and the person is not entitled to bail. Surely the Hon. Premier can see that. I do not want to call names but there is a well known Barbadian officer (who is a great credit to the Police Force and a worthy member) who up to this year took a serious view of a case of slight assault on a policeman. It was an assault which left no mark whatsoever on the policeman. In his opinion, according to line 9 of Section 66 (1) he would say that the offence appeared to him a serious one and perhaps to him alone it would be a serious one. That is no question of the administrative side at all, because, as soon as you touch a policeman, the offence appears to him a serious one. 9.15 p.m.

And then Sir, with regard to Section 2, "where a person is taken into custody for an offence without a warning and is retained in custody, he shall be brought before a Magistrate as soon as practicable, and I am moving the addition at the end of the words "and in any event not later than 48 hours".

Hon. G. H. ADAMS: Then the Magistrate would have to come out and try on Sundays?

Mr. BRANCKER: I did not have a scholarship in mathematics, but surely if a man is arrested on Saturday, a Magistrate would not have to come out on Sunday if the time limit is 48 hours.

I beg to move that the addition of the words "and in any event not later than 48 hours," be inserted immediately after the words "as soon as practicable" in sub-section 2 of Clause 66.

Mr. TUDOR: I beg to second that.

Hon. G. H. ADAMS: I would like to point out that following the English Act an Officer not below the rank of Sergeant or the Police Officer in charge of the Station if you arrest a man at 3 o'clock in the morning, who else but the Officer in charge of the Station can possibly say whether it is a serious offence? What are you going to do, wake up the Police Magistrate at three in the morning and say "I have a person here who has committed an offence and I want you to come and tell me whether it is a serious one?"

The Section reads, "A Police Officer not below the rank of Sergeant, or the police officer in charge of the police station to which the person is brought may, and if it will not be practicable to bring him before a magistrate within twenty-four hours" so that is covered anyhow—"after his being taken into custody, shall enquire into the case and unless the offence appears to the officer to be a serious one." Well you may have somebody above the rank of sergeant who happens to be present, and being a superior officer might say: "This is a serious matter and you cannot give him bail;" or the officer in charge of the station who might be the only man there when the person is carried in might say: "It is a serious matter and I cannot give him bail." What other person could be a better judge than the superior officer or the officer in charge of the station? Who else is there to judge?

Mr. E. D. MOTTLEY: What I think the senior member for St. Lucy is saying is, if you are now amending the Act and you found that certain

hardships were worked as a result of this—he is a legal practitioner and so was the Premier — it is possible for the officer in charge to be unfair in the case, because it reads: “unless the offence appears to the officer to be a serious one”. I go further and say: I have been called out very often to give a person bail, and if it is an offence against the Police I refuse to bail the person because you have to keep on terms with the Police, whether the person assaulted a police officer or police sergeant, because it goes from top to bottom. If you assaulted a police man, I say you should have no bail. If somebody committed an offence on a Saturday night and the police arrested that fellow and he assaulted the police, then I consider it is a serious offence, and he should not get bail whether it be for assaulting a Sergeant, corporal or police officer or resisting or obstructing him on his duty.

Hon. G. H. ADAMS: Perhaps the hon. member would give way. If I told him what has been my experience. I have lost my temper with a magistrate for refusing to grant bail to people who applied; that is why I said it can be arranged through the head of the administration.

Mr. E. D. MOTTLEY: The Hon. Premier is saying he can arrange it through the Head of the Administration. He has also said it is his experience now since he has stopped practising within recent years that it is harder to get bail. You know what is the position today. Since you have discharged Mr. McLeod, if a person assaults a police officer on duty or resists, you cannot get bail for the person because of the difficulty since Mr. McLeod lost his job, because the young barrister is afraid of the Police or the Colonial Secretary. Suppose your son comes out now (and you are dead), and the senior member for St. George is Premier—because that could happen—what would happen is that the magistrate would fear giving young Adams this bail, and the magistrate is not moving from that stand and you get this type of thing: “If The Police Departments says not to give a man bail and you give him bail they are going “to try and get you fired.” I am not saying that you should put in what the senior member for St. Lucy asked you to put in, what is worrying me is that after his being taken in custody there should be somebody there; either a police officer or a police sergeant should be available for twenty-four hours of the day; just as a doctor is on duty at hospital for so many hours and should be available, so a magistrate should be. I am asking the Premier to see about this. In the case of assaulting the police, it might only be a matter of mending his tunic; and with your experience of the difficulty to get a magistrate, and in recent years since the dismissal of Mr. McLeod magistrates are afraid to grant bail when the police say “no”. Is that right or wrong? they are afraid to give bail if the Police Officer says “No” It might be a trivial offence but do not let us think of ourselves, let us think of the people who might be off-guard. A man may be having a couple of drinks and he does not think. What is bad language in Broad Street at 11 o'clock would not be bad language in Bulls Alley at 9 o'clock in the morning. [A VOICE: Is it good language?] Of course it is good language, and you can ask the Premier what else it could be.

9.25 p.m.

It is not good enough to say that you are bringing forward a Bill. This Section says: “Unless the offence appears to the Officer to be a serious one, release him on his entering into recognizance....” I should like to know if there is no possibility of

inserting in this Section that where the Police Officer fails to release a person, application could be made to a Police Magistrate. You can make such application to a Police Magistrate now, but the Magistrate is not bound to release a person on bail. As the position is now, since Mr. McLeod has been dismissed, the Police Magistrates are afraid to grant bail if the Police say that bail cannot be granted, especially if a young Barrister is appearing in the case. A man may be off-guard, and he may assault a Policeman by resisting him, and somebody says that this man should not be granted bail. Well, I do not agree with that; but I have no hesitation in saying that having regard to what has happened in this House of Assembly, when I saw that a Police Magistrate had convicted and sentenced a man for attempting to draw a knife when an attempt was made to arrest him, and then the Court of Appeal fined him 20/-, I say, that that is just encouraging lawlessness. The Magistrate sent that man to jail, and the Assistant Court of Appeal imposed a fine of 20/- on him! I would have sent that man to jail.

I am appealing to the Hon. Premier, if he sees what is happening, to insert in this Section, that a person can appeal to a Magistrate on this question of being released on bail. You can telephone the Magistrate, and the Magistrate asks: “Do you consider the offence a serious one?” The Police Officer says that it is an assault, and the Magistrate says that in his opinion, it is not a serious offence; I am wondering if the Police Magistrate has that authority under this Bill. A man who is in the cell is not before the Police Magistrate; the Magistrate may say: “Yes, grant him bail,” but when the Police Officer says that the offence is a serious one, bail is not granted. I would suggest that the Magistrate be brought out, and then the man would be before him.

I should like to ask this: is the man before the Magistrate when the Police Officer telephones him? When the Magistrate telephones and says to grant the man bail, he is just doing you a favour. If the Magistrate really wants to help you, he should go to the spot and grant bail; he cannot just telephone from Bush Hall or anywhere else, and say to grant bail, because the man is not really before him then. The Police will be sympathetic towards their organisation, and it is well that that is so; but we cannot make legislation merely for one section of the Community, we must consider that any man may break the law. It is not every Magistrate who will want to come on a Saturday night, and therefore I would like to see the Hon. Premier giving the right of appeal as to granting bail to the Magistrate.

Mr. BRANCKER: Mr. Chairman, it occurred to me half an hour ago that further consideration of this matter be postponed so that we would have a 45-minute break; others thought differently, and that is why you are being subjected to the ordeal which you are now undergoing, but there was no lack of sympathy on my part.

I thought that the point was very plain; it should not be left to the unfettered discretion of any Policeman to say that the offence appears to him to be a serious one. In actual practice, in so far as certain Police Officers are concerned, the slightest thing always appears to them to be serious, simply because the person involved is a member of the same police force. If you leave it to the unfettered discretion of any Policeman, there is no bail; surely that is plain, and there should be something to restrict the powers of the Police. There is a certain Officer who says: “I look at anything committed against any Policeman as serious.” That Officer said this to me when I telephoned in connection with

bail for somebody: "Your client has been charged with assaulting a Policeman; that appears to be very serious, and there is no bail to be granted."

9.35 p.m.

The honourable and learned Premier speaks of saying you might telephone a magistrate. That might be two o'clock in the morning. It is not merely telephoning a magistrate; it is getting him to come down. Since Mr. McLeod has been dismissed, magistrates do not do that any more, although Mr. Hanschell has done it and Mr. Erskine Ward and Mr. Bancroft. They gave bail after finding out from the Sergeant-in-charge of the Station what was the actual condition of the person and who is alleged to have been assaulted, if the case was nothing serious, if the person had not gone to hospital or if it did not merit the person going to a doctor. But magistrates do not take that risk now because of what happened to Mr. McLeod. The hon. Premier said that it is a matter which could be arranged with the administration, and therefore it rests with the head of the Department. I am sorry to let the hon. and learned member know that the Commissioner of Police does not take him seriously.

Hon. G. H. ADAMS: I never said that; I said the Governor.

Mr. BRANCKER: I would not ask the Official Reporter to say what was actually taken down. I would recall when we were discussing the question of passports, and the refusal of the Police Department to issue application forms to people unless those people produced a receipt from the shipping firm stating that they had purchased a ticket, that the Hon. Premier said on that occasion he was surprised to hear of it, and would take the matter up right away; but despite the fact that he took the matter up, the Police Department is still giving that trouble and refusing to give passports unless you produce that receipt.

Hon. G. H. ADAMS: It is really difficult when you get unadulterated nonsense to make a reply. He said it is difficult with a Police Magistrate. No Police Magistrate has any real right to come out. What does the hon. member suggest as a remedy? I would sit down and listen to any amendment which is workable. All the objections he has is that if you hit a policeman, no bail is granted. Tell me how you can get around that in an Act? Suggest two words that I can accept. The only way to get around that is to see that the Head of the Administration gives instructions. What Police Magistrate you can tell to come out and give bail? You must give a man on the spot the right to give bail. That is nothing new; that is what happens now. It is the only way you can do it. This is put in the language of the most recent English Act. This is Section 8 of the English Act of 1952, except in that Act it is "inspector" but we say "Sergeant". We say nobody below the rank of Police Sergeant. How else can you work it? If you take in a man at 3 o'clock in the morning, who else is to bail him but the sergeant or corporal? Who else can bail him? If the hon. member after his denunciation can possibly draw up something that is workable, I will accept it.

Mr. E. D. MOTTLEY: The Hon. Premier says that I suggested something which is nonsense. I am still at a loss to understand what he says. I think you will agree that there is a difficulty. I agree that the Police Magistrate has no authority there. I have seen a case in Bridgetown in which the then Solicitor General was appearing for a man who had taken a lot of things off a man-of-war. It was during the

time that Colonel Dickens was Commissioner of Police. The Sergeant refused to grant bail as well as Colonel Dickens and the only thing counsel had to do was to get the magistrate to come down. Counsel told magistrate this was within his jurisdiction and the magistrate then said that the case was not before him. It is true to say that the magistrate has no real right in it. It is only if he cares that he can ask.

The Hon. Premier will agree that certain difficulties do arise from time to time. Does the Hon. Premier accept as a fact that you have certain difficulties with young practitioners of the law and that young magistrates are fearful since what happened to Mr. McLeod, to do anything? If in the opinion of the Police Officer, bail should not be granted, is it not possible that the Hon. Premier can add some proviso like this? "Provided always if bail is refused that the person so charged may be able to appeal to the Police Magistrate under whose jurisdiction he is arrested."

9.45 p.m.

Now I say it is alright if you bail a man or if you do not grant him bail, but this is provided the matter is a serious offence and you do not grant him bail. If the man is arrested the Thursday before Good Friday or Christmas night, sometimes you get magistrates sitting on Saturdays; and then it is Sunday, Monday and Tuesday before he is tried, and the magistrate according to this is in authority to grant bail, but if the policeman should say this is a serious matter, he is not granted the bail. What I am asking the Premier to say is whether it would not be scientific to put in "provided always that bail is granted....."

What has happened, Sir is this. [Asides] I have the time and the energy to talk; I have been elected here and I feel it is my duty to talk; If I am a fool I will talk my talk as long as I am in here, and I do not see anybody in this whole Chamber who could stop me from talking, not one of the twenty-three members. I am asking the Premier whether it would not be scientific to put in provided always that if bail is not granted especially with regard to the difficulty of a person to get bail from the magistrate in which jurisdiction the person is so charged. [A VOICE: Made when, at night?] The policeman can do it. Just as it is your duty to protect them, it is equally your duty not to bring a hardship to one section of the people and not all. This is an old Section and it creates a hardship.

On motion of Hon. Dr. H. G. CUMMINS seconded by Hon. M. E. COX, Mr. CHAIRMAN reported progress and asked for leave to sit again and Mr. SPEAKER resumed the Chair and reported accordingly.

9.50 p.m.

ADJOURNMENT

On the motion of Hon. Dr. H. G. H. CUMMINS seconded by Mr. L. E. SMITH, Mr. SPEAKER adjourned the House for three-quarters of an hour.

NO QUORUM—ADJOURNMENT

On re-assembling, Mr. SPEAKER: It now being after 10.30 p.m. of the clock, the time for resumption after the adjournment, and there being less than nine honourable members present, this House now stands adjourned until this day week at 3.00 o'clock p.m. in accordance with the Rules.