LEGISLATIVE COUNCIL

FRIDAY, 5TH DECEMBER, 1952.

The Council met at 2 p.m., the Hon. **C. V. Wight, C.B.E.**, Deputy President, in the Chair.

PRESENT:

The Deputy President, the Hon. **C. V. Wight, C.B.E.** (Western Essequibo) in the Chair.

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

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

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

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

The Hon. **T. Lee** (Essequibo River).

The Hon. **V. Roth, O.B.E.** (Nominated).

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

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

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

The Hon. **Dr. C. Jagan** (Central Demerara).

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

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

The Hon. **W. A. Phang** (North Western District).

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

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

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

The Clerk read prayers.

MINUTES AMENDED

The minutes of the meeting of the Council held on Thursday, 4th December, 1952, as printed and circulated, were taken as read.

The Deputy President: There is a slight error in the minutes and I would like to call attention to that. It is under the motion by the hon. Member for Central Demerara (Dr. Jagan). It is stated that Mr. Kendall voted for the motion with Mr. Farnum (the hon. the Fourth Nominated Member). It should be the hon. Member for Central Demerara and the hon. the Fourth Nominated Member voted for the motion.

Amendment made, and the minutes confirmed.

REPORTS AND DOCUMENTS.

The Colonial Secretary (Mr. Fletcher, Acting) laid on the table the following:—

The Report on the Transport and Harbours Department for the year 1951.

The Report of the Director of Audit, British Guiana, on the Accounts of the Transport and Harbours Department, for the year ended 31st December, 1951.

The Report of the Board of Control Atkinson Field for the year ended 31st December 1951.

NOTICE OF QUESTIONS.

ANNA REGINA RICE MILL EMPLOYEES.

Dr. Jagan gave notice of the following questions:—

1. How many workers were employed at the Anna Regina Rice Mill (a) in January, 1949, and (b) in January, 1950?

2. How many workers from the Anna Regina Rice Mill were laid off in 1951 on account of infirmities which rendered them unfit to do a full day's work?

3. Were those remaining at the aforesaid Mill paid the rates recommended by the Public Service Salaries and Wages Commission?

4. From what date were they paid those rates?

5. From what date were the wages recommended by this Commission paid to other Government employees?

6. When will Government pay the retrospective pay due to the workers remaining at the Anna Regina Rice Mill who were employed at the Mill on the date referred to in (5) above?

LOCAL SOAP INDUSTRY.

Mr. Fernandes: Before we proceed to the Order of the Day I crave your indulgence, sir, to draw the attention of Government to the anxiety being experienced by those who manufacture soap locally. Apparently the representatives of the soap industry in British Guiana had an interview with the Controller of Supplies and were appalled to learn that in accordance with the Oils and Fats Agreement soap up to any quantity may be licensed to come into British Guiana in competition with the local soap. It is causing very great anxiety because the local factories already are being squeezed, through a short supply of raw materials, and their operation is restricted in some cases to only two or three days a week. Now the last blow, we are told, is that licences will have to be granted no matter what the qualities are. I think this is a matter which Government should study very carefully, because several years ago I had the privilege of serving as the Deputy Chairman of the Secondary and Minor Industries Committee and, if my memory takes me back that far and correctly, I remember quite well that Government agreed that only 40 per cent. of the total requirements of laundry soap should be permitted to be imported into this country.

I do not know, sir, if the Oils and Fats Agreement goes beyond that, but I am under the impression that there may be a law somewhere to that effect. I have not been able to trace it, as this matter has only been brought to my attention this morning, and I would like also to bring it to Government's attention because of the peculiar circumstances operating in Trinidad which can easily eliminate the manufacture of soap in British Guiana. I am not going to say anything more. I leave the balance for the right time, just in case I have to take this matter up further.

The Colonial Secretary: The hon. Member had mentioned this matter to me this morning and it certainly will be looked into, particularly the quantity of soap.

Dr. Jagan: I would like to make an observation in support of the hon. Member's representation. What he has referred to about Trinidad is that a firm has been set up there by Lever Bros., and we know that Lever Bros. hold an actual monopoly on soap production throughout the world, and particularly in the British Empire countries. It would be a great blow to the industry now working up in this Colony, if it is allowed to be faced with uncontrolled competition from such a giant as Lever Bros. I think Government should look into the matter very seriously.

ORDER OF THE DAY

BILLS—FIRST READING

The following Bills were read a first time on a motion by the **Attorney-General** seconded by the **Colonial Secretary**:

A Bill intituled "An Ordinance to provide for the management, control and supervision of Atkinson Airport."

A Bill intituled "An Ordinance to make provision for prescription and limitation in respect to titles of land and for purposes connected therewith."

LIMITATION (AMENDMENT) BILL

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

"An Ordinance to amend the Limitation Ordinance."

I should point out to hon. Members that this Bill seeks to give effect to certain recommendations of the Law Revision Committee. Until recently it was generally considered that part-payments and acknowledgements in writing would revive statute barred debts. However, recent decisions of the Supreme Court have cast doubt on the question as to whether statute barred debts are so revived. There have been two cases—one decided in May last year and the other as recently as August this year—and in the latter case the learned Judge went into the history relating to this matter of limitation and as to the law in this Colony, and stated in the course of his judgment:

"For the above reasons, I hold that those decisions given in England before Lord Tenterdan's Act are not applicable in this Colony, and on a construction of the Limitation Ordinance. Chap. 184, there is an absolute bar to an action for debt which was due and payable for more than three years, and that no part payment, acknowledgment or promise to pay made less than three years before the bringing of the action can operate to make the action maintainable."

The learned Judge, referring to the previous decision given in May last year, said:—

"But the learned Judge would seem to have based his decision that the Common Law of England was resuscitated because of the intention of the Legislature as disclosed by the explanatory memorandum attached to the Bill. I have already intimated that the intention of the Legislature is not to be invoked in aid of the construction of the language of an enactment. With respect, I regret I am unable to agree with Ward, J."

In view of what I have said these decisions created a doubt with regard to statute barred debts, as to whether they are revived by acknowledgment in writing or part-payment. Clause 2 of this Bill now seeks to remove such doubt and to make it clear that part-payments and acknowledgments in writing of debts which will otherwise be barred by the period of limitation prescribed by the Principal Ordinance will revive those debts. Section 10 of the Principal Ordinance deals with the right of an heir, etc., to bring an action in case of a person entitled dying, and subsection (2) deals with the liability of an heir, etc., to be sued in case of a person liable to action dying. Clause 3 of this Bill seeks to re-enact that section and in addition to make provision that any action that has accrued against a deceased person may be brought within one year of the grant of probate or letters of administration. As the law now stands, the period runs from the date of death of the deceased person.

Clause 4 seeks to re-enact section 13 of the Principal Ordinance which deals with the application of the Ordinance to set-off and counterclaim, and in addition to make provision that any claim by way of set-off or counterclaim shall be deemed to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded. Clause 5 deals with provisions as to actions already barred and pending actions. Those are the salient features of this Bill, and hon. Members

will agree that it is necessary that the law should be made certain in matters of this sort. There is nothing more I can add at this stage. I beg to move that the Bill be now read a second time.

The Colonial Secretary seconded.

Mr. Lee: I think that Government is making a mistake in this matter. It has been the ruling of several decisions in the Supreme Court time and again that a verbal or oral acknowledgment, if believed by a Magistrate or Judge, takes a debt out of the prescribed period. Now to put it in this manner will create a hardship on several people who carry on business in this Colony. I do not say that this is not an improvement, but there are several people who cannot write, and this legislation specifically states that the acknowledgment must be in writing and must be signed by the people making the acknowledgment. It does not say that the person can attach his mark to it if he cannot read and write.

I think that Government, while trying to bring our laws up to the standard of those in England, should write. I think that Government, although trying to bring our laws up to the standard of those in England, should at the same time see that the acknowledged custom in this Colony, supported by several decisions by learned Judges of the Supreme Court, is still carried out. I may say, there are certain Judges who feel that the decisions of other Judges in this matter should be upset, and that is creating more doubt in the minds of the people. Long ago the shops and groceries on the sugar estates gave credits of large sums of money, and at the close of a year they would put that debt aside and the debtors start a fresh account. All the debtors did was to acknowledge the debt orally before the grocer. Now he will have to sign an acknowledgment of the debt. If he puts his mark on the document, who is to testify that the mark is properly a signature? I certainly do not agree to the passing of this Bill.

The Attorney-General: The hon. Member who has just spoken should at least be conversant with one side of the picture, in view of the fact that the earlier judgment which was given in May of last year, was in a case in which he appeared on behalf of the plaintiff. The view which was then expressed by the learned Judge, Mr. Justice Ward, was not agreed with and accepted by Mr. Justice Boland in the later judgment. Therefore, it is obvious not only to lawyers but to laymen and Members of this Council particularly, that where you have two judgments which are different in regard to the principle, the Legislature should step in and express beyond doubt the principle so far as the law is concerned. There is a principle of law which should be ascertained, and consequently in a matter of this sort it should be beyond any question at all that a debt may be revived by payment of money on account or by acknowledgment in writing. That is always the understood principle, and that is what this Bill seeks to do—to place beyond doubt the fact that, as stated in clause 2 (1):

> "Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment."

It does not necessarily mean there must always be an acknowledgment in writing. The fact of payment will be an acknowledgment of the debt. So the hon. Member, I submit to hon. Members of this Council, is not expressing the principle which should operate in regard to matters of this sort. There have been two conflicting decisions, and all this Bill seeks to do is to set at rest the doubts which have arisen in connection with the acknowledgment of debts. It may be true that in subclause (2) it states:

> "Every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment."

But it does not say that an illiterate person cannot make a "cross" mark and have two witnesses to the acknowledgment . I think the hon. Member does not appreciate the fact that a signature does not always mean that the person signing must do so with his own hand. If he cannot sign there is provision in the law for it to be done with witnesses. To look at it from a commonsense point of view the person is acknowledging the debt and is taking some step to acknowledge it in writing. In other words, if X is an illiterate person and owes a debt of $400 or $500, and has not paid any money on account of it for three years, he goes into the store and says "I am an honest man. I do not want to have your goods and not pay for them. I cannot write but I am acknowledging the debt." Someone may write his name and he touches the pen.

I am asking the hon. Member if that is not an acknowledgment for the purpose of any such provision as we have here. In addition to that, if he pays $5.00 on account that is an acknowledgment of the debt, and the debt accrues from that date. I have explained the reason for it and, I think, hon. Members will agree and the hon. Member for Essequibo River himself should be the first to agree that this is a very necessary requirement. How would he like to go before the Court and have one side citing the judgment of Mr. Justice Ward and the other side citing the judgment of Mr. Justice Boland? Consequently, unless this matter is taken beyond the Court to a higher tribunal, the law will remain quite uncertain so far as the expressions of opinion in those judgments go. Accordingly it is sought, as I have intimated to hon. Members, through the recommendation of the Law Revision Committee of which the Chief Justice is Chairman to put the matter beyond doubt.

Question put, and agreed to.

Bill read a second time.

COUNCIL IN COMMITTEE

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

Clause 2—*Insertion of new section 9A in the Principal Ordinance.*

Mr. Lee: A pro-note has to be signed before certain persons if the maker of the note is illiterate. I am moving an amendment of this clause to the effect that this signature should take place in the presence of certain persons simultaneously.

The Chairman: May I point out to the hon. Member that an analagous provision appears in the Wills Ordinance. It has the same provision—that if an illiterate person makes a will he has to affix his mark to it.

Mr. Lee: The Wills Ordinance has a specific clause relating to that and I would like to see it here also so that the meaning would not be ambiguous.

The Chairman: Perhaps if the hon. Member reads section 4 of Chapter 148 he would see that it reads:

> "4. No will made in the colony shall be valid unless it is in writing and executed in manner hereinafter mentioned; that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and the signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, and those witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary."

I certainly think that a mark made in the presence of two witnesses would be sufficient. I am under the impression that there are several wills of which probate has been granted and on which there was only this mark under section 4.

Mr. Luckhoo: That is perfectly correct. If I may remind my hon. Friend, a scratch on a bit of paper is presumed to be in order if it purports to be the signature of a person. That

is all that is necessary. I am afraid that the fears of the hon. Member are ill-founded in this case.

Mr. Peters: This is certainly a lawyer's affair. I may add that in the case of a will even the witnesses need not see the testator sign. If the testator himself or any other person acknowledges the signature that is sufficient.

Mr. Lee: With all due respect to my learned friend, I would ask him why is it that the Legislature has provided that if an illiterate person wants to sign a pro-note he has to do so in the presence of certain persons? The Legislature wanted it to be very clear and unambiguous. If this Council feels that this mark would be sufficient then I will not interfere, but I think the matter would have to be tested in the Supreme Court. I am trying to avoid any doubt, and I know that this provision will create some doubt. A signatory means a person who signs, and let us assume for the sake of argument that it was for a pro-note for $500; are we going to say that it must not be attested before a J.P. or a Commissioner of Oaths? If the document is to be valid that has to be so; the signature would have to be witnessed by any of the persons authorised to witness such a document.

The Financial Secretary: In the law there are clear provisions for affixing the signature or mark of a person on any document. In other words, there is legal provision for placing a mark on any document in a way so that that mark becomes a signature.

The Chairman: If the hon. Member looks at section 2 of Ordinance No. 39 of 1933 he would see that a person who signs a pro-note as maker or indorser should do so in the presence of any one of certain persons who would be satisfied as to the identity of the person making the particular mark or signature. The reason for that, if I may suggest to the hon. Member, is that there may be important results hinging on the transfer of that document to other people, therefore it is necessary that the *bona fide* holders of the value should be satisfied that the mark was genuinely affixed. That is why that provision was made there and not in the Wills Ordinance or the Partitions Ordinance.

Mr. Lee: Here you are creating a lot of doubts. In the 1933 Ordinance certain conditions are set out, but here we are providing for a person who would just sign. Suppose the agent is authorized to sign to the effect that the debt has been created and he signs while the principal knows nothing about it? If hon. Members are satisfied, however, I will withdraw the amendment.

Clause 2 passed as printed.

Other clauses passed as printed.

Council resumed.

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

The Colonial Secretary seconded.

Question put, and agreed to.

Bill read a third time and passed.

CRIMINAL LAW (PROCEDURE) (AMENDMENT) BILL

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

"An Ordinance further to amend the Criminal Law (Procedure Ordinance with respect to the qualification of jurors and of special jurors; the control of publication of proceedings at preliminary enquiries; and for purposes connected with the matters aforesaid".

This Bill seeks to amend the Criminal Law (Procedure) Ordinance with regard to the qualification of jurors and special jurors. It also deals with the control of publication of the proceedings of preliminary enquiries. Those are the main features. As hon. Members will see, its particular object

is to revise the law with regard to special jurors which is contained in the Criminal Law (Procedure) Ordinance, Chapter 18, in order to facilitate the striking of a special jury when an order is made for the striking of such jury. Clause 3 seeks to make provision for the revision of jurors lists on which the names of persons qualified to sit as special jurors are indicated by the Registrar. Clause 4 sets out the qualification of special jurors and provides that the registrar shall indicate those persons qualified to sit as special jurors immediately on completion of the jurors books, and the procedure to be adopted for the revision of the list with respect to special jurors. This clause also seeks to increase the income qualification of a common juror from $420 to $720 per annum. This is in keeping with the present trend of money values. Clause 6 re-enacts the procedure for obtaining an order for trial by special jury and seeks to make provision for the procedure to be adopted in the choosing of a special jury.

Hon. Members will appreciate the fact that the question of the provision of special jurors exists at the present time but it is considered that it is desirable that the details with regard to this matter should be amended and the Bill seeks to make such amendment. I should inform hon. Members that in section 18 of the Jurors Act of 1949 provision was made for the abolition of special juries except in commercial cases, but I would point out that when this abolition of special juries took place in 1949 the conditions obtaining in the United Kingdom were very different from the conditions which obtain here.

Dr. Jagan: Why?

The Attorney-General: The hon. Member who has asked why, would appreciate the fact that at a trial at the Old Bailey it would be a thousand to one chance if the jurors know the particular individual whose case was outlined at a trial, but I do not think the same thing can be said of this or any other small community. A trial by special jury is not an automatic matter. An application would be made by or on behalf of the Attorney-General and, so far as the provision goes, by or on behalf of the accused. In other words, an accused has the right to make application for a special jury. I daresay hon. Members might know of cases in this country in which the accused would wish to make such an application. On the other hand, the Crown, represented by the Attorney-General, also has the right to make such an application. Such applications are very infrequent and I do not know whether hon. Members have any recollection of such an application being made for a long time. However that may be, I think it is desirable that the provision should be made for trial by special jury. From time to time there have been occasions on which juries have given verdicts against the weight of evidence. For one reason or other which I do not propose to go into at the present time, juries have taken it into their hands to come to decisions which only they themselves knew how they reached them.

I think hon. Members will agree that that has happened on a number of occasions, and that on many occasions also they reported that they could not agree. It is not suggested that this recourse to special juries is being taken simply because jurors have found themselves at variance with the instructions of the judge. Hon. Members will agree that judges are human and that jurors are human also. We should always bear in mind that it is the function of the jury to deal with evidence of fact and it is the function of the judge to deal with evidence of law. The jury have to take their direction on the law from the judge, but it is their duty and peculiar province to arrive at a decision on the facts of the case as presented in Court.

It has been known that for one reason or another jurors have sometimes gone contrary to the facts of a case. It is desirable that we should retain this law as regards special juries, with certain modifications. When we come to the Committee stage we will deal with the matter in detail. So far as the other aspects are concerned, there are two. One is as regards income qualification, and I think hon. Members will agree that the amount fixed some years ago is no longer comparable with money values today. The other matter is as regards publication of the proceedings of preliminary enquiries. Hon. Members will appreciate the fact that it is undesirable that there should be full publication of the details of a preliminary trial which might create certain prejudices in the mind of the public as regards the accused. Provision is therefore made only for certain formal details to be published. I do not think hon. Members will disagree with that proposal. It is proper and it is a safeguard in the interest of a fair trial when the matter is before the Supreme Court. I do not think there is any other matter in this Bill which requires comment at this stage. I beg to move that this Bill be now read a second time.

The Colonial Secretary seconded.

Mr. Luckhoo : Whatever criticism might be levelled against the British system of jurisprudence, it must be admitted that it stands pre-eminently in world standards as affording the best possible protection to any man charged with a criminal offence. These standards which have been approved by all mankind, so to speak, are based upon the system of trial by jury. The principles by which the jury is selected must be closely watched, lest there be a deviation from the essential principles which might harm and affect the system of jury trial. Secondly, any change at all must be viewed with eyes of suspicion and with a heart of fear, because no change is ever effected for the sake of change but for the purpose of instituting something which is new or resuscitating something which is lying dormant. I preface my remarks with these generalisations because I am conscious of the fact that in this Bill there are many features which are progressive and admirable, but in like manner and form there are many features which are repugnant and retrogressive. In attempting to analyse it I would, first of all, deal with the elements of fact before proceeding to deal with those of law.

I feel that one of the most admirable features of the Bill is, as the Attorney-General has pointed out, the question of the non-publication of the details of a preliminary enquiry. The history of the jury system is romantic and exciting, and I think it is hardly a form from which one would digress and go back to the history of the grand jury or the paid jury, because we would be going back to the old days — the days of the Anglo-Saxons when we had trial by ordeal and trial on oath and so on. With the advent of the Norman Conquest we had trial by battle and this proceeded until about 1215 and then the Lateran Council decided that this kind of trial by ordeal should end as being something of savage remains of the old days. Then there was the introduction of a system whereby an accused was asked if he consented to be tried by his neighbours and having acquiesced he was tried by his neighbours. In reality, the jury in those days, watching the gradual progress, was virtually a body of witnesses.

With the evolution of time from the days of 1215, witnesses could be brought into Court and the neighbours would sit as a jury and listen to the case but could not give expression to their own belief or knowledge of the case. It was not until the close of the 17th century that we have seen the system of jury changed so that the jury sitting on a trial know nothing whatever of the facts of the case. They are deemed to be ignorant of the circum-

stances and are there to express an opinion and bring a verdict on what evidence was led in the Court. That is the stage as it is today, where members of a jury can have no possible association with the case and, if it is known that is not so, it is good reason for excluding them.

The feature of this Bill, which seeks to prevent the publication of the proceedings of a preliminary enquiry, is to my mind another forward march. I am not sure they have it in England; I do not think so. I think this is a very admirable step to take, whereby you confine the publication in the daily newspapers to a concise statement of the charge without going into details. That is more than ever necessary in a Colony like this, where you have people living together in small communities because—I speak of my own knowledge — in the Magistrate's Court where the preliminary enquiry is held one finds that on very many occasions inadmissible evidence is allowed, such as a confession which may properly be challenged, and one waits until the trial in the Supreme Court in order to challenge it or to ask that certain evidence be ruled out.

I have seen in the newspapers in bold headlines "alleged confession" and details of the confession are published when subsequently at the trial that alleged confession is ruled out as being inadmissible. Persons who read the newspapers and sit at a trial, must be impressed, either consciously or subconsciously, by reports of that kind. I fear a great deal of harm has been done in the past by full reports of a preliminary enquiry, especially where the tendency is to publish the evidence in chief and deal with the cross-examination in a line or two. One side of the picture is presented, and that is why I welcome very heartily this Bill dealing with that particular aspect.

But, sir, in this Bill there is the other aspect—the question of reviving the law, so to speak, in respect of special jury. There is presently a law whereby special juries can be struck. Section 42 of Chapter 18 says:

> "The Court or a Judge at any time before trial on the application of the Crown or of any accused person, after hearing any objection of the other side, may in its or his discretion order that a special jury shall be struck for the trial of any indictment or information except treason or treason-felony."

The power is there, and in my experience I have never known of a single case within the last 20 years in which a special jury has been called upon or an application made for a special jury. I have endeavoured to ascertain on how many occasions in the history of our Colony one has had to call for a special jury, and I am told by individuals who are in a position to know, that only on one occasion—in the Molly Schultz murder case—special jury was summoned for the trial. Sir, that goes back to the days of Sir Charles Major as Chief Justice, before 1920—somewhere around 1918 or thereabout. That was the only occasion. What then is the position ? Why then do we find here a very attractively drawn up provision providing details of a special jury to try a case if application has been made? Surely there must be some reason for it.

The hon. the Attorney-General has not said or so suggested it, but there are cases where verdicts have been returned which might be regarded as "perverse". I think that is a good word. Let us face reality. One has been hearing—it has been said far and near, not by the hon. the Attorney-General—that the number of fraud cases going before the Supreme Court makes it necessary that we should have special jurors to try those cases. I am convinced, and I feel I have reason for saying so, that if we admit all these details in respect of calling special jurors, we would have applications being made for special jurors with a regularity as

compared with the rarity under the existing law. The point I make is this:

We are all concerned with justice and its administration, but the person who must be considered at this stage more than any other is the person who is accused, and he should be permitted to have the right of a full panel and not a panel restricted by income qualification. There is an income qualification whereby you do choose your jury. Let me say to the hon. the Attorney-General that I agree that we should increase the amount from $40 to $60 a month as the qualification for your jury, but why should you choose special jurymen and bring them out in a special class,—those earning $100 a month? Is the criterion to be the question of income qualification provided they are intelligent? If that is so, then it is based on false premises, because if a perverse verdict can be returned by men earning $40 a month it can also be brought by men earning $100 a month. The fact that they earn more money does not make it more difficult for them to return a verdict which may be perverse.

I do not see the necessity for changing that which is at present law. The law, as it stands, has been applied in the case I have cited. Why now go in for the preparation of a list marking those out for a special jury? Is it for the purpose of bringing in special verdicts? One does not know. At a trial it is not only a question of the jury; one has the Crown Prosecutor who presents the facts fully and impartially, and in accordance with the principles of law. But there have been cases in which those principles of law were not strictly followed, despite objections, and as a result there has been a reversal of the conviction by Courts of Appeal and the Privy Council. The point I make there is this: it is not because errors have been committed in cases that one should turn around and say "Very well, we shall have a special prosecutor or special Judges because there have been reversals." In like manner, not because one jury may have on one occasion brought in a verdict deemed to be perverse that we should have a special jury.

I feel that a certain amount of suspicion can justifiably be caused, and one feels and fears that with the provision whereby application can be made in cases for a special jury there will be a regularity of applications, and one will have this special peculiar type of jury with a very high qualification being invoked to sit on trials. The essence of the jury trial is a trial by neighbours, a trial by one's own peers. That is the fundamental principle and, I feel, sir, here is an effort—I am not saying wickedly or wantonly being made—whereby an accused person can feel with justification that he is not permitted the right of selection from an open panel of jurors but from a restricted group in that the panel will be based not on any particular academic qualification or intelligence but only on monetary consideration.

The hon. the Attorney-General has pointed out that in England in 1949 all special jurors were abolished. That is so, and he further said it may not be always practicable to make a comparison between England, a country developed, and British Guiana. Let me in answering that say this: let us presume that contention is correct. Then let us look at the law in England prior to 1949 and see what existed 100 years before. If not admitting but conceding the point made by the hon. the Attorney-General, let us say that we are 50, 60 or 70 years behind the standards in the United Kingdom. What was the position then? Did they have special juries then? Yes, but only for misdemeanours. They never had, and I can find no traces of it, special jurors for felony or for treason.

The point I make, sir, subject to correction but as the result of my own little research, is that in England there has never been at any time in its history special juries for felony but only

for misdemeanours which cover a very small group of offences and do not include robberies, wounding, murders which are in the widely classified group of felony. If 100 or 80 years ago we invoke the law as it was then in England, we would not have special jurors. Even though there is provision in the law—section 42 of Chapter 18—I can see the hesitation with which one attempts to utilize that particular section of the law. I say hesitation because I have only been told of one case in a number of years in which it was invoked, the purpose being that it should be used with great reluctance. The tendency is that this should be taken out of the Statute Book and not have inserted these details as given here in this Bill.

The point I make is that in England there is no longer a special jury, and at no stage in English history—I think I am right—would you find a special jury in a case of felony or treason but only in cases of misdemeanours. For that reason I cannot support these clauses of the Bill, and I do say that if the occasion arises where it is necessary to have a special jury there is provision already in our Statute Book. But, sir, these details, I say, I fear will be the means whereby we will have them being used with regularity, and that will be hewing at the foundation of our jury system whereby a man is entitled to be tried by his peers, his neighbours. There must be some minimum qualification. Today the hon. the Attorney-General suggested that the qualification be raised from $40 to $60 because of the change in money values. I agree that that is so, but then why should one go a step further and consider one group earning $100 to come within this special concentric circle?

Whatever remarks I have made, it is not an attempt to cast any stigma upon the prosecution and on the Attorney-General's office, where I can say of my own knowledge that one can always get as fair and square a deal as any accused can want in respect of receiving a fair and proper trial. But in an honest approach to the subject the position is, where a case comes up for consideration and it is deemed necessary to have a special jury and these people who are on the special jury are called upon to serve, there will be some effect on the minds of those people who are chosen. They will conclude that the case is one of some special significance that an application is made for a special jury. Thereby the accused will not receive that impartial and fair trial which he is today receiving through a wider panel of jurors.

On the whole, whatever may be said with regard to the question of perverse decisions by the jury, that is a rare exception. We have and we do find in this Colony the jury returning verdicts which, I have heard Judges remark on that in their humble view, is a true and correct one. I may say this, that I have had the experience of receiving even letters from other persons, Americans who were charged in this country, in which they say that the jury system in British Guiana under which they were tried on the capital offence was in their view—I use their own words which I remember—"a godsend to us." They were tried by people of as many as six different nationalities sitting on the jury. You have had it time and time again people of different nationalities coming together and giving of their honest verdict. I do not feel that the time or the circumstances warrant the details or set up to have special juries in this Colony. The law is there; if the occasion does arise it can be invoked, but do not bring these details and produce a list in which you have special jurors named, because I can see only one purpose behind that—the intention to introduce special juries at very many trials, as compared with what was formerly the position.

Dr. Jagan: I would like to make a few observations, but before doing so I must state my agreement with what has been said by the last speaker. As

a lawyer he certainly knows what the position is in the Courts, and he has put it very bluntly for all of us, who are not legal Members practising before the Courts, to understand. One fact to which I would like to refer is the one dealing with the income qualification for the ordinary jurors. I notice here that the amount is to be revised upwards to $720 per annum, which is a 50 per cent. increase. While I appreciate the fact that money values have gone up since the time when that limit was fixed, nevertheless one has to keep in mind what the hon. Member who spoke before me referred to a moment ago. Trial by jury is based on the fact that one must be tried by one's neighbours, by one's peers. Can we honestly say that everyone in British Guiana, one's neighbour or peer, is earning $60 per month? If we take the Government Service, at the moment we would find that very few of those persons employed in the unclassified group earn as much as $60 per month, and we do know that there are others in private employment who receive much less.

In but a few cases the wages paid in private employment are higher than those paid by Government. At the moment Government's minimum wages do not provide an income of $60 per month. I remember when the wages were fixed some time ago—in the latter part of 1949—they were fixed at $1.52 per day for male workers in Georgetown and $1.26 for male workers in the country districts. Since then there has been an increase—in the first case an award of 20 per cent. and since then, I believe, there was an additional increase of 5 per cent.—which added together we find that the income of the workers on the whole will not reach the figure of $60 per month. If we were to take for our consideration what has been said to us by the last speaker, then we must see to it that members of the working class should also be included in the list of jurors. That is all I would like to say in addition to what the hon. Member has already said.

I am in agreement with what the hon. Nominated Member has said, but I am opposing the increase of the qualification of a juror from $480 to $720 per annum. I feel, sir, that is not necessary. One should try, as the hon Member said, to be progressive and not retrogressive. If we are to be progressive we should try to bring more people within the scope of the jurors' list rather than limit it to certain individuals and thereby make the list narrow.

Mr. Fernandes : I, too, am in agreement with the contention of the hon. the Sixth Nominated Member (Mr. Luckhoo). As I see it, this change is contemplated because it is felt in some quarters that there may possibly have been a miscarriage of justice in one or two cases which have been tried recently. Whether there has been a miscarriage of justice or not, it is not for me to comment on, but there are British principles of law one of which states that it is better to allow nine guilty men to go free than to convict one innocent man. I feel certain that the appointment of special jurors with a minimum wage of $100 per month will not eliminate the suspicion that once in a while the verdict does not appear to be the correct one. Then what should be the next step? Government will have to come back and try to raise the standard a little higher and, I am afraid, even when the income qualification gets to the top there will still be cases in which certain persons have some doubt as to whether justice has been carried out.

The point which struck me most, of those raised by the hon. the Sixth Nominated Member, is this: the minute the prosecution calls for a special jury it is logical to expect that will create in the minds of persons that the prosecution fears that if the case goes to the normal jury a wrong verdict is going to be returned. In other words, the person accused is guilty and rather than have him go free at the hands of a normal lot of

jurors we must make sure that there is no chance of that happening and we must have him tried by a special jury. That is going to create a very wrong impression in the minds of persons, particularly if the first six or so cases which are referred to special jurors all carry one verdict—guilty. It is bound to create the impression that special jurors are summoned for one purpose only and that is to ensure a conviction.

Not only is it necessary that justice be done, but it must also appear to be done. I am afraid that the present provisions for a special jury are quite enough in cases where it is felt for very very valid reasons that a special jury should be summoned. I think it would be wrong at this stage to change the system which we have at present. I feel quite satisfied in my mind that it will not have any appreciable effect by having special jurors of that standard of income in so far as verdicts or the possibility of verdicts which may be thought to be somewhat unfair are concerned. Therefore, sir, when the time comes I shall support the amendment for the removal of that clause from the Bill.

Mr. Lee : The part I object to is the empanelling of a special jury. When one looks at Section 42 of the Principal Ordinance he would see that the stress is really in sub-section (3) which states:-

> "(3) A judge shall sit in Georgetown or New Amsterdam, on a date, of which notice shall be given by the Registrar in the Gazette, not less than five days after the publication of the list, for the purpose of revising it and there shall be the same right of audience, the revision shall be made, the panel shall be selected, the summonses shall be served, the jury shall be chosen, the challenges for cause shall be allowed, and all other proceedings whatsoever shall be taken, and the court shall have the same powers, as if it were a common jury list or any jury drawn therefrom a common jury."

Under the old Ordinance the challenge of a special jury was not limited, but this seeks to limit the power we have to challenge a special jury and I cannot agree to that. I feel that this is redundant. We have had this provision for a special jury going very fairly and I cannot agree to this. As regards the argument relating to monetary matters, the question of the value is there. Can anyone say that the cost of special juries under the old Ordinance has increased? I do not think there has been a great number of applications recently for the appointment of special juries and I do not feel I can agree to this.

Mr. Macnie: I did not propose to say anything and I am sorry I did not hear the remarks of the Hon. the Attorney-General when he moved the motion for the second reading of this Bill because I was within the precincts of the Chamber. If he has not already done so, I would ask whether the Hon. the Attorney-General would be so good as to tell us, if he can, the reason for the introduction of this Bill. The reason is not very apparent to me in the Objects and Reasons set out at the end.

The Attorney-General: I shall deal with the hon. Member's point in the course of my reply, but I think that the Council itself has gone somewhat off the point, if I may be permitted to say so. The law at present, as I indicated in the course of my remarks when introducing the Bill, provides for special juries. The hon. the Sixth Nominated Member has referred to the section—Section 42 of Chapter 18—and I propose to read it so as to indicate to hon. Members that the change is not one such as the hon. Member or hon. Members fear. In view of the fact that the Bill was being amended with regard to the increase in the qualification and also with regard to other features—the non-publication of details of a preliminary enquiry and so on—this clause has been introduced with the idea of setting out the position clearly. Section 42 of Chapter 18 reads as follows.—

> "42.—(1) The court or a judge, at any time before trial, on the application of the Crown or of any accused person,

after hearing any objection of the other side, may in its or his discretion order that a special jury shall be struck for the trial of any indictment or information except treason or treason-felony.

(2) The registrar shall, within ten days from the date of the order, prepare from the jurors' books of the counties of Demerara, Essequibo, and Berbice, taken together, a list in alphabetical order, by surnames numbered consecutively, of all jurors who are qualified to be elected as members of the Legislative Council under His Majesty's Order in Council herein aforesaid, and shall publish the list in the Gazette and in one daily newspaper circulating in the colony.

(3) A judge shall sit in Georgetown or New Amsterdam, on a date, of which notice shall be given by the Registrar in the Gazette, not less than five days after the publication of the list, for the purpose of revising it and there shall be the same right of audience, the revision shall be made, the panel shall be selected, and summonses shall be served, the jury shall be chosen, the challenges for cause shall be allowed, and all other proceedings whatsoever shall be taken, and the court shall have the same powers, as if it were a common jury list or any jury drawn therefrom a common jury.

(4) The list shall remain in force as the list of special jurors during the continuance of the existing common jury list, and during that period any special jury shall be selected therefrom."

The particular clause in the Bill to which reference has been made, reads:—

"42.—(1) The Court or a judge, at any time before trial, on motion made by or on behalf of the Attorney-General or of any accused person, may order that the trial of any indictment or information, other than for treason or treason-felony, shall be by a special jury."

Therefore, what the hon. the Sixth Nominated Member is saying with regard to special juries does not really affect the point, because the principle of provision is there. If the hon. Member compares Section 42 (2) of the Principal Ordinance with sub-clause (2) in this Bill, he would see that that is substantially what is here. The sub-clause reads:—

"42.—(2) At the trial of any case before a special jury, the jury to be empanelled for the trial thereof shall be chosen, the challenges shall be allowed and all other proceedings whatsoever shall be taken, and the Court shall have the same powers as if it were a common jury: . . . ."

Mr. Lee: What about the question of challenge?

The Attorney-General: I refer the hon. Member to the Criminal Law (Procedure) (Amendment) Ordinance, No. 2 of 1948.

Paragraph 37A. of section 9 states:

"37A. On the trial of any indictment—

(a) the Attorney-General, the Solicitor-General, the Crown Counsel or any counsel appointed to prosecute on behalf of the Crown may, without cause assigned, challenge three jurymen; and

(b) every person arraigned may, without any cause assigned, challenge three jurymen."

That is the law as it stands now. Section 42 (2) provides that the proceedings shall be the same as if it were a common jury list or any jury drawn therefrom.

Then follows the proviso in this Bill which reads:—

"Provided that the special jury shall be chosen from among the number of special jurymen on the panel for the Court in which the case is to be tried and if the requisite number of special jurymen is not thereby obtained, then the remainder may be obtained from among the special jurymen in attendance on the panel in any other Court at that sitting. If the requisite number is still not obtained then the Court may command the proper officer forthwith to summon as many persons present in Court whose names are on the list of jurors or whom the Court consider proper persons to serve as shall be sufficient to make up a full jury for the trial of the case."

In other words, this is procedural to enable the Court, if a challenge is made of the existing jury, to provide that if there are any other jurors outside and in the precincts of the Court they should be summoned so as not to delay the trial. There is no such provision in the Ordinance as it stands. In other words, although it is perfectly true that we have the provision in the law for the empanelling of a special jury, there is no provision whereby, in case a special jury is empanelled and the facts caused a number of jurymen to be withdrawn, the trial would not have to be delayed until summonses for others are sent out. It is provided that where the number before the Court has been exceeded or there is a possibility of accident, the judge can direct the officer to proceed to the Court where the trial is proceeding so that it could be concluded. I am sure all hon. Members will agree that trial by jury and the desirability of trial by peers have been provided for years and years ago.

I do not propose to go into the history of trial by jury but, of course, it is a safeguard. It is a bulwark and we have it permanently. The fact is that special juries are very infrequently invoked, but in case it is invoked and the power is there to challenge and the challenge exceeds the number of jury before the Court, then it would not be necessary to delay the trial by sending out summonses and spending a long time waiting for their return and so on. That is the main feature, but the principles are there.

I would point out to the hon. the Sixth Nominated Member who has received the support of the hon. Member for Georgetown Central and the hon. Member for Essequibo River, that it is our endeavour to obtain justice rather than a conviction. We are ministers of justice and our constant endeavour is to assist the Court as far as possible. If there is anything in favour of the accused I think my Department has always made it a point to present the facts fearlessly and very scrupulously. As the law stands it is only a question of the procedural part and making the necessary provision to obtain without difficulty or occasioning any delay in this matter of additional jury. Hon. Members have agreed with the provision with regard to the non-publication of a preliminary enquiry *in extenso* as a very desirable provision, and these provisions had to come before this Council for the purpose of amending the law.

As regards the other aspect—monetary provision—the criterion is not only money. There must be an intelligent appreciation of the various issues presented to the Court. Justice is not of one side only; justice means the most good to both sides. We have to look not only at the cases but, very often, at the victims as well. In the presentation of any set of facts, even though they may be delicate, it is desirable that the jury who have to be the judges of the facts must be in a position to have some reasonable appreciation of the facts as presented both by the prosecution and the defence. It is not a question of a one-sided approach of the matter, and I am sure hon. Members will agree that if they have to be tried, they would prefer to be tried by persons with some reasonable standard of intelligence. The hon. Member for Essequibo River complained some time ago about difficulties in relation to those people who are ignorant. It is true they may have some money, but sometimes the appreciation of complicated matters is a very difficult thing. So far as the question of money values is concerned, it might be difficult to select people and get the very peak of intelligence, but that remains to be seen.

Reference has been made to the question of peers, but an illiterate

man's peers might not be 12 illiterate men. It is desirable to keep a standard because, at the time when these amounts were fixed, as I have said before, money values were down. I am not speaking of persons who are in an income group below those seen here and may not have the same standard of intelligence but, by the same token, the general view is that in order to receive a certain income one must have a certain standard of appreciation of things around him and a certain standard of education and intelligence.

In other words, a man's income may be an indication of the quality or capacity of his mind. That is a reasonably good criterion and it is reasonable to try and find an answer to what is a difficult matter. It does not necessarily mean that because a man is in receipt of a substantial income he has integrity or that his honest appreciation of the questions would be very high. His intelligence and honesty may be the very opposite to his income. "One swallow does not make a Summer". One man who is in receipt of a very substantial income may not like principle as regards the standard of rectitude and ethics among people who do not desire these material things.

I have not forgotten the question asked by the hon. the Seventh Nominated Member. I may point out that time and time again the hon. the First Nominated Member has made very adverse comments on the working of the jury system. I am sorry that the hon. Member is not in his place at the moment, but I should like to say that this matter has been engaging attention for a long time and that judges have had a variety of views with regard to the question of the jury system and its operation in this Colony. The late Mr. Justice Luckhoo, in a note on this question of the jury system, said:

> "More use should be made of the provision contained in Section 42 of the Criminal Law (Procedure) Ordinance, Chapter 18, for a special jury in accounting cases and matters which require a higher standard of intelligence."

I mention that because a gentleman like Mr. Justice Luckhoo had a very considerable experience in criminal matters and I think hon. Members would accept his comment with regard to this matter and endorse it. He said in another paragraph:

> "I have known, however, of verdicts, not very many, which seemed perverse to have been brought about by external influence and interference, moreso on the part of those interested in the accused persons."

Hon. Members will agree that I have not made any comment and did not use the term "perverse" with reference to any verdict. I think the term was used by the hon. the Sixth Nominated Member. Mr. Justice Luckhoo went on to say:

> "The fact that there have been disagreements of the jury to the extent of 4 per cent. of the cases tried over a period of ten years is no criterion for paving the foundation for an alteration of the jury system or for its condemnation."

I have not said anything or made any comment which can be regarded as condemning the system. It was rather the other way about. I referred to the specific question of special juries in view of Mr. Justice Luckhoo's comment, since he had a very long experience at the Bar of this Colony and he also sat on the Bench and was also a Member of this Council. I therefore accept his comment very fully—without reservation. Then we have had comments by Chief Justice Worley who suggested difficulties that may arise with regard to the selection of juries. This has not been designed, however, for the purpose of starting immediately with the special juries. If the occasion arises where there are matters of a complicated nature and it is desirable both from the Court's point of view and the accused's point

of view that they should be presented to a jury, that would be done. It would be fully appreciated that all the aspects of the case have to be considered by the presiding Judge.

There is also a comment which was made by a judge last year, with regard to this matter. He expressed agreement with the question of the decrease of money values and here he states:—

> "With regard to clause 3 which seeks to amend the Principal Ordinance by the insertion of a new section 29A providing for the qualification of special jurors, I am not in favour of empowering the Registrar with deciding, without his decision being subjected to revision, whether a juror has the prescribed qualification to be a special juror...."

There will be not special jurors' list, but just that the word "special" will be placed against the names on the regular list of jurors. When the Registrar is selecting the jurors for a session of the Court he will do so indiscriminately from the names of common and special jurors. If a case is one which the trial Judge decides should be tried with a special jury, there will be a sufficient number of special jurors to form a panel, if not the requisite additional number will be got from amongst the jurors in attendance in the other Courts at that session; if there is still not a sufficient number then others will be summoned. Hence the provision in the clause of the Bill.

It is not intended to introduce any new feature of special jurors, but merely to provide the procedure so as to avoid any suspicion that a special jury is being got for particular cases. The Judge decides whether a special jury should be empanelled, and then that special jury is drawn from the available jurors summoned to attend his Court; if there is not a sufficient number, having regard to challenges taken, then he may require the Registrar to summon other special jurors who are in the other Courts. I think I have made the point clear to hon. Members.

Hon. Members need have no suspicion about it. There is no design that you are going to have all cases with special jurors. It is an answer to any suggestion of packing or bringing in a special jury for a specific purpose—to bring in a specific verdict against in any specific matter. I hope hon. Members appreciate the point I have made in reply to the criticism levelled at this particular aspect of the Bill and will support it, because while we have jurors, until we reach the position that England had reached in 1949 whereby they could dispense with special jurors, let us have a procedure which enables us to avoid any suggestion whatever or any suspicion of just getting a special jury for a specific case.

Question put, and the Council divided and voted as follows:—

For — Messrs. Macnie, Smellie, Peters, Kendall, Lee, Capt. Coghlan, Dr. Singh, the Financial Secretary and Treasurer, the Attorney-General and the Colonial Secretary—10;

Against—Messrs. Luckhoo, Phang, Fernandes and Dr. Jagan—4.

Motion carried.

Bill read a second time.

COUNCIL IN COMMITTEE

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

Clause 2— *Amendment of Section 20 (1) (a) of the Principal Ordinance, No. 2 of 1948.*

Question "That the clause stand part of the Bill" put, and the Committee divided and voted as follows:—

For — Messrs. Macnie, Luckhoo, Smellie, Phang, Peters, Kendall, Fernandes, Lee, Capt. Coghlan, Dr. Singh,

the Financial Secretary and Treasurer, the Attorney-General and the Colonial Secretary—13.

Against—Dr. Jagan—1.

Clause 2 passed.

Clause 4—*Insertion of new sections 27A and 72B in the Principal Ordinance. — Qualification of special jurors.*

Question "That the clause stand part of the Bill" put, and the Committee divided and voted as follows:

For — Messrs. Macnie, Luckhoo, Smellie, Phang, Peters, Kendall, Fernandes, Lee, Capt. Coghlan, Dr. Singh, the Financial Secretary and Treasurer, the Attorney-General and the Colonial Secretary—13;

Against—Dr. Jagan—1.

Clause 4 passed.

Clause 6—*Repeal and re-enactment of section 42 of the Principal Ordinance — Special jury at discretion of Court on motion of either party.*

Mr. Lee : With this special jury you only have six challenges, whereas under the old law you have as many challenges as you can show reason for. I will vote against this clause.

Mr. Luckhoo: The hon. the Attorney-General certainly made a very good and spirited reply in respect of this Bill, and he adduced arguments which did have some weight, but the point I was endeavouring to make, perhaps very poorly—and I do not think the hon. the Attorney-General fully comprehend my efforts or, perhaps, I did not express myself properly—was that the position is this: I admit freely that the law does exist at present. There is under section 42 of Chapter 18, the right given for calling a special jury on application to the Court. Here we have details which will give rise to the calling of the special jury at the shortest possible notice, something which is readymade.

The point I was making was that during a period of 50 years or 60 years only on one occasion there was the need to invoke that section of the law, therefore why should there be the desire now to have something so readymade providing such quick action? Why we should at this stage make preparation for the ready presentation of a special jury list? I went on further to say that this I regard as an invitation, so to speak, to have special jurors at trials. That is the fear I have objectively. The hon. the Attorney-General may not be with us all the time and, though I know that left to the hon. the Attorney-General it may be invoked on the rarest of occasions, yet with a form such as this in the Statute Book we may have an inclination to have it used often. That was the point I endeavoured to make on this particular clause.

With respect to this clause I am going to move an amendment for the insertion of the words "felony or" between the words "for" and "treason". I beg to move that amendment. What I have done there is to introduce into this legislation what was introduced about 100 years ago in England. The hon. the Attorney-General can look at *"Halsbury"*. In England special jurors were not permitted to sit upon indictments for treason or felony but only for misdemeanours. That was the position prior to the 1949 Act. This clause is really putting us into the position that England was a number of years ago. I do not think it can be said that we are so far back that we are really in the 12th or 13th century.

I move that particular amendment and I do, sir, ask the hon. the Attorney-General to consider, in the event of this amendment being defeated as it looks like it will be, the question of murder. In the case of murder where a man's life is being dealt with, he should have a right to go to a full

panel and not to a special jury. Felony covers a very wide ground; very few offences do not come within its ambit. Misdemeanours are just a few offences like public mischief. I am moving only one amendment, but I do ask the hon. the Attorney-General to consider the question whether a man on the capital charge is not entitled to go to a full panel of the jury and not to be restricted to a special jury. It seems almost in contradiction to the fact that the only case I was able to cite with a special jury was a murder case, but I still think it was wrong to have a special jury sitting in a case of a man charged with the capital offence. He should have free scope for selection from a full panel.

The Attorney-General : That will nullify the effect of the whole thing. The best thing is to tear it up. I would like to read a paragraph from the minutes of the former Chief Justice which was written on the 3rd February, 1950:

> "There is provision for striking a special jury, chapter 18, section 42, but it is rarely used. I would suggest that the Crown consider applying for a special jury in capital cases and cases involving complicated accounts or a system of fraud where there is reason to believe improper influence may be brought to bear. In some Colonies this is a general rule and in my experience it has worked well."

Here is the Chief Justice, who is not in this Colony now, approaching this matter and making that suggestion. The hon. Member's amendment really nullifies the whole effect of the whole thing. Our approach, may I suggest to hon. Members, is this: we are seeking not to obtain convictions. That is a totally different thing. The hon. Member appears for the accused and that is one point of view, but the Crown has to look at both sides. Justice is not one-sided: it has to have a balance and the approach must be balanced. Therefore this provision does not relate to the Crown alone. There may be an occasion where it will be in the interest of the counsel for the accused, in the interest of his client, to apply for a special jury that will not be swayed by emotion and by propaganda and various other things which are undesirable in relation to an objective approach to any trial.

As I have said before, the Colony is small and many things pass through a grape vine. Therefore there may be an occasion where in the interest of the accused himself justice would be better served by having a provision such as this which he can invoke. I am not saying there may not be an occasion also where the Crown will apply for it. The proof of the pudding is in the eating. The hon. Member himself cannot say that the Crown has exercised the right and made application under that provision in the law. We are not seeking to change the law where a special jury can be struck, but it is to have some sort of provision from two points of view—so as to avoid delay and so as to avoid suspicion.

Consequently, although you have this paragraph written in 1950 by a former Chief Justice, which I have quoted, yet the hon. Member can say it has been invoked by the Crown only on one occasion, despite the fact that it must be in the hon. Member's knowledge that there have been verdicts with which no legal member can agree. We have not had recourse to the procedure simply because we conceive it to be our duty to present the case fairly and scrupulously fairly against the accused. The functions of the Crown are often completely misunderstood. The Crown's duty is to see that justice is done and to assist the Court in every way possible. In endeavouring to obtain justice we present the case on behalf of the Crown.

Mr. Lee: Can the learned the hon. the Attorney-General say whether the introduction of this new section limits

the challenges as in a common jury to six and, therefore, is not limiting the right of a man to be tried by a jury of his choice? You want a special jury of qualified men of a certain income groups. These men will be drawn, and you can only challenge six of them, and the Judge has the right to bring in others. Why is it necessary to have a special jury? Is it not for the specific purpose that a certain type of person should sit in judgment on the accused?

Let us assume that 24 jurors are summoned and they are allowed to be challenged and the 24 are wiped out. Would the Judge, if there are common jurors present, direct that twelve should be brought in to see whether the accused would accept them? What then is the use of the special jury but for a specific purpose? We had the provision in the old law, but it was not used because the ordinary jury was of such a character that it gave the accused and the Crown justice. The reason why that provision in the law was not invoked was because the law allowed as many challenges as one would like and, as such, gave the right to the accused to say "I do not want this man because he is connected with so-and-so", or "I do not want this man because he is an employee of the people who are accusing me". We want justice to be done, and that is why we are here to protect the accused in the choice of a special jury.

Mr. Smellie: I feel somewhat diffident to intervene in this battle between legal giants. This clause, we are discussing now, seems to be the one around which all the controversy is centred. It is the most controversial clause of the Bill. I listened to the speech of the hon. the Sixth Nominated Member with great appreciation. It was a very fine speech in my opinion. I was very much impressed and, I may say, shaken by the arguments which he adduced; but on the other hand after the hon. the Attorney-General replied, I was completely satisfied with the explanation he had given. I would only like to say that as a layman I feel there is no change with regard to the calling of a special jury as between the old Ordinance and the new. All that this new section seems to do is to facilitate the calling of a special jury, and the strongest point in its favour, I think, is the fact that it can be called there and then, which will give rise to no suspicion on the part of the person who is accused.

Mr. Lee : I would again like to emphasize for the hon. the Fifth Nominated Member's information that under the Ordinance with the common jury you only have six challenges, whereas with a special jury you have as many challenges as you have reasons for. Under the old law there is a limit to the number of challenges.

Mr. Luckhoo : There is another point which I would be obliged if the hon. the Attorney-General would clarify for me. That is, under section 42 (2), as proposed in the Bill, there is a proviso which says:

> "....If the requisite number is still not obtained then the Court may command the proper officer forthwith to summon as many persons present in Court whose names are on the list of jurors or whom the Court consider proper persons to serve as shall be sufficient to make up a full jury for the trial of the case."

The point I am making is, it does not say those persons may necessarily be jurors. Can that be the intention that the Court can call persons to serve as special jurors whose names do not appear as jurors?

The Attorney-General: Their names must be on the list. It does not mean that. I read from the Chief Justice's letter and, obviously, I did so referring particularly to the Demerara Sessions. As the hon. Member knows, invariably there are two Courts sitting and there are panels for both

Courts. If there is a particular case where application is granted for a special jury and in the Judge's Court in which the case is to be taken there is not the requisite number of special jurymen, this provision empowers the Registrar to call upon other special jurors in the other Court, who have been summoned and who can make up the panel for the purpose of the case about to be tried. That is the effect of what I tried to indicate in answer to the hon. the Seventh Nominated Member. I will read what I read a moment ago. It was this:—

> "At the Demerara Sessions if a case is one which the Judge decides should be tried by a special jury, there may be amongst the jury directed to attend his Court, a sufficient number of special jurors to form a panel; if not he may get the requisite number from amongst the jury in attendance in the other Court; if still there is not a sufficient number, then the case would be adjourned to the next assizes for the drawing of a special jury by the Registrar."

The procedure I have outlined will avoid any suspicion with regard to the conduct of cases. In other words, every effort will be made to get a special jury from those summoned to attend the session, but if there is a failure after having tried to get the requisite number nothing can be done about it. It cannot be said by this procedure that the special jury was summoned for the purpose of the case. In other words, every avenue would be exhausted before we come to the question of summoning a special jury. First of all, there would have to be an application to the Crown from the accused—and every application might not be granted by the Court. If the Court grants the application every effort would be made to select the jury from among the jurors in Court—for the proceedings which are before the Court.

Mr. Luckhoo : It is because of what the hon. the Attorney-General said that I made reference to this point. This clause 6 states, *inter alia*:—

> "(2)....Provided that the special jury shall be chosen from among the number of special jurymen on the panel for the Court in which the case is to be tried and if the requisite number of special jurymen is not thereby obtained, then the remainder may be obtained from among the special jurymen in attendance on the panel in any other Court at that sitting. If the requisite number is still not obtained then the Court may command the proper officer forthwith to summon as many persons present in Court whose names are on the list of jurors or whom the Court consider proper persons to serve as shall be sufficient to make up a full jury for the trial of the case."

It is quite possible that all the other persons in Court, besides the special jurymen, would be non-jurors.

The Attorney-General: I think the hon. Member has not read the proviso very carefully.

Mr. Luckhoo : Yes; that is what I am quarrelling about. I am referring particularly to the words—

> "....persons present in Court whose names are on the list of jurors or whom the Court consider proper persons to serve as shall be sufficient to make up a full jury for the trial of the case."

This would be in conflict with what the hon. the Attorney-General read as coming from a judge. The next stage —after failure to secure the requisite number of special jurymen from any Court then sitting — should be an adjournment of the case, so I think these words should be deleted and we should have something put in their place which savours of the granting of an adjournment. I therefore beg to move that the words from "or" to "case" be deleted.

The Chairman: I would point out to the hon. the Sixth Nominated Member that if that question is not decided he would be the first to take advantage of Section 38 in Chapter 18. It says:—

> "38.—(1) The Crown and every accused person shall be entitled to any number of challenges on any of the following grounds, that is to say—

(a) that any juror's name does not appear in the juror's book:

Provided that no misnomer or misdescription in that book shall be a ground of challenge, if it appears to the Court that the description given therein sufficiently designates the person referred to; or

(b) that any juror is disqualified under sections twenty-one and twenty-two or exempt under section twenty-three of this Ordinance; or

(c) that any juror is not indifferent between the Crown and the accused person.

(2) No other ground of challenge than those abovementioned shall be allowed, no challenge shall be allowed except for one of those grounds on any trial.

(3) (a) If any challenge aforesaid is made, the Court may, in its discretion, require the party challenging to put his challenge in writing. (b) The other party may deny that the ground of challenge is true, or may, in the case of a challenge on the ground that the juror has been convicted as hereinbefore mentioned, allege that the juror challenged has received a free pardon. (c) If the ground of challenge is that the juror's name does not appear in the jurors' book, the issue shall be tried by the court on voire dire by the inspection of the jurors' book, and on any other evidence the court thinks fit to receive, and similarly also in the case of a challenge on the ground that the juror cannot speak, read and write English.

(4) If the ground of challenge is any other than as last aforesaid, then two persons present whom the court may appoint for that purpose, shall be sworn to try whether the juror challenged is disqualified under sections twenty-one or twenty-two, or is exempt under section twenty-three of this Ordinance, or stands indifferent between the Crown and the accused person, as the case may be, and that trial may be held before the judge in chambers.

(5) If the court or the triers find against the challenge, the juror shall be sworn, but if the court or the triers find for the challenge, the juror shall not be sworn, and if, after what the court considers a reasonable time, the triers are unable to agree, the court may discharge them from giving a verdict and direct other persons to be sworn in their place, or may give any other directions it thinks fit."

I think that if the Court asks somebody whose name is not on the jurors' list, the hon. Member would seek the aid of Section 38 very successfully. I should also like to point out that the Attorney-General has found himself in some difficulty over the mathematical problem put to him by the hon. Member for Essequibo River. I think the hon. Member never had Section 38 in mind which has reference to an unlimited challenge on special grounds. It is an unlimited challenge to every juror.

The Attorney-General: If the hon. Member looks at the clause again, he would see that there is no difficulty whatever in it. It says:

"....If the requisite number is still not obtained then the Court may command the proper officer forthwith to summon as many persons present in Court whose names are on the list of jurors or whom the Court consider proper persons to serve as shall be sufficient to make up a full jury for the trial of the case."

The important words are from "persons present in Court" to the end. In other words, on the one hand an officer shall summon "as many persons present in Court whose names are on the list of jurors"—not those whose names are not—"or whom the Court considers proper persons to serve as shall be sufficient to make up a full jury for the trial of the case." The point is that if there are no persons then in Court whose names are on the jurors' list, the Court itself may look at its list and say to the officer: "You can summon the hon. the Seventh Nominated Member and the hon. Member for Georgetown Central." The Court would use their names because they are on the list, although they themselves might not be then present in Court.

Mr. Peters : I am afraid that the ambiguity is apparent in this matter and I do agree with the hon. the Sixth Nominated Member that it needs clarification. In other words, the plain interpretation of this is that the Court can select "Tom, Dick and Harry" to serve as special jurors. I think this proviso does need some clarification.

The Chairman: If I may suggest, we should look at the words "proper persons." That means persons properly fit or qualified to serve. The word "proper" is used in that sense.

Capt. Coghlan : May I suggest that the word "eligible" be placed after the words "proper persons"?

Dr. Jagan: The interpretation of the word "proper" seeks to show that the persons are on the jurors' list.

The Chairman: The presumption is that there is a panel which has been exhausted and after that you can go outside. The usual procedure is that the Registrar summonses 40 or 50 persons to serve and if that panel is exhausted then you have to summon more to fill up that gap.

Mr. Peters : I suggest that we make provision for the Court to summon as many jurymen as are necessary from among the persons present in Court, so that when we refer to "whom the Court consider persons to serve" we can only be referring to jurymen present in Court.

The Chairman: If I may suggest to the Members and if it is agreeable to the hon. the Attorney-General, the amendment suggested by the hon. Member for Demerara River would make an agreeable amendment.

The Attorney-General: I have no objection to it.

Amendment by hon. Member for Demerara River—that the word "eligible" be inserted between the word "persons" and the words "to serve"—put, the Committee dividing and voting as follows;

For: Messrs. Macnie, Smellie, Phang, Peters, Kendall, Coghlan, Thompson, Singh, the Financial Secretary and Treasurer, the Attorney-General and the Acting Colonial Secretary—11.

Against: Messrs. Luckhoo, Fernandes and Lee and Dr. Jagan—4.

Amendment carried.

Mr. Luckhoo : I beg to move that paragraph 42 (1) of this clause, 6, be re-committed and that it be amended by the insertion of the words "felony or" between the words "for" and "treason."

Clause 6, paragraph 42(1) recommitted and amendment put, the Committee dividing and voting as follows:—

For: Messrs. Luckhoo, Peters, Fernandes, Lee, Drs. Jagan and Singh —6.

Against: Messrs. Macnie, Smellie, Phang, Kendall, Coghlan, Thompson, the Financial Secretary and Treasurer, the Attorney-General and the Acting Colonial Secretary —9.

Amendment lost.

Clause 6, as amended, passed.

Council resumed.

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

The Colonial Secretary seconded.

Question put, an agreed to.

Bill read a third time and passed.

The President: Council will now adjourn to Wednesday, December 10, at 2 p.m.