T H E

P A R L I A M E N T A R Y D E B A T E S

O F F I C I A L R E P O R T

[VOLUME 7]

PROCEEDING AND DEBATES OF THE FIRST SESSION OF THE NATIONAL ASSEMBLY OF THE THIRD PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF GUYANA

167th Sitting **2 p.m.** **Wednesday, 1st November, 1978**

MEMBERS OF THE NATIONAL ASSEMBLY (62)

Speaker

Cde. Sase Narain, O.R., J.P., Speaker

Members of the Government – People's National Congress (49)

Prime Minister (1)
Cde. L. F. S. Burnham, O.E., S.C.,
Prime Minister

Deputy Prime Minister (1)

Cde. P. A. Reid,
Deputy Prime Minister and Minister of
National Development

Senior Ministers (12)

Cde. H. D. Hoyte, S.C., **(Absent)**
Minister of Economic Development and Co-operatives

* Cde. S.S. Naraine, A.A.,
Minister of Works and Transport

* Cde. B. Ramsaroop,
Minister of Parliamentary Affairs
and Leader of the House

*** Non-elected Minister**

* Cde. C.V. Mingo,
Minister of Home Affairs

* Cde. H. Green, **(Absent – on leave)**
Minister of Health, Housing and Labour

* Cde. H. O. Jack, **(Absent – on leave)**
Minister of Energy and Natural Resources

* Cde. F. E. Hope,
Minister of Finance

* Cde. G. B. Kennard, C.C.H.,
Minister of Agriculture

* Cde. M. Shahabuddeen, C.C.H., S.C.,
Attorney General and
Minister of Justice

* Cde. V. R. Teekah,
Minister of Education, Social
Development and Culture

* Cde. G. A. King,
Minister of Trade and Consumer Protection

* Cde. R. E. Jackson,
Minister of Foreign Affairs

* Cde. J.A. Tyndall, A.A.,
Minister of Trade and
Consumer Protection

Ministers (2)

Cde. S. M. Field-Ridley,
Minister of Information

Cde. O. E. Clarke,
Minister of State – Regional
(East Berbice/Corentyne)

Ministers of State (10)

Cde. F. U. A. Clarke,
Minister of State – Regional

*** Non-elected Minister**

Cde. P. Duncan, J.P.,
Minister of State, Ministry of
Economic Development and Co-operatives

Cde. C. A. Nascimento,
Minister of State,
Office of the Prime Minister

Cde. K. B. Bancroft, J.P.,
Minister of State – Regional
(Mazaruni/Potaro)

Cde. J. P. Chowritmootoo, J.P.,
Minister of State – Regional
(Essequibo Coast/West Demerara)

Cde. J. R. Thomas,
Minister of State, Ministry of
Health, Housing and Labour

Cde. R. H. O. Corbin,
Minister of State, Ministry of
National Development

Cde. S. Prashad,
Minister of State – Regional
(East Demerara/West Coast Berbice)

Cde. R. C. Van Sluytman,
Minister of State
Ministry of Agriculture

Cde. L. A. Durant,
Minister of State – Regional
(North West)

Parliamentary Secretaries (5)

Cde. M. M. Ackman, C.C.H.,
Parliamentary Secretary,
Office of the Prime Minister,
and Government Chief Whip

Cde. E. L. Ambrose,
Parliamentary Secretary,
Ministry of Agriculture

Cde. M. Corrica,
Parliamentary Secretary,
Ministry of Education, Social
Development and Culture

Cde. E. M. Bynoe,
Parliamentary Secretary,
Ministry of Trade and
Consumer Protection

Cde. C. E. Wrights, J.P.,
Parliamentary Secretary,
Ministry of Economic Development
and Co-operatives

Other Members (14)

Cde. W. G. Carrington
Cde. E. H. A. Fowler
Cde. J. Gill
Cde. W. Hussain
Cde. K. M. E. Jonas
Cde. J. G. Ramson
Cde. P. A. Rayman
Cde. A. Salim
Cde. E. M. Stoby, J.P.
Cde. S. H. Sukhu, M.S.
Cde. C. Sukul, M.S.
Cde. H. A. Taylor
Cde. L. E. Willems
Cde. M.Zaheeruddeen

Members of the Opposition (16)

(i) People's Progressive Party (14)

Leader of the Opposition (1)

Cde. C. Jagan
Leader of the Opposition

Deputy Speaker (1)

Cde. Ram Karran
Deputy Speaker

Other Members (12)

Cde. J. Jagan
Cde. Reepu Daman Persaud, J.P., Opposition Chief Whip
Cde. Narbada Persaud
Cde. C. Collymore **(Absent)**
Cde. S. F. Mohamed
Cde. I. Basir
Cde. C. C. Belgrave
Cde. R. Ally
Cde. Dalchand, J.P.
Cde. Dindayal
Cde. H. Nokta
Cde. P. Sukhai **(Absent – on leave)**

(ii) Liberator Party (2)

Mr. M. F. Singh, J.P. **(Absent – on leave)**
Mr. M. A. Abraham

OFFICERS

Clerk of the National Assembly – F. A. Narain, A.A.

Acting Deputy Clerk of the National Assembly – A. Knight

2:05 p.m.

PRAYERS

OATHS

Resignation of Comrades M. Kasim and M. Nissar

The Speaker: I have received letters from Comrades Mohamed Kasim and Mohamed Nissar, respectively, resigning as Members of the National Assembly. With their resignations, two seats became vacant in the Assembly.

I, therefore, in accordance with article 70(1) of the Constitution call upon the representative of the People's National Congress List of Candidates, that is, the list from which the names of the two persons were extracted, to further extract from the said list the names of two other persons who are willing to become Members of the National Assembly to fill the vacancies therein.

Election of Comrades C.V. Mingo and F.U.A. Carmichael

The names of Cde. Claude Vibert Mingo, Minister of Home Affairs, and of Cde. Fitz Uriel Alexander Carmichael, Minister of State – Regional (Rupununi), were extracted, and Comrades Mingo and Carmichael have been declared elected Members of the National Assembly.

As Comrades Mingo and Carmichael are present, the Oaths will now be administered to them as elected Members of the Assembly.

The Oath of Office was administered to and made and subscribed by Comrades Mingo and Carmichael.

ANNOUNCEMENTS BY THE SPEAKER

Congratulations to newly elected Members

The Speaker: On behalf of the Members of the Assembly and myself, I congratulate Comrades Mingo and Carmichael on their having been elected Members of the Assembly.

Leave to Members

Leave has been granted to Comrades Green and Jack for today's Sitting, to Cde. Sukhai for a period of one month from 13th October, 1978, and to Mr. Feilden Singh for a period of two months from 23rd October, 1978.

PRESENTATION OF PAPERS AND REPORTS, ETC.

The following Papers were laid:

National Insurance and Social Security (Industrial Benefit) (Amendment) Regulations 1978 (No. 5), made under sections 12, 14, 20, 21, 23, 24, 39 and 51 of the National Insurance and Social Security Act, Chapter 36:01, on the 10th February, 1978, and published in the Gazette on the 18th of February, 1978. **[The Minister of Parliamentary Affairs and Leader of the House on behalf of the Minister of Health, Housing and Labour.2.10 p.m.**

State Pension (LILY SUKNANDAN) Order 1978 (No. 111), made under section 4 of the State Pensions Act, Chapter 27:04, on the 10th of October, 1978, and published in the **Gazette** on the 21st of October, 1978.

[The Minister of Finance]

QUESTIONS TO MINISTERS

Question No. 28

Cde. Mohamed: Cde. Speaker, I wish to ask Question No. 28 standing in my name on the Order Paper:

> "Will the Prime Minister say how much was paid by all the Corporations listed in the full page advertisement in the **Sunday Chronicle** of August 7, 1977, including the Guyana National Newspapers Ltd., offering "best wishes to the P.N.C. for successful deliberations at their Second Biennial Congress" held at Sophia from 12th to 20th August, 1977."

The Deputy Prime Minister and Minister of National Development (Cde. Reid): Cde. Speaker, on behalf of the Cde. Prime Minister, I present this Answer to the Question:

> "The full page advertisement in the **Sunday Chronicle** of August 7, 1977, was a GUYSTAC Group advertisement at a total cost of two thousand, nine hundred and sixty-five dollars ($2,965.00).
>
> The Group operates in the main on a commercial basis, and it is the general practice to seek

promotional leverage where the circumstances would seem to justify the cost involved.

In the case of the advertisement under reference, the "Second Biennial Congress" of the People's National Congress was an event of significant public interest and import with a potential increase in readership of the newspaper, hence the advertisement was placed in terms of the expected business returns."

PUBLIC BUSINESS

BILL – SECOND AND THIRD READINGS

ADMINISTRATION OF JUSTICE BILL 1978

The Speaker: Comrades, before we proceed with the Bill, there are a few typographical errors I would wish to draw to your attention:

Clause 4 (a) In the proposed section 61(2), substitute the word "guilty" for "gutity" appearing at the end of the subsection;

(b) In the proviso to the proposed section 61(9), After the word "that", substitute the word "no" for the word "not";

Clause 6 In the beading of the proposed First Schedule, substitute the word "OFFENCES" for the word "OFFENCE";

Clause 18(b) Substitute the word "substitution" for the word "subsection" appearing after the word "the".

A Bill intituled:

"An act to alter Chapter VII of the constitution In accordance with Article 73 thereof and to make provision for matters relating to the administration of justice." **[The Attorney General and Minister of Justice.]**

The Speaker: Cde. Attorney General.

The Attorney General and Minister of Justice (Cde. Shahabuddeen): Your Honour, the Bill before the House this afternoon constitutes, in the respectful submission of the Government, a long overdue and a very much needed measure of Court reform. Very briefly, Your Honour, the Bill seeks to lighten the enormous workload of the High Court in three ways. First, the Bill essays to authorise magistrates to deal summarily with a new category of indictable offences. Secondly, the Bill seeks to enlarge the civil jurisdiction of magistrates. And thirdly, the Bill seeks to empower the two Commissioners of Title and the Registrar of the Supreme Court to deal with the simpler and less complicated types of civil litigation in the High Court.

Then, Your Honour, perhaps it would be convenient for me to seek to break ground by dealing with the first of these three areas dealt with by the Bill. I am talking now about those

clauses in the Bill which seek to enlarge the existing power of a magistrate to deal summarily with indictable offences.

Now, Your Honour, there can be no question that over the years the work of the High Court has increased tremendously. Without inflicting a pile of statistics on the House, perhaps it would be enough to indicate the outline of this development by drawing attention to the situation in relation to the civil work in three years. I have statistics in fact, from the year 1965 to 1978 but I think it would suffice the present purposes if I just drew attention to the years 1965, 1971 and 1977. In 1965, we had nine High Court judges and the number of matters filed annually, that is to say, filed in that particular year, was 2,401; pending matters were 2. In 1971, the matters filed amounted to 3,720; pending matters 63. Now, in 1977, matters filed were 4,103; pending matters, 1,380; certainly a very fabulous and steep rise in the intensity of litigation before the High Court. There has been a similar development in relation to criminal work.

Now perhaps on the side of the size of the judiciary, I might enlarge a little by saying that in 1946 we had three judges; in 1961, seven judges; in 1972, ten judges; in 1975, eleven judges, which is still the number. So, it would seem from this very brief excursion into statistics, that recognising that we had a mounting workload in the High Court, an attempt has been made to solve this problem over the year in two parallel ways. First, the attempt was made to enlarge the size of the High Court bench in the way I have just indicated but, of course, there has to be a limit in terms of the available human personnel to the capacity of such an approach to provide a lasting or a satisfactory solution to the problem of tackling with the rising workload of the High Court. We simply could not go on adding indefinitely to the size of the High Court bench. As a matter of fact, when comparisons are made between the size of our High Court bench and the size of the High Court bench in other developing territories of a comparable size and stage of development, the conclusion is inescapable that really, our High Court bench is a rather biggish bench.

2.20 p.m.

That takes me to the second approach which has been tried over the years also. The second approach has been to empower magistrates to deal summarily with indictable offences. As a matter of fact, they started with this in England way back in 1847. Prior to that year, all indictable matters in England had to be dealt with before judge and jury but the awkwardness and difficulties of applying that as a satisfactory procedure for the disposal of all indictable cases was soon appreciated and so they in England in 1847 and in the years following started to apply this parallel remedial measure of authorising magistrates to deal summarily with indictable offences. It was not until the year 1932 by Ordinance No. 21 of 1932 that this House, the Legislature as it then was, gave power to magistrates to hear indictable cases within a certain category, summarily. If we examine the Ordinances and Acts passed in the years following 1932, we will find that every so often the Legislature found it necessary to enlarge the category of indictable offences which magistrates were authorised to handle summarily.

Very briefly, it is the logic of this second approach which is reflected in this Bill and the Bill does it this way. Rather than go on indefinitely adding by little bits and pieces to the various categories of "minable" offences, as they are called by lawyers, what the Bill proposes to do is very simply to authorise magistrates to deal summarily with all indictable offences with the exception of some very grave ones. These grave ones are listed in the relevant clause of the Bill. That is the approach of the Bill.

Then, Your Honour, let me recall to the memory of the House the fact that the Legislature of this country has on several previous occasions had to give recognition to the kind of problem which I have been seeking to present for the consideration of the House today. I think the most pertinent reference that I can find is to the year 1961 when the House, at the instance of another Government which was in office in that day, enacted the District Courts Ordinance, No. 30 of 1961, with the very specific and direct object of providing for indictable offences, a number of them, to be dealt with summarily by a subordinate court which was to be presided over by a

Magistrate of not less than five years' standing. For a number of reasons which I need not enter into, that Bill was never implemented. **[Interruption]** At least my copy here says at the top of page 129 of the Annual Ordinances for 1961, these words: **"I Assent R.F.A. Grey, Governor, 14th July, 1961."** I hope that give satisfaction to the question just posed. Now lamentably, the non-implementation of that Ordinance did not shoo away the problem. I am afraid, Cde. Speaker, the problem has remained with us as you will know all too well, and all members of the profession will also know. In fact, the problem has only exacerbated itself over the years, the difficulties have compounded themselves, and the need for a solution has become more pressing, more urgent and more insistent.

Before I pass on, without being sidetracked into a discussion of the merits or demerits of jury trial, with which subject I do not propose to deal unless obliged, let me call to the attention of the House two parallel movements which have been taking place within our legal system. First, I speak of the development relating to jury trial and indictable offences. The position is that jury trial originated in a period of the life of another society when penal methods were rather unsophisticated. Roughly speaking, the only penalty known to the people of those times was the penalty of death. Almost every offence was a capital offence. Yes, even offences which today might be thought deserving of nothing more than a modest penalty attracted the death penalty. Those were the circumstances and those were the times in which the jury trial originated.

Now, every Member of the House will appreciate that we here, in the same way as the people of England, have moved many steps beyond that original starting point. In fact, I think we may fairly say that in this respect the wheel has come full circle because the position today is that with the exception of two offences, treason and murder, there are no capital offences in the land. All our offences are non-capital offences. So the House may well think that to that extent, to that very important extent, the rationale for insisting rigidly on the application of jury trial has lost somewhat of its force. I want to caution that I am not here debating the merits or demerits of

the system of jury trial. I am merely trying to project that system within a certain historical perspective for the better appreciation of the rationale for the presentation of the instant Bill.

Now I invite the House to witness a second development which has taken place over the years within our legal system and it is this, that whereas the original position here in Guyana was that almost all of our magistrates were laymen, with the passage of years we have modified that position, we have tended to introduce qualified legal gentlemen as members of the magistracy until we have reached the position today – we think it is a happy one – in which we can say without fear of contradiction that every single member of our magisterial bench is a fully legally qualified gentleman. But we should not take that for granted because, as the more senior Members of the House will recall, up to about twenty years ago we still had some lay magistrates operating in the interior districts and so on. Districts Commissioners I believe they were. Anyhow, the position today, and for some years the position has been that all our magistrates are fully qualified lawyers. Your Honour, the view which I respectfully invite the House to take is that this improvement in the qualifications of the members of our magistracy must be presumed to signify an enhancement in their competence to deal with more serious cases, so we arrive at a position where, if you will forgive the geometrical illogicality, two parallel lines converge as it were. That is to say, we have moved away from the old position where the old offences were capital offences and the sole offences now are non-capital offences. Secondly, we have moved away from a position when all over our magistrates were laymen. All our magistrates are now qualified lawyers so the presumption is that they should be competent to handle a larger work load in relation to indictable matters.

2.30 p.m.

Indeed, Your Honour, the magistrates have themselves, for some years now, been representing that they should be entrusted with a larger criminal jurisdiction and civil as well. I have sent for the Guyana Magistrates Association Journal, it hasn't arrived yet, but if Your Honour would

permit me, I will read an extract from the Journal, June, 1978, Volume 3 No. 1, Association notes by the Secretary at page 7. I am speaking of our Guyana Magistrates Association Journal and this is what is written there:

> **"**It had been hoped that we would have been able to report some degree of progress in regard to restructuring the Magistracy, but as far as can be ascertained, the position is the same as it was long before this organ made its first appearance in 1976. The Association feels that this is a matter of the utmost urgency. There is dire need for increase in the jurisdiction of Magistrates..."

May I repeat that,

> "There is dire need for increase in the jurisdiction of Magistrates, whereby they would be empowered to impose sentences in many cases which now reach the High Court. Not only would this help to reduce the well-nigh uncontrollable arrears of cases in that Court, but it will also curtail the heavy costs incurred in jury trials in these days of constraints in expenditure."

Those are the views which the Magistrates have been putting forward now for some time. They, themselves, have been inviting the State to confer on them an enlarged jurisdiction. Now, in fact, the State has recognised the wisdom of the course proposed by the magistracy. **[Interruption]** It is always amazing how some Members of the House have, despite their years in this august society, successfully resisted the civilising influences which participation in society such as this is supposed to impart.

May I recall to the attention of the House that, in fact, four years ago, this House approved of a very radical reorganisation and reconstruction of the magistracy. In 1973, the magistracy comprised two senior magistrates and sixteen magistrates, total 18. With a view to

conferring an enlarged jurisdiction on the magistracy in that year, the establishment was revised. A new post of Chief Magistrate was created; three new posts of Principal Magistrate were created and four additional posts of Senior Magistrate were created. At the end of the roll call the number of magistrates in that year comprised 10 of the more senior type magistrates, and 11 magistrates, total 21.

Now, I think the House was right to add to that, to arrive at a rounded picture of the establishment, the fact that we have three legally qualified men who are Chairmen of Rice Assessment Committees and who in their spare time do normal magisterial work. As I said, this reorganisation was embarked upon expressly with a view of inviting this House to legislate for the purpose of conferring and enhanced jurisdiction on the magistracy but what with competition on our limited and valuable parliamentary time, I fear that we have taken some while in arriving at this House with the Bill. Nonetheless here it is.

Let me, however, add before passing on, that we recognise that notwithstanding this relatively recent reorganisation of the magistracy, it may well be necessary, or desirable, to review the staffing arrangements on the magistracy including the support administrative arrangements with a view to making sure that everything will be in place to enable the magistrates to discharge the additional jurisdiction sought to be conferred on them. This is something the Government is quite willing to look at but I think a distinction has to be drawn very clearly between the Bill, the principles of the Bill, the objects of the Bill, on the one hand, and the administrative arrangements which may be necessary to give effect to those purposes prescribed by the Bill. Let me add, lest there be any misunderstanding, that the Magistrates with whom I have spoken have said that they do not oppose the objects which the Bill is designed to achieve. That is a direct quote.

Now, let me speak of two benefits which, I think, the Bill is likely to confer if properly used and I am sure it will be. First, there will be a saving in costs in that instead of, as it were,

litigating the same issue in two courts and paying two sets of costs to lawyers, a person now charged will be able to have his case disposed of in one court. And it is the submission of the Government that an ancillary benefit will be a saving of time in that manifestly it will take a much shorter time to dispose of an indictable case in the magisterial court than it would take if the same matter had to be referred for trial to the Assize Court.

May I draw attention to two safeguards which the Bill provides for. The first safeguard is this, that the Bill provides that before a defendant is tried by the magistrate under these provisions, the prosecution must serve on him a copy of the statement of every witness whom the Prosecution proposes to lead in evidence. Now, heretofore, we have had no operational provision to this effect in the history of this country. I submit that if the matter were approached with a fair and open mind the equitable nature of this provision would be manifest and I believe that all those who are prepared to approach it on such a basis would be quite willing to applaud its purpose. Indeed, it is remarkable, how in the controversies which have been raised there has been such stunning silence about the improvement sought to be effected by this particular provision. In other words, when this provision becomes operational, a person who is sought to be tried summarily will know, beforehand, exactly what in substance is the evidence which would be given by each witness whom the Prosecution is likely to call against him. That has not been so before.

2.40 p.m.

Those who are minded to criticise anything for the sake of criticism seem to ignore the fact that this is the first time we have had a provision of this kind and as in all cases where something new is introduced by this House, it is customary to draw a cut-off line. It does seem to the administration that the most equitable cut-off line to be drawn in relation to the application of this statement procedure is the cut-off line between old offences and new offences and that is where we have drawn it. There is a second safeguard which I invite the House to consider and it

is this. Up to now, the procedure for appealing in a case of this kind is that the convicted appellant must first appeal to the Full Court of the High Court whose findings on fact are final and from that Court he can appeal to the Court of Appeal but only on a point of law. It would be apparent to the House that under that procedure, it takes some time for an appellant to reach the final Court of Appeal, he is rather limited to the area of matters which he can ventilate and have reviewed in that Court.

We are changing that. We are retaining the Full Court of the High Court as an intermediary Court of Appeal in relation to ordinary summary conviction matters but in relation to indictable offences which are to be done summarily – and I may say that it may be convenient for us to encapsulate that category by referring to it briefly as amenable offences – the proposal which the Bill makes to the House is that the appeal should lie direct from the Magistrate's Court to the Court of Appeal. Of course, when it gets to the Court of Appeal, the litigant would be able to canvass all arguable points, whether they arise in relation to fact or to law or to points of mixed fact and law. That roughly, Your Honour, represents the historical perspective out of which this Bill has developed; the scheme of the Bill, the outline of it, its aims and purposes as well as the factual justification arising from the overburden under which the High Court has been suffering these many decades past.

And so I come to a question which has been the subject of some debate and which I expect would be debated, the question of consent. Your Honour, under the law as it exists up to this time, if a magistrate proposes to deal summarily with an indictable offence, he must first ask the accused person whether he consents to a summary trial. If the accused person does not consent, then the magistrate has no option but to refer the case for trial before judge and jury in the High Court. We are, quite frankly, changing that. We are doing so for reasons which I hope to expose to the scrutiny of this Assembly in a while. In lieu of that requirement for obtaining the consent of the accused person, what the Bill is doing is to substitute a requirement that a magistrate in the exercise of his judicial discretion should form a judgement as to whether the

particular case might be better tried summarily or at the Assizes. That is what the Bill proposes to do.

But let me add that even in this respect there is a reform which I think would be right to bring to the notice of the House. Heretofore, in making a decision as to whether he will try a case summarily, the Magistrate was required by the existing law to take into account the antecedents of the defendant, that is, as we know, the question as to whether he has a criminal record, his character and so on. Well, this Government has found that to be a repugnant position. We do not think that it is right that before a trial opens the Court should be seized of a man's criminal record and so we are dropping that element as one of the traditional ingredients which by law, have been taken into account by a magistrate when deciding up to now whether he would try a case summarily or not. I hoped to hear this little reform applauded but I hear only silence.

I do stress this, Your Honour, that it is not the intendment of the Bill that a magistrate should automatically seize himself of jurisdiction to deal summarily with each and every one of these offences which will be made cognisable by him. That is not the intent of the law. The intent of the law is that he should apply his mind in a judicial manner and receive from the parties an outline of the case and make from that an evaluation as to whether the case is better fitted to be tried summarily by him or better fitted to be tried by a judge and jury in the High Court. That is the responsibility which this Bill seeks squarely to leave on the shoulders of the magistrate and he cannot escape it, so, there could be no question that the magistrate is expected automatically to try every one of these cases himself. If he does that, he would be violating his duty under the law.

Your Honour, it follows from that, that to the extent and to the very real extent to which it is the intent of this Bill that the magistrate should refer all serious cases for jury trial, this Bill does not seek to abolish jury trial. On the contrary, the Bill anxiously retains that existing feature of our legal system. Every case which is of a more serious or grave nature should be

referred by the magistrate for trial before the judge and jury. Jury trial is not being abolished. All we are doing is to rationalise the procedures for determining whether it would be better to try the particular case by judge and jury or by the magistrate. We are trying to rationalise the use of the jury as part of our legal apparatus.

Your Honour, the gravamen of the criticism on this issue may be summed by this way. It has been said, **"**Oh, it is idle to talk about a right to trial by a jury if the right cannot be exercised by the person himself**."** The answer which I proffer to this Assembly for its consideration is this, that really what this House should be concerned with is to ensure the quality of justice which is being administered and it will be the respectful submission of the Government to the House that really the quality of justice which the Courts can administer is not in any way functionally related to the question of consent or no consent. I would put it this way to those members who are disposed to listen, that either a magistrate is competent to try a particular case or he is not competent to try that case. If the magistrate is indeed not competent to try a particular case, the consent of the accused person does not increase the competence of the magistrate to try him, so, the consent on that issue is irrelevant. Correspondingly, if a magistrate is competent to try a particular case, the withholding by the defendant of his consent to being tried by the magistrate does not disable the magistrate from trying that case in a just manner.

2.50 p.m.

I invite the House to take a little look at the position in England which is the home of the jury, as we know. What is the position there? I have already indicated that up to the year 1847 all indictable cases in England had to be dealt with before a judge and jury but because of the unsuitability of that procedure for application in every case, Parliament in England in that year and in several years afterwards has progressively withdrawn from the jury an increasing category of offences which had been made cognisable by the magistrates in England. The House will know that the magistrates in England are laymen. They may be advised by a legally qualified

lawyer or a clerk but it is they who make the decision. They are laymen or most of them are. I have already made the contrast to that position and pointed to the fact that our magistrates are all legally qualified.

We have this position from 1847 onwards, Parliament in England has steadily been enlarging the jurisdiction of magistrates to deal in a summary way with any indictable matter, until we have reached this position. I have not gotten the latest statistics in England but I have statistics up to the year 1964 when Sir Patrick Devlin wrote his little book on trial by jury. From what he said there, the astonishing position has been reached in England where fully 90 percent of all indictable offences reach the High Court. Of that category of 10 percent which reach the High Court, the estimate is that two-thirds of that 10 percent involved guilty pleas. It would seem that really the proportion of indictable cases which are actually tried before a judge and jury in England is only one-third of 10 percent, that is, 3 1/3 percent, so the conclusion reached is that of all indictable cases charges in England, 3 1/3 percent are actually ventilated before a judge and jury.

It is true that in England this 96 odd percent of indictable offences which are dealt with before the magistrates are dealt with before the magistrate summarily only with the consent of the accused. That is perfectly true, but the argument I ask the House to consider is this, whether or not a party consents in England, the fact is that magistrates are dealing with 96 odd percent of all indictable cases and the presumption must surely be that in dealing summarily with that large proportion of indictable cases they are dealing satisfactorily with them, that they are determining those cases in a just, in a fair and in a proper manner. The inference I ask the House to draw is that even if the consent of the defendant were not forthcoming, that would not affect the capacity of those magistrates to deal just as fairly with all of those offences. In other words, as I contend respectfully, the consent of the defendant to being tried summarily by the magistrate does not touch the competence of the magistrate to deal justly with the particular case. I think the concern

of the House would be to ensure that the case is dealt with justly in whichever court it may have to be dealt with. The question of consent does not really touch that issue.

The duty of the State, I submit, is not governed by any *a priori* views as to whether a defendant has to consent or not to being tried by a particular court. I submit that the primary concern of the State should be to organise the system of courts in such a way that any case which is competently being tried in any of those courts would be justly tried. That, I submit, should be the concern of the State. It may well be that when the State lays out its organisation of its court system it may for good and sufficient reason see fit to provide a choice between one court and another for the trial of a particular category of cases. But I submit, Your Honour, that the decision as to whether a particular case is more suited for trial in one court rather than in another is essentially a judicial decision. It cannot logically depend upon the unilateral say-so of a party; it cannot logically depend upon whether the prosecution or the defendant wants the case to be tried in this court or another court. It surely must depend upon the judicial assessment made by the judicial authority as to the suitability of a particular case for trial in one court or another and in that perspective, if the House accepts it as a valid one, there surely is no room for any consent or refusal either by the prosecution or defence to being tried in a particular court which the judicial system indicates is the appropriate court for trial of that particular case.

Let me try to illustrate that a little from our own system. Under our system the magistrate can only deal summarily with a matter with the consent of a defendant but it does not follow that if the defendant consents to summary trial that the magistrate has to try the matter summarily. The magistrate has and retains a primary responsibility, even if the man consents, to make his own assessment on the suitability of that case for trial in the High Court or in the lower court, so even if the man consents the magistrate can say no, I will not try this case summarily, I will have it referred to the High Court for trial. That is an indication of the proposition for which I have been contending, that really the question as to whether the particular case is more suited for trial in one court rather than another is essentially a judicial decision which should be made by a

judge or someone like a judge, someone who is exercising judicial authority which will include a magistrate.

I do not wish to become didactic about this but it is always helpful to see how people in other lands have responded to similar situations. In America and in other countries, there is under the law provision for particular cases to be tried either in one court or another, so there is a choice and the question which has been agitated and discussed is whether that choice should be exercised by the litigant or should be exercised in the form of a decision made by the judicial authority by way of an evaluation of the suitability of the case for trial in one court or another. Let me just invite the House to consider the words used by the respected Chief Justice of the Supreme Court of New Jersey on this subject writing in his book on Cases and Materials on Modern Procedure and Judicial Administration, page 51, where he went on record as saying this:

> "Wherever a choice of Courts is available, this process of shopping around for the court that will best serve one's purpose is inevitable however undesirable it may be from the standpoint of respect for law and due administration of justice. Though this shopping around is regrettably common in many states it is unnecessary and should be eliminated from any mature judicial system for it cannot fail to impair the work and reputation of the courts."

Those are the views for what they are worth from the respected and experienced Chief Justice of the Supreme Court of the State of New Jersey of America. Very briefly, it really is not right and especially against a legal system which permits of arrangements under which a litigant can shop around for a court of his choice. The legal system should be so designed that if a decision has to be made as to which of two courts a case should be tried, the decision should be made by the judicial authority after careful evaluation and assessment of the features of the particular case. That kind of shopping around should therefore be eliminated, as the Chief Justice recognised, from any mature legal system. It is a block and a defect so that I would rely

upon the sentiments expressed by his Honour the Chief Justice of the State of New Jersey in this particular respect. In brief, we are not abolishing the jury, we are retaining the jury but we are rationalising and improving the methods for deciding when a jury should be used.

3 p.m.

Let me come to one or two other aspects of the Bill which have attracted some degree of discussion. I turn now to a provision in Clause 3 of the Bill for the hearing together of separate complaints by the magistrate. Heretofore, we have had a provision of this kind but it was limited in this respect, that it could not be utilised by the magistrate without the consent of the defendant. Now, we are proposing in this Bill to delete the requirement of consent and instead, to empower the magistrate to hear more than one complaint together subject to this: that if he finds that the justice of the case requires it, he will have to order that there should be separate trials.

Let me add that the procedure is substantially the same as the procedure now obtaining in the High Court. The position in the High Court is exactly this, that the Judge may try more than one count in an indictment together subject to this, that if he feels that the justice of the case requires it he may order separate trials. We think that we are on good ground there and anybody who wishes to consult those provisions may do so. They are set forth in section 97 subsection (3), section 105 subsection (3) paragraph (a) Cap. 10:01 and in rule 3 of the indictment rules which are annexed in the schedules to that Act, the Criminal Law (Procedure) Act. That is the rationale for this particular clause and the justification and logic for it. The existing procedure, we feel the House will agree with us, has tended in the past to tie the hands of the magistrate unduly and to require him to order separate trials even in cases in which he may feel that it is absurdly inconvenient and time-wasting to try charges separately when, if they relate to the same situation, they might be better and more conveniently tried together.

Let me say that in the High Court the decision as to whether charges should be tried together or not is made by the judge irrespective of whether anybody consents or not. There again, it points the moral of the proposition I was seeking to extract from a review of the history of this matter when I proposed to the House for its consideration that really the question as to whether a man should be tried in one court or another, and it would follow the question whether he should be tried on more than one charge together or not, is essentially a decision of a judicial nature which should be made by a judicial authority.

Now, in clause 14, the Bill addresses itself to the question of empowering a magistrate to order compensation for the victim of an offence. May I alert the House at this time to the fact that we propose, at a later stage, to nullify this provision in one sense and that is this, the Bill as drafted provides that where a court orders compensation to be paid by an offender against his victim, then if he transfers any property within 10 years with a view to avoiding that judgement, the transfer of that property should be void since it is made with intent to defeat the creditor and to defeat the injured person of his right to recovery. We will propose during Committee stage to reduce that period of ten years to one of five years.

Let me invite the House to consider another feature of the Bill and that is that we are seeking to provide for a court to order the tracing of property which might have been acquired as a result of the commission of an offence of dishonesty. All too often the House will be aware of cases in which an offence of dishonesty is committed where huge sums or properties are involved but in which the person who has been defrauded finds it impossible to collect or to retrieve or to recoup anything. This is sad because there is existing provision in the law which is designed to deal with this situation and we had thought that we might invite the House to refurbish this provision in one or two ways. We propose to make it clear that the provision applies to cases of immovable property being acquired as the result of the commission of offences of this type.

We also propose to simplify the procedures for proving that some particular property has been acquired through the utilisation of the proceeds of the commission of a particular offence of dishonesty. Heretofore, there has been great difficulty in making good this kind of proof and no doubt this is one of the reasons why the existing provisions have hardly been utilised as legally qualified members of the House will know and recognise.

What the Bill proposes to do is this, to empower the court to say that if it is established that a party has committed a crime of dishonesty and if the court is satisfied that some particular property was acquired by him or his relatives, then there should be a presumption that that property if it was acquired after the offence was committed, was acquired through the use of the proceeds of that offence. May I say that I have had conversations with representatives of the Bar Association as late as this morning – they requested only this morning to see me and I immediately saw them – and we had certain discussions. One of the amendments which I have proposed is an amendment to limit the operation of this presumption of acquisition or origin of property to be a period of ten years counting from the commission of the offence. At the moment the period is open-ended.

There is another amendment which we will invite the House later to consider and it is an amendment designed to improve the power of the courts to deal expeditiously with cases and this has to do with cases in which a man absents himself from court on the ground of illness. We think that an equitable method of determining whether he is ill or not is for the Legislature to empower the court to appoint, as it were, its own medical practitioner to examine the man. Then the court will ultimately make its decisions as to whether the man is really ill, having considered the report of the medical practitioner appointed by the court as well as the report of the medical practitioner appointed by the defendant. Heretofore, I think the machinery has tended to be a little lop-sided in that it has happened in most cases that the only evidence available to the court was evidence coming from the defendant.

I turn to clause 8 of the Bill which speaks of the question of appeals in criminal matters dealt with by the High Court. Now, the position up to now, as Your Honour will appreciate, is that an accused person who is convicted before the High Court has a right of appeal to the Court of Appeal but if he is acquitted the Prosecution has no right of appeal. There seems in principle to be a discrepancy here and there is really a case for introducing legislation designed to enable the Prosecution to appeal in a fit and proper case to the Court of Appeal.

3.10 p.m.

May I say that provisions to this effect exist in other Commonwealth countries and in a rather more extensive form than the way they are set out in clause 8 of the Bill. But again, we have had some reconsideration of this Bill and while I think it would be right for the house to keep the objective in this before its mind's eye, it may be convenient if we started with a more limited measure under which the D.P.P. would be entitled not to appeal and secure a reversal of a verdict of acquittal but he would, as in England, merely refer to the point of law if there is a point of law for the consideration of the Court of Appeal. As I said, Your Honour, this is the position in England and I think it may be convenient for us to start with this limited measure. It would have this beneficial value to the community in that, although verdicts of acquittal will remain undisturbed, it would enable the Court of Appeal to settle definitively and affirmatively doubtful and disputed points of law for the guidance of High Court Judges who may have to deal with similar cases in the future.

Your Honour, there is another feature of clause 8 to which I would refer. The Bill in this clause proposes to empower the Court of Appeal to vary the sentence even in a case in which the appellant appeals only on conviction. Now, the present position has been this. If the appellant appeals only on conviction, the Court of Appeal is limited to that ground of review and if it affirms the decision and disallows the appeal, may not vary the sentence however wrong the Court of Appeal may think the sentence was. We think that this is due for correction so we are

proposing that whether or not a man appeals on conviction, or on conviction and sentence, or one or the other, so long as the appeal reaches the Court of Appeal, if the Court of Appeal feels, in the event that it affirms the conviction, that the sentence is manifestly wrong, the Court of Appeal will have the power to adjust its sentence to the facts.

Your Honour, it has been said that this provision would militate against the bringing of appeals by convicted persons whose sentences are comparatively light. That is the argument against this provision. In brief, it says this: Look, whereas now a man who receives a light sentence is likely to take a chance of appealing on conviction alone knowing that he could not lose on the question of sentence, if you give the Court of Appeal this power to waive the sentence to accommodate it to the facts, you might be dissuading that man from appealing lest, in the event of his appeal being disallowed, the Court may enlarge his sentence. True enough, that may happen but I ask the House very anxiously to consider how in the name of all that is just could that be a rational argument against this provision? Not unless one proceeds on the basis of "heads I win, tails you lose." That may be great fun for some people but I suggest and submit that it is totally unrelated to any serious effort or attempt to administer real and substantial justice in the land.

May I finally add on this point that I do regret that this provision has been maligned and criticised because really – and I am authorised to say this – this particular provision comes from the Chancellor. The Cde. Chancellor proposed it. The Government has respectfully agreed with the Cde. Chancellor on the wisdom of including this provision and we have done so and we accordingly present it to the House for consideration in that light. It is not the Government's idea. The Government assumes full responsibility for it but it is an idea which was adopted with respect from the Chancellor.

Now, let me come to another provision in the Bill which has been the subject of some controversy. It concerns the question of a Judge being assigned temporarily to sit in another

Court. Your Honour, what the Bill proposes is this, that the Chancellor shall have the power to ask a High Court Judge to sit occasionally in the Court of Appeal and correspondingly to ask a Court of Appeal Judge to sit occasionally in the High Court,. And may I say again, this is not the Government's idea, the Government assumes full responsibility for it but it is an idea which the Government has adopted respectfully from the Cde. Chancellor's opinion. I say that because of often-veiled suggestions of the possibilities of executive manipulations which this clause is supposed to introduce and to open up. Nothing of the kind! The idea is that a provision of this kind would improve the rapport which ought to exist between the two branches of the Supreme Court – the High Court and the Court of Appeal.

We have in mind cases in which there might be extraordinary pressure building up in one or the other Court at the particular time in which you want to deal with that pressure of work but you do not want to appoint a new man. You do not want to go to that length to obtain a new man from outside the system and putting him here. You may have a sudden or temporary increase of work in the Court of Appeal while you might have a little slack in the High Court. The idea is that you pick up a man from the High Court where the work is not so heavy at that time, you send him to the Court of Appeal where he helps out with the cases there until he comes back. And vice versa, there may be some stage at which the work in the High Court might build up and you do not want to appoint a man to act. You just want a man to be there for a day or two or three days and you send a member of the Court of Appeal to sit there to help out. So, there is no question of anybody being demoted or being made to sit in a lower Court for a long and extended period. That is not the concept at all. How ridiculous it is or not, we will soon see when we come to examine the precedents for an arrangement of this kind.

I make these points before the House – **[Interruption]** We had a particular situation to bring to the notice of the Court. In the High Court, we have what is called the Full Court of the High Court which is comprised of judges of the High Court. The High Court is an intermediary Court of Appeal. It deals with appeal from Magistrates' Courts. After the High Court has dealt

with an appeal, it can go forward to the Court of Appeal but only on law. The point I make here is that the High Court is, to all intents and purposes, the final Court of Appeal on fact in relation to appeals from the Magistrates' Courts. It will happen in many cases that the facts involved might be very serious or might have grave implications for the defendant. His liberty may be in jeopardy. Since no appeal lies to the Court of Appeal on a question of fact in a case of that kind, it may be thought prudent occasionally to strengthen the Full Court of the High Court by including in its membership for the trial of one or two appeals of a grave nature, a member of the Court of Appeal who may not be so pressed with work at that particular time. That is another situation in which we visualise that this is a provision for advantage of the public weal.

3.20 p.m.

Cde. Speaker, I submit that it is to be regretted that this provision has been viewed in some quarters as a provision designed by the executive to enable the executive to manipulate the judiciary. No such thing, as I have said. To begin with, the provision has originated from the Cde. Chancellor. Secondly, what is the fear, I gather is that the provision might be used to demote the Court of Appeal Judge to the High Court. Well that cannot happen because the intent of the Bill is that he should go down to sit in the High Court for only one or two cases and not for an extended period.

The third point is that the assignments would be made by the Chancellor because it is the Chancellor who is going to be operating that part of the machinery, not the executive. The next point is that the Court of Appeal Judge cannot be made to go down and sit in the High Court unless he agrees to this. Now, we have used words in the Bill which we think reflect this concept that a Court of Appeal Judge should not be required to go down and sit in the High Court unless he agrees to do so. We want to go further and to elucidate the matter beyond peradventure, beyond doubt, and so at the appropriate stage we propose to add one or two words to make it crystal clear that in the case of a Court of Appeal Judge he cannot be required to sit in

the High Court unless he agrees. Lawyers who will read the Bill would have their own view as to whether it is here at all or not. My submission is that those who are not so well qualified might leave this to legal minds.

May I say Your Honour, that provisions of this kind exist in the United Kingdom and have existed there since the year 1925. I will give the references since members of the Opposition appear to be so fully acquainted with the law, they can check it up themselves. It is Section 3 of the Supreme Court of Judicature Act 1925, Section 6 and Section 7. They all provide for this sort of legal interchange. In case that were doubted, let me draw to the attention at least three cases which were decided only this year in the Court of Appeal in England in which Judges from the House of Lords came right down to the Court of Appeal and sat. They did their work in the Court of Appeal, they sat as Court of Appeal Judges. They were members of the House of Lords. They were Lords of Appeal in ordinary. They sat at the very top of the judicial pinnacle; they came down pursuant to this 1925 Act and sat in at least three cases only this year. I hear that it is being asserted that there are no cases in which Lords of Appeal in ordinary have come down in the House of Lords in England and sat in cases. There are three cases. I can cite them. I can just mention them: re Tax Settlement Trusts 1978, 1 All England Reports 1047, in that case Lord Russell of Kilcan came down from the House of Lords and sat in the Court of Appeal; Glendian against Ragley, 1978, 2 All England Reports 110, Court of Appeal; Lord Scarman came down from the House of Lords and sat humbly in the Court of Appeal; The Queen against Atkinson, 1978, 2 All England Reports 460, Court of Appeal, Viscount Dillon and Lord Scarman, two members of the House of Lords Judicial Committee came down to the Court of Appeal and sat quite humbly and did a good job, I believe.

There is ample precedence for what we are doing and there certainly is no basis for the unworthy suggestion which has been put forward to the effect that this provision has been designed to enable the executive to manipulate the judiciary and to effect the demotion of an undesired or unliked member of the Court of Appeal.

On the civil side, let me add that as I said we are proposing to enlarge the jurisdiction of the magistrate. At the moment it is fixed at $500. We propose it should be sent up to $1,500 which is the more realistic figure regard being had to inflation and to the intent of the Bill to meet the deliberate enlargement in his civil jurisdiction.

The last point I wish to make is that in clause 9 we are seeking to empower the Registrar and the two Commissioners of Title to do Bail Court work and Chamber work in relation to such matters as will be assigned to them by the Chief Justice who in accordance with this provision will keep his finger on the trigger. In order to include the Registrar we will be proposing an amendment at the proper time to this clause. With those very brief words I respectfully ask that the Administration of Justice Bill 1978 be read by this House a Second time.

Question proposed.

The Leader of the Opposition (Cde. C. Jagan): Cde. Speaker, this Bill called the Administration of Justice Bill is really misnamed. It should really be called the Administration of Injustice Bill. The mover of this Bill took great pains to give us a discourse about the administration of justice, how it evolved in the United Kingdom. Strange at some times members from the Government when reference is made and called about matters pertaining to the United Kingdom they speak of colonial mentality. On this occasion when it suits the Government, the members give us a long discourse about origin of the jury system and how the administration of justice has evolved so much so that magistrates today deal with, as he put it, nearly 90 percent of the indictable cases.

Your Honour, it is necessary to deal with this matter historically and dialectically and not see this matter merely as a technical question. That is what the hon. Minister of Justice attempted to do. It is not a question of the competence of a judge or a magistrate, it is much more than that. He said the jury system developed in England because at that time practically in

all cases the penalty was a capital one. But what he failed to point out is that the jury system developed in the United Kingdom as part of a general struggle for democracy and freedom in that country. Underlying the whole concept of trial by jury is that a person must be tried by his peers and I need not tell the mover of the Bill – and he is well aware of it – that in England they chopped off the head of a King in order to ensure the fundamental rights of the people. As I said, included among those are the right to vote, the right for the workers, the ordinary person to be elected to Parliament, even to make the House of Commons, the supreme chamber, higher than the House of Lords. Those were reforms which went through in the whole political system of the United Kingdom. And to deal mainly with the administration of justice and isolate that from that general development is really to put one's head in the sand. Okay, he says now 90 percent of the cases are tried by Magistrates. But what he didn't tell us is the atmosphere in which the administration of justice operates in the United Kingdom. Can we say that in the United Kingdom today, there is a similar political mayhem as in Guyana?

3.30 p.m.

Cde. Speaker, they didn't rig the Constitution in the United Kingdom. They didn't rig a referendum to extend the life of the Government. The Government in the United Kingdom is not a Government which gets its power by fraud. The Government of the United Kingdom is a Government which gets its power by consent of the people and the whole political system, the judicial system operates within that framework. And if within that framework people elect to have trial by Magistrates, it could also mean that they have confidence in the judicial system. Thus they are willing in that political system and the way it operates to elect that they go to Magistrates instead of to a jury. In other words, despite the fact that statistics were given to show that about 90 percent of the cases go to the Magistrates, nevertheless, the Minister of Justice was careful to point out that still the accused person elects, that has not been removed. At least that is what I understood from what he said. But the fact that he elects to go also is an

indication that he is confident in the judicial system because he is operating within a total political system founded on democracy.

Bourgeois democracy, though it may be, nevertheless, it is a horse of a different colour from a 10 percent Government which we have here, where people have no confidence at all in the Government or in the institutions of the Government including those having to do with the administration of justice. The Minister argues by way of simple analogy. Your Party calls itself Marxist. Maybe they haven't taught you about historical and dialectical imperialism. So you can come to this House and argue historically and dialectically, so that we can compare situations in a proper way.

What is the situation in our country? Jomo Kenyatta was taken when he was fighting for liberation, not for a trial by jury but to a remote village where Magistrates tried him. What happened? Seven years! Where was the Minister of Justice then? His leader was then arguing against Burnham. The P.P.P. was then arguing against the injustice of that system of that kind of manipulation. Where would Nazruddeen and Bowman have been in 1953 when the British piled on them a charge of sedition, if it were left to the British Colonial Government to decide which Magistrate should try them? Where would they have been?

It is not just a technical matter, as the Minister tries to make it appear, the decision whether the case should go before a Magistrate or a Judge and Jury. It is a technical matter and, as he put it, even the Magistrate himself will have to make a judicial decision whether he is competent to handle the matter. All he will have to do is to get a phone call. He doesn't have to worry with technical competence and judicial decision. We know how things work here. A phone call is enough and political direction is given. You do so and so. You and you will try this case. We have had flying Magistrates. We have had some people promoted over others as a result of which two Senior Magistrates in this country packed up their bags and left long ago. The hon. Minister knows that.

It is not a question of technical competence. Why is it Rodney is not given a job at the University even though members of the Selection Committee of the Academic Board attest to the fact that he is competent and qualified to have a job as head of the history department? Who decided that he must not get the job? Who did? Who sit on the Board of Government and what is the Minister of Education doing about it now? When he was in the Opposition he was one jumping up and making a lot of noise about it, but when they get on the side of the Government and they get $3,500 a month, their mouths are shut. They come in and talk; they stifle their consciences and they rationalise; they rationalise as they do now in the interest of moving the system, clearing up the backlog, etc.

That kind of rationalisation is not good enough when we are dealing with a situation like Guyana, where we see framed-up charges, where we see Police withholding important evidence which is in favour of the defence. Take the Arnold Rampersaud case, for example. We have got the case against Balwant Singh, the political case against Kumar. Is it that you are afraid of the Jury? Why are you afraid of the Jury? Are we to look only at expense or money when the liberty of the subject is at stake? Surely, money is wasted in so many ways in this country.

3.40 p.m.

Look! The Deputy Prime Minister only a little while ago said that the Corporations have a right and, indeed, a duty to spend thousands of dollars to give salutations to the P.N.C. but the Government does not have money to appoint more Judges. Why? It is not that. It is because they now have this 10 percent Government and cannot trust the Jury any longer. Even their own supporters are rebelling against them and they can no longer have confidence in the jury system, so, they want to manipulate the system for political purposes.

We speak of technical qualification. Mr. Ramphal, when he was here as Attorney General spoke about the rule of law. He said the Constitution provided for a Supreme Court, an

independent judiciary, and institutional procedures for appointment by the Judicial Service Commission and constitutional guarantees securing the tenure of the Judges. Nice words! That was in 1965 when the Constitution was being sold to the public. But what do we find today in the context of the paramount of the Party? Judges are intimidated by P.N.C. flags pointed right next door to remind them. In the same way that the Corporations, whether they like it or not, have to send messages at public expense, so the Judges are warned: "Remember who is giving you bread!**"** So, we have the P.N.C. flag flying all over the place even in Courts. We had, during the referendum not too long ago, instances where Police vehicles were carrying stickers marked **"**Vote Yes for the Bill." Police Stations and Courts all had signs urging the public to vote in favour of the referendum. We have other examples but I do not want to tire the House naming them.

The fact of the matter is that the P.N.C. has arrogated to itself all powers. Just now, two Ministers swore to uphold the Constitution. Which Constitution? They first manipulated the Constitution by appointing technocrat Ministers and paying more of their backbenchers to do Party work at public expense. Maybe, now that the T.U.C., the postal workers, the teachers and the civil servants are raising hell in the streets, they are knocking them off now, making economies, and they are making the technocrat Ministers elected Ministers. That little fraud went on before.

Why is it that a letter of appointment from the Chancellor of the Judiciary which was approved by the Judicial Service Commission giving appointment to a leading barrister in this country, was countermanded? Who did it? Was it the Minister of Justice? Maybe he should be here to tell us. We want information like that, not a lot of rationalisation. Let him tell us who countermanded that decision? Two Ministers were swearing to uphold the Constitution. What did the Minister of Justice do then? The Constitution was violated. Mr. Ramphal talked about an independent judiciary and a Judicial Service Commission. So, why tell us – you are not talking to children in this country today – that it is simply a technical matter and the Magistrates

will use their judicial consciences. Things do not work like that in Guyana today. We see civil servants and others being coerced to do the dirty work of the P.N.C. though Public Service unions, Teachers unions and the T.U.C. passed a resolution condemning such practices at their last 25th annual conference last month. But, it goes on. You see them outside there. Poor people, they are being coerced to do the dirty work of the P.N.C. How then do you expect in this context that we must give approval to this measure?

Your Honour, we have before us not only the framed-up charges, to which I referred, against Arnold Rampersaud, Balwant Singh, Ganraj Kumar and others but we know of some people who are being given preference in appointments and promotions while others, though competent, are kept out, no doubt, by political orders given from high up. We also must ask what is the competence of some of those who have been appointed as Judges and Magistrates? What are the qualifications which they have? Is it competence and experience which are the criteria as it used to be in this country at one time, even in the bad old colonial days? Or, is it now bootlicking and the search for promotion and personal advancement? This is the kind of thing which is going on today in Guyana.

Not so long ago we debated two measures in this House. It was just when the 1977 sugar strike started. One was to re-enact the National Security Act, Part II of which provided for detention without trial. The Minister of Justice did not tell us whether England has that. At the same time, the Government rushed through this Parliament another measure to take away from the accused after he is convicted, the right to be free when he has applied to the Appeal Court. They took that away and they put it in the hands of the magistrate and the magistrate now has the discretion to decide whether or not the person must be given bail. We were told then that this was to catch some hardened criminals. When we referred to what obtains in England, we were told, "Oh, you have a colonial mentality", and now chapter and verse about England is being cited to us.

3.50 p.m.

What is the fact of the matter in practice? We saw during the sugar strike the same Magistrate, whom we are supposed to have confidence in, imposing excessive bail of $10,000 for simple little offences and in some cases bail was refused. We had the ludicrous case of a charge made against an individual by the police for public terror. Some lawyers said they have never seen that in the law books. Where was the right to strike, where was the right to picket, where was the right to peaceful demonstration? All of that was violated by the police and they made ridiculous charges. The Magistrates, some of them also no doubt knowing where their bread is buttered, refused in some cases, as I said, to give bail and in other cases they put up fantastic bail. Even more than that, one Magistrate in a decision told the accused that the bail is being granted to him provided he goes back to the cane field. This is the kind of judicial system we are asked to have confidence in. Mr. Minister, this is not England.

I do not uphold capitalism, but capitalism has certain norms of behaviour, what is called bourgeois democracy, those which the British people fought for from the days of Magna Carta. Those have become established within the system. Therefore, we have to ask ourselves whether we have that in Guyana. It seems to me that all these measures which the Government is imposing have to be seen in a framework of our political development. In other words, the bourgeois democracy which was there when the Government took power is being cast aside. Why?

We would not say that these people in the Government benches are evil men. We know they have certain petit bourgeois nationalist interests. But we would not ascribe malice. The fact of the matter is that this regime is becoming more and more unpopular daily and as the people fight back to defend their living standards, the Government is becoming, step by step, more and more autocratic and this is only one of a long series of measures which we have seen. Cde. Carrington deserves the name comrade. He, a trade unionist, growing up in the ranks of one of the most militant trade unions in this country, accepted, as part of his blood, democratic

industrial relations. Of course, at some times under pressure, he buckles. But by and large he was a trade union democrat. But that was not good enough for the P.N.C. at this historical period, when they want to set up parallel unions, when they rig union elections as they did in Linden, when they want to bring out the Army, the military and the paramilitary forces against the workers as they did at Linden, as they did with the Municipal workers last year, and as they did during the sugar strike. They cannot handle any more because of their autocratic and anti-democratic methods and their anti-working class policies. They can no longer practise democracy. Thus, everything goes by the board, principles.

We saw in the sugar strike where policemen seized food belonging to strikers. They will have to answer to the I.L.C. because they signed certain conventions. They not only did that but also, as I said, they perverted the whole administration of justice when it came to that strike. Since 1963 when the P.P.P. was in Government, it was agreed that on all matters pertaining to labour, where labour has a vital interest, there will be consultation with the T.U.C. and the respective organisations.

The Speaker: Dr. Jagan, I think we are giving speakers fifteen minutes extra to the time of thirty minutes. You will have ten minutes more. Would you like to complete it now or should we take the break and come back?

Cde. C. Jagan: I will complete now.

The Minister of Parliamentary Affairs and Leader of the House (Cde. Ramsaroop): Cde. Speaker, I beg to move that the House continues until ten minutes after four.

Question put, and agreed to.

Cde. C. Jagan: As I said, Your Honour, since 1963, when the Labour Relations Bill was in this House, when the P.N.C. took to the streets along with other forces, when there was an 80-day strike, it was agreed in the settlement of that strike that in future there should be consultation with the T.U.C. and other unions in all matters pertaining to labour where they have the vital interest. What has happened? Recently, the Government increased the N.I.S. contributions by 462 percent. Previously, they had increased it when they said that it was necessary to reduce the age from 65 to 60. They enlarged the ambit of the Widows and Orphans Fund to include teachers, police personnel, nurses, and no doubt, soon all Government Corporation workers will be included. When this matter was raised in this House we deliberately asked, was there consultation with the T.U.C., the respective unions, the P.S.U., the Teachers' Association, etc.? The Minister of Finance said, yes. Now the T.U.C., the P.S.U. and the Teachers' Association are saying there was no consultation whatsoever. Who is lying? Cde. Speaker, I think it is the duty of the Minister of Finance to come in this House and give a statement on this question.

Profumo once lied in the Parliament in England and he had to resign.

Cde. Speaker, this is serious matter. As you know, decisions have been taken to have industrial action to move towards a general strike. If this consultation had taken place, perhaps they wouldn't have been in this position. How can you go about talking about produce or perish? How can you go about saying we don't have enough money to employ more Judges and establish more courts? That is the rationalisation, **"we can't afford it"**, therefore, let us modify the system but really what modification means is a manipulation of the system for political purposes.

The arrogance of this Government! It feels it can do anything, because it has the bayonets behind it. But time will show that you can hold down the people for a while with the bayonets but you can't produce the food and the goods.

I have a little book here called the Trojan Horse by Sherill Payer. On page 68 she writes:

> "It should be clear by now that the IMF plays an intensively political role in its dealing with economically weak countries, not an impartial technical one. We must now go on one step further in order to understand the crucial part played by the IMF in the two most discouraging patterns of third world politics, the subversion of social revolution and the death of democracy."

What we are witnessing here in Guyana, not only today but a further period of time beginning with the rolling of the head of Winslow Carrington, is a move to the right, is a move towards applying autocratic methods to solve problems. Not democratic methods and this is leading to the death of democracy in this country. But we warn you such measures will not solve the headaches which the Guyanese people are going through today, nor will they solve the problems of this Government because they will be compounded.

Okay, you will get more money, nearly $500,000,000 this year. Last year and this year already we were paying out more than we were borrowing, because the debt and the compensation payments have again gone up to 33 percent of the current Budget expenditure. From 3 percent of exports 5 years ago to 18 percent this year. Those are the figures in the IMF letter of intent. Are we going to go on in that manner?

Years ago certain people who had no knowledge of economics suddenly became economic experts and they said the Government's borrowing capacity is there. We are so much better off than the socialist countries and the statistics were all arrayed, two articles in the Sunday Chronicle. What is happening today? The fact of the matter is that this country is being deliberately enticed into a debt trap and what is happening to countries like Indonesia --

The Speaker: Dr. Jagan, how this has relevance to the Justice Bill?

Cde. C. Jagan: Because I am concerned with the democratic rights of the people. The more this country gets into economic troubles --

The Speaker: We are dealing with the Justice Bill now.

Cde. C. Jagan: The more the Government will try to solve the economic crisis by putting more burdens on the backs of the workers and taking away their democratic rights. That's the point I am making.

Cde. Speaker, I wish to close my contribution to this debate and ask the Government seriously to defer this Bill. Let there be more dialogue and try to reach agreement at least with the technical people concerned, the legal profession who are opposed to this measure. Are you going to fight against everybody? Lawyers, doctors, architects, dentists, accountants, engineers, everybody? The farmers, the workers, everybody? Are you going to hold the guns against them and manipulate the judicial system, lock them up because they speak out? That is the intent of this Bill. That is what it is. We warn you, that this is not going to bring about the solution to this country's headache. I recommend, for your consideration, a deferment of this Bill, the placing of this Bill, perhaps before a Select Committee of this House where we can have some more time. This, incidentally, is how Parliament works in some countries. Before a Bill comes to the House it goes to Select Committee, Special Committees, in the United States, in the Soviet Union, in other countries, so that all the technicalities and everything else can be examined thoroughly and after that the public also have a say in the matter. Generally speaking, the public hardly is aware of what is happening before it is rushed through and passed by this Parliament.

I commend therefore, that suggestion to the Minister and to the Government in all seriousness because I cannot see this Government trying to fight against the whole population. It will not be resolving the problems and more and more we will be heading from an authoritarian

dictatorship which we have at the moment to a virtual Police State. That we have to avoid if this country is to move forward peacefully towards social progress.

The Speaker: The Sitting of the House is suspended until 4.30 o'clock.

Sitting suspended at 4.08 p.m.

4.27 p.m.

On resumption --

The Speaker: Cde. Persaud.

Cde. Reepu Daman Persaud: Cde. Speaker, once again it is our displeasure to listen to another presentation of the Attorney General. It has now become well known to us in this House that his arguments are constructed in the shifting sands of sophistry. This Bill, Cde. Speaker, represents a vicious assault on the administration of justice. Having destroyed all other institutions in the country, the P.N.C. now turns its sadistic energy on the system of justice.

We are all aware that the Attorney General is traditionally the leader of the Bar. Today, however, we see his colleagues whom he is supposed to lead, on the streets recording their protests against the measure before the House. But that is not all. Members of the Bar succeeded today in closing the Courts down in protest against this measure which I have already described as vicious. The fact that members of the Bar have taken to the streets clearly demonstrates a total lack of confidence in the Attorney General and he only has two alternatives this afternoon. The first one is to withdraw the Bill and if he is incapable of doing that, the second one is that he must resign because he has failed to persuade members of the Bar, he has failed to persuade members of this House and he will equally fail to persuade the citizens, the people of this country.

Cde. Speaker, citizens are aware of the many instances when Courts were tampered with and when the wheels of justice were exposed to naked shame and disgrace. In one instance, a Judge held his decision for eleven months to permit certain illegalities to take place. This is the type of justice that this country gets. Justice in Guyana has been in peril for a long time and the present Bill fortifies the belief that the Courts will now openly be used to deny the citizens of their basic human rights.

The Attorney General must be forewarned that he cannot function in isolation and he will not be able easily to excuse himself when he attends any international forum on justice. He cannot go to one of those and simply claim **"Look, I have come in my individual capacity."** I understand – and I am subject to correction – that this was the position taken by the Attorney General in Barbados. If it was not so, I stand corrected. He cannot speak here as the Attorney General on matters of justice and then go abroad and say **"No, I am speaking here in my individual capacity"** in forums where questions of justice and human rights are discussed. If he is to face the international scene with honour and dignity then this is the afternoon when he must reprieve himself to be able to do that.

Cde. Speaker, the jury system has been with us for over a thousand years. It has worked well. During the course of this very year, a Judge in discharging his panel spoke of the great services of our citizens in the administration of justice and praised the jury system. The truth is that the P.N.C. Government is afraid of the verdict of the people. The members showed that in the General Elections both of 1968 and 1973. That tendency was again exposed in the July 10th referendum when it became manifestly clear that the people of this country were not with the administration. The P.N.C. added to the shame when it published what it claimed to be the results of the referendum. The P.N.C. now holds the reins of government against the people's verdict.

Similarly, Cde. Speaker, the P.N.C. was against the jury's verdict in the Arnold Rampersaud case; it failed to get the man's neck in three trials. This Bill shows that the P.N.C. is carrying out a calculated design to remove the people of this country from any form of decision making. They have lost that right in elections. Their view and decision did not matter at the referendum and now in the process of the administration of justice, the people are being removed.

4.35 p.m.

The Attorney General attempted this afternoon to rationalise the Bill. Let us look at it, first, the taking away in a great number of indictable cases the right of the accused to say whether he wants to be tried by a Magistrate or by a jury. The Attorney General cannot deny – in fact he admitted – that there is provision in the current law for indictable matters to be taken summarily by the Magistrate. The Magistrate would direct the question, you have got a right to be tried by a Judge and Jury, if you so elect, and then the accused person makes the decision as to whether he agrees. There are many instances when accused persons themselves apply for their cases to be taken summarily. If that provision exists in the law where a great number of indictable cases can be dealt with by the Magistracy, why is it the Government wants at this stage of the life of Parliament to take away that right, when earlier we were told that this aspect is not affected by the Constitution? We were told that we need a new Constitution, this is a patch work, we will take evidence from people, then examine all the facts and put the Constitution before the House. They said they needed fifteen months to complete that exercise. But before people can speak, they bring an amendment to the Constitution which has to do with the administration of Justice. The people must be told that the Government has a record of deceiving them always. I will deal with that later on.

The argument seems to be based on a backlog of cases. What the Attorney General did not do is to tell us why there is a backlog. If he examines the work of the Magistracy, the results will be different. Is the Attorney General aware that of the thirteen courts within the Georgetown jurisdiction, twelve are functioning and among the twelve courts you have got more than two thousand cases outstanding? What is more, you have got cases dating back to 1976 which have not been tried up to now. So when you are removing the load of cases from the judiciary and taking those cases to the Magistracy, you must be **au fait** with the facts. People have been going to the Magistrate's Court day after day and their cases are being postponed and now you are seeking to give greater burden to the Magistracy. That is not our principal argument

but I make the point merely to show that the backlog is not because of preliminary inquiry and then High Court trial, there are other factors which the Government must go into. Is it not a fact that five judges used to sit in criminal sessions? That is a fact and that number has been reduced to three. I think there are about fourteen Judges. Look at the disparity. It is clear that more judges can be put to deal with criminal cases. Many people who sit in the Magistracy never had the exposure in the Supreme Court. They never addressed the jury.

Another factor that ought to be considered is who will prosecute these indictable cases that are now going to be dealt with in the Magistrate's Court? Are the policemen going to do it? I looked through the Criminal Offences Act and there is no doubt that many legal points are going to be raised. No-case submissions are going to be made. The Magistrate will be compelled to reserve decisions to ask the police to get a member from the D.P.P.'s office to come and argue. Is the D.P.P.'s office staffed for that kind of exercise? The rationalisation, therefore, of the Attorney General lacks vision and lacks content and he spoke literally without life, which probably shows that he is not committed deeply to the Bill before the House. Every one of us here was unimpressed with his presentation. Therefore he must get down to the real matter and examine it.

Expediency seems to be the argument. One assumes that the Government would have been all the time ensuring that there is no delayed justice, for the concept is well known, delayed justice is denied justice. If, therefore, it is found now that you have got a backlog of cases, the Government comes at this stage to take away the right of the accused person to choose whether he wants his case heard by the Magistrate or the jury. They are taking away that right to solve their problem of a backlog of cases. We say, Cde. Speaker, that that right is a basic human right. The citizens of many countries, whether it is England, Canada, New Zealand, the West Indies, the Virgin Islands, one of the small Islands within the Caribbean, have got the right to choose whether they want their cases heard before the Magistracy or a Jury. But in Guyana, the P.N.C. says no, you must not have that right, we will decide. The concept of a man being tried by his

peers is one that is deeply rooted in the concept of human rights. We all know justice must not only be done but appear to be done and there can be no doubt that evidence can be produced to show where Magistrates are interchanged and shifted for particular cases when an accused person has to appear before a court where, from the beginning he knows that the dice, to put it that way, are loaded against him. He will have to face that trial with tension and possibly with the reality that he has no chance of a fair trial but indeed he has to go to jail. The Magistrates are without facilities for law books. What they will do when the indictable cases before them increase in number? Do they adjourn their courts in the various parts of the country and then come and sit in the law library to look at authorities to come to their judgements?

4.45 p.m.

That is the situation we have got in this country. This being so the Bill which seeks to take away an accused right to elect whether he wants a trial before a Magistrate or a Jury, must be strongly condemned and rejected. The enlargement of the Magistracy must be viewed with the conglomeration of factors that they are unable to carry their current load of cases.

I recall in the Supreme Court, Judges coming at midnight, and that was a regular feature it wasn't anything special to take verdicts. I know in the Supreme Courts that when one case is finished and the Jury is sent for deliberation, the Judge after a short break takes another case and when the time comes for the verdict, adjourns, deals with that and comes back to the case. I have made these points merely to draw this Assembly's attention to the fact that there are other factors that are responsible for the piling up of cases. I make the additional point that it is not only so in the Supreme Court, it is also the same in the Magistracy. I have read a notice in the Official Gazette, at least once for this year, postponing the Essequibo Session, and you have got cases.

We come to the Bill which will give the Chancellor the right to ask an Appeal Court Judge to come and sit in the High Court and to ask a High Court Judge to sit in the Appeal Court. I am not dealing with the current Chancellor, I am dealing with the principle. Laws must be

made for all times, and in passing laws in this House we must not confine our contribution or thinking to any individual who may, at that time, be administering the law. This amendment, which is a Constitutional amendment, will permit the Government to manipulate the judiciary, which it has done before without the present power which will help it now to have a wider scope of selection of Judges, both for trial in the High Court and the Appeal Court. We are strongly opposed to this Constitutional Amendment.

When this Bill was tabled in the House, a single copy of it was handed to the Clerk. I checked with this Office continuously for that week to see if I could get a copy. I want to charge this afternoon, with the strongest conviction that the Bill was back dated and it came out over a week after the date of the Bill itself. I challenge anybody to say that that is not so. You are amending the Constitution, you talk about Constituent Assembly, you make a big fuss about consulting the people, and you indulge in such tricks and deception against the people of this country, dealing with the grave question of amendment of the Constitution. The people must know now that the whole exercise of Constituent Assembly and framing a Constitution is against their interest and, in fact, whatever is to be done is already there. They are only indulging in the usual hypocrisy but people are not fooled.

You are not unaware of the President of the Bar making that complaint. You are not, I am sure, unaware that he had to ask the Attorney General to send him a copy of the Bill, which supports my argument that the President of the Bar who subscribes, as he admits, to the Official Gazette, was not in possession of that Gazette up to the 20th September. It was on the 22nd September that he got a copy of this Bill. Cde. Speaker, this is the situation. In fact, the Bill was introduced in the National Assembly on the 7th September and that Bill went into the hands of the President of the Bar only on the 22nd of September, 15 days after. We are not arguing that the Standing Orders do not allow a few things but one expects that the Standing Orders must be observed both in its letter and spirit, so that the public will be fully aware, they will have knowledge of what is taking place.

We come to another area in which we must record our protest and that is the hearing of any number of complaints together by the Magistrate. The Attorney General attempted to convey to this House that that was a simple matter. A man may be charged with assault and he may be charged with another offence. The fact that the Magistrate would have been hearing the facts of the assault charge, and if he has to adjudicate on the other case, the evidence in that assault case may prejudice his judgment. The present position is that a defendant or an accused must continue to say whether he wants the matters taken together or separately though they may appear to rise from the same facts and circumstances. The possibility is, they may be different types of offences with far-reaching effects.

The Government, therefore, in every measure it brings before this House, shows the tendency of moving each time to deprive people of certain rights that they currently enjoy. For that reason and because of the fact that we have got experience with the Government and, indeed, with the administration of justice, we too must join in protesting, and more than that, opposing the Bill before the House.

4.55 p.m.

The Speaker: Cde. Persaud, you are going on to your next 15 minutes.

Cde. Reepu Daman Persaud: Thank you, Cde. Speaker. Cde. Speaker, the Leader of the Opposition alluded us this afternoon to the fact that a lawyer who was qualified, that is, he had all that was required for him to become a Judge, was in possession of a letter of appointment and, despite the fact that it had reached that stage, he was not permitted to sit for one single minute on the bench. The Attorney General told us this afternoon that some of these things have been requested by the Chancellor. I will not attempt at all to cast aspersions on the Chancellor but what I do say is, armed with the evidence of the one which the Leader of the Opposition directed us to this afternoon, we can safely say that there is an influence outside of the stream of

the administration of justice that is more powerful than those who should be guiding the stream of justice in this country and that influence is the P.N.C. Government. It finally decides.

I do not want to burden you with any quotation but if the speech that the Prime Minister gave at Sophia on 18th August, 1975, was read and cited, you will find on page 8:

> "That the Government is subordinate to the Party, should be obvious. It is the Party that formulates policy on the basis of its ideology, strategy and tactics."

Indeed, the concept of the paramount of the Party over the Government and other agencies and institutions will imply that the Judiciary is also affected by this statement. We have not seen a statement by any spokesman of the Judiciary, outside of the Government saying that the Judiciary does not subscribe to this concept of paramountcy of the Party. This being so, our fears about the shifting of Judges are founded on strong premises.

Cde. Speaker, the increase in cases both in the Magistracy and the Supreme Courts must be examined in relation to our three quarter million population. It must be examined in the light of the fact that about 50 percent of our population are young people and probably a substantial number of that population are under fourteen and can be categorised as juveniles. Is it that the crime rate has gone to the extent that the Courts cannot deal with the great number of cases that come before them each day? All those are factors that ought to be considered before the Government moves to change the law to deprive people of certain rights which they currently enjoy.

Cde. Speaker, the other clause in the Bill that needs to be looked at is the one in which the Government seeks to recoup money obtained by fraud by persons convicted. We are not opposed to action being taken to recoup money stolen from the State or from anybody but what we do say and strongly say, is that the burden of proof must rest with the Prosecution. We are

totally opposed to the shifting of that burden whereby the person or persons will have to institute proceedings to prove his, her or their innocence. The concept that the burden of proof is with the Prosecution is well known.

Clause 16(9) is obnoxious and ought to be removed. We are opposed to any confiscatory order being made before the person concerned is heard and tried and found to be in possession, or that he/she may have acted in conspiracy with the person who was convicted of fraud. What seems clear from this clause in the Bill is, if it is **"alleged"** – that is the word used – that the accused person gave money to "A", and "A" used that money to acquire any property, the Judge can make an order confiscating the property, just on the **ipse dixit** of some evidence in Court.

The Police has the right and one will assume, the machinery, to carry out inquiries, to produce evidence to that effect, and take the matter to Court, and, if it is found that that is so, then we are not opposed to any action. But, we must strongly oppose the Bill in its present position and form. Cde. Speaker, this Bill is another one which the people of this country are opposed to. This Bill is another one which shows that the Government wants to increase its power and to use its military apparatus to suppress and oppress the people of this country.

The Attorney General was arguing earlier about appeals. He said that currently if a convicted person appeals, he can appeal against conviction in which case, the Court will not be competent to interfere with the sentence. If merely appealing against conviction will give the right to the Court to interfere with the sentence, then I argue and say on my feet that that will militate against people appealing. If a man appeals, it might be that he is innocent. And, the possibility is that – I am arguing that he might not appeal if the law is changed – if he had appealed as the present law stands, then he could have had his conviction quashed. You can make an innocent man a criminal. These are the strong objections that we have got against the Bill before the House and we must not therefore sit idly by without strongly recording our protest

5.05 p.m.

and calling upon the Government and specifically the Attorney General, who is the leader of the Bar, to withdraw the Bill. Ten members are on the street protesting against him.

The Speaker: You have four minutes more.

Cde. Reepu Daman Persaud: Cde. Speaker, I am advised that in England no member who constitutes the House of Lords comes down to a low court.

The Speaker: The Attorney General referred you to three cases.

Cde. Reepu Daman Persaud: I am advised, and the advice is good advice, and that is why I repeat it on my feet. Cde. Speaker, you ask why fear and why we are looking into the Bill with greater depth. We are doing so because the Bill, minus the amendment, to give the Appeal Court the right to change the verdict of a jury clearly shows what the intention of the Government was and there is no doubt that the P.N.C. Government has buckled under pressure and has put in an amendment to correct that. That is the most objectionable provision of the Bill before the House and if that has found itself in the Bill and if we are armed with the facts like the Arnold Rampersaud trial – there were three trials – one can have no other justification. I challenge the Attorney General to produce a convincing argument. What the Government would have liked to do in that instance was obviously to appeal against the decision of the jury, go to the Appeal Court and, I say, fix the Appeal Court, lobby the Appeal Court against the accused person and then change the verdict of the jury and hang the man. This is a Government that must be condemned and over 60 percent of the citizens of this country – I think we are moving into the 75 percent bracket today – are against this Bill. The Government has got a chance therefore to reprieve itself, not by simply amending the amendment that they have got but by scrapping the entire Bill and acquiescing to the will and feeling of the people of this country against the measure. We oppose it and we shall vote against it.

The Speaker: Cde. Ram Karran.

Cde. Ram Karran: Your Honour, it will be recalled that at one time the Government in this House sought to peddle the line that the Opposition was of a colonial mentality because it objected to the abolition of appeals to the Privy Council. The wisdom of the Opposition to the Privy Council is clear now because at the time it was pointed out that even though India was a country with hundreds of millions, Mr. Nehru, the Prime Minister, who as himself an eminent lawyer of past experience, decided to retain the Privy Council for some time before its abolition from that country. Here in Guyana, we had the ridiculous situation of brother appearing before brother. Here in Guyana, we had the ridiculous situation because the country is so small, the lawyers are so well known to each other that one young barrister was fined very heavily because he suggested to the Court that his client had expressed fear about appearing before him in a matter in which he is likely to be prejudiced because he was a P.N.C. activist before his elevation to the chair. We have had all that sort of thing and this reminds me of Malan in South Africa. Immediately after he had abolished the Privy Council and when the liberal judges passed their decisions his manner of changing them was – unlike the P.N.C. here – to increase the judges in the Appeal Court so that no matter what liberal decision was given at the bottom, they changed it all at the top. We are not different from what has happened in South Africa during the period of Malan.

My friend cannot say that tradition is something we cannot hold dear. His language, his expression is so English, or perhaps it is that of my friend, the late M.O H. Khan, with whom he was associated for some time, perhaps that is the accent, I do not know. The trial by jury is something we have seen operate sometimes against the people but nevertheless it is the best bet that you can have.

My friend tells us that he is not changing the jury system, he is retaining the jury system for murder, manslaughter and sedition, or one or two more cases, but the majority of indictable

cases will go before the Magistrates. I would like to examine the Magistracy but before I do so I want to record here that the capitalist system is better portrayed in a statement made in the predecessor to this House, the Court of Policy, by Mr. J.P. Santos when they were discussing the abolition of the horse guards. Mr. J.P. Santos, who was opposed to the measure, was speaking to Mr. S. E. Wills who was in favour of the abolition. He said: "Your Excellency, when the black people start to break up the town, Mr. Wills gone over to Vreed-en-Hoop with the Ferry boat, we who got property are going to be the ones who will suffer." When he said "black people" he meant the working class, of course.

What this Government is seeking to do is to protect itself and to protect the new bourgeoisie it is building and that is why all the whip lashes are going against the working class. Who face the judges? Who go before the Magistrates? The people in the middle class go once in a while, but the majority of them are the working class. Experience has shown in the past that when crime increases adjustments are made. As the hon. Attorney General outlined to us, the court would comprise of so many judges, with so many today, they had so many Magistrates. At one time there were only two Magistrates when the only court was the concrete building across there. There was a time when the Attorney General used to prosecute in the courts. I know that time. There has been expansion, obviously, not because of the increase in crime. I do not think the increase in crime in this country has been greater than in other countries bearing in mind the economic situation. Any country in the same economic situation will have the same sort of increase in crime. What they must do to remove crime is to adjust the economic situation and then you will have less need for the repressive forces of society, as they call them, Judges, Magistrates, Policemen and so on and so forth. That is socialism but we don't think we can teach our friends across there in the short time that we have.

5.15 p.m.

Experience has shown, Sir, that whenever there is an outbreak of crime for some reason or the other, the ruling class uses it as a means of galvanising the attention of the people. But the people are not seeing the crimes that are done by the Government, they see the choke and rob, they say hang them and with that same sentiment they pass laws. From the experience that the

people got in England, Stewart wrote about it, many other people wrote about it, whenever that outcry comes, look out for the limitations on civil rights. And that is exactly what we are having here today. Let the Attorney General and let the Government think of means of solving the economic crisis and this House will not be faced with a situation of increasing cases in the courts and so on and so forth.

Take the point raised by my friends who eloquently discussed the burden of proof. If it is only a question of adjusting things, why do we want to change this important principle? We have heard this one over and over again that an accused is innocent until he is proven guilty. Why, in this socialist system, the accused must prove his innocence? This is a great departure from the principles and the tradition that we have inherited from the struggles carried out hundreds of years ago in the United Kingdom, from whose system of jurisprudence we have drawn. We are accustomed to these, and therefore, we do not want you to put in a hotchpotch. You have got a "yo-yo" system. The High Court Judge comes to the bottom court and vice versa – "yo-yo."

I will say that if the majority of indictable cases are going to be tried by Magistrates you will either need an increase in the Magistracy or when the Appeal Court Judge comes to the low court, the High Court Judge must also come to the Magistracy level so that he can dispose of the cases. Other than that, you are not doing anything. You have a **"yo-yo"**, the Magistrates go right up and the Judges come down. If not you will have to increase because you are giving the

Magistrates more burden. And I can tell you from my own experience. The Magistrates want more power. Let me tell you how they use their power.

There was a man charged at the Sparendaam Court for telling his mother-in-law what she really was. When they went into court the Police Sergeant who was prosecuting said**, "You're on strike"**, and the strike element came into the picture. The Magistrate said, **"Pay $12,000."** A man working for $6.61 a day had to find $12,000 to get bail. I told the Magistrate that I am going to take this case to the International Labour Organisation. After the man was unable to get bail two day after his bail was reduced to $10,000. Eventually it came down to $6,000 that is after the man had spent a week in jail. All in all he spent 12 days in jail. And what came out of the charge? He was acquitted. And this same woman has had 6 more people, strikers, drawn into court, put on excessive bail and there is one pending now.

This is the sort of Magistrate you want to try people's cases. That particular Magistrate, when the case was being tried there, I walked down to the saw-mill and I saw Mr. Magistrate buying timber at 9.30 in the morning. And before he went to court, he had to go to the Registry and I think he goes there every morning. Is that the sort of people you are going to entrust people's freedom and liberty to? And that is not the only one, there are many others.

I had to call the hon. Minister the other night, I was sorry to do it, it was about 10 o'clock, his wife said, "He's tired you know." A man only told somebody "they thief out the money" the policemen took him to the court, the court said no bail, next day he will get bail. What sort of thing is that? That is the sort of justice we have in this country. I see it day after day. I saw it during the 160 days' strike. Every single worker who was charged. It is only one Magistrate, I don't want to call his name because he might get bounced off, I will say was reasonable. The rest of them fixed $10,000 bail. Those were the instructions. **"Ptolo,"** you gave those instructions? How a man working for $6.61 a day can find $10,000 to go on bail? His food was seized; the Magistrate said he must prove that the food was not stolen. That is the

sort of rascality and instructions from these people who are the heirs of the imperialists. It cannot go down our throats.

We have another avenue through which to get justice. There was a big fanfare and the blowing of trumpets and so on. Ombudsman was created. You go to the Ombudsman, Sir, the Ombudsman says, **"I am willing to work, but I haven't got staff."** Is that how you are going to give the people justice? This is not how it should be done. I don't feel that there is any justification at all for the introduction of this **"yo-yo"** system, nor is there any justification for the abridgement of the rights of the people in this country. Let us all work together towards a solution to the economic system. Let the people get enough food to eat; let them get enough clothing to wear; let them get spare parts; let them get fertilisers to fertilise the fields; let the fields bloom. But don't sit and mismanage and misgovern the country.

The hon. Attorney General says, "dire need for the increased jurisdiction of Magistrates." That will come as a matter of course. With the reduction in the value of money, it has come all through the years. I remember at one time Magistrates were unable to impose more than 6 months in jail. But the law was passed because bourgeoisie became a problem and it is today a problem and Magistrates' jurisdiction in respect of that was increased. They can impose on a man two years or something like that, and fine him more than the $500 or whatever it is they were fined. Let us do it in that way. Let us do it in a principled way but don't feel that because Magistrates want more jurisdictions and that the Government can rely on certain Magistrates, that those Magistrates will be selected to try cases that are political cases. The hon. Attorney General didn't say so. I am not being unfair to him, I don't want to be unfair to him, but what is going to happen is that the political cases are going to be handed to the honourable Magistrates and the situation is going to be untenable because one of these days the people are not going to be able to take it any longer.

I don't want to say any more. But I want to remind my friend the Attorney General, perhaps he was too young at the time to know, it was a story all over the place, that this piece of legislation that he seeks to introduce here reminds me of the case of George Petata, the Policemen. George Petata held a man for riding without a light. He said: "Come here boy, wuh yuh name"? He said, "Charles Thomas." He wrote that. He said "What street is this?" He said: "Oronoque Street." He could not spell that so he said, "Leh we go in Church Street." So he wrote "Church Street." This is what the Attorney General is seeking to do to us here today, to tell us that he is giving greater freedom, he is reforming the law when in fact he is putting heavy pressure, heavy burdens on the working people who are the ones who will have to face the Magistrate, and face the Judges, and face the –

5.25 p.m.

The Speaker: Cde. Attorney General.

Cde. Shahabuddeen (replying): Your Honour, it is a courtesy which I owe to the House to reply to the various remarks made but really, when regard is had to the substance or shall I say, lack of substance, of the purported contributions, I do honestly find myself in the invidious position of having very little to respond to. I submit, Cde. Speaker, that the burden of the case which I presented here this afternoon on behalf of the Government has not even been touched by the various Opposition members who have spoken. They had in fact been driven to do nothing better than to acknowledge that while I have attempted to present a rationalisation of the measure, that work does not apparently find favour with them. On more than one occasion, they impugned the use of the word. They impugned the whole effort to rationalise the Bill. But, what have they done apart from having recourse to crude personal remarks and references which are unworthy of them as they are an offence to this august Chamber?

We all do have our own little weaknesses, our little peculiarities. I have my accent it has been said; my good and honourable friend Ram Karran has his problem with his teeth, and I suppose my good and honourable friend, Mr. Reepu Daman Persaud has other problems which I need not mention. **[Laughter]** But if there is one thing which discloses the utter bankruptcy, the utter intellectual bankruptcy of the Opposition, it is the manner in which they have sought to confuse issues and to substitute *ad hominem* remarks for real argument; they are not arguments, they are simply insulting, crude words.

Now let me turn to some of the remarks which might attract comment and speak of the reference made by the hon. Leader of the Opposition when he spoke of the functional relationship between the jury and the development of democracy. I have seen references of this kind in statements emanating from other quarters, statements which, such as these, seem to identify the jury with democracy; statements which suggest that the existence of a jury system is a *sine qua non* of a democracy. So that, if you do not have a jury, you do not have a democracy. Poppy cock, nonsense, I say! The hon. Leader of the Opposition should really have been the last one to thrust forth such weak and indefensible an argument. Does he not have high praise for certain countries which do not have a jury system? Is it not a fact that the greater part of Western Europe including West Germany as well as East Germany, including Sweden, save in respect of one particular offence, including France and Italy, which are undoubted democracies by any standard, do not have a jury system as we know it? Is it not a fact that India which is manifestly the world's largest working democracy does not have a jury system in many parts of that great land? Or are these things unknown?

Some reference was made by Cde. Reepu Daman Persaud to a position which I am supposed to have taken in Barbados at a conference, the name of which he did not mention. Now really, the comrade should get his facts straight. If we do not get our facts straight and we purport to be making important statements in this House which will impugn stands taken elsewhere by responsible members of this community, we really do a great disservice to the

country. So, let me tell him what the facts are. Let me do his homework for him. That conference was organised under the aegis of the I.C.J. under special arrangements which stressed that though they were going to invite Government officials, they were going to invite them in their individual capacities. Nobody had any standing there, except in his individual capacity. It was not a special defensive position which I sought to take there.

Then Cde. Reepu Daman Persaud had another excellent substantive contribution to make. In what regard? It is this: that I spoke literally without life. That was his major contribution. **[Interruption]** Yes, and I will continue to do that because of this very sound reason: that sober lawyers, my friend, do not have need for recourse to histrionics. Flaring nostrils and rolling eyeballs are for pantomimes. They do not enhance the prowess of a speaker. You understand that? So, you are welcome to make use of those facilities, those gadgets and deeds whenever you feel fit. This Member of the House will continue to speak, as you said, in a literally lifeless manner.

Cde. Speaker, let us look at the other matter which was referred to. It concerned an allegation, because it is nothing less than an allegation, that the right to trial by jury is an important fundamental human right. What nonsense! People should not use words loosely. If Cde. Reepu Daman Persaud is being advised by legal advisers, he does them an injustice to trot out so indefensible and vulnerable an opinion in this House. There is no country which I know of, in which the right to jury trial is a fundamental human right. If you look at the Universal Declaration of Human Rights 1948 – I am educating you, I perceive – if you look at the European Convention on Human rights 1950, if you look at the fundamental rights provisions of our Constitution, if you look at the fundamental rights provisions of Trinidad and Tobago, Barbados, Jamaica, India, you name it, you will not find therein inscribed the slightest reference to jury trial. **[Interruption]** If you will settle down like a nice little boy, I will tell you the rest. Do not get unduly agitated, I will tell you. I will tell you what there is.

What there is, is this: that you have a fundamental right to be tried by an independent and impartial tribunal. If you have any reasoning powers in you, you will understand that you can have an independent and impartial tribunal whether or not that tribunal is assisted by jury as happens in France, in Germany, in Sweden and Italy. That is the fundamental human right, to trial by independent and impartial tribunal. But it is a weak man which falls into the trap of confusing that concept with jury trial. That is wrong and you should relate it to those who have advised you. On your thesis, there would be no human right in India; there would be no human right in Guyana in this respect, in Trinidad and Tobago, in Jamaica, Barbados or anywhere else.

That takes me to his second point. He says – and here he essays to touch substance for the first time – "Oh, if we off-loaded this criminal work on to the Magistrates, what will happen if difficult points of law arose in the Magistrates' Courts? There would be necessity then for lawyers from the D.P.P.'s Chambers to go down." Of course, there may be such a necessity.

But how does that become a problem? Right now if those same cases are not tried in the Magistrate's Court, if they are tried in the High Court, a lawyer from the D.P.P.'s Chambers has to go. All that will happen is that instead of going to the High Court he will now go for that very **1**case to the Magistrate's Court. There would be no problem at all, unless he insists on making out that there is one.

5.35 p.m.

The next thing that he referred to was an allegation, which I submit is wholly inaccurate and really I think he ought to have known better and should never have made it. He made a previous suggestion, if I understood him correctly, that this Bill might have been published a week after the date it actually bears and that it was back-dated by a week. Your Honour, I ask the House to see how absolutely irresponsible this particular Member is. He suggests that there has been a one week back-date, yet he accepts that the President of the Bar Association received

his copy from me on the 22nd September, 1978. The Bill which I have before me shows that it is dated in the Gazette the 20th September, 1978 and that is two days before. How does he get one week before? Where does he get that from? On his own presentation the President of the Bar Association had the Bill on the 22nd September. The date of the Gazette is 20th September, two days before. His ridiculous contention and allegation that this Bill was back-dated by a week--

Cde. Reepu Daman Persaud: Cde. Speaker, on a point of correction. Though this Bill is dated the 20th September, 1978, it was circulated with the Gazette of the 27th September, 1978, the following week.

The Speaker: What you said was that the President of the Bar Association received his copy on the 22nd September, 1978. As a consequence, it was also back-dated by one week. There is no question of a correction.

Cde. Reepu Daman Persaud: The point I make is that the Bill dated the 20th September, 1978, which was a week before it was circulated, was not circulated on the date which it bears. It was circulated subsequently.

The Speaker: You did not say that.

Cde. Shahabuddeen: It is not worth my while to return to that subject. I turn to another aspect and my intent is to demonstrate yet once again the utter irresponsibility of this particular Member in suggesting, as he did, that there was some sort of hide and seek about the publication and release of this Bill. I do not understand it. I have the Standing Orders before me. Standing Order No. 45, paragraph (4) merely requires for the introduction of a Bill that the Bill be laid over with the Clerk, thereafter you may publish the Bill and thereafter follows the other requirement about the period which has to elapse between publication and Second Reading. There is no requirement so far as I know. Of course, you can correct me, Cde. Speaker, in case I

am wrong. There is absolutely no requirement that the Bill shall be published before it is introduced, suffice it that a copy is laid on the Table and we laid a copy with the Clerk. The Clerk is there and can be questioned by any who is interested and he will tell you that he at all times had a copy of this Bill with him.

The Speaker: Cde. Persaud also said that.

Cde. Shahabuddeen: Your Honour, there was this oblique reference to paramountcy of the Party, and the presentation made of this doctrine by Opposition members is nothing short of a ridiculous caricature of what the concept really means. In pursuit of short-term political gains they have sought to caricature it and make it out to be a declaration by the Government of its supremacy in the judicature. No such thing. All the doctrine means is this, that a Government derives its power, its authority from a political party. That is a reality here, in America, in England. There is a parliamentary party which derives its authority from the national political party as happens in England. The Labour Government is nothing but a sub-committee of the Labour Party in England and that would apply equally to the Conservative Government if and when there is one again. So all that doctrine reminds us of is that so far as the Government is concerned, the Government takes authority and takes its policy from the party and I do not think that that is a doctrine which requires defence. It is manifestly a reflection of the actualities not only here but in America, in England, in France and elsewhere. Every Government takes its policy from the party which puts it in office. That is all it means. It does not mean, was never intended to mean and does not, in fact, operate on the basis of the judicature taking directives from any political party. I say that is an unworthy calumny to utter against the People's National Congress.

Then I come to the question of the presumption of origin of property in relation to the clause which deals with the recouping of property which is traceable to the commission of an offence of dishonesty. I merely wish to mention that this House with its long experience and

with the long experience of Members including Cde. Reepu Daman Persaud will be cognisant and aware of the fact that instances are many in which for good and sufficient reasons this House, in its estimate of public interest and its evaluation of where that interest lies, will from time to time lay down that the burden of proof on some particular issue shall rest on one side or the other. That happens very frequently. In fact, if Cde. Persaud would consult article 10 of the Constitution, he would see that an exception is specifically made there for provisions of this kind. It is nothing unusual.

Then I would like once again to demonstrate his utter irresponsibility and the unworthiness of his remarks in essaying to challenge a statement which I made to the effect that contrary to any opinions put out by any other person who quotes, including his own legal advisers, the fact is that members of the judicial committee of the House of Lords do go down from time to time to sit in the Court of Appeal in England. I am quite willing to lay over with you, Cde. Speaker, for your personal inspection, the reports of the three cases I mentioned to you this afternoon and you can see there that it is true that Members of the House of Lords have sat in those cases in the Court of Appeal. I think again Cde. Persaud has been rather unkind to his legal advisers to trot out their opinion and to risk their credibility and reputation in this House in the face of what I stated this afternoon. I think he has really been unkind to his legal advisers. It only displays the totally uninformed nature of his contribution, the negative nature of it and the whole misconception of principle which has underlaid his presentation. I suspect in brief that the comrade has been a little out of his depth.

Question put, and agreed to.

Bill read a Second time.

Assembly in Committee.

Clause 1 agreed to and ordered to stand part of the Bill.

5.45 p.m.

Clause 2

Cde. Reepu Daman Persaud: Cde. Chairman, the Attorney General in his contribution said that Judges from the Appeal Court will be asked to go to sit in the High Court. I want to ask the Attorney General whether he consulted with the Judges concerned in both the Appeal Court and the High Court before this measure was introduced and if he did not consider it necessary to discuss it with the Bar Association before bringing the Bill before the House.

Cde. Shahabuddeen: Cde. Speaker, the answer to that question is as follows: Yes, I considered it my duty to discuss the proposals in the entire Bill with the judiciary. But the Attorney General has to analyse his discussions with the judiciary in the light of those procedures which, over the years, had been established as fit and proper. He doesn't go about asking individual Judges what they think. He goes to the Chancellor and speaks with the Chancellor. This was done. If any wider discussion was necessary the Chancellor would indicate. It suffices us to say that the discussions were with the Chancellor.

Now, as is normal, the Bar Association would be consulted. In fact, in this case the Bar Association was not consulted. The Bar Association was not consulted because the Bar Association was itself proved to be at fault. On the 19th August this year, the Bar Association did not look forward to co-operating with the Government in any of our work, so when the time came for this Bill to be introduced, it was introduced without consulting them. Thereafter, there was a hue and cry and then I referred that letter to the President of that Association, and the President corrected that letter. That letter was so erroneous that it had to be corrected but it was corrected after this Bill was introduced. I shall read that letter to you. In brief, it seems that the Bar Association has been suffering from certain letter-writing problems. The President corrected that letter in a letter to me of the 25th September in which he says at the bottom:

> "As regards the Association's Secretary's letter of the 19th August to you it was our intention to express at the outset our desire to co-operate with you in the cause of justice and the omission of a reference to you was inadvertent."

His letter did not suggest that they wanted anything to do with the Government. Thereafter, as hon. Members will know, I saw the Bar Association on the 25th September, I had a meeting with them, which extended over three hours. They asked for a deferment of the Bill and that was done. The Bill was put down for some time later, for the 5th October. They asked for another deferment that was granted. The understanding of that first meeting was that after they studied the Bill they would return to me and we would have discussions. They never did. They wrote asking for an interview. I saw them for over an hour. That is the position.

Clause 2 agreed to and ordered to stand part of the Bill.

Clause 3 agreed to and ordered to stand part of the Bill.

Clause 4.

The Chairman: Cde. Reepu Daman Persaud.

Cde. Reepu Daman Persaud: Cde. Chairman, I wish to move the Amendment that has been proposed by me and circulated. Clause 4(2) of this Bill removes a basic right of an accused person, a right which is bound up with the concept of a fair trial. The concept of a fair trial must not be looked at in isolation. Trial means tribunal before which one will appear. Currently, for many of the offences that are affected by the Bill, an accused person has the right to be tried and heard by twelve persons. The amendment in this Bill takes away that right in a large number of cases and puts him in the hand of a single individual.

In the United Nations Charter the words **"fair trial"** imply clearly that an accused person must be satisfied that justice will be meted out to him. My argument is against removing that opportunity, that right, that law to put an accused person before one man as against twelve men. I argue and very strongly despite what the Attorney General may attempt to say this afternoon, that that would be reducing a right which an accused person enjoys at the moment. And more than that, it would deny him the most fundamental right of being tried by his peers.

5.55 p.m.

I don't want to indulge in wild criticism; it is not only a question of accusing, it is a question of a number of people living in the roof, having not come down to earth. There are many, many men who until this day cannot understand the language of the common man. I recall, Cde. Chairman, some years ago being told of a murder case ably argued by Mr. J. A. Luckhoo, Senior. The accused person in that case had given a statement. He could not read and write; he was an indentured labourer and in his statement he said: "Me mind um, me feed um, me kill um?" **[Interruption] [The Prime Minister: "**That is not Luckhoo's case; that is S. E. Wills' case."] Whoever it was that argued the case, the point I wish to make this afternoon is that the jury interpreted it the way it was put to them by the lawyer and that is, that the accused person in fact in that statement was not making a statement of confession that he killed the person, but that he was asking a question. He was acquitted. The point I make, therefore, is that if you deny a man that right in serious offences and put him before a single individual who undoubtedly would have been legally trained, he faces the danger of not getting his point of view and his facts properly understood and interpreted. This undoubtedly would militate strongly against the Government's intention to take away that right.

Cde. Chairman, I feel that this is one of the grave amendments and we should not do anything to deny the common man the right to a fair trial. A speaker from the Opposition who preceded me made the point, and it is true, that it is the ordinary worker, the common man who

finds himself before the Court so very often. He might not have all the facilities both of influence and finance to ensure that his case is properly put before a legal mind but there could be no doubt that lawyer or no lawyer, a common man can speak to those who understand his way of life, who lived with the same type of experience, and his language of communication would be more effective to that panel of twelve men than he can ever hope to get over to a legal mind who will look at the thing technically and stop him saying: "You are not complying--" The jury provides the accused person with a clear opportunity to ventilate his matter and the members of the jury will be able to understand and appreciate the language of the accused person so that when they arrive at a verdict it is likely that that verdict would be fair.

It is based on these points that I make my argument and I hope that the Attorney General finds on this occasion some merit in my argument. I hope that he agrees at least with one of the points and that is, that twelve men will better deal with an issue than one man. When you come out of first instance hearing, the Appeal Court is not constituted of one Judge. It is the minimum of two judges or three judges and there was talk about increasing that panel to five in important cases. That extends the concept that more than one person would be sitting. I fail to see how an argument can be adduced at this stage to say, take away the right whereby a man can stand before twelve men and put him before one man. That single man may have a prejudice against the individual. We are human beings; we are living in a small society. Who knows what prejudice may be existing in the Magistrate's mind at the moment in adjudicating on the matter? Do not let us indulge in further sophistry and say he is going to exercise his judicious mind. He also has a human mind which must be treated as average. It is based on these facts that I strongly argue against any amendment whereby in serious cases an accused person can be tried by one man after the passage of this Bill, whereas prior to the passage of this Bill, he had the opportunity of being tried by twelve men.

Currently, the Magistrates do not have the power to fine a defendant or an accused person above a certain amount. I think $4,000 is the amount in the Bill and he can impose sentence of

up to three years' imprisonment. So, with the passage of the Bill, it is not only hearing the case and coming to a decision but it is a question of increased penalty. The Magistrate can put him away for three years. All those factors must be considered.

I had alluded to the point before that in these cases, legal arguments will come up. There are cases that are more serious. The Prosecutor who is usually a policeman, a layman, may not be able to reply to legal arguments as occur so often in the Courts and there will be need for barristers to go and appear. The Attorney General has said to that argument, that nothing is wrong in any case if a barrister had to go and prosecute. He would have gone and done it. The Attorney General obviously did not have his feet on the ground when he replied on that point without giving the thought that the point deserved.

With the High Courts in New Amsterdam, Essequibo and Georgetown, there are five criminal courts sitting at any one time requiring five barristers to prosecute, but when Magistrates are dealing with criminal cases throughout the country, you ask yourself the question: how many Courts deal with criminal cases in Georgetown? The minimum is two. You have one Court that deals with indictable cases alone but we note that on many occasions sometimes three Courts deal with indictable matters at the same time in Georgetown. There are Magistrates' Courts at Providence, Vreed-en-Hoop, Wales, Anna Regina, Weldaad, Suddie, Whim, Springlands, etc. How could the Attorney General say that all you will require is a barrister to go down and prosecute in the Magistrates' Courts? That argument obviously had no substance; it was empty and I proceed to say that it was empty. For that reason, a greater burden will be placed on the barristers and we will live to see and we will hear in this Parliament of the chaos that there will be in many Courts.

6.05 p.m.

There is another point that I want to argue. In allowing these matters to go before the Magistrate, there is another problem. A man is charged with a serious offence and he is put before the jury; the case goes on day after day. You know what it will involve, the expenditure will not be greater for him. And this is experience. If his case is being heard in a court outside of Georgetown, say on the Corentyne, or on the Essequibo Coast, his lawyer goes one day, the Magistrate takes one witness, adjourns, he starts another summary case, criminal or civil. In country courts, the Magistrate sits in both criminal and civil jurisdiction. He goes back another day and another witness or two are taken, and they adjourn. He will find himself in the difficulty of saying, look fees have been exhausted. The ordinary man is going to be put to greater financial burden. There will be more delay and a greater backlog. This is a basic error by this Government this afternoon in trying to assure the people, and to assure them so convincingly as the Attorney General attempted to do, because that is not true. There are several impediments that have been put in the way and you will have greater delay in trials and people are going to be put to greater hardships.

I have attempted to say in very clear terms what prompted the amendment. I hope the arguments are going to be treated with the merit they deserve and the Attorney General will have a second look at this amendment. It must not be looked at very narrowly. I do not want this afternoon to make the point that there may be a man who does not share the same political opinion of the Government and if he is charged indictably and proceedings are heard both in the lower court and higher court, the possibility is that the jury may acquit him, so it may be better to charge him with one of these offences that are amenable under the amendment, and let him face the Magistrate. I don't want to make that point. In any case, he can be put away for three years. That is another great danger and that consideration occupies the minds of many individuals at the moment. You have got the political factor, the human factor, the practical consideration that a greater number of men will be involved, the fact that I urged earlier, that the facilities for the use of law books do not exist in the country courts. These Magistrates may have to come to

Georgetown and nobody will deny, including the hon. Cde. Prime Minister, that Magistrates have complained on many occasions that they are without law books. If they are to give decisions, it will mean adjourning the court, leaving the work and going to sit in the library to read authorities and then go back to give their decisions. The Government must sometimes listen. Arrogance can, indeed, ruin not only an individual but many things. Therefore, I feel strong and I express the views of the Opposition, the people and the Bar Association. I am no spokesman for the Bar Association. I have read what they said and they feel this way and we have all seen that many of them have taken to the streets. The majority of Magistrate's Courts have a greater backlog of cases --

The Chairman: Cde. Persaud, you have made all those points before.

Cde. Reepu Daman Persaud: This is the only one that is repetitious. But I repeat it only for emphasis, that all those courts that come under the Georgetown Judicial District have a backlog of cases. I therefore strongly urge the Government to accept the amendment, and more particularly, not to deny the right of the accused person to choose. The point is that on many occasions the accused person himself agrees. Provision is there already. We must not, Cde. Chairman, deceive the people. We must not tell them in one breath that we are for them and yet in every measure that comes before the House we lessen the rights and privileges of the people of this country. I strongly urge the support of this amendment.

*Amendment proposed***.**

Cde. Shahabuddeen: Cde. Chairman, I fear that the amendment is not acceptable to this side and I will give briefly the reasons. The presentation made by Cde. Persaud in support of the amendment is really nothing less than an effort to re-argue the whole case. We have already done that. We have already argued the question of wisdom or unwisdom of the system which

offers a unilateral right to any party to say in which court the case should be heard. I have already argued the wisdom of fostering that sort of function in a judicial authority. In connection with these arguments about Magistrates and Legal Advisers, I want to remind him of the distinction I uttered this morning between the principles and objects of the Bill on the one hand, and the Ministry and other supporting arrangements which may be necessary to develop and promote the objects of the Bill. They are two different things. We recognise that attention will have to be given to the adequacy of staffing arrangements and things of that kind. The Government is willing to look at all of that but it has nothing to do with the principles and objects of the Bill.

Cde. Persaud spoke with great feeling about the jury system. I want to remind him and the House of what I said, that this Government is not proposing to abolish the jury. We are retaining the jury.

There is one aspect of his presentation which I think can do with some criticism. I think there is a suggestion somewhere along the line where he said that generally speaking a jury is a more efficient instrument in ascertaining the truth than a Magistrate or any other kind of court. I do not know how well he has done his research but with the limited research that I have done the conclusion we have come to is that really we are long past the time when people could say that the jury is the best instrument to ascertain what is the truth of any matter before a court. The jury really is an accident of English History. The Prime Minister accepts the Soviet Union, Cuba and Bulgaria, but you don't have it in these places and really it is quite wrong to foist this idea on your people that no jury means no democracy. That is quite wrong and unforgivable.

6.15 p.m.

Earlier today, I mentioned the decline in the use of the jury system in England, the land of its birth. What I didn't add then but I think that I should now add is the tremendous criticism which the jury system has been subjected to in England, and America. Sir James Stephens, the foremost criminal lawyer of those times, criticised the system. He said it was unworkable. Lord Denning sang its praise in 1949 in a book which was really more an attack on the Soviet system than a rational analysis of the English one. Some years later on, Sir. Patrick Devlin subjected the jury system to serious criticism and if you must know Sir Patrick Devlin, well, Jonathan Williams, who is the foremost writer and criminal lawyer in England today, has in fact recommended that the English jury should be scrapped, abolished and replaced by another system such as the one which they have in Germany. That is the position for those of us who are interested in the research matter and who are not content to speak from off the top of their heads and to bang the table to make up the difference.

Let me just cite, with your permission Cde. Chairman, from the views expressed by a great American jurist, Jerome Frank, writing in 1949. This is what this great American Jurist said:

> "If anywhere we have a Government of men in the worst sense of that phrase it is in the operation of the jury system."

He added that:

> "Everyday law is for ... capricious and arbitrary, yielding the maximum in the way of lack of uniformity and of unknown ability."

Let me refer to the views expressed by Mr. Justice Cardozo one of the most brilliant lights that ever adorned the Supreme Court Bench in America. This is what he said:

"Few would be so narrow," as I fear some of us have been so narrow today in this House, "or provincial as to maintain that a fair and enlightened system of justice would be impossible without a jury."

As I said earlier, the proposition offered by the Opposition is that the jury means democracy. No jury, no democracy is an unworthy calumny of many States in this world which are undoubted democracies including as I said many parts of India. So those are my remarks, my explanations of the reasons why I fear this proposed amendment is going to be rejected by this side of the House.

Amendment -

That the expression "and the accused" appearing in section 61(2) be deleted and the following expression be substituted thereof:

"and if the accused consents",

put, and negatived.

Clause 4, as printed, agreed to and ordered to stand part of the Bill.

Clause 5 to 7 agreed to and ordered to stand part of the Bill.

Clause 8.

Cde. Shahabuddeen: Cde. Chairman, I beg to move the amendment to this Clause which stands in my name. The reasons for the Amendment were already ventilated in my opening statement this afternoon.

Amendment –

That the following be substituted for paragraph (c):

"(c) by the insertion immediately after section 32 of the following section as section 32A –

Reference to Court of Appeal of point of law following acquittal on indictment.

32A(1) Where a person tried on indictment has been acquitted (whether in respect of the whole or any count thereof), the Director of Public Prosecutions may, if he desires the opinion of law which has arisen in the case, refer that point of law to the Court, and the Court shall, in accordance with this section, consider the point and give their opinion on it.

(2) For the purpose of their consideration of a point of law referred to them under this section, the Court of Appeal shall hear arguments –

(a) by, or by counsel on behalf of, the Director of Public Prosecutions; and

(b) if the acquitted person desires to present any argument to the Court, by

himself, or by counsel on his behalf.

(3) Where, on a point of law being Referred to the Court of Appeal under this section, the acquitted person appears by counsel for the purpose of presenting any argument to the Court, he shall be entitled to the payment of his costs, that is to say, such sums as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being re-presented on the reference.

(4) Rules of Court may be prescribed for the purpose of regulating the practice and procedure on any reference under this section and, in the absence of any such rules, the court of Appeal may, on any reference under this section, give such directions as they think fit for the purpose of carrying out and giving effect to the provisions of this section.

(5) A reference under this section shall not affect The trial in relation to which the reference is made or any Acquittal at that trial."

Proposed, put, and agreed to.

Clause 8, as amended, agreed to and ordered to stand part of the Bill.

Clause 9

Cde. Shahabuddeen: Cde. Chairman, again for the reasons mentioned by me earlier this afternoon, I beg to move the amendment to Clause 9 which stands in my name.

Amendment -

That the following provisions be substituted as Part V –

"PART V – LIMITED CIVIL JURISDICTION OF THE COMMISSIONER OF TITLE AND THE REGISTRAR OF THE SUPREME COURT.

Jurisdiction of a Commissioner of Title and the Registrar of the Supreme Court in Bail Court and Chamber matters.	9(1) A Commissioner of Title and the Registrar of the Supreme Court may exercise the jurisdiction of a judge of the High Court in respect of such –
	(a) matters as are disposed of in Bail Court; and
	(b) business as is done in Chambers, as may be assigned to them respectively, by the Chief Justice and, for that purpose, a Commissioner and the Registrar

shall be vested with, and may exercise, the powers of a judge of the High Court.

(2) Any order of a Commissioner or the Registrar made in exercise of the jurisdiction conferred on them by this section shall have effect as if it had been made by a judge of the High Court.

(3) For the purposes of this section – "Bail Court" has the meaning assigned to it in the Rules of the High Court;

"business in Chambers" means those matters which may be disposed of in Chambers by a judge under Order 43 of the Rules of the High Court.

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(4) Section 9 of the High Court Act shall not apply in relation to the powers conferred on the Registrar of the Supreme Court under this section.",

Proposed, put, and agreed to.

Clause 9, as amended, agreed to and ordered to stand part of the Bill.

Clause 10 agreed to and ordered to stand part of the Bill.

Clause 11.

Cde. Shahabuddeen: Your Honour, for reasons mentioned earlier, I beg to move the amendment to this Clause which stands in my name.

*Amendme*nt –

That the following be substituted:

The words **"one thousand, five hundred"** for the words **"two thousand"**,

The number "**1500"** for the number **"2000",** and the number **"500"** for the number **"5000"**,

Proposed, put, and agreed to.

Clause 11, as amended, agreed to and ordered to stand part of the Bill.

The Chairman: Cde. Leader of the House.

The Minister for Parliamentary Affairs and Leader of the House (Cde. Ramsaroop): Cde. Speaker, I beg to move the suspension of Standing Order 9(2) to enable us to complete consideration of this measure, to wit, the Administration of Justice Bill, 1978.

Question put and agreed to.

Standing Order No.9(2) suspended.

Clause 12 agreed to and ordered to stand part of the Bill.

Clause 13.

Cde. Shahabuddeen: Your Honour, I beg to move the amendments to this Clause which stand in my name, one, to subsection 4 as proposed in that clause and one to subsection 5. These amendments are only intended for greater clarity.

Amendment –

(i) That the following words, **"and with the consent of the judge,"** be inserted between the Words **"Chancellor,"** and **"sit"** in the proposed subsection (4) of section 3 of the High Court Act.

(ii) That the following words **"a judge of the High Court"** be inserted after the words **"powers of"** in the proposed subsection (5) of section 3 of the High Court Act.

Proposed, put, and agreed to.

Clause 13, as amended, agreed to and ordered to stand part of the Bill.

Clause 14.

Cde. Shahabuddeen: I explained earlier the reasons which would induce me now to move the amendment standing in my name to this Clause.

Amendment –

That the following words “five years” be substituted for the words “ten years” in the proposed subsection (2) of section 14 of the Criminal Law (Offences) Act.

Proposed, put and agreed to.

Clause 14, as amended, agreed to and ordered to stand part of the Bill.

Clause 15, agreed to and ordered to stand part of the Bill.

Clause 16.

The Chairman: Cde. Attorney General.

Cde. Shahabuddeen: Cde. Chairman, I beg to move the two amendments to this clause which stand in my name.

The Chairman: There is also an amendment by Cde. Reepu Daman Persaud. What I propose doing is to deal with the amendments by the Attorney General and then I will deal with the amendments moved by Cde. Persaud. First, I will put the amendment by the Cde. Attorney General.

Amendment –

(1) That paragraphs (b) and (c) be relettered as paragraphs (c) and (d) respectively, and that the following paragraph be inserted as paragraph (b) –

(b) by the insertion of the following subsection as subsection (3) of section 173 -

'(3) Where an accused person absents himself or seeks to absent himself from trial on the ground of illness the Court may order him to submit himself for examination by a registered medical practitioner designated by the Court in order to determine whether or not he is fit to attend the trial and thereafter the Court may proceed with the trial in the absence of the accused person if –

(a) he does not submit himself for the examination; or

(b) the Court, having considered the report of that examination, together with any other report of any registered medical practitioner tendered by the accused person, and if

necessary, the testimony on oath of any registered medical practitioner, is satisfied that the accused person is capable of attending the trial.'",

(ii) the words "if, in proceedings instituted under this section within the period of ten years after the date of the commission of the offence" be inserted after the words "convicted and" in the proposed subsection (9) of section 203 of the Criminal Law (Procedure) Act,

Proposed, put, and agreed to.

The Chairman: Cde. Persaud.

Cde. Reepu Daman Persaud: Cde. Chairman, this amendment is moved, because to my mind an individual will be adjudged to be in possession of property which was obtained by fraud even without that person being given an opportunity to be heard. In my view, this amendment hinges on the concept of natural justice. The presumption of innocence is something which must be strongly guarded and that presumption must also be preserved. I do not argue that the Constitution does not give the right in certain cases probably to shift the burden of proof but what I do say is, if that right exists it must not be used willy nilly. I have already said that we support the principle that if a fraud has been committed by any person and State funds or any other funds are involved and it can be proved that the person is in possession of property bought from that money which was stolen, then proceedings could be instituted against that individual. But, to act on an allegation and then proceed to make an order to confiscate is what the Opposition objects to. For that reason, you can see my amendment deals only with clause 16(9) which states:

"Where any property which is sought to be attached or seized under subsection (1) is shown to have been purchased in the name of, or to have come into possession of, a

person or his spouse, children or other dependants after the commission of an indictable offence of which that person is convicted and it is alleged that the proceeds of the subject matter of the offence were wholly or partly converted into that property, ..."

and this is the part,

"... it shall be presumed until the contrary is shown that the property was obtained by or was the proceeds of the offence."

So, the contrary has to be proved and shown by a person who is in possession of the property. I feel that that is very wrong and I oppose it. The Police and law-enforcing institutions of the State have greater facilities and will have access to all the materials and information that would be required to prove the guilt of that person. If the allegation comes out in Court and there is some whit of evidence which shows that the property acquired by a person's spouse, children or dependant was purchased with money from the offence, then the Court can issue a directive for proceedings to be instituted against that person to put that person before the Court. If the Prosecution proves that that was so, then any order should be issued and no one will have any complaint. Cde. Speaker, I think that that would be a reasonable position because one does not know what strength the allegation will have and to merely act on an allegation could be serious and dangerous and could jeopardise innocent people in the process.

We are not opposed to ensuring that State funds and property are protected; we are only opposed to the clause which shifts the burden of proof. It is not only a question of adducing an argument to say it was done once or twice or that the Constitution so provides, because the burden of proof so far as I recall was shifted under the National Security Act. But this is totally different. The situations are different. The Government tabled a Paper on the Equality of Women to give them total independence. A wife must not be penalised for an act of the husband, nor must the children or any dependant for that matter. The possibility is, if this Bill is allowed to go through in its present form, all the talk about equality of women and of taking care of the children would be rendered useless and futile.

Therefore, Cde. Speaker, what objection the Government has or what argument can it adduce? If the Government is satisfied that the offence has been committed, well prove it and make an order of confiscation but do not just take away the property in which probably the wife and children will be living, putting them on the road without giving them an opportunity to say what is their position. Based on those points, I propose the amendment and call on the Members of the House to just remove clause 16(9).

Amendment proposed.

Cde. Shahabuddeen: Cde. Chairman, I do not propose to retrace my steps and to be as repetitious as the comrade was in going over once more for the benefit of the House, things already said. Let me just say very briefly these words, that the position is that under the existing law, the Courts already have power to confiscate property which is traceable to the commission of a crime of dishonesty but all those of us who are familiar with the law would know that this provision is seldom, if ever invoked. Why is it not being used? It is because of the form in which it is cast in the statute books which places a wholly unfair and impractical burden on the Prosecution to prove that the property which is standing in the name of a relative of the defendant is attributable to the commission of a crime and that is why this law, though it does exist, is not being used; that is why we have invoked the power of the Assembly to fashion it and to make it amenable. It is wholly unfair of the Comrade to suggest that this is casting an unfair burden of proof on a poor, hapless person. It is a mere allegation by the claimant who will justify the decision of this presumption of origin. For the presumption of origin of property to the claimant will have to prove that someone was convicted of an offence of dishonesty. The claimant will have to prove that the person who owns the property is a relation or dependant, and the third thing to be proven is that the property came into the name of this dependant after the commission of the offence.

6.35 p.m.

I want to mention the next thing that the Comrade seems to have overlooked. He seems to have overlooked the fact that we have proposed an amendment, in this very paragraph, which has been passed. The amendment seeks to limit the period in which these proceedings can be instituted under this section to ten years.

The last thing I want to say is that the Comrade remarked about discrimination and provisions against women. This clause will hit the women equally with men. It is not seeking to hit women in circumstances in which it will not hit men. I say that that is an unfair and unwise appeal. May I add to that, that it is a wicked appeal.

Cde. Reepu Daman Persaud: Cde. Chairman, the three ingredients to which the Cde. Minister of Justice and Attorney General pointed, one, that an accused person is convicted, two, proof that the property is owned by a relation or dependant or three, that the property was acquired after the commission of the offence, do not prove that the money with which the property was acquired or purchased was the money from the fraud. If the prosecution had presented a case in that way, it would have been a case of no-case submission. An important consideration is also that that person against whom the allegations are made, would not have been there to answer and the allegations would have been made in the absence of the person. We share all the sentiments about fraud and everything must be done to stop it. We have advocated that we should put an end to fraud and what have you. But what we do not agree with is the manner in which it is done. If, therefore, the Cde. Attorney General argues that the person would have been in possession of some document or some proof as to how he or she came into possession of the property, surely the prosecution could also have access to this type of material. It is not simply turning up with an arrest. It would have been a case of going to court and if the order of the judge is not reversed, then suffer the hardship and be denied access to the property or properties. This provision can create great hardship. It could be a long period when that person is moving to

prove that this is his property, this is how he bought it. The person would have to suffer embarrassment, hardship during that period.

The Chairman: I will put the amendment by Cde. Reepu Daman Persaud.

Amendment –

That subsection (9) be deleted,

Put, and negatived.

Clause 16, as amended, agreed to and ordered to stand part of the Bill.

Clauses 17 to 20 agreed to and ordered to stand part of the Bill.

Assembly resumed.

Cde. Shahabuddeen: Your Honour, I beg to report that the Administration of Justice Bill 1978 was considered in Committee clause by clause and was passed with amendments. I now move that it be read the Third time and passed as amended.

Question put.

Cde. Ramsaroop: Division!

Assembly divided: Ayes 36, Noes 5, as follows:

Ayes	**Noes**
Cde. Zaheeruddeen	Cde. Nokta
Cde. Willems	Cde. Ally
Cde. Taylor	Cde. Mohamed
Cde. Sukul	Cde. N. Persaud
Cde. Sukhu	Cde. Reepu Daman Persaud - 5
Cde. Stoby	
Cde. Salim	
Cde. Rayman	
Cde. Ramson	
Cde. Jonas	
Cde. Hussain	
Cde. Gill	
Cde. Fowler	
Cde. Carrington	
Cde. Wrights	
Cde. Bynoe	
Cde. Corrica	

Cde. Ambrose

Cde. Ackman

Cde. Durant

Cde. Van Sluytman

Cde. Prashad

Cde. Corbin

Cde. Thomas

Cde. Chowritmootoo

Cde. Bancroft

Cde. Nascimento

Cde. Duncan

Cde. Carmichael

Cde. Clarke

Cde. Field-Ridley

Cde. Mingo

Cde. Ramsaroop

Cde. Naraine

Cde. Reid

Cde. Burnham - 36

Agreed to.

Bill, as amended, read the Third time and passed.

ADJOURNMENT

Resolved, "That this Assembly do now adjourn to a date to be fixed."

[The Minister of Parliamentary Affairs and Leader of the House]

Adjourned accordingly at 6.47 p.m.

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