立法會
Legislative Council

立法會 LS183/98-99 號文件

1999 年 5 月 18 日司法及法律事務委員會會議文件

向終審法院提出越級上訴

目的

本文件旨在提供若干背景資料，以供司法及法律事務委員會就向終審法院提出越級上訴一事進行討論。

《香港終審法院條例》

2. 《香港終審法院條例》（第 484 章）（下稱“該條例”）規定，就民事訟案或事項向終審法院提出的上訴，只可就上訴法庭的判決提出。有關規定詳見該條例第 22 條（**附件 A**）。

3. 在前立法局於 1995 年通過該條例的過程中，香港大律師公會及香港律師會曾向負責研究有關法案的法案委員會建議制訂越級上訴的程序。兩會的意見書摘錄分別載於**附件 B** 及 **C**。

4. 政府當局曾發出一份有關“終審法院 —— 越級上訴的可行性”的文件，以作回應。該文件載述政府當局對制訂越級上訴程序的利弊的意見。該文件最終的結論，是政府當局不同意修訂該法案，以制訂越級上訴的程序，並希望終審法院至少可在成立初期，按照樞密院當時的制度（即不得向樞密院提出越級上訴）運作。但政府當局亦曾表示，“在終審法院成立數年並建立其聲譽後，香港可就制訂越級上訴程序的可行性再作檢討”。該文件載於**附件 D**。

5. 該法案委員會曾就該事進行討論，並匯報其商議結果。有關會議紀要及法案委員會報告的摘錄分別載於**附件 E** 及 **F**。

向英國上議院提出越級上訴

6. 訴訟人可就若干民事訴訟向英國上議院提出越級上訴。有關程序的詳情，請參閱 “Halsbury’s Law of England”（第 4 版）第 10 冊第 741 至 742 段（**附件 G**）的解釋。

7. 英國的越級上訴程序在《1969 年司法法令》內提出。正如英國律政司在動議有關法案進行二讀時向下議院致辭時解釋，“越級上訴”的建議旨在“解決原訟法庭法官因須受上訴法庭或上議院已作出的判決約束而要面對的困難。雖然法官可能認爲較高級別法院的判決錯誤，但敗訴一方提出上訴亦於事無補，除非他已準備用上大量時間和金錢將案件提交上議院審理。在該情況下，向上訴法庭提出上訴亦是徒勞無功，因爲上訴法庭現時仍須受上訴法庭及上議院的判決約束”。

8. 下議院就《司法法令草案》的越級上訴建議進行辯論的紀錄摘錄，載於**附件 H**。

立法會秘書處
法律事務部
1999 年 5 月 11 日

香港終審法院條例（第 484 章）

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22. 民事上訴

(1) 在以下情況下，可就任何民事訟案或事項向終審法院提出上訴——

(*a*) 如上訴是就上訴法庭的最終判決提出，而上訴爭議的事項所涉及的款額或價值達$1,000,000 或以上，或上訴是直接或間接涉及對財產的申索或有關財產的問題，或直接或間接涉及民事權利，而所涉及的款額或價值達$1,000,000 或以上，則終審法院須視提出該上訴爲一項當然權利而受理該上訴；及

(*b*) 如該上訴是就上訴法庭的其他判決提出，不論是最終判決或非正審判決，而上訴法庭或終審法院（視屬何情況而定）認爲上訴所涉及的問題具有重大廣泛的或關乎公眾的重要性，或因其他理由，以致應交由終審法院裁決，則上訴法庭或終審法院須酌情決定終審法院是否受理該上訴。

(2) 行政長官會同行政會議可在憲報刊登命令，修訂第(1)款以更改其內所指明的款額。

（由 1997 年第 120 號第 4 條修訂）

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Annex A

Hong Kong Court of Final Appeal Ordinance (Cap. 484)

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22. Civil appeals

(1) An appeal shall lie to the Court in any civil cause or matter—

(*a*) as of right, from any final judgment of the Court of Appeal, where the matter in dispute on the appeal amounts to or is of the value of $1,000,000 or more, or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of $1,000,000 or more; and

(*b*) at the discretion of the Court of Appeal or the Court, from any other judgment of the Court of Appeal, whether final or interlocutory, if, in the opinion of the Court of Appeal or the Court, as the case may be, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the Court for decision.

(2) The Chief Executive in Council may by order published in the Gazette amend subsection (1) to vary the amounts specified. *(Amended 120 of 1997 s. 4)*

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Annex B

附件 B

SUBMISSION ON THE JOINT LIAISON GROUP AGREEMENT AND THE HONG KONG COURT OF FINAL APPEAL BILL

The Principal Objections

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3. The Court of Final Appeal will not be able to operate with the flexibility required of a Court which is by the Joint Declaration and the Basic Law vested with the power of final adjudication given the restrictions on its jurisdiction and on the circumstances in which leave to appeal may be granted, the manner in which the Court must be constituted for the hearing of appeals and applications for leave to appeal, and the absence of any provision for 'leapfrog' appeals direct from the lower courts.

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3 July 1995

Annex C
附件 C

COURT OF FINAL APPEAL

COMMENTS MADE BY THE LAW SOCIETY OF HONG KONG

General

1. There is no provision to enable appeals to "leap-frog" direct to the CFA although such a power might well be of advantage.

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18 Feburary 1995

Annex D

附件 D

Court of Final Appeal

Possibility of "Leapfrog" Appeals

The Bar Association has suggested that the Court of Final Appeal legislation should contain provision for "leapfrog" appeals i.e. appeals that go directly from the court of first instance to the CFA, without first being heard by the Court of Appeal. There is no such procedure for appeals from Hong Kong to the Privy Council, but there is in respect of appeals to the House of Lords in respect of English civil cases.

Leapfrogging to the House of Lords

2. There has existed since 1969 a procedure for missing out, or "leapfrogging", the Court of Appeal in England so as to enable an appeal to be taken from the High Court direct to the House of Lords (Administration of Justice Act 1969, ss. 12-15). The procedure is little used; for example, in 1990 there were only four leapfrog appeals. The conditions which must be satisfied before such a direct appeal can be taken are that:

(a) the trial judge has granted a certificate of satisfaction; and
(b) the House of Lords has given leave to appeal.

3. As to (a), a trial judge can only grant a certificate if all the parties consent and the case involves a point of law of general public importance which is either -

(1) concerned wholly or mainly with the construction of a statute or of a statutory instrument, or

(2) is one where the trial judge is bound by a previous decision of the Court of Appeal or the House of Lords.

The granting of a certificate by the trial judge is discretionary. No appeal is possible against the granting or refusal of a certificate.

4. As to condition (b), the application for leave to appeal is determined by the House of Lords without a hearing. If leave is granted, any appeal to the Court of Appeal from the decision of the trial judge is precluded.

The Bar's proposal

5. The Bar's proposal in respect of a leapfrog procedure appears to be as follows -

(a) it would only apply to civil cases;

(b) it could apply to cases of great general or public importance where it is obvious that an appeal would eventually reach the CFA;

(c) leave of the CFA would be required; and

(d) detailed procedures would be a matter for the draftsman.

It therefore seems that the Bar's proposal is for a procedure of broader application than that applying to the House of Lords.

Arguments in favour of leapfrog procedure

6. The main benefits of a leapfrog procedure would be that, by omitting the Court of Appeal, -

(a) cases could be heard more quickly by the CFA; and

(b) the parties involved would be spared the cost of the proceedings before the Court of Appeal.

Arguments against

7. In preparing the CFA Bill, the Administration has tried, as far as possible, to follow the existing jurisdiction, powers and procedures that apply to the Privy Council. This has the major advantage of preserving continuity in the system of appeals, and providing litigants and their legal advisers with a system with which they are familiar. The introduction of a leapfrog procedure would be a novel development.

8. The fact that the Privy Council is at a great distance from Hong Kong, whereas the CFA will be in Hong Kong, does not have any bearing on the desirability or otherwise of a leapfrog procedure.

9. The Privy Council, when hearing appeals from Hong Kong, currently benefits from the judgments of the Court of Appeal. These judgments are made after detailed submissions have been to the court by counsel representing the two parties, and identify the precise points of law involved, set out and discuss the relevant case law, and give reasoned arguments for the decision reached. The Court of Final Appeal would also benefit from those judgments and it would not be advisable to allow a shortcut procedure which would bypass the Court of Appeal.

10. It may be argued that stringent conditions could be prescribed for a leapfrog procedure, including the consent of the parties and the leave of the CFA. However, such conditions would still make it possible for the Court

of Appeal to be bypassed. The fact that the parties and the CFA may have agreed to this procedure does not necessarily mean that it would be in the public interest. The decisions of the CFA will be of vital importance to the whole legal system, since they will create binding precedents and new jurisprudence.

11. The public interest requires that the judgments of the CFA, particularly in the early days of the court, should be of the highest quality. If it were possible for the CFA to decide a case directly on appeal from the court of first instance there would be a risk of the quality of the court's judgments being undermined.

Conclusion

12. The Administration considers that it would be unwise to provide for a leapfrog procedure in respect of the CFA from the time the court is established. It would prefer to allow the court to operate, at least initially, according to the system now prevailing in respect of the Privy Council. After the court has been established for a number of years and its reputation established, the possibility of introducing a leapfrog procedure could be looked at again.

13. For these reasons the Administration does not agree to amend the Bill to provide a leapfrog procedure.

leapfrog/AGC/CFA2

Annex E(1)
附件 E(1)
LEGCO Paper No. HB 20/95-96
(This record has been seen
by the Administration)

Ref: HB/C/37/94

Record of Meeting of the Bills Committee to study the Hong Kong Court of Final Appeal Bill held on Thursday, 6 July 1995 at 4:30 p.m. in the Chamber of the Legislative Council Building

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Leapfrog Appeals

12. On leapfrogging, Ms Gladys LI stated that provisions should be made available in the Bill for leapfrog appeals in civil cases. Where both parties were prepared to pursue the right of appeal up to the highest level and where the case involved a matter of great general or public importance, it would be in the interest of both the public and the litigants, in terms of cost saving, that the case be allowed to go straight to the CFA. In the Bar's view, there should be procedures governing leapfrogging, such as an application for leave to the court of first instance or to the CFA. Ms LI did not think that the availability of leapfrog procedures would undermine the function of the CFA as it was unlikely that every case would be a leapfrog; only exceptional cases which were of great general or public importance, or had caused grave injustice, such as the interpretation of the BL, constitutional issues and Bill of Rights matters, would be allowed to leapfrog to the CFA.

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Annex E(2)
附件 E(2)
LEGCO Paper No. HB 21/95-96
(This record has been seen
by the Administration)

Ref: HB/C/37/94

**Record of Meeting of the Bills Committee to study
the Hong Kong Court of Final Appeal Bill
held on Friday, 7 July 1995 at 8:30 a.m.
in the Chamber of the Legislative Council Building**

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Clause 32

Leap-frogging

17. The Administration said that the CFA had to be established for some time to build up its jurisprudence. The Administration did not consider it desirable that leapfrogging be provided for appeals to the CFA in the initial stage of its establishment, which would deprive the CFA of the benefit of the decisions of the Court of Appeal. The Administration would provide a paper on the issue. **Adm**

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Annex E(3)
附件 E(3)

LEGCO Paper No. HB 23/95-96
(This record has been seen
by the Administration)

Ref: HB/C/37/94

Record of Meeting of the Bills Committee to study the Hong Kong Court of Final Appeal Bill held on Wednesday, 12 July 1995 at 8:30 a.m. in the Chamber of the Legislative Council Building

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LegCo Paper No. HB 1174/94-95

(a) *Paper on 'Possibility of "Leapfrog" Appeals' at* ***Appendix I***

5. On the time required for cases to go to the CFA, the Administration said that at present it would be a matter of 3 to 4 months for cases to go from the High Court to the Court of Appeal. Since the CFA would be established in Hong Kong, cases were expected to go fairly quickly from the Court of Appeal to the CFA. Action

6. Mr Martin LEE questioned the Administration's reasons for objecting to "leapfrog" arrangements since such cases would nonetheless require consent from the parties concerned and leave of the CFA. The Administration stressed that the fact that the parties and the CFA might have agreed to this procedure did not necessarily mean that the procedure would be in the public interest. If the Court of Appeal was bypassed, the jurisprudence and decisions of the Court of Appeal might be missed and there could be the risk that the CFA decisions could be less thorough and impressive than would otherwise be the case. It was necessary to avoid making the CFA a court of appeal in another name. In the discussion with the Chinese side, the HK Government's proposal was to follow as far as possible the existing procedures relating to the Judicial Committee of the Privy Council.

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附件 F

立法局 94-95 年度第 HB1182 號文件

檔號： HB/C/37/94

香港終審法院條例草案
審議委員會報告

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越級上訴

20. 委員會曾研究在草案中加入越級上訴規定的好處。根據該項構思，案件經原訟法庭審理後可直接向終審法院提出上訴，毋須先經由上訴法院聆訊。一些議員認爲，香港終審法院的情況有別於英國樞密院；後者與香港相距極遠，並要審理另一些英聯邦成員國的上訴，而終審法院則設在香港，其大法官並只會聆訊香港的上訴案件。故此，在草案中加入越級上訴的規定可能有其道理。大律師公會對此意見亦表示贊同，認爲應訂定民事訴訟的越級上訴程序，如案中雙方同意行使任何上訴權力，直接向最高層的法院上訴，而終審法院亦已給予上訴許可，則可依循有關程序上訴。就訴訟當事人的利益而言，這個方法可節省開支。

21. 政府當局表示，從樞密院的司法委員會辦公室提供的數據顯出，司法委員會處理香港案件的總日數在一九九二、九三及九四年度分別爲 28、28 及 35 天。目前，香港向樞密院提出的上訴並無此項越級上訴程序，但英國的民事案件則可向上議院提出越級上訴。政府當局在擬備終審法院條例草案時，盡可能依循樞密院現有的司法管轄權、權力及程序。此舉的主要優點，是維持上訴制度的連續性。引進越級上訴程序則會是一項全新發展。此外，現時樞密院在聆訊香港的上訴時，可參考上訴法院的判決。將來，終審法院亦可參考該等判決。即使訴訟有關各方及終審法院同意進行越級上訴程序，亦不一定意味着此舉符合公眾利益。倘若終審法院有權直接審理一宗僅經原訟法庭聆訊的上訴，則法院所作判決的質素有可能大打折扣。故此，政府當局認爲在設立終審法院時規定越級上訴程序，是不智的做法，當局希望終審法院至少可在成立初期，按照現行樞密院的制度運作。香港應在終審法院成立數年後，才檢討實施越級上訴程序的可行性。

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Annex F

DRAFT

LEGCO Paper No. HB 1182/94-95

Ref: HB/C/37/94

Report of the Bills Committee to study the Hong Kong Court of Final Appeal Bill

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Leapfrog appeals

20. The Bills Committee have had discussion on the merits of providing for a leapfrog provision in the Bill to allow appeals that go directly from the court of first instance to the CFA, without first being heard by the Court of Appeal. Some Members opine that unlike the Privy Council, which is at a great distance from Hong Kong and which has to handle appeals from some of the Commonwealth member states, the CFA will be established in Hong Kong and its judges will only hear Hong Kong appeals. There may thus be good reasons for including a leapfrog provision in the Bill. The Bar echoes this view and considers it desirable that procedures be made available for leapfrog appeals in respect of civil cases where both parties consent to pursue any right of appeal up to the highest level and where an application for leave to appeal is granted by the CFA. This will be a cost saving measure in the interest of the litigants.

21. The Administration advises that statistics provided by the Office of the Judicial Committee show that the total number of days when the Judicial Committee has transacted Hong Kong business are 28, 28 and 35 in 1992, 1993 and 1994 respectively. At present, there is no such leapfrog procedure for appeals from Hong Kong to the Privy Council, but leapfrog appeals are available in respect of English civil cases to the House of Lords. The Administration, in preparing the CFA, has tried, as far as possible, to follow the existing jurisdiction, powers and procedures that apply to the Privy Council. This has the major advantage of preserving continuity in the system of appeals. The introduction of a leapfrog procedure would be a novel development. Moreover, the Privy Council, when hearing appeals from Hong

Kong, currently benefits from the judgement of the Court of Appeal. The CFA will also benefit from those judgements. The fact that the parties to the proceedings and the CFA may have agreed to a leapfrog procedure does not necessarily mean that it will be in the public interest. If it were possible for the CFA to decide a case directly on appeal from the court of first instance, there would be a risk of the quality of the court's judgements being undermined. The Administration therefore considers it unwise to provide for a leapfrog procedure when the CFA is established. It would prefer to allow the court to operate, at least initially, according to the system now prevailing in respect of the Privy Council. The possibility of introducing a leapfrog procedure should be looked at again after the CFA has been established for a number of years.

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(2) APPELLATE JURISDICTION AND PROCEDURE

(i) The House of Lords

A. JURISDICTION

741. Civil appeals generally. The House of Lords is the supreme court of appeal in Great Britain and Northern Ireland. An appeal lies to the House of Lords:

(1) from any order or judgment of the Court of Appeal in England, by leave of that court or of the House of Lords[1], subject to restrictions imposed by statute or by practice in respect of specific matters[2];
(2) from any order or judgment of any court in Scotland from which error or appeal lay on or before 1st November 1876 by common law or by statute[3];
(3) subject to statutory restrictions, direct from a decision of the High Court in England[4];
(4) from any order or judgment of the Court of Appeal in Northern Ireland, by leave of that court or of the House of Lords[5], subject to statutory restrictions[6]; and
(5) subject to statutory restrictions, direct from a decision of the High Court of Justice in Northern Ireland[7].

1 Appellate Jurisdiction Act 1876, s. 3 (1); Administration of Justice (Appeals) Act 1934, s. 1 (1). Leave may be granted by the Court of Appeal or, if refused, by the House of Lords. As to applications to the House of Lords for leave to appeal to the House, see para. 758, post.
2 For these restrictions, see para. 745, notes 4–6, post.
3 Appellate Jurisdiction Act 1876, s. 3 (2). Leave to appeal from the Court of Session is not required except in proceedings under the following Acts: Electricity Act 1947, s. 32 (6); Transport Act 1962, Sch. 10, para. 15 proviso; Iron and Steel Act 1967, Sch. 4, para. 44 (5); Tribunals and Inquiries Act 1971, s. 13 (6). An interlocutory judgment of the Court of Session is not appealable to the House unless the Court of Session gives leave to appeal or unless there is a difference of opinion among the judges pronouncing judgment: H.L. Standing Orders (Judicial Business) (1971) no. XII.
4 Administration of Justice Act 1969, Part II (ss. 12–16). For the statutory provisions, see para. 742, post.
5 Northern Ireland Act 1962, s. 1 (1), (2). Appeals are brought in the same manner as appeals from the Court of Appeal in England: s. 1 (3), (5).
6 Ibid., s. 1 (7).
7 The Administration of Justice Act 1969, Part II (ss. 12–16), as adapted by s. 16, applies to Northern Ireland: s. 36 (3). For the statutory provisions, see para. 742, post.

742. Civil appeals direct from the High Court. In certain civil proceedings[1] an appeal may be brought direct to the House of Lords from a decision of the High Court[2] if the trial judge grants a certificate for this purpose and if leave is granted by the House[3]. An application for a certificate, which may be made by any party to the proceedings[4], must be made immediately after judgment[5]. The judge may, however, entertain an application made within fourteen days beginning with the date on which judgment was given or within such other period as rules of court may prescribe[6].

Before granting the certificate the judge must be satisfied (1) that a point of law of general public importance is involved in the decision which relates to the construction of an enactment or of a statutory instrument or is one in respect of which he was bound

case has been made out to justify an application for leave to bring such an appeal[8]; and (3) that all the parties to the proceedings consent to the grant of the certificate[9]. No appeal lies against the grant or refusal of a certificate[10].

The judge may grant a certificate only in cases where in the usual way an appeal would lie from his decision to the Court of Appeal and then to the House of Lords[11]. No certificate may be granted where the decision of the judge, or any order made by him in pursuance of the decision, is made in the exercise of jurisdiction to punish for contempt of court[12].

1 "Civil proceedings" in the Administration of Justice Act 1969, Part II (ss. 12–16), means any proceedings other than proceedings in a criminal cause or matter: s. 12 (8).
2 Ibid., ss. 12, 13. These appeals are known colloquially as "leapfrog appeals". The Administration of Justice Act 1969, Part II (ss. 12–16), applies to any civil proceedings in the High Court which are either proceedings before a single High Court judge (including a person acting as such a judge under the Supreme Court of Judicature (Consolidation) Act 1925, s. 3, which empowers Court of Appeal and ex-High Court judges to sit as High Court judges: see para. 864, post), or proceedings before a Divisional Court: Administration of Justice Act 1969, s. 12 (2) (a), (c).
3 See ibid., ss. 12, 13. As to applications to the House of Lords for leave to appeal under Part II, see para. 759, post.
4 Ibid., s. 12 (1).
5 Ibid., s. 12 (4).
6 Ibid., s. 12 (4) proviso. No such period had been prescribed at the date at which this volume states the law (1st October 1974).
7 Ibid., s. 12 (3). This subsection may be amended by Order in Council: see s. 12 (6), (7).
8 Ibid., s. 12 (1) (b).
9 Ibid., s. 12 (1) (c).
10 Ibid., s. 12 (5).
11 See ibid., s. 15 (1), (3). Where, with or without leave of the Court of Appeal or of the House of Lords, no appeal would lie to the House from the Court of Appeal on an appeal from the decision of the judge, he may not grant a certificate except in proceedings under the Matrimonial Causes Act 1973: Administration of Justice Act 1969, s. 15 (2).
12 Ibid., s. 15 (4).

Annex G
附件 G

ORDERS OF THE DAY

ADMINISTRATION OF JUSTICE BILL [*Lords*]

As amended, considered.

Mr. Speaker: I have, as usual, posted up my list of selections. I have suggested that with new Clause 1 we take Amendments Nos. 16 and 17. I understand that if new Clause 1 is carried and adopted it will come after Clause 27.

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Clause 12

GRANT OF CERTIFICATE BY TRIAL JUDGE

The Solicitor-General: I beg to move Amendment No. 11, in page 6, line 38, at end insert:

'and

(*c*) that all the parties to the proceedings consent to the grant of a certificate under this section,'.

The object of the Amendment is to reinstate the provision deleted in Committee that a leapfrog certificate can be granted only where all the parties to the proceedings consent. Part II of the Bill is based broadly on the scheme proposed by the Evershed Committee in paragraphs 483 to 504 of its Final Report for enabling an appeal from a High Court judgment to go, in certain circumstances, direct to the House of Lords, thereby by-passing, or leapfrogging as the phrase is, the Court of Appeal.

The Committee recommended that the scheme should be confined initially to cases involving a point of law of public importance which either related to a question of statutory construction, or was covered by a previous decision of the Court of Appeal. The Committee envisaged that it would be for the trial judge to certify that the case was fit to go direct to the House of Lords. It did not think it necessary that there should be a consent by both parties to the litigation, although it was to be expected that in the great majority of cases in which the scheme would operate it would do so with the consent of both parties. That is made clear in paragraph 502 (*b*) and (*e*) of its report.

Before the Bill was introduced it was represented to my noble Friend by Lord Reid that if the consent of the parties were not required there would be a danger, having regard to the state of judicial business in the House of Lords, that that House might become overloaded with leapfrogging appeals. It was accordingly decided to make the consent of the parties a condition precedent to the grant of a certificate by the trial judge. I have put that part of the history shortly, but that is substantially what occurred.

When the Bill was in another place it was strongly urged that the House of Lords should be the deciding authority and not the trial judge, as the Evershed Committee had recommended. The suggestion was made that as the application for a leapfrog certificate had to be made by consent, it should be possible for the Appeal Committee to determine it on the papers and so avoid the delay and expense which the Evershed Committee feared might result if the House of Lords were made the deciding authority. That appears in paragraph 490 of the report.

At a meeting which the Committee had with my noble Friend, this suggestion proved acceptable to the Lords of Appeal and the Bill was accordingly amended in another place so as to limit the trial judge's function to certifying that the case was a proper one for an application to be made to the Appeal Committee for leave to appeal directly to the House of Lords. Clause 13(3) provides that such an application shall be determined without a hearing.

In Committee, my right hon. Friend the Member for Islington, East (Sir Eric Fletcher) suggested that the effect of giving the House of Lords the last word was to invalidate the reason for requiring the consent of the parties. The remedy against being flooded by leapfrogging appeals would be in their Lordships' own hands, since they could reject applications simply on the ground of pressure of business. In my right hon. Friend's view, as I understood it, the question whether a leapfrog certificate ought to be granted should be left to the discretion of the trial judge, who could take into account the reason for any objection by a party to the granting of a certificate. He thought that if consent were required it might be withheld for the purpose of putting pressure on the other side.

We have considered with the greatest care the arguments on this point. The cogency of the argument of my right hon. Friend to which I have just referred depends on whether the situation is regarded from the point of view of the successful or the unsuccessful party before the trial judge. If he is the unsuccessful party he may feel aggrieved if the successful party, having, for all one knows, greater economic resources than he, refuses his consent to leapfrog, solely in order to put the unsuccessful party to the trouble and expense of going first to the Court of Appeal.

If, however, it is the unsuccessful party who has the greater economic resources should not the successful party be able to say that he does not want to go to the expense of fighting an appeal to the House of Lords before the validity of the judgment that he has already obtained has been tested in the Court of Appeal? As my right hon. Friend suggested, it could be left to the trial judge to take into account the party's reasons for not wanting to leapfrog.

But if this were done there is the danger that the trial judge would simply grant the certificate knowing that the party's objections could afterwards be considered by the Appeal Committee. The result might be that the Appeal Committee would not only have more applications to consider, but, under Clause 13(3), would have to determine the dispute on the documents without a hearing. An application for leave to appeal to the House of Lords under the Administration of Justice (Appeals) Act, 1934, is heard only when the Lords of Appeal can be spared from the ordinary judicial business of the House of Lords. This means that there is usually a delay of one or two months, and sometimes considerably longer, before the application for leave to appeal can be heard. If applications for leave to leapfrog were not restricted by a requirement of consent and the Appeal Committee were forced to determine disputed applications there would be a danger of the Appeal Committees being overloaded just as it was feared that under the Evershed Committee's scheme the House of Lords might be swamped with leapfrogging appeals.

Moreover, it would be most unsatisfactory for the Appeal Committee to have to deal with disputed applications on the papers alone. It would, at least, be necessary for the papers to contain the submissions of the parties, and this might lead to their being quite lengthy. Often, no doubt, they would be settled by counsel, and this would mean added expense.

[THE SOLICITOR-GENERAL.]

Another danger of allowing a leapfrog application to be made otherwise than by consent was alluded to by Lord Reid in the Second Reading of the Bill in another place, when he used the expression "the most impossible problems", in referring to those problems that would arise in the event of attempting to force an unwilling respondent who might be a man of quite moderate means to go straight to the House of Lords. The noble Lord expressed the view that at present it was the right practice to allow an application for an appeal to be brought to their Lordships and for conditions often to be imposed as to costs. He thought that that procedure could be extended, but he said that it would be extremely difficult to safeguard a respondent of moderate means if there were any proposal that he should be brought to the House of Lords against his will.

Like one or two other matters that we have had to consider in our treatment of the Bill, this is a fairly narrowly balanced point. I come to a conclusion contrary to that thought to be right by my right hon. Friend the Member for Islington, East with reluctance, because I know that he felt strongly about this, and he has put his argument very cogently and persuasively. But having weighed all these factors, our conclusion is that, on the whole, it is best that the element of consent to the granting of a certificate under the Clause should be present, and I recommend that course to the House.

Sir Eric Fletcher (Islington, East): I am sure that the House will be grateful to my hon. and learned Friend for the fullness and care with which he has addressed arguments to the House in support of the Amendment. As he said, it is a highly technical and somewhat abstruse and narrowly balanced question. The House should be aware that what the Government are asking us to do is to reverse a decision of the Committee which considered the Bill in some detail, and to restore to the Bill a subsection which the Committee on the Bill, by an overwhelming majority, and with the support of hon. Members on both sides of the House, thought undesirable. The Solicitor-General also referred to the fact that what he is now asking the House to do is something contrary to the recommendation of the Evershed Committee, which also—a number of years ago—went into this question very fully and came to a totally different conclusion.

I do not propose to weary the House again. Both in the Second Reading debate and in Committee I indicated the reasons why I believe that the Amendis unnecessary and unsatisfactory. I am totally unconvinced by the speech to which we have just listened. The arguments which have been put forward have been dictated by their Lordships in another place, and we in this House are being asked not merely to overrule the decision of the very well-informed Committee which dealt with this Bill but to bow to the supposedly superior wisdom of their Lordships on this matter.

Mr. Arthur Lewis (West Ham, North): Democracy.

Sir E. Fletcher: Hon. Members may make what comments they like on this aspect of the matter. I think it would be futile at this late stage of the proceedings to reiterate what I have said before, but I repeat that I am totally unconvinced by the arguments which have just been addressed to us.

I console myself with the thought that the whole of these proceedings on Clauses 12 and 13 for the so-called leapfrogging procedure are in the nature of an experiment. I hope very much that they will succeed. I believe they will contribute quite substantially to a reduction in the costs of litigation. I very much hope that after a short interval the success of the experiment will be reviewed, and perhaps on review the course which I have argued on Second Reading and in Committee will find favour so that when this matter comes up for renewal the experiment can be extended in the way I have suggested.

Amendment agreed to.

ADMINISTRATION OF JUSTICE BILL [*Lords*]

Order for Second Reading read.

3.43 p.m.

The Attorney-General (Sir Elwyn Jones): I beg to move, That the Bill be now read a Second time.

This Bill has over 30 Clauses and deals with a large number of matters. Its cumulative effect represents yet another important chapter of law reform. It should render less daunting to the litigant the complex processes of litigation. There are valuable individual changes affecting the man in the street, like that in Clause 20, which enables orders for interim payment before trial to be made to victims of accidents in the conditions prescribed. But many Clauses in the Bill are highly technical, and, although they have their own importance, I cannot contend that they are of absorbing parliamentary interest.

However, I take comfort from the famous reply given by Mr. Micawber to David Copperfield, when Copperfield asked:

"'How do you like the law, Mr. Micawber?'

'My dear Copperfield,' he replied, 'to a man possessed of the highest imaginative powers, the objection to legal studies is the amount of detail which they involve. Even in our professional correspondence,' said Mr. Micawber, glancing at some letters he was writing, 'the mind is not at liberty to soar to any exalted form of expression. Still, it is a great pursuit, a great pursuit.'"

One aspect of that great pursuit in recent years has been the increasing interest shown by lawyers in law reform and I am happy to acknowledge the contribution which judges, solicitors and barristers have freely made to the prolonged study of complex and difficult problems in the administration of justice.

Part I of the Bill is concerned with the county courts and amends the County Courts Act in a number of important respects. Clause 1, for instance, extends the pecuniary jurisdiction of the county court in actions of contract and tort or for money recoverable by Statute from £ 500 to £ 750. The jurisdiction of the court has always depended generally on the amount in dispute or the value of the object in dispute. Originally, the limit, when the modern county court system came into being in 1846, was £ 20. By 1938, it had risen to £ 200, in 1955 it was raised to £ 400 and in 1965 to £ 500.

The purchasing power of the £ , based on the Consumer Prive Index, fell by just over 31 per cent. between 1955 and August 1968, so that the equivalent of £ 500 then is about £ 655 today. The equivalent of the 1938 limit of £ 200 would be £ 742 today, so there are strong arguments for extending the jurisdiction of the county courts merely to keep pace with the fall in the value of money. These arguments have recently been reinforced by the Report of Lord Justice Winn's Committee on Personal Injuries Litigation. One of its recommendations was that county court jurisdiction in these cases should be increased to as much as £ 1,000, with power to increase it after a trial period to £ 1,500.

But the Committee wanted a number of things to be done before that recommendation was implemented, including the improvement of court buildings, the installation of tape recording equipment and the provision of a large central court on each circuit. These are clearly desirable, but, unhappily, they cannot be accomplished overnight. But my noble and learned Friend the Lord Chancellor, who has these matters under consideration, has concluded that there should be, in the meantime, a general increase in jurisdiction to £ 750. This will result in a small but sensible measure of relief to the High Court judges without imposing an undue burden on county court judges.

Clause 10 provides that future increases in jurisdiction can be made by Order in Council after an affirmative Resolution in each House of Parliament approving the draft Order. This will avoid the difficulty which we have experienced in the past of necessary increases in jurisdiction having to be postponed because of the lack of that rare commodity, parliamentary time. It will also make adjustments of the limits easier, should the Reports of the Payne Committee on Enforcement of Judgments and the Royal Commission on Assizes and Quarter Sessions make further changes desirable.

Clause 2 makes the alteration from £ 500 to £ 750 wherever £ 500 appears in the County Courts Act. Clauses 3 and 4 are concerned with transfers from the

High Court to the county court and vice versa and with what happens when an action in the High Court should have been started in the county court because the amount recovered is within the limit of county court jurisdiction.

The Bill follows the existing practice by providing that if a plaintiff does not recover more than a certain amount — the amount specified is £ 600—he will get only his county court costs. This therefore leaves a margin of error.

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The Attorney-General:. .....

Part II of the Bill deals with what is known to lawyers as the "leapfrog" procedure. So, even if lawyers are denied, to use Mr. Micawber's phrase, any exalted form of expression, they do occasionally indulge in these flights of fancy. The "leapfrog" proposals derive from difficulties which arise when a judge of first instance is bound by an existing decision of the Court of Appeal or the House of Lords. Although the judge may think that the decision of the higher court is wrong, it is useless for the unsuccessful party to appeal, unless he is prepared to go to the expense and trouble of taking the case to the House of Lords.

An appeal to the Court of Appeal would, in any event be wasted, because the Court of Appeal is, at present at any rate, bound by its decisions and by those of the House of Lords. This means that in some cases, such as Revenue cases, a litigant may have been first to the General or Special Commissioners of Income Tax, have then appealed to a single judge, then gone on to the Court of Appeal, before a final decision can be reached by the House of Lords after an enormous amount of time, trouble and expense.

The Evershed Committee, in 1953, recommended that a High Court Judge should have power to certify that an appeal from his judgment was fit to go direct to the House of Lords where the questions to be the subject of the appeal were essential to the determination of the cause and were of substantial legal or public importance and were covered by an earlier decision of the Court of Appeal. The question would, alternatively, have had to have been wholly or substantially related to the construction of a Statute or Statutory Instrument.

Clauses 12 to 16 incorporate the principle of those recommendations. I should, however, explain to the House that the Bill, as it now stands, contains a number of modifications to the proposals that were incorporated in the Bill when it was first introduced in another place. These changes followed discussions between my noble and learned Friend the Lord Chancellor and the Lords of Appeal in Ordinary.

The Bill now enables the judge to grant a "leapfrog" certificate to eliminate the Court of Appeal where his decision involves a point of law of general public importance relating to the construction of an enactment or Statutory Instrument and which has been fully argued before him and fully considered in his judgment or is covered by a previous decision of the Court of Appeal or the House of Lords and was fully considered in their judgments.

The House of Lords is now included, as it was not in the Evershed proposals, because it has been announced, as the House will know, that the House of Lords sitting judicially will in future regard itself as free to depart from its previous decisions when it appears right to do so. The certificate of the judge will be issued only—this is an important departure from the Evershed recommen-dations-when all the parties to the proceedings consent.

A further modification of the original proposals is that the judge's certificate will not in itself authorise a direct appeal to the House of Lords but simply enable the parties to apply to the Appeal Committee of the House of Lords for leave to bring a direct appeal. This will give to the Appeal Committee a measure of control over the number and type of cases which are appropriate for direct appeal. It is proposed that the Committee should decide whether an appeal can be brought on reading the papers and without hearing the parties or their representatives. The procedure should, therefore, be relatively quick and inexpensive for the parties. This, the House may think, is an important improvement.

Mr. John Lee (Reading): If all the parties do not consent, and there is still a very arguable point, will there be appeal procedure in the normal way to the Court of Appeal so that the case can go ultimately to the House of Lords in the normal course of events?

The Attorney-General: Yes. The case would go through the normal stages to the Court of Appeal and, if the litigant had sufficient money and courage, thereafter to the House of Lords. Some lawyers think that a large number of male descen-dants-or female descendants, for that matter-should be bred from men like that.

I do not think that I need trouble the House at this stage with the more detailed provisions of this part of the Bill, except to say that Clause 15 prevents a certificate from being granted in certain cases -for example, where the decision of the trial judge is normally final-and that Clause 16 extends the provisions of this Part of the Bill to Northern Ireland, with necessary modifications. **.....**

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4.36 p.m.

Sir Eric Fletcher (Islington, East):I, too, extend a cordial welcome to the Bill and congratulate my right hon. and learned Friend and the Government on having managed to include such a large variety of useful and desirable reforms, some more important than others, in this miscellaneous and comprehensive Bill. It would not be right on Second Reading to attempt to discuss more than perhaps two or three of the Clauses, but I have something to say on a few of them.

Before doing so, I want to refer to Part II, which outlines the "leapfrogging" proposals. As the right hon. and learned Member for Epsom (Sir P. Rawlinson) has said, these Clauses received a great deal of consideration in another place and were substantially amended. The Bill in its present form, not only differs from the recommendations of the Evershed Committee, but also differs from the intentions of the Government as they were when it was originally introduced. I hope to be able to convince my right hon. and learned Friend that the Bill can be improved in one important particular.

As my right hon. and learned Friend said, the provisions of Part II-generally known as the "leapfrogging" provisions -stemmed from the recommendations of the Evershed Committee, which sat from 1947 to 1953 and made a large number of recommendations for improving the practice of the courts and the administration of justice, and was particularly concerned to reduce the expense of litigation. I had the honour of serving on that Committee, together with my noble and learned Friend the Lord Chancellor.

Not the least important recommendation was that, in certain cases where it was realised that it was inevitable that a decision could only be reached in the House of Lords, a judge of the High Court should certify that it was an appropriate case to by-pass the Court of Appeal and to go direct from the court of first instance to the House of Lords, thereby saving the litigants involved a very considerable amount of expense.

We realised that a provision of that kind would be appropriate only in certain cases and that, therefore, certain conditions should be laid down to enable that procedure to be adopted. We proposed, as the Bill now provides, first, that there should be a point of law of general public importance; secondly, that it should involve either the construction of an Act of Parliament, or a Statutory Instrument, or that there should be a binding decision of the Court of Appeal, the effect of which would mean that the Court of Appeal would be bound and could give a decision only one way, whatever it might think of the merits; thirdly, that the trial judge should certify that the case was appropriate for going direct to the House of Lords. These three conditions are embodied in the Bill.

But the Bill now embodies a fourth condition, namely, that all parties should consent. This is contrary to the recommendations of the Evershed Committee and is, in my opinion, not only wrong, but will produce hardship and injustice. The matter was carefully considered by the Evershed Committee which, in paragraph 502(*b*) of its Report, said:

"We do not think it necessary that there should be a consent by both parties to the litigation, either before the trial or afterwards, at the time the application is made."

When the Bill was introduced in another place, my noble and learned Friend the Lord Chancellor, who had signed the Report of the Evershed Committee, as I did, endeavoured to justify the change which he had introduced with these words:

"The Evershed Committee did not recommend one of those limitations, and that is that all parties should consent. I have put that in on the representation of the noble and learned Lord, Lord Reid. He is apprehensive that the House of Lords, with quite enough to do already, might have too many of these cases."-[OFFICIAL REPORT, *House of Lords*, 12th November, 1968; Vol. 297, c. 441.]

Substantial changes have been made in Part II, and Clause 13, as it now stands, is entirely new. The original intention of the Government was that the certificate of the judge of first instance that the case was fit to go to the House of Lords should be sufficient. Objection was taken to that by a number of Law Lords in another place who indicated that they thought that the House of Lords ought to have some control over the number of cases brought under the "leapfrog" procedure.

This, also, was considered by the Evershed Committee. We pointed out that if, after a certificate had been given by the judge of first instance, it was open to either party then to go to the House of Lords, that would open the door to a great deal of additional expense being incurred-counsel being briefed and argument before the House of Lords as to whether the "leapfrogging" was appropriate. As the Evershed Committee reported, to permit that would go far to offset any savings which might otherwise be achieved by a "leapfrog".

In Committee and on Report in another place, a compromise solution was reached and that solution is now embodied in Clause 13. To obviate the expense of a hearing before the Appeal Committee of the House of Lords after a certificate is given by the trial judge, it is now proposed that the House of Lords should retain control over which cases bypass the Court of Appeal. Clause 13 enables the Appeal Committee of the House of Lords, on receiving a certificate from the trial judge, to grant leave or not as it pleases and — and this meets the objection of the Evershed Committee — Clause13(3) provides that such an application should be-determined without a hearing and, therefore, without expense

I am entirely in favour of the introduction of Clause 13. But the introduction of Clause 13 seems to me to make it quite unnecessary and irrational to preserve in Clause 12(1) the requirement that the consent of the parties to a certificate should be obtained. Let us examine what might happen. Let us take a case which it is eminently desirable should bypass the Court of Appeal, a case in which there is involved a point of law relating to the construction of a Statute or a Statutory Instrument, a case in which the courts are bound by a previous decision of the Court of Appeal or the House of Lords and which is, therefore, exactly the kind of case which, to save expense should go direct from the court of first instance to the House of Lords.

In such a case, why should the consent of both parties be required? Either both parties would consent, in which event there would be no problem, or one party would oppose, either for good reason or bad. It is not unknown in litigation for litigants sometimes to have ulterior motives, and sometimes to put a less wealthy litigant to unnecessary expense. It is not unknown to take advantage of inequalities of economic strength as be tween one litigant and another.

I therefore take as my illustration a case which, pre-eminently, should bypass the Court of Appeal, but in which one party, for some reasons, chooses to oppose. The trial judge will be able to take account of that opposition. If he thought it reasonable, he would not give a certificate; if he thought that the opposition was unreasonable, he would grant a certificate. But that would not be final. With Clause 13, the House of Lords would have a final say in the matter and it would know whether it was a reasonable case to bypass the Court of Appeal.

Therefore, under the provisions of the Bill as we now have it, the provision, contrary to the recommendation of the Evershed Committee, that the consent of both parties is necessary, seems to me not only unnecessary, but calculated to produce hardship and injustice. For those reasons, I hope very much that, when we reach the Committee stage, an Amendment which I shall propose in that sense will commend itself to the Government and will not be found unfavourable in the House of Lords**.....**

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Mr. Doughty:. .....

The "leapfrogging" procedure will not affect the vast majority of people. This is a legal necessity, possibly an attempt to make the law better on a small and, for a few people, very important point. But the right hon. Member for Islington, East (Sir Eric Fletcher) was right to say that one side should not have the power, by simply saying no, to block this procedure.

With regard to the hearing in another place, there are two objections to the proposal that there should be no oral hearing. One is that people who are refused their demands without even being able to give their reasons will, not unnaturally, always have a grievance. If the Attorney-General gives one side the power to object in the original court, that is all the more reason for an oral hearing in the House of Lords.

The other matters are mostly points of detail, better suited to Committee. I have raised what I thought to be the principal points of the Bill, above all those which have been over looked, and particularly what the Bill's result will be. If the Bill is passed without those matters being considered, the present bad position will become even worse.

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Mr. Lyons: .....

The purpose of the "leap-frogging" procedure is to save money for the poor litigant because it is so expensive going through both the Court of Appeal and the House of Lords. I completely fail to understand why this procedure does not apply for an appeal from the decision of a county court judge. If one appeals from a county court judge's decision, one has to go in the first instance to the Court of Appeal and then to the House of Lords. Surely the smaller the sum initially the more important it is to save money subsequently. Why should it be that if one takes a case to the High Court one may skip the Court of Appeal and go straight to the House of Lords, but if one goes to the county court one has to go both to the Court of Appeal and the House of Lords?

I appreciate how this anomaly has arisen. When the Bill was originally drawn the idea was that the High Court judge was a sufficiently senior judicial official to decide whether a case should go straight to the House of Lords. He would decide it without check or hindrance from anyone, but in another place, as a result of objections, Clause 13 was injected into the Bill. It was said that it would be window-dressing because, even if the High Court judge agreed, the House of Lords, sitting judicially without a formal hearing, could throw out and refuse an application to by-pass the Court of Appeal. With the subsequent provision in Clause 13 it does not matter whether the judge who made the original decision to by-pass the Court of Appeal is a senior or a junior judge because the matter is taken out of his hands.

I should like to hear the Attorney-General justify the reasons why the county court judge cannot make this decision, subject to the checks contained in Clause 13—in other words the approval of the House of Lords—when the High Court judge can do so. Likewise, it does not matter that one party does not consent to this procedure. It did originally matter as the Bill was provided but now, in view of the existence of Clause 13, what harm could come if a county court or High Court judge decided in the face of objections from one litigant that the leap-frogging procedure should be eliminated? The litigant has his appeal through the House of Lords and when the papers are read the House of Lords, sitting judicially, will see from the papers that the litigant objected in the court below. Therefore, in themselves there will be a form of appeal. I ask the Government to take that into account.

Inherent in the Bill is the decision of the Government to maintain the Courts of Appeal. Some people believe that there should be only one. When people talk, as increasingly they do, of a shortage of high calibre personnel to fill judicial offices, it is worth remembering that the House of Lords occupies 10 or 11 able judges and there come before them throughout the year able counsel. If we had only one Court of Appeal there would be an additional reservoir of judicial manpower to be put at the service of that one court which would remain.

The Bar is often accused of maintaining restrictive practices come what may.

It is interesting that no one who is not a lawyer has complimented the Bar today for not objecting to the Clause in the Bill which permits solicitors to employ agents; That is something which they could not legally do before. The Bar Council has made no objection. No barrister in this House has raised his voice in protest. The Bar is entitled to credit for not opposing a change leading to greater efficiency and equity. This is an indication that barristers are not motivated only by vested interests**.....**

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6.40 p.m.

Mr. David Weitzman (Stoke Newington and Hackney, North): **.....**

Having said that, I come to two points on which I very much agree with the provisions of the Bill. I consider that the most important, apart from the question of increased jurisdiction, are those in Clauses 12, 13 and 20. Reference has

already been made to the provisions in Clauses 12 and 13, which deal with what has been called "leap-frogging". It is absurd that before a litigant can test the validity of a binding decision of the Court of Appeal on a point of law he must bring his action before the trial judge and then go to the Court of Appeal, telling both those courts that he has no hope of success but is merely doing it to bring the matter to the House of Lords, to test the matter there and obtain their Lordships' decision. Apart from the heavy costs, that procedure is farcical on the face of it.

It is true that in some cases it has been said that the House of Lords has the advantage of hearing the views of the trial judge and the judges in the Court of Appeal, but their Lordships have that advantage at the expense of the litigant. A strong case is made out for the provisions of Clause 12. Fifteen years have elapsed since the Evershed Committee recommended that change. Doubtless, thousands of pounds have been spent uselessly in costs in that period. They have been thrown away. I am glad that the present Government have at last seen fit to enact this provision.

When the Bill was introduced it contained a provision to leave to the trial judge the decision to go to the House of Lords. I saw considerable objection to that. Trial judges very so much. I am glad that an amendment has now been made so that a decision can be made by the House of Lords. The only real objection to that was the question of costs, and that objection is now met by the provision that there is no hearing and therefore no expense in argument by counsel, and that the matter can be dealt with simply by the House of Lords looking at the papers.

I am rather attracted by what was said by my hon. Friend the Member for Bradford, East (Mr. Edward Lyons) about the possibility of extending that provision to a decision of a county court judge. That should be considered to see if it is practical.

I rather agree that there is objection to the provision that there must be the consent of both litigants. I do not know why that should be essential before the matter can go to the House of Lords...

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7.12p.m.

The Attorney-General:.....

My right hon. Friend the Member for Islington. East (Sir Eric Fletcher) raised questions about the "leap-frogging" provisions of the Bill. As he said, the Evershed Committee said at paragraph 502 of its Final Report that it imagined that in the great majority of cases the "leap-frog" scheme would operate with the consent of the parties. By making this a condition of the scheme, it is possible to ensure that the House of Lords is not flooded with "leap-frogging" applications. I think that this was the basis of the anxiety expressed in another place by several Lords of Appeal. If consent by both parties were not required — I invite my right hon. Friend to consider this—a powerful litigant might try to intimidate his opponent by asking to go direct to the House of Lords. Some right of appeal would have to be given against the grant of a "leap-frog" certificate in these circumstances and the resultant expense might counteract some of the advantages of the scheme.

There were other matters raised during the debate which, I suggest, would be more appropriate for discussion in the Committee. I repeat my thanks to the House for its welcome to the Bill.

Question put and agreed to.

Bill accordingly read a Second time.

Bill committed to a Standing Committee pursuant to Standing Order No. 40 (Committal of Bills).