

# STATE COUNCIL

MONDAY, 10TH AUGUST, 1953.

The Council met at 2 p.m., His Honour the President, Sir Frank McDavid, C.M.G., C.B.E., in the Chair.

## PRESENT

The President, His Honour Sir Frank McDavid, C.M.G., C.B.E.

Mr. W. J. Raatgever, C.B.E.

Mr. L. A. Luckhoo.

Mr. R. B. Gajraj.

Mr. P. A. Cummings.

Mr. U. A. Fingall.

His Grace the Archbishop of the West Indies, the Most Reverend Dr. Alan J. Knight.

Mr. G. L. Robertson.

His Grace the Archbishop read prayers.

The minutes of the meeting of the Council held on the 29th June, 1953, as printed and circulated, were taken as read and confirmed.

## ANNOUNCEMENTS.

### HER MAJESTY'S VISIT TO JAMAICA

The President: Hon. Members a letter has been received from the Legislature of Jamaica, dated 27th June, 1953, inviting representatives from the Legislature of this Colony

to participate in the welcome in that Colony of Her Majesty the Queen during Her visit there in November next. I shall ask the Clerk to read the text of the letter and to circulate copies of it for the information of Members. At a later stage I may before the adjournment, if there is time, move the suspension of the Standing Rules and Orders in order to enable me to move a motion in connection with this particular communication.

The Clerk read the letter the text of which is as follows:

### HOUSE OF REPRESENTATIVES, JAMAICA,

27th June, 1953.

Sir,

On the 18th day of June, 1953, the House of Representatives of Jamaica unanimously resolved—

"WHEREAS Her Majesty the Queen had announced her gracious intention to visit Jamaica in November this year;

"AND WHEREAS it would be appreciated that on this historic occasion our sister territories of the British West Indies should be associated with us in the loyal welcome to be extended to Her Majesty;

"NOW, THEREFORE, BE IT RESOLVED that the Speaker of this Honourable House of Representatives, in association with the Honourable President of the Legislative Council, should be requested to extend an invitation to the other Legislatures of the territories of the British West Indies to send representatives to participate in the welcome to be extended to Her Majesty in Jamaica;

"AND FURTHER BE IT RESOLVED that the representatives of the other British West Indian Legislatures should be guests of this Government during the period of the Royal Visit."

In accordance with that resolution I am now directed by the President of the Legislative Council and the Speaker

## [The Clerk]

of the House of Representatives to extend an invitation for two representatives from the Legislature of British Guiana to visit Jamaica and participate in the welcome to Her Majesty.

I am to say that your representatives will be the guests of the Government of Jamaica during the period of the Royal Visit, that is to say from the 24th to 28th November inclusive, and that this invitation is extended to include their wives.

As arrangements will have to be made for the Royal Visit which would include your representatives, it is important that you let me know at an early date whether the invitation is accepted and if so, the names of your representatives and whether they will be accompanied by their wives.

Yours faithfully,

(Sgd.) CLINTON HART,  
Clerk of the Legislature.

Clerk of the Legislative Council,  
Georgetown,  
British Guiana.

#### PRESENTATION OF REPORTS AND DOCUMENTS.

**The President:** I shall ask the Clerk to read the schedule of documents which are to be tabled.

**The Clerk** read the following list:—

The Report of the Trotman Trust Fund for the year 1952.

The Report of the Mitchell Fund Trustees for the year 1952.

The Report of the Director of Audit, British Guiana, on the Audit of the Accounts of the Government of British Guiana for the year ended the 31st of December, 1951.

The Report of the Official Receiver, Crown Solicitor and Public Trustee for the year 1952,

Addenda to Part III—Chapter III of the Report of the Director of Education for the year 1950-1951.

#### NOTICES.

##### INTRODUCTION OF BILLS.

**The President:** Hon. Members, I give notice of the introduction and of the first reading of the following Bills:—

A Bill intituled "An Ordinance to make provision for payment of remuneration to Elected Members of the House of Assembly and for payment of travelling expenses and subsistence allowances to Members of the State Council and the House of Assembly."

A Bill intituled "An Ordinance to repeal the Undesirable Publications (Prohibition of Importation) Ordinance, 1953".

If there is time I shall move the suspension of the Standing Rules and Orders in order to enable me to introduce and, if the Council agrees, take through all its stages the second of two Bills to which I have referred,

#### ORDER OF THE DAY.

##### REMUNERATION OF STATE COUNCILLORS.

**The President:** I now propose to move the motion standing in my name on today's Order Paper—

Whereas it is desirable that Members of the State Council should receive remuneration from public funds for their services;

And whereas, in paragraph 14 of Sir Charles Woolley's despatch to the Secretary of State dated 21st June, 1952 (Council Paper No. 2/1952) the view was expressed that amending legislation should be introduced to provide for the remuneration of State Councillors on the same scale as for Members of the House of Assembly;

[The President]

And Whereas, in paragraph 3 (i) of the Secretary of State's despatch dated 5th August, 1952 (Council Paper No. 2/1952) he expressed agreement that Members of the State Council should be paid on the same scale as Members of the House of Assembly;

And Whereas, the Legislative Council has voted provision in the approved estimates for 1953 for the payment of remuneration to the Members for State Council and to the Members of the House of Assembly and such expenditure has been authorized by the Appropriation Ordinance, 1953 (No. 14);

Be it resolved:—

That this Council recommends that the Government introduce legislation to authorize the payment from public funds of Members of the State Council on the same scale as Members of the House of Assembly.

Hon. Members, I have thought it both necessary and desirable to introduce this motion, it being in my view the most appropriate and effective means of securing an expression of the views of the State Council on the question of remuneration of Members of the Legislature of this Colony and more particularly of Members of the State Council. As hon. Members are aware, the Bill of which I have just given notice, having as its short title "The State Council and House of Assembly (Payment to Members) Ordinance, 1953", in the form in which it has been passed by the House of Assembly, provides for the payment of a salary of \$1,920 per annum to Members of the House of Assembly only, though it does provide for the payment of travelling and subsistence allowances to Members of both Chambers in connection with attendances at meetings of the Chambers or of Committees, Boards, etc.

Incidentally, this Bill seeks to enact that any sums paid under its au-

thority shall be a charge on the public revenue of the Colony. That is to say, it shall be a statutory charge. Consequently the Speaker of the House of Assembly has quite properly certified the Bill to be a Money Bill. That is to say, the delaying powers of the State Council in connection with it are restricted under the provisions of Section 69 of the British Guiana Constitution Order in Council. Moreover, under Section 67 (2) of the said Order in Council no motion proposing an amendment of the Bill which would enlarge or increase the extent and scope of the charge to public revenue would be in order in either Chamber except with the consent and authority of the Governor.

If any such amendment to the Bill is to be made, such consent must be had beforehand from the Government, and therefore, this motion, if it is passed by this Council is a very necessary preliminary step to action in this sense by either Chamber.

Now, I want to emphasize at once that I have no embarrassment whatever in introducing this motion; not because if it were accepted and acted upon it would mean any addition to the emoluments which I personally receive as Minister without Portfolio, but because I am seeking in doing so to defend and to uphold what I consider to be a most vitally-important principle. I hope and I believe that every Member of this Council will approach this matter in that spirit. Any charge or accusation which may be levelled that we, as individuals, are seeking our personal gain at the public expense should, I am sure, be dismissed with contempt. Members of this Council will do well, I am sure,—and I suggest this to them—to consider this matter quite impersonally and having regard to what I consider is the wisest and the best course in the public interest.

[The President]

Now, as I understand them, the arguments which have been put forward against the payment or remuneration of Members of the State Council are these: firstly, that the State Council is a superfluous body and that any money which is expended upon its maintenance as such is a waste of public funds; secondly, that the Waddington Commission in their Report stated that they did not recommend that Members of the State Council should receive a regular salary but that they should receive a *per diem* subsistence allowance; and, thirdly—this I think is the most important of the arguments used—that the majority of the Members of the State Council are men of substance and can afford to serve without remuneration, and that in the case of the two Members of the State Council who have been nominated and appointed on the recommendation of the Majority Party now in power, they can be taken care of from Party funds.

I will deal with the first of these arguments. This is the one which seeks to contend that the State Council is a superfluous body. I will not go over the ground which we have already taken in our last debate. I said then and I say again that there is no room whatever for any controversy as to the absolute necessity for a second Chamber, although I conceded that there must be ground for differences of opinion as to its composition and to the methods by which its members should be selected. His Grace the Archbishop dealt very thoroughly indeed with this matter and pointed out that in modern democratic processes the second chamber has been recognized as an absolute necessity. And further, His Grace had emphasized these words, that 'the Constitution is in being: it stands, and it is up to all of us to make it work; see that it works.' What has been said and the action that has

been taken are, in my opinion an improper attack on the Constitution itself. It is an attack designed to undermine the authority under which the House of Assembly and the Government itself are functioning. Indeed the Government and the House derive their powers solely from that document. Therefore, any action which seeks to derogate from the authority of it, is quite improper and quite wrong. I feel myself that if the Party in whose charge the administration of the country now lies feel they are unable to work under the Constitution, then it is their duty to make due representation about it or, if they see fit, to get out. But they must not seek to derogate from its authority. I will just mention the lack of logic in providing in any Bill for payment of travelling expenses of Members of the State Council and denying that they as a body should exist.

We come now to the second argument which is that the Waddington Commission had said that in their view Members of the State Council should not receive a regular salary but should receive a *per diem* subsistence allowance. Hon. Members, I have not been clear in my own mind what they really meant by a *per diem* subsistence allowance. It may be that they meant an allowance *per diem* of attendance. On the other hand it is possible that they meant by subsistence allowance something in connection with travel. It is quite likely they did mean that, because you will remember that the Waddington Commission was seeking to suggest that the members of this Council should be selected as representative of the three Counties of the Colony, and although they did not by any means suggest that the members should reside in these countries, it is quite possible they had in mind resident councillors. So, it is possible they might have meant

[The President.]

subsistence allowance in connection with travelling, or, on the other hand, *per diem* allowance. However, what happened was that the Governor of the day, Sir Charles Woolley gave very careful consideration to this matter, and, I think propounded in his despatch to the Secretary of State what is the correct view in regard to the payment of State Councillors. Hon. Members will forgive me if I quote from Paragraph 14 of his despatch on the Constitution:

“As to the Members of the State Council, while their legislative duties may well be less onerous than those of Members of the House of Assembly, it cannot be assumed that they will be men of means or be able to spare the necessary time from their normal avocations without some compensation. If they are only to be paid travelling and subsistence allowances cases might well occur where persons whom it was desired to nominate as being eminently suitable, would for financial reasons feel unable to accept appointment. This would be a pity; and I incline to the view that members of the State Council should be remunerated on the same scale as members of the House of Assembly”.

That despatch of course, is a public document, and so is the Secretary of State's reply in which he agrees with Sir Charles Woolley and accepted that recommendation. Now what followed was this. The last Legislature accepted this recommendation and provided in the Estimates for the year 1953—that is the current year—a sum of money for payment of both Members of the House of Assembly and the State Council at the rate of \$160.00 per month. That sum of money has been voted in the Estimates and it has been authorized in an ordinance of the Colony, namely, the Appropriation Ordinance, 1953. Consequently there is legal appropriation of this money for the payment of State Councillors.

What is lacking is specific authority by law fixing the rate and making this charge a permanent charge on the revenue of the Colony. I will go further and mention what is not generally known. The constitution document itself does not specifically provide for the payment of either House, but the framers of this document were very careful to safeguard the position of the members of the legislature from being public officers of the Crown. As you know, an officer of the Crown (other than the three ex-officio members of the House of Assembly) cannot serve in either Chamber, and so in Section 4 (b) of the British Guiana (Constitution) Order in Council, 1953 there appear these words;

“For the purposes of this Order a person shall not be considered to be a public officer or otherwise to hold office of emolument under the Crown by reason of the fact that he is in receipt of a salary or other emoluments in respect of his tenure of the office of Speaker, Minister, Under-Secretary, Member of the State Council or Member of the House of Assembly.”

I read these words to you, hon. Members, to show that the Statute under which we are now working contemplates and implies that members of both chambers—members of the legislature—should receive remuneration.

The vital point in the arguments against is contained in the third, namely that members of this body may be men of substance, and therefore can afford to serve without remuneration. That hon. Members I submit, is a complete abrogation of a principle which has been fought for long and a battle which has been won in other countries, that is the payment of legislators in order to guard against class discrimination and to ensure that a man who is willing and able to serve his country in any of these capacities should be able to do so without fear of being put out of his

[The President]

bread and butter by doing so. That important principle was fought for and won in England, and I should have thought that the Party which is in charge of the administration should have been one of the first to guard against any infringement of that principle. This State Council is equivalent to other Second Chambers in countries where bi-cameral legislatures exist. I hesitate, however, to make ourselves analogous to the House of Lords in the United Kingdom for obvious reasons. The House of Lords is an entirely different body. The peers of the realm are entitled to sit in the House of Lords—some do and some do not—but they do not by their eligibility become entitled to remuneration. They are entitled to travelling expenses from their seats to the House of Lords. But in a Senate—let us take the Senate in Canada for instance—Senators in Canada are nominated by the Governor-General and are paid for their services. Senators in the United States are also paid. I daresay if you look at nearly all constitutions you will find Senators and Councillors receive due remuneration to guard against the possibility of membership of those bodies being confined to a particular class who can afford it.

This is the strong point. It is essential in a democracy (a) you should have a second chamber and (b) that chamber should reflect all the currents of national life, social life and economic life in your country, and that is what I think this body should do and be. There is, of course, grave danger in permitting a situation whereby some members of this body might receive remuneration from an outside source. I think my hon. colleagues will forgive me for saying so but the nominees of the Party should join with me in agree-

ing that it is wrong that they should be taken care of by Party funds. It would be greatly wrong if my hon. colleague who is connected with a most important industry should let it be known that he will be remunerated for his services here by the Association of which he is a servant—a serious position, I think for any of us to be in.

I do not say for one moment that some of us in this Council are not able to serve without remuneration. I would like my colleague on my right (Mr. Raatgever) to excuse me if I refer to his case particularly. He has been a Member of the last Legislature throughout the whole of its existence—five years or more—and for the whole of that period he refused to draw one single dollar from the public Treasury, on the ground—the very honourable ground—that he was in a position to give his service without pay. He has thereby deprive himself of a sum in the vicinity of £2,000. I am perfectly sure that if this motion is accepted and acted upon Mr. Raatgever will continue to be of the same mind, and will not draw any money. Some of us may be in that position, but I do not for one moment think that a professional man is necessarily in that position. His time is extremely valuable, and if he is called upon to serve in this Council he may require financial assistance to balance his account, and also to help him in securing some secretarial assistance.

The point I am trying to make is that the prescription of remuneration for the State Council does not necessarily mean that those of us who, in our consciences, think that we can afford to do without remuneration should be precluded from doing so. As I said, I am sure my colleague on my right (Mr. Raatgever) will continue to serve without pay.

[The President]

I think I have said enough to indicate that a very vitally important principle is involved in this matter. In my view this State Council ought to endeavour and do its utmost to safeguard that principle. It ought not to be a consenting party to anything that abrogates that principle. I feel I have said enough to convince the Council that the words of my motion, both in the preamble and in its text, are just and correct. My motion reads as follows: (Text of motion read). I now have the honour to formally move this motion.

**His Grace the Archbishop:** Mr. President, I rise to second the motion you have so ably put before this honourable Council. I cannot say that I do so with any pleasure. In fact I do so with a certain amount of pain, because I think it is always embarrassing, despite what you have said, that any man should have to speak upon a motion which in any way affects him personally from the financial side. I am quite sure that neither I nor any other Member of this Council will be standing here this afternoon to speak on behalf of himself as an individual, or on behalf of the present Members of this Council as individuals; but to defend the rights and privileges of the State Council as an integral part of the Legislature, and to uphold and defend the Constitution. I was very pleased, Sir, to hear you emphasize again what I tried to put before the Council at its previous session—what I believe to be so important—that we must work the Constitution as it is now and not as it might be in 1963 or 1973 (or as some of us might have written it in a different manner altogether), but as we have received it. If any hon. Member desires the present Constitution to be changed (and all of us must desire that it should grow in due time into something better)

surely the best way we can prepare for progress is to show ourselves worthy of it, and in order to do so it is essential that the present Constitution is made to work.

Under the Constitution the Legislature of this Colony is one, although it consists of two Chambers, and what is done for the Members of one Chamber should be done for the Members of the other. I therefore consider myself, as I stand to second this motion, as standing to defend the privileges and rights of the Legislature of this country in both Houses, as provided by the Constitution. I would like then to ask the Council to consider for a moment the basic question as to whether legislators should be paid at all. We must start from that point. The majority of modern opinion is certainly in favour of the payment of legislators in every country, but there is still a minority which would desire that all such service should be voluntarily given. I feel that those few—I do not know whether there are any among us in this Council—who urge that legislators should not be paid, and that all such public service should be freely given, are hardly in tune with the times.

It may be thought that the idea of the payment of members of a legislature is something new, but it is more than 650 years old. Many people, I know, believe that it is something which has been introduced in the present Century. In fact it was introduced by King Edward I at the time of the Model Parliament in the year 1295, which was the first time when all the estates of the Realm were represented in the Legislative Assembly. In that Parliament, so called the Model Parliament, the peers of the Realm and the commoners sat side by side in one House, and all at that time were paid for their services. King Edward I was a very far-seeing person

[His Grace the Archbishop] himself, but I do not know that even he can be given all the credit for this principle which we regard as being so modern, for he followed up the proposals of Simon deMontfort, the man who had just led the Great Rebellion, and who was considered, I suppose, the leader of the most progressive party in his day. It was he who sought to establish the principle that all legislators should be paid.

I may mention in passing that the Lords and Commons sat together in one Chamber until 1341 when the House of Lords took its separate origin. Members of the House of Lords were then compensated by the grant of estates, monopolies and privileges for their public service, while Members of the Commons continued to be paid what today we call salaries. This state of affairs, started more than 650 years ago, continued until the 17th century in England. In the 17th century the custom of payment of Members of the House of Commons gradually, and only gradually, fell into disuse. Lord Hailsham made a comment on this very point. He said:

“During the 17th century payment of Members of the House fell into desuetude as part of the general development of corruption in English public life, whereby seats came to be bought, sold, and paid for by those who had the means to do it”.

When politics became no longer an honourable profession at that time, but what Americans would call a ramp—when corruption was rife, it was decided that it was better to cease to pay members of the Legislature in order to lessen the inducement for people to buy and sell seats in the House.

The payment of legislators is now well established as a democratic principle, and I would like to call the attention of the Council to the fact that the insis-

tence upon its restoration has been from the beginning a working-class movement. It is very much to the credit of the British Labour Party that they, more than any other organization, brought pressure to bear upon the Government of England in order that Members of the House of Commons might be properly remunerated. It has been a triumph for Democracy. No longer does a man have to consider his financial position before he can offer his services to the State. A man, no matter how humble his origin, provided he has the necessary gifts, should be able to come forward without fear or favour to serve in the Legislature and give public service to his native land. Sir, it would be a sorry day for this country, or for any other country which gives at least lip service to the principles of Democracy, if even one person were prevented from accepting election or nomination to a seat in the Legislature because, financially, he could not afford to do it. This great democratic principle has been fought for long and hard, and it has been fought for by the people and for the people in order that the will of the people might prevail. I would be sorry to see any of us here taking the part of the reactionary, trying to break down or impede the path in the democratic set-up which has been established here as in other countries.

That great organiser Edward I, who first introduced payment of legislators, made this remark in doing it. He said—If I may quote his actual words, (for he spoke in Latin)—“*Ut quod omnes similiter langit, ab omnibus approbetur*” Translated it means “In order that what touches all men equally should by all be approved.” In other words, since the poor man as well as the rich man has his share and his stake in the country, for the poor man as well as the rich man has to contribute either in money or labour to the common weal, it is only



[His Grace the Archbishop]

fair that each should have his proper representation; not only by exercising the vote, but also where he has the ability to do so, by taking his seat among the legislators in the highest councils of the land.

There are professional men who could hardly afford to sit in this Council because of the time they would lose thereby. There are businessmen who would have to think very hard before they accept nomination to this Council if they were not paid, because of the effect upon their business. Then, Sir, what would be the position of a carpenter, an engineer, or some such person who was called upon to give his services without remuneration? Surely, it would be unthinkable for anyone in this democratic age to consent to a situation in which a humble craftsman would be prevented from taking his place in the assemblies of the nation.

If I may now touch on the practical side of the subject, I think it would be a very grave mistake on the part of the public to imagine that the service of a Member of this Council consists only in sitting here when the Council is in session. That, I think, has some bearing upon Your Honour's own remarks about the subsistence allowance *per diem*. I do not know what has been the experience of other hon. Members of this Council, but I can say that since I have been appointed here my correspondence has increased almost beyond knowledge; certainly far beyond anything I had anticipated at the time of my acceptance of the seat; and I could now usefully employ an extra secretary if I could afford to do so. The work piles up very fast all the time, and I think it fair to suppose that as time goes on we shall find it increasing still more. Hon. Members will have to give more time and energy to the service of the country

outside the Council than they give here during its sessions.

What would happen then if the motion were not passed, or if the Government now in power in this Colony were to stand by their present resolution and no payment was available for Members of the State Council? Obviously the Governor's choice would be restricted. He would have to consider very carefully before asking anyone to be a Member of the Council, whether or not he was causing that person some financial embarrassment. We might very easily find ourselves in the position of creating here in this Colony of ours a new and most undesirable form of aristocracy, or even worse, a plutocracy; a small body of people who, just because they had wealth or property, were able to take a part in the political life of the nation denied to others. Then again, even after the Governor's choice had been made the troubles of some Member nominated to this Council might still not be over. He might, after he had been appointed, find himself in considerable difficulty and embarrassment, and I should myself consider it quite disastrous if any Member of this Honourable Council had to look to any outside source for remuneration. Every man would strive to act honourably, I am sure, but it certainly would be a most embarrassing situation if a Member of this Council were obliged to look to some capitalist interest, or to a Trade Union, or still worse to Party funds in order to make it possible for him to continue membership of the State Council. It would be indeed a sad day for British Guiana, or for any other nation, when its legislators could not afford to defy the Party machine or break away from Party discipline should their conscience so direct.

I believe there are those who have scruples about accepting payment. There are those who, perhaps for this

[His Grace the Archbishop]

motion. There are doubtless those who, even if the motion is passed and becomes effective through the will of the Government, will still have scruples about receiving remuneration for their services in this Chamber. Some Members do not need the money. Some Members do not wish to have it, whether they need it or not. Anyway no one is obliged to accept what is offered. You, Sir, have yourself intimated how one hon. Member refused to take that to which he was entitled in the old Legislative Council, and with great self sacrifice gave public service voluntarily for the whole period of that Council's existence. So if any Member of the State Council has any scruples about accepting what is offered, at least three courses of action are open to him—(1) He can give the money to charity. There are many worthy charities that would be only too glad to benefit by it. (2) I know there is nothing to prevent his making a gratuitous gift to the Treasury of the amount, as public-spirited men did in England during the War in order to help their country in its hour of crisis. It may well be that we shall see many such gratuitous gifts being made by Members of the other House who have recently spoken so eloquently about the shortage of public funds and their great desire to keep down expenditure. (3) A Member of the State Council may just leave the remuneration and not uplift it. So I cannot see that any scruples should stand in the way of a Member of this Council, who does not wish to be remunerated from the public purse, voting in favour of the motion for the sake of the basic democratic principle which it seeks to uphold.

It is the principle which is at stake. I am indeed embarrassed to some extent to have to speak on this motion, but I find no embarrassment

whatsoever in proclaiming a principle, which I believe to be fundamentally democratic and to be one which has always been fought for so persistently by Labour Parties in various countries and by those who represent what is called today technically "The people". This sound democratic principle must stand indeed in this country, especially since at the present time, when we are on the threshold of very great developments, political and economic, we ought to be able to call upon the largest diversified fund of knowledge and experience. For this reason membership of the State Council, as of the whole Legislature, ought to be representative so far as possible of every phase of life, of every class and of every kind in the Colony. We must, therefore, make it possible for this to happen; and we must above all make such provision to ensure those who are appointed to this Council or those who are elected to the Lower House shall have the greatest possible measure of independence and shall not have to look to any outside authority of any kind for their bread and butter. Sir, with those words it is with great pleasure I second the resolution you have moved, and I heartily commend it to the favourable attention of this Council.

Mr. Robertson: Your Honour, I rise to oppose this motion in principle. I would like to state here and now that my Party, the Majority Party in the House of Assembly, refused payment to Members of the State Council because we are absolutely against a nominated Second Chamber, as so often has been explained. I note that His Grace the Archbishop made mention of a democratic principle and further mentioned that it was due to the Labour Party in England that payment of Members was introduced in the Legislature in England. But it is also the very Labour Party and the Socialists organizations in England that object to the Nomina-

[Mr. Robertson]

ted System. They have fought for payment, Sir, but for Elected Members of the Legislature and not for Nominated Members. I recall the President referring to the Senate of the U.S.A. It is true that Senators or Members of the Upper House of the U.S. Legislature are paid, but that is an elected body. As long as this Upper House remains a nominated body we will always have to question who are the people these Members represent. I would not like to go over the old ground that I covered at the last meeting of this Council, but I would like to state that if the Members of this Council are to receive pay from the funds of the people, public funds, then surely they should be elected representatives of the people. It is for that reason that I oppose this motion in principle and on the policy of my Party.

Mr. Gajraj : Mr. President, I have listened most carefully to the brilliant manner in which the motion has been moved and seconded. In the opening words of the preamble of the motion we read: "Whereas it is desirable that Members of the State Council should receive remuneration from public funds for their services.." In those few words, I feel, lies the whole problem for which we are endeavouring to find a solution this afternoon. Is it desirable that Members be paid? First of all I would like to examine the attitude of the Government Party on the question. We are very fortunate indeed to have just listened to an explanation by the hon. Member, Mr. Robertson. We are told that the Government Party say that they are entirely against the existence of an Upper Chamber. I see my good friend, Mr. Robertson, is shaking his head to indicate the negative. But only this morning, I think, all of us read in the newspapers the report of the broadcast

of the Leader of the House and Minister for Agriculture, Forests, Lands and Mines (Dr. Jagan) wherein he categorically stated that it is the desire of the Party to remove the State Council from the Constitution of this country, as in their view the State Council is both unnecessary and reactionary. The compromise reached, as Mr. Robertson has now put before the Council, is that they are not opposed to the State Council *per se* but they are not prepared to countenance the presence of Nominated Members in this Council.

Following upon that line of thought, the Party has declared its uncompromising stand of refusing to sanction payment of salaries to Members of the State Council on the ground, as Mr. Robertson has just told us, that Members of this Council do not represent any constituency but are appointed by His Excellency the Governor, acting in his sole discretion. To my mind, it is nothing but arrant nonsense to speak of a lower scale of privileges for Nominated Members. Nominated Members of the State Council, I would like to state for the benefit of the Majority Party and the members of that Party who are here as our colleagues in this Council, are free and unfettered in their thoughts and actions. They are not tied to a party line, however repugnant that line might be to the individual concerned; they are not pledged to follow any fixed course of action; they demonstrate the freedom of personal thought and expression of initiative and action, which party policy, as we see it being developed here, is determined to liquidate, leaving the many at the mercy of the few.

I do not defend the system of Nomination as being a righteous one for all time, but certainly all practical citizens will agree that it is more than necessary

[Mr. Gajraj]

at the present time to ensure that there is an opportunity for individuals to exercise their judgment and put forward their own ideas with a freedom that is unfettered by fear and not chained to some idealistic demogogy.

I disagree most emphatically with the reasons of the Government Party, but I, as you know, Sir, will not vote for the motion as it stands. If the Government Party had used as their excuse the need for exercising economy, or if they had said that they needed some extra money to finance the dozen so-called "Peoples' Scholarships" and then said that the Members of the State Council could more easily afford to give free and voluntary service to the country, in my opinion their action might have been more excusable. But, Sir, to dare to set up an excuse exhibiting thereby a snobbish disregard for an essential element of the Constitution is, to my mind, cheap, petty and mean, and is unworthy of a government bearing Her Majesty's name and, indeed, it belittles the stature and the prestige of our country.

Members of the Government Party in this honourable Council might, no doubt, say that the Constitutional Commissioners did not recommend a salary for Members of this Council and that it was Sir Charles Woolley, as Governor of the Colony, who made the suggestion that Members of the State Council should be paid and that suggestion was subsequently approved by the Secretary of State for the Colonies. That is quite true. But, Sir, I ask, was that the only modification suggested by Sir Charles? Did he not also recommend the lengthening of the life of the legislature from three years to four years? Why have the government Party kept silent on that point? Why have they not campaigned for the acceptance of

a three-year life for the House which they themselves are reported to have recommended by the Constitutional Commissioners? It is of course clear that with the results of the elections as they are longer life for the legislature would be more to their liking. Can they claim to be consistent if they reject one recommendation with the hope of destroying this Upper House, and accept without a blush other recommendation which they now find are favourable to their present position? Sir, I would like to make it clear at this stage that as an individual citizen I have nothing personal against any of the members of the government Party, indeed I hold friendly converse with many of them from time to time. But when, as a majority group, they set out to destroy the Upper Chamber of this Government, and hope to accomplish this by denying its members some remuneration I am afraid that they exhibit a woeful lack of political maturity, and only substitute wishful thinking for what should be statesmanlike effort. Do they really think that, small as this country's population is, there is not to be found numbers of men and women in it who are imbued with patriotic zeal and burning with a consuming desire to be of service to their country without desiring to be recompensed for their services in the form of money? Do they really believe that following upon the lowered standards resulting from World War II that there has departed from all Guianese the high standard of truth, of honour, and integrity?

If such be their views indeed, then I can only suggest that they have been following the wrong path, and advise them to retrace their steps and rediscover for themselves the imperishable principles of moral law to which I have just alluded. But, Sir, I feel sure that I will be justified in saying that perhaps

[Mr. Gajraj]

with the exception of our two colleagues representing the Majority Party, every Member of the present State Council, however differently they might vote on the question of payment referred to in this motion is imbued with that patriotic zeal and passionate desire to serve this country and will give of his best irrespective of whether monetary remuneration follows or not.

I have listened most carefully and most attentively to the arguments adduced this afternoon that lack of payment might prevent men who are not so well off in life and who otherwise qualify to serve on this Council from accepting nomination. Sir, many have served this country for long number of years with distinction and without remuneration. Did the absence of remuneration, Sir, prevent a man like Mr. Hubert Nathaniel Critchlow from accepting a seat in the Legislature and working for the good of the Colony for years? Did it prevent the late Mr. J. Waterton Jackson from accepting a seat in the Legislature and giving of his time up until the time of his death? So, Sir, I do not subscribe wholly to the view that the provision of payment is an absolute necessity.

As I understand it Sir, you have presented this motion to the Council more because you consider the action of the Majority Party to be a violation of an established procedure agreed to by Her Majesty's Secretary of State and also an attempt to practise discrimination — discrimination between the two chambers of the legislature. I sympathize with that view but I would like to say, Sir, that as a member of this honourable Council I would consider it an insult to be offered a salary similar in quantum to that of the Members of the House,

Sir, ours is a great responsibility in this Council. We are placed here not merely because there are seats to be filled. We have to possess certain qualifications over and above those of the House of Assembly. Among them are qualifications of age and of experience in government. We are to use these qualities when considering the decisions of the Lower House which are sent to us for consideration. We are expected to provide the mature thought, the sober outlook, to guide by wise counsel, to offer the benefit of our experience; in fact, my conceptions of the functions of this Council is that we are more in the role of elder statesmen. If my colleagues agree with me, they would readily appreciate that there is a very big difference indeed between the responsibilities of members of the State Council and the responsibilities of members of the House of Assembly. In my view, any attempt to assess the value of our responsibilities as members of the State Council on a similar financial basis as that of the House of Assembly is purely fanciful and arbitrary.

For my own part I embarked upon my membership of the State Council with no desire for remuneration. As a matter of fact I believe that every single member of this Council was made aware at the time of his appointment that in all probability remuneration would not be forthcoming to members of the State Council. My acceptance of office was unqualified, and I do not at this stage propose to accept for my own personal gain the salary proposed for members of the House of Assembly, even if the government Party makes a *volte face* and agrees to sponsor such legislation. I shall give my services free and with a deep sense of duty to our country.

[Mr. Gajraj]

I do not say that the principle of payment for members of both Chambers finds no sympathy with me but for myself I regard my services in this honourable State Council with such a high sense of duty and honour that as I pointed out before, proper assessment of such services in terms of money would be beyond the present resources of our Government. They say that their money is short. In the circumstances I shall continue, as I said a short while ago, to give of my best the services as required of me by our country in this Council without remuneration of any kind with the sure and certain hope that we of this Council will in like manner pass on to our successors in office pure and unsullied the high principles of honour and service which I feel are so manifestly necessary these days. With all due respect, I shall not therefore, Mr. President support the motion.

**Mr. Cummings:** Mr. President Sir, I did not intend to speak on this motion although I intended whole-heartedly to support it. But after listening to the hon. Member, Mr. Gajraj I feel I ought to state that quite apart from the question of principle, with which I shall deal in a moment, if money were to be paid to State Councillors I shall have no compunction about accepting it because I feel if I perform my duties as a State Councillor, I shall work as hard as any Member and harder than many Members of the House of Assembly. I will not seek for myself any payment. At the moment I suppose I can serve my country without it, but I consider that a fundamental is involved. Is the Majority Party saying, "We deny the instrument which has given us powers?" They are put into power by this constitutional instrument and they seek to negate that instrument by destroying the State Council. Th-

manner in which they seek to do it is, to my mind, quite puerile, because it will not daunt this Council as at present constituted. It is childish to argue about accepted fact. The State Council is a fact, and good sense should enjoin the Majority Party to see that it works and functions efficiently and that it assists in the government. If, as you have said Sir, the Majority Party are not satisfied with the manner in which the members of the State Council are selected, then there are recognised channels along which they can proceed.

Sir, it is detrimental to good government to have a Chamber restricted to people who can afford to serve voluntarily. The choice should be wide. The Governor in selecting his six nominees should be able to select professional men, artisans or even the unemployed—anyone qualified to make a useful contribution in this council—and to refuse to pay State Councillors would be to tie the hands of the Governor with regard to his selections. I therefore Sir, without saying much more, I feel that you Sir, His Grace and other speakers have gone thoroughly through the *pros* and *cons* of this matter—wish to associate myself with all that you have said in favour of the payment of State Councillors.

**Mr. Luckhoo:** Like the hon. Member who has just spoken I feel after your analytical survey of the position as well as that of His Grace that the position was very clearly defined. I must express some surprise at the hon. Member, Mr. Gajraj who, after showing every good reason why he should support the motion decided finally he should not support it. I feel Sir, in a matter of this kind what is attempted to be done by the House of Assembly is to pass discriminatory or class legislation whereby they would discriminate against those nominated by His Excellency

[Mr. Luckhoo]

the Governor. Sir, the result of their aims is this: His Excellency will be fettered in respect of his choice in the future. We are not making laws for the present only, but for time, and as such one must view the position objectively. The persons chosen by His Excellency are those whom he feels are capable of filling the positions, and whose choice is not dependent upon his possession of worldly goods.

One other point before I take my seat. When this matter was before the House of Assembly I remember one member went into mathematical calculations whereby he endeavoured to show how much you would save if you multiply \$160.00 per month by 8. Unfortunately his mathematics did not permit him to pursue the matter further, because if he used a larger number the result would have been much greater. Sir, I have no hesitation at all in viewing this matter objectively but if I may quote your words:

"What has been said and the action that has been taken (by the Party) are an attack on the Constitution itself, and any action which seeks to derogate from its authority is quite improper and quite wrong."

and should be resisted strenuously.

**Mr. Macnie :** I did not intend to speak on this motion and indeed, let me make it clear, I had intended to vote against it. When I was invited by His Excellency to accept nomination to this Council I had no expectation whatever of any remuneration. It was quite patent to anyone who can keep their eyes or ears open that the Majority Party of the day intended to oppose any such motion. When I accepted nomination I did so with no expectation of remuneration whatever. I did not expect and I am still not expecting. Whether this motion is carried or not, I still support it, because I little doubt that the Major-

ity Party of the day would have any worry. I am going to vote for it. I am going to vote for it for two reasons—the arguments put forward by the seconder of the motion, His Grace the Archbishop, and, somewhat to my surprise, the arguments advanced by the hon. Member on my right, Mr. Gajraj. But I wish to make it quite clear that I do not expect that if my vote helped to carry this motion, any Member of the State Council would receive any remuneration at the hands of the Majority Party. I wish to be quite frank about it. I think it is very unfortunate, because I disagree with my hon. friend on my left, Mr. Luckhoo, when he speaks of the Government discriminating against the six Members nominated by the Governor to this Council. I feel, Sir, that it is a pity that the party Government of the day does not realize that by disapproving of any payment to Members of this Council they are discriminating against themselves and against the people whom they represent, in that the field of choice is restricted, which I think was largely the point made by you, Sir, and very clearly by His Grace the Archbishop. I feel that the Government in power should realize that they are restricting the field of selection for membership of this Council, and that by so restricting it they are discriminating against the very people whom they represent.

**The President:** If no other Member wishes to speak I should, I suppose, exercise my right to reply. Fortunately for me all the Members, not excluding Mr. Gajraj, have strongly supported my motion, but I am sorry that he did not explain fully to us why, notwithstanding his very emphatic support, he proposes to vote against it. The only point which was really made against the principle was made by the hon. Member, Mr. Robertson, who explained that for himself, and speaking for the Party to which he is accredited, it is because this





[The President]

which it was discussed. However, I am quite sure that the intention and object of those who framed that Ordinance and introduced it were quite clear—to keep out of this Colony books, pamphlets and publications of any kind which were considered to be inimical to the best interests of the citizens of this country. That Ordinance gave to the Governor-in-Council the power first of all to decide what publications were inimical, and upon making such a decision, to order that they be kept out. There may be room, I suppose, for controversy as to what is undesirable and should be kept out of the country. That is to say, the criterion which might be exercised by that body might not be such as would find general acceptance. However, I am not going to deal with that aspect of the subject at all.

I feel that the present Administration does not desire to make use of this law which exists on the Statute Books. Furthermore, it may, if it does make use of it, do so in quite a different way from the intention of those who framed it. Consequently, I feel that it is quite correct that this Ordinance should be repealed. I hope that Members of this Council will agree that it is most expedient and proper that the Ordinance should, in the present circumstances and under the conditions in which we find ourselves, be repealed. I do not know whether any Member proposes to deal with the merits of the case *in extenso*. I hope not. I believe that when the Bill was discussed some six months ago the debate lasted six hours. However, if any Member desires to go into the merits of the matter he is quite within his rights to do so.

Clause 3 of the Bill seeks to invalidate something which has already been validated, and I myself feel that this Council, or the majority of us, will

find ourselves unable to agree to that clause. I know that one of our Members will move an amendment dealing with that clause when we are in Committee. I move that the Bill be now read a second time.

Mr. Raatgever seconded.

Mr. Luckhoo : I do not propose to spend anything like the six hours spent on the last occasion when the original Bill was debated in the Legislative Council, but in the few minutes I shall speak I feel I should do so because I am the author, so to speak, of what has been termed the "subversive literature motion." Let me make this perfectly clear, that I do not attempt to apologize for having done so. To the contrary I am very proud that I did do so, because I feel that one should have the courage, if one feels that something is detrimental to the interest of his country, to say so and not be afraid to say so. I say that those who object to what has been done will not be the ones to judge it; posterity and history will decide whether what was done was correct.

What is not realized is that the liberty of the subject is fettered by every single bit of legislation enacted in any country, because the subject is told either to do certain acts or that he shall not do certain acts. We have to differentiate between freedom and licence, and all that was endeavoured to be done when that motion was moved was to see that propaganda and literature which aimed at the overthrow of the State or the order of things should be kept out of the country, in the same way as one is prevented by law from taking hashish or smoking marijuana. Such prohibition restricts the personal liberty of the subject, but although those things provide personal delectation would one say that such individuals should be permitted the right to use

[Mr. Luckhoo]

them when one knows that they are inimical to their bodies? I suggest that in the same way subversive literature which is aimed at undermining the State would undermine not only the minds of the people but also physically and morally reduce them to a state which I feel could be saved if the people of this country were kept away from lies and propaganda literature which could do them no good.

In the same way as literature which affects the morals of individuals, which pulls them down instead of uplifting them, should be kept out; in the same way as parents would prevent their children from reading literature which could do them no good, in the same way I say that the persons in power, the caretakers of the people, the Executive Council—the same persons who are today the Government; they should be the persons to decide what literature is subversive or undesirable. I say that if the principle to which I adhere be false, and if the concepts which inspired me to take this resolute stand against the infiltration of subversive propaganda be unwarrantable, then no apology from me can make them right, but if founded on truth and rectitude, no censure from others can make them wrong.

Perhaps it is not generally known, but in Chapter 17, section 324 of the Laws of British Guiana there is an enactment to which I would draw the attention of the Government. Maybe they would also wish to have that repealed. The section to which I refer reads:

"324. Everyone who publishes any seditious libel shall be guilty of a misdemeanor, and on conviction thereof shall be liable to fine or to imprisonment for two years, or to both the fine and imprisonment."

For a seditious libel which is published in the Colony a person can be penalized by the laws of our country, but if that same seditious literature is published abroad and brought into the country there is no means of getting at the individuals responsible. I thought I would bring that point to the attention of this Council. Since the motion was accepted by the Legislative Council, and since the introduction of legislation by means of the Ordinance not a single book has been banned, contrary to what has been spread abroad. All that the Ordinance does is to give to the Governor in Council, the persons whom the people of the country put there, the right to say that if any literature is coming into the country which is aimed at undermining the State it should not be permitted to come into the Colony. In the same way as the Governor in Council could ban what is known as filthy literature they could say that a certain type of literature was subversive, and as the caretakers of the people they could say that it should be kept out. The whole purpose of the motion and the legislation which implemented it, has been completely misconstrued and misread, and the people have been given a completely different aspect of its true perspective, which is really to bring in line literature published abroad and literature published in the Colony. For my part I will have to oppose this Bill.

**His Grace the Archbishop :** Sir, I also promise not to take six hours of your valuable time, but I am sorry to disagree very fundamentally with my hon. friend who has just sat down. I studied the Ordinance very carefully at the time when it was first put before the Legislative Council as a Bill, and I have studied it very carefully since its enactment. I thought then, and I still think, the Ordinance was ineffective, ill-timed, undesirable and entirely mischievous.

[His Grace the Archbishop]

I am going to take this opportunity to address some remarks in public upon this subject. My hon. friend who has just sat down says that posterity will judge. If posterity is going to judge I am going to have my say before I sit down this afternoon : and I hope very much that what is recorded in this Council today will perhaps warn any future Government against repeating such an experiment. First of all I consider the Ordinance entirely ineffective and contrary to the best interests and the practice of law, because it could not possibly be enforced. We have a long and virtually unprotected coastline. I have in my possession some of the diaries of the late Bishop Austin, of blessed memory. In those diaries it is recorded that in those days there was no road from Georgetown to Berbice, and the Bishop used to travel along the coast by boat and wade ashore at any point he desired. I pity any Coastguard attempting to protect our coastline. Inland we are more vulnerable. Right around from Venezuela to Brazil there are hundreds of miles of frontier and no one, except with the expenditure of millions of dollars, could hope properly to control that. At any point along that frontier anyone wishing to bring undesirable literature into this Colony could do so, and I cannot see how any Government could stop it.

Then again there is the Post. That enlightened Government which passed this piece of legislation did not propose any postal censorship. I have experience of the use of the mails for such purposes. At a time when I was the Headmaster of a school there were some organizations abroad sending literature concerning contraceptives to schoolboys whose names appeared on Prize Lists and Examination Pass Lists. An effort was made, at the request of the Education Department and others interested

in Education, to put a stop to it. But the people who were sending the literature were not so easily to be foiled and had the letters addressed in different handwriting on plain envelopes, and so the literature continued to come in. I cannot imagine any political party or subversive organization wishing to bring in literature being put off by such puny effort as that undertaken by the last Government here.

Then I consider the Bill fundamentally and essentially bad, inviting people, as it does, to read undesirable literature. Again I have personal experience which I am obliged to quote to illustrate the point. When I was a much younger man, by chance one afternoon I went with some boys into a Cinema where we saw a most undesirable film. I was foolish enough to write a letter of protest to the management that such a film should be shown to those young children. Subsequently I met the Manager of the Cinema, who was a very good friend of mine, and he told me that the film was a very poor story and miserable production which would have undoubtedly been a loss but for my letter which was exhibited and which filled the house at every show. I can imagine nothing more calculated to persuade people to read undesirable and subversive literature than to pass a Bill of this character—of the character of the Bill we are now asked to repeal. The hon Member who spoke last likened the prohibition of undesirable literature to the prohibition of dangerous drugs. I am sorry I cannot follow that analogy. There is, as a rule, a very general opinion about the effect of well known dangerous drugs, but there is not such an unanimity of opinion about literature or thought of any kind. My ideas appear to be right to me and they may appear to be wrong to everyone present in this Chamber this afternoon, but I still have the right to my opinion; and in a free country argument

[His Grace the Archbishop]

is best met with argument. We have always been made to understand that only in Fascist and Communist countries freedom of thought is denied to the people, censorship is imposed by the Government, and the people are treated like children being told what they may read or what they may not read.

When the original Bill was passed I said to myself "This is just one more example of the power of the Government which has increased and is increasing and ought to be diminished." I thought it was a very poor conception of the duties of the administration of those days that they could not find anyone competent to answer the points in this literature which they believe to be untrue. Surely no matter what kind of propaganda is produced, there is an answer to it, and an answer is far more sensible than a blind prohibition. Can it be that those who are anxious to preserve the country from sedition cannot give the answer to the propaganda they fear? Before I sit down I would like hon. Members to ask themselves this question as a matter of general application. Who in any country has the right to decide what is or is not desirable for the citizen to read? I might be tolerant to the opinion of a body of University Professors in their opinion on matters of intellect; I might be tolerant to the opinion of a Board of Theologians on matters of theology; but to commit myself body, soul and spirit to the Governor in Council is something quite impossible for me as an honest citizen to do. With all my heart I have revolted against this Ordinance ever since it was first put out in the form of a Bill, and I am only thankful for this opportunity to say something to support its repeal.

Finally, under this new Constitution that we now have, whatever danger

there was before is now increased a hundredfold, not only at the present time but for the whole future. As far as I can see it, there will always be a majority party of some sort in power, as we are committed to party government once and for all, and so it appears that a poor minority in the Colony, who may be very considerable in numbers, will have to submit to the views of the majority as to what they should or should not read. That is putting oneself in a position that I do not think any citizen should be asked to do. That is an infringement of the liberty of the individual. That is not just restraint. If absolute freedom is a licence, then this is tyranny; and I am pleased this afternoon to have the opportunity warmly to support the motion that this detestable Ordinance should be repealed and taken once and for all off the Statute Books of this Colony and, I hope, never to return thereto. \*

In due time I shall have to support an amendment which, I believe, will be moved in the Committee stage with regard to Clause 3. It is a great pity that this admirable Bill should have been marred by Clause 3, which appears to me to be bad law, maladministration and contrary to all commonsense. With these remarks I warmly support the passing of this Bill for the repeal of the *Undesirable Publications Ordinance* which is now before this Council.

**Mr. Cummings:** Sir, I rise to support this Bill with certain reservations with which I shall deal in the Committee stage in regard to Clause 3. The hon. Member, Mr. Luckhoo, drew an analogy when he spoke of dangerous drugs. As the hon. Member, His Grace, has said, that is something completely different. I feel, Sir, that all matters relating to thought, opinion and conscience are without the sphere of legislation. A man must be free to assimilate ideas, just as he is free to breathe the

[Mr. Cummings]

air around him, and his faculties should be so trained as to permit him to apply reason and judgement to the facts he has assimilated and to make decisions as to what he should believe for himself. That is liberty. That is freedom. Our accepted way of life envisages freedom of speech and thought. Can a man be said to be free if six or nine persons—and here I refer to the Governor-in-Council—are to deem that certain literature is contrary to his interest?

Here let me pause to suggest a different *vis a vis* seditious libel. As His Grace has pointed out, it is one thing to surrender rights with regard to theology to a Board of Theologians or one's opinion on certain other matters to a Board of Professors, trained persons. With regard to seditious libel the liberty surrendered there, if any, is to a competent Court, a Court trained to deal with that type of opinion. Because for certain political reasons a majority return certain people, am I to be satisfied that those people are competent to tell me what I should read? We may awake one morning—to be frivolous for a moment—and find that the comic strips in the newspapers are deemed subversive, that the Bible or the Works of Shakespeare, Plato, Milton are deemed to be subversive literature. Any such restriction is a negation of democratic ideas. I had said from my platform during the last elections that I was thoroughly against the Subversive Literature Ordinance and I had pledged myself if elected to see that it is repealed. I am happy now to associate myself with this Bill before the Council which seeks to repeal that Ordinance.

**Mr. Robertson:** It is with the greatest pleasure that I rise this afternoon to support this Bill. I recall that eventful afternoon, the 27th of Feb-

ruary, when we picketed outside this building in the broiling sun in protest against the Bill, this obnoxious piece of legislation. Today I am in the cool in this Chamber supporting the repeal of that most despicable piece of legislation that was ever placed on the Statute Books of this country. Sir, that piece of legislation was a disgrace and an insult to the intelligence of this entire community; it stinks and as such it should be forgotten as an evil, political, mental aberration born of hysteria and fanned into being by the selfish and shortsighted antagonist of the people: I feel, Sir, that any measure which restricts the rights of the people should never be used in any democratic community. I find, Sir, in that piece of legislation nothing but an attempt against the civil rights of the people. You must see what the demagogues want you to see; you must listen to what they want you to hear, and you must read what they want you to read. That is what I call suppressive. It's discriminatory, primitive, restrictive, compulsive, oppressive legislation.

The word "Democracy" is shouted from the housetops by the demagogues. That word coming from an oligarchal Government is nothing but hypocrisy and is a distortion of that blessed word. What is democracy? It is the free movement of the people with their liberties and their rights unrestricted. It is a principle which acknowledges the equal rights of all men to life, liberty and the pursuit of happiness. I may quote from "the Universal Declaration of Human Rights" where we find even in the preamble these words:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

"Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world

[Mr. Robertson]

in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people..”

Then in the Proclamation we have got the following:—

“The General Assembly proclaims

“This universal declaration of human rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

“ARTICLE 1—All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

“ARTICLE 2—Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or any other limitation of sovereignty.

“ARTICLE 3—Everyone has the right to life, liberty and security of person.”

That is what I call democracy. Sir, I always think it is a burning shame to find in our midst these hirelings and lackeys of the Imperialists who make themselves so depraved as to institute such laws to suppress the civil rights of their own people. We always find that whenever the personal interest of these leeches is being challenged by the

people, or whenever the people commence to be awakened or to be politically conscious these demagogues say, “Let us save these people from themselves.” Yes! That is the conclusion they always come to, as was raised in that now defunct Legislative Council and as we hear today in the debate in this Council—“No, we must not permit the people to have it. It is like putting sharp-edged tools into the hands of children with which they will cut themselves. Sir, the people not only of this country but of the world are going to have these sharp-edged tools in their hands, but they will not cut themselves. All they will cut is the yoke from around their necks.

Bill read a second time.

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

#### COUNCIL IN COMMITTEE

Clause 2—*Repeal of Ordinance No. 4 of 1953.*

**The President:** May I ask whether the word “wholly” is desirable? Unless Members feel it is, I will move that it be deleted. The Clause reads, “The Undesirable Publications (Prohibition of Importation) Ordinance, 1953, is hereby wholly repealed.” The word “wholly” seems to me entirely superfluous. I move that the clause be amended by the deletion of that word.

**Mr. Raatgever** seconded.

Clause 2, as amended put, and agreed to.

Clause 3—*Invalidation of acts.*

**Mr. Cummings:** Sir, I wish to move the amendment of this Bill by the deletion of Clause 3.

**Mr. Luckhoo** seconded.

**Mr. Cummings:** I form the view that such a clause would be illegal. Much has been said about Parliamentary Sovereignty. It is true that the Imperial Parliament is supreme, and that the authority of that body cannot be questioned by any Court. There are only certain technical *de facto* limitations to the sovereignty of the Imperial Parliament, but it is not so with the Colonial legislatures. Professor Dicey in his treatise on the Law of the Constitution, the 6th Edition, at page 98, which I will quote with your permission, Sir, says:

"No British court can give judgement or ever does give judgement that an Act of Parliament need not be obeyed because it is unconstitutional. Here in short we have the essential difference between subordinate and sovereign legislative power."

He goes on at Page 105,

"Hence the courts in Victoria and also in the rest of the British Dominions may be called upon to adjudicate upon the validity of constitutionality of any Act of the Victorian Parliament."

We accept that as meaning that the court can pronounce upon the validity of an Act of this Legislature.

Now, Sir, we turn to the Colonial Laws Validity Act of 1865, to see what purported legislation the Court may deem invalid. In the Interpretation Section—Section 1,

"The term 'colony' shall in this Act include all Her Majesty's possessions abroad in which there shall exist a legislature, as hereinafter defined, except the Channel Islands, the Isles of Man and such territories as may for the time being be vested in Her Majesty under or by virtue of any Act of Parliament for the Government of India. Now the terms 'legislature' and 'colonial legislature' shall severally signify the authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for any colony . . . The term 'colonial law' shall include laws made for any colony either by such legislature as aforesaid or by Her Majesty in Council."

In Section 2 the Act provides that,

"Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the Colony which such law may relate, or repugnant to any order or regulation."

—and here I emphasize the words "repugnant to any order or regulation"—

"Made under the authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative."

Now, Sir, I hope that from the foregoing I have conveyed to hon. Members my view, (1) that a competent court can legislate on the validity of an enactment of this Legislature, and (2) that the court is bound to declare that enactment void if it is repugnant not only to an Imperial Statute but to an Order in Council made by virtue of such a Statute.

The British Guiana Act of 1928, which is Chapter One of the Laws of British Guiana, is an Imperial Act—I will not read the whole thing—empowered Her Majesty in Council to legislate by Order in Council for the creation and constitution of the Legislature for the Colony of British Guiana in substitution for the then existing Legislature. Such legislation is promulgated by Order in Council, 1928, which is Chapter Two of the laws of this Colony. Section 54 of Chapter II provides that,

"It shall be lawful for the Governor, with the advice and consent of the Council subject always to any conditions, provisos and limitations prescribed by any Order in Council, or by any instructions under His Majesty's Sign Manual and Signet to make laws for the peace, order and good government of the Colony."

Now, before dealing with the Subversive Literature Ordinance of 1958,

[Mr. Cummings]

I pause to ask myself what that means. It means this, that the Imperial Parliament said that the Legislature as constituted under that Order in Council, if it adopted the proper procedure, is supreme; and if it said "this" is the law, then "this" is the law; provided—and here we must think of the Colonial Laws Validity Act—that the law was not repugnant to any Act or Order in Council applicable to the Colony.

Now, Sir, the Common Law of England is the Common Law of this Colony, and if the Comptroller of Customs seized without statutory authority something from someone, he would, by virtue of the Common Law have committed a trespass. The then legislature said, "By virtue of the power vested in us by the Order in Council we shall abrogate the Common Law and declare valid, acts which would otherwise have been invalid." Now what does our present Legislature seek to do? In effect they say, "We are going to say, 'what you gentlemen declared to be, by virtue of an Act of Parliament, law, was never law'." The present Legislature seeks consequently to do something repugnant to that Order in Council which was in existence at the time when the acts were declared valid and remained in existence until its repeal by the present Order in Council. Were that Section to come before a competent court for a pronouncement on its validity—and I say this with a degree of confidence—the court will declare such a provision to be repugnant to the Order in Council, of 1928 and consequently, void in pursuance of the provisions of Section 2 of the Colonial Laws Validity Act—that is, to be destitute of any legal significance. What then, would be the use of embodying in an excellent Bill which seeks to repeal a most undesirable ordinance, a provision which has no effect—*brutum fulmen!*

But, Sir, there is another reason which I do not propose to develop fully. Section 59 of the present Order in Council, provides that

"Subject to the provisions of this Order it shall be lawful for the Governor with the advice and consent of the State Council and the House of Assembly to make laws for the peace, order and good government of the Colony."

I have not, Sir, come to a definite conclusion on what I shall now say; this is merely being submitted to you for your consideration—as everything is. Except that the first limb of my argument is supported by what I consider to be unchallengeable authority. But it does seem to me, that this legislature, a subordinate law-making body in enacting a provision of the nature of Clause 3 is purporting to enact a law which would destroy the peace, order, and good government of the country. It seems to me that this would be *ultra vires* and consequently void. It can only legislate for the peace, order and good government. Now, if a sovereign body says, "We abrogate the Common Law and we validate this act," does it make anything but chaos—quite apart from order—for a body with similar sovereign powers to say: "You, my predecessors declared that the acts were lawful, but we declare that they were never lawful?" In effect, saying our predecessors either did not or could not do what they in fact had done. To say that something which was made alive was never alive is a complete negation of the very sovereignty we now claim—chaos! For these reasons, Sir, I move the amendment of the Bill by the deletion of Clause 3.

Mr. Luckhoo: I would like to support my hon. friend and say this Clause 3 is repugnant to all constitutional legislation, reason and commonsense. Sir, the reasons for my adopting that attitude are three-fold. Firstly, it attempts



[Mr. Luckhoo]

to legislate a lie, and attempts to do something which is entirely impossible; secondly, it denies the power of the past legislative which may be termed a denial of the sovereignty of Parliament, and thirdly it is a contravention of the Constitution and is therefore invalid. Sir, the first point that it attempts to legislate an untruth is to say that the past legislature had no sense of truth and honour. It is shocking to one's sense of propriety and justice. On the point that it seeks to do something which is impossible, the acts of the Comptroller *de facto* have been validated. Yet this new Bill seeks to say this was never done. I would refer you, Sir, with your permission to Blackstone, who is the father of the Common Law of England and one of the old masters in his "Commentaries on the Laws of England," Page 160—I think it is the 4th Edition—where he speaks of the power of Parliament.

"All mischiefs and grievances, operations and remedies that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate or new-model the succession to the Crown; as was done in the reign of Henry VIII and William III. It can alter the established religion of the land: as was done in a variety of instances in the reigns of King Henry VIII and his three children. It can change and create afresh even the Constitution of the Kingdom and of Parliament themselves; as was done by the Act of Union, and the several statutes for triennial and septennial elections. It can, in short do everything that is not naturally impossible."

He regards Parliament as being the supreme body and as being capable of doing almost anything. But this is one thing, I respectfully contend, that cannot be done: it cannot say that that which has been done was not done. In doing so it denies the power of the past Legislature, which is a further objection, because the past Legislature pos-

sessed all the rights and privileges of the present one, and as my hon. friend quite rightly pointed out, it had the right to make such a law, which it did in fact make. In *Halsbury*, Vol. 6 at page 383, it is said:

"Acts of Parliament cannot curtail the powers of future Parliaments since it is a maxim of the common law that Acts derogatory to the power of subsequent Parliaments bind not."

The analogy there is that a future Parliament has no greater power than the present. The legislative body which was in existence at that time had every right to legislate as it deemed fit, and no subsequent Legislature can say that what was done was not done. In other words it is a question which affects the rights and privileges of that legislative body. Apart from that it is a contravention of our Constitution and therefore invalid. In addition to the passage to which my hon. Friend referred, I would like to quote sections 2 and 3 of the British Guiana (Constitution) Order in Council which read:

"2. This Order may be cited as the British Guiana (Constitution) Order in Council, 1953. It shall be published in the *Gazette* and, save as otherwise expressly provided in this Order, shall come into operation on the appointed day."

"3.—(1) The existing Orders are hereby revoked.

(2) The aforesaid revocation shall not prejudice anything lawfully done under the existing Orders and in particular the continued operation of any law in force in British Guiana immediately before the appointed day shall not be affected by reason only of such revocation."

So that in our new Constitution ample provision is made whereby what was lawfully declared to be law by the past Legislature remains law. There was a very interesting case in 1949

[Mr. Luckhoo]

which went to the Privy Council. It was the case of the *Commonwealth of Australia v. the Bank of New South Wales and others*, in which the High Court of Australia held that there was a contravention of the constitutional rights, and therefore the enactment was invalid. The matter was taken to the Privy Council which upheld that ruling. I feel, and I have no doubt about it, that clause 3 of this Bill is repugnant to reason and commonsense, and it is unconstitutional. In reading the recent debate on the Bill in the House of Assembly I observed that our Attorney-General took the same view, and in my public experience I cannot remember any occasion on which he offered advice to the Legislature which was wrong. I therefore feel that the young and perhaps inexperienced legislators in that House would have done well to accept the straightforward view which he expressed, that this clause of the Bill was unconstitutional. I have no hesitation in supporting the amendment moved by the hon. Member, Mr. Cummings, for the deletion of the clause.

Amendment put, and agreed to.

Title and enacting clause put, and agreed to.

Council resumed.

**The President:** I report that the Bill has passed through our Committee with amendments, and I propose to move its third reading at once, unless there is any objection to that. I therefore move that the Bill intituled "An Ordinance to repeal the Undesirable Publications (prohibition of Importation) Ordinance, 1953" be now read a third time and passed.

**Mr. Gajraj** seconded.

Question put, and agreed to.

Bill read a third time and passed.

#### HER MAJESTY'S VISIT TO JAMAICA

**The President:** Hon. Members, I communicated to you a letter from the Legislature of Jamaica at the beginning of our meeting and I said that if there was time this afternoon I would move a motion with regard to it. As it is now 10 minutes before closing time, I hope you will agree with me that we should suspend our Standing Rules and Orders again in order that I should move a simple motion of thanks to the Legislature of Jamaica, coupled with a suggestion that our Government accept the invitation and provide the necessary funds to enable the delegates to be sent. If you agree that that should be done I will ask you to approve of the suspension of the Standing Rules and Orders.

**Mr. Raatgever** seconded.

Agreed to.

**The President:** The motion is quite simple. I will ask the Clerk to circulate copies. It reads:

"Be it resolved:

That this Council desires to record its sincere thanks to the Members of the Legislature of Jamaica for their kind invitation to send two representatives of the Legislature of this Colony and their wives to participate in the welcome being given to Her Majesty Queen Elizabeth II on the occasion of her visit to Jamaica between the 24th and the 28th days of November next and to be the guests of the Government of Jamaica during that period, and requests the Government to provide the funds necessary to cover the travelling and subsistence expenses of the delegates and their wives in connection with their said visit."

I have no hesitation whatever in moving this motion. I think it is our duty to express in a formal way our

[Mr. President]

thanks to the Legislature of Jamaica for this invitation, and I think too that it is much more so when the occasion is one which is so rare in this part of the world—an occasion for participating in the welcome to Her Majesty. If this motion is passed the Clerk of the Council will communicate accordingly. The second part of the motion is to ask the Government to provide the expenses of the trip on behalf of two representatives of this Legislature, apart from the period of the visit, the cost of which will be borne by the Jamaica Government to whom our representatives will go as their guests. I formally move the motion.

Mr. Cummings seconded.

Mr. Macnie: Sir, I rise to support the motion and to ask whether you will give us a little explanation. I notice that the letter from the Clerk of the Legislature of Jamaica is dated the 27th of June, and it seems to have taken a considerable time to reach this Council. While I recollect having read in the Press that this invitation had been extended to this Colony I cannot at the same time recall having read that it had been considered in the House of Assembly. I wonder whether it may be that the House has not met since the letter was received, or whether there was any other cause for the delay. However, I entirely support the motion

and I hope that the request made towards the end of the motion will receive the considerations of the Government, and that it will be granted.

**The President:** Hon. Members, I am afraid I cannot answer categorically the question asked by the hon. Member. All I know is that the receipt of this letter was announced in the House of Assembly by the Speaker, and some indication of its receipt was also given in the public Press. Naturally, as it is a letter addressed to both Chambers of the Legislature of this Colony, a reply ought to be given by both Chambers, but the initiative must, of course, be taken by someone in each Chamber. I have taken it upon my shoulders to initiate some action here. I presume that the House of Assembly has either not met since that announcement or is engaged on some other duties, but I do hope that similar action will be taken. However, I take it that the action which we are taking will be followed by similar action in the House of Assembly. Certainly, for our part we will take action at once to communicate our gratitude to the Jamaica Legislature.

Motion put, and agreed to.

**The President:** Hon. Members, that concludes our business for the day. I therefore adjourn the Council *sine die*.