

LEGISLATIVE COUNCIL

(Constituted under the British Guiana
(Constitution) (Temporary Provisions)
Order in Council, 1953)

THURSDAY, 24TH FEBRUARY, 1955

The Council met at 2 p.m.

PRESENT :

His Honour the Speaker, Sir
Eustace Gordon Woolford, O.B.E., Q.C.

Ex-Officio Members:

The Hon. the Chief Secretary,
Mr. F. D. Jakeway, O.B.E.

The Hon. the Attorney General,
Mr. F. W. Holder, C.M.G., Q.C.

The Hon. the Financial Secretary,
Mr. W. O. Fraser, O.B.E.

Nominated Members of Executive Council:

The Hon. Sir Frank McDavid,
C.M.G., C.B.E. (Member for Agriculture,
Forests, Lands and Mines).

The Hon. P. A. Cummings (Member
for Labour, Health and Housing).

The Hon. W. O. R. Kendall (Member
for Communications and Works).

The Hon. G. H. Smellie.

The Hon. R. B. Gajraj.

The Hon. R. C. Tello.

Deputy Speaker:

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

Nominated Officials

Mr. W. T. Lord, I.S.O.

Mr. J. I. Ramphal.

Nominated Unofficials:

Mr. T. Lee.

Mr. W. A. Phang.

Mr. L. A. Luckhoo, Q.C.

Mr. C. A. Carter.

Rev. D. C. J. Bobb.

Mr. H. Rahaman.

Miss Gertie H. Collins.

Mrs. Esther E. Dey.

Dr. H. A. Fraser.

Lt. Col. E. J. Haywood, M.B.E., T.D.

Mr. R. B. Jailal.

Mr. Sugrim Singh.

Clerk of the Legislature—

Mr. I. Crum Ewing.

Assistant Clerk of the Legislature—

Mr. E. V. Viapree (acting).

Absent :

The Hon. G. A. C. Farnum, O.B.E.
(Member for Local Government, Social
Welfare and Co-operative Development).

Mr. W. A. Macnie, C.M.G., O.B.E.,
—on leave.

Mr. E. F. Correia.—on leave.

The Speaker read prayers.

The Minutes of the meeting of the Council held on Tuesday, the 22nd of February, 1955, as printed and circulated, were taken as read and confirmed.

ANNOUNCEMENT

MEMBERS ABSENT

Mr. Speaker: I have to announce that the hon. Member for Local Government, Social Welfare and Co-operative Development (Mr. Farnum) and the hon. Mr. Macnie have asked to be excused from attending today's meeting.

PRESENTATION OF REPORTS AND DOCUMENTS

The Chief Secretary: I beg to lay on the table:

The Trading and Profit and Loss Accounts and the Balance Sheet of the Kamarang Trade Store for the year ended 31st December, 1953, together with the Director of Audit's certificate and report thereon.

Sir Frank McDavid: (Member for Agriculture, Forests, Lands and Mines): On behalf of the Member for Labour, Health and Housing (Mr. Cummings): I beg to lay on the table:

"The 1953 Report of the Central Housing and Planning Authority, British Guiana.

ORDER OF THE DAY

SUMMARY JURISDICTION (APPEALS) (AMENDMENT) BILL

The Attorney General: I beg to move the first reading of a Bill intitled:

"An Ordinance further to amend the Summary Jurisdiction (Appeals) Ordinance."

The Financial Secretary: I beg to second the motion.

Question put, and agreed to.

Bill read a first time,

MINING (CONSOLIDATION) (AMENDMENT) BILL

Sir Frank McDavid: I beg to move the first reading of a Bill intitled:

"An Ordinance further to amend the Mining (Consolidation) Ordinance with respect to the payment of royalty on timber cut on concessions and leases granted under that Ordinance."

The Financial Secretary: I beg to second the motion.

Question put, and agreed to.

Bill read a first time.

ADOPTION OF CHILDREN BILL

The Financial Secretary: I move that the Council resolve itself into Committee to resume consideration clause by clause of the Bill intitled —

"An Ordinance to make provision for the adoption of children."

The Attorney General: I beg to second the motion.

Question put, and agreed to.

Council in Committee.

The Attorney General: With your permission, Sir, I ask leave to deal with the Bill in the absence of the hon. Member for Local Government, Social Welfare and Co-operative Development (Mr. Farnum) who is in charge of the Bill

Permission granted.

The Attorney General: On the last occasion I asked, with the concurrence of the hon. Member in charge of the Bill, that it be left in Committee so that, if there were any matters which required amendment or alteration, we would have the opportunity of dealing with these matters, when Council next met. We have examined the Bill and there is nothing which we would wish

to amend or alter. In these circumstances, Sir, unless any hon. Member wishes to make any further comment in regard to any particular aspect of the Bill at this stage, I ask that Council resume.

Mr. Ramphal: I understand there was an extensive amendment to a certain clause and we were to be provided with a copy.

The Attorney General: Hon. Members will recollect I then said that it would form part of the Minutes and, as hon. Members would have the Minutes, I assume they would not wish to have a duplication on the matter.

Mr. Speaker: That is so.

Mr. Ramphal: I apologise. At the time when that was said I was in the Lobby.

Mr. Speaker: It was a long amendment. Is there anything the hon. Member would wish to add?

Mr. Ramphal: No, Sir.

The Attorney General: I beg to move that Council now resume.

Council resumed.

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

Mr. Gajraj: I beg to second the motion.

Question put, and agreed to.

Bill read a third time and passed.

POUNDS (AMENDMENT) BILL

The Chief Secretary: I would like to take the first reading of the Pounds (Amendment) Bill—item 4.

Mr. Speaker: That may be done.

The Chief Secretary: I beg to move the first reading of a Bill intitled—

“An Ordinance further to amend the Pounds Ordinance, with respect to the publication of lists of impounded strays.”

The Attorney General: I beg to second the motion.

Question put, and agreed to.

Bill read the first time.

INDIAN LABOUR (AMENDMENT) BILL

The Attorney General: On behalf of the hon. Member for Local Government, Social Welfare and Co-operative Development I would like Item 5 to be taken.

Permission granted.

The Attorney General: On behalf of the hon. Member for Local Government Social Welfare and Co-operative Development I beg to move the first reading of a Bill intitled —

“An Ordinance further to amend the Indian Labour Ordinance.”

Sir Frank McDavid: I beg to second the motion.

Question put, and agreed to.

Bill read the first time.

ABOLITION OF CAPITAL PUNISHMENT

Mr. Luckhoo: May it please Your Honour, I beg to move —

“That this Honourable Council recommends to Government that a select committee be appointed forthwith to enquire into and report on the abolition of capital punishment, and with terms of reference that permit recommendation of changes in the law of murder, in and for the Colony of British Guiana.”

[Mr. Luckhoo]

Sir, I first gave notice of this motion on the 26th September, 1952, — two and a half years ago — but it never saw the light of day, and the notice was again repeated on the 5th August, 1954. Consequently I am very happy for the opportunity of having this motion debated in this Council today. It may not have the colour such as the paint factory motion, but nevertheless I can assure you, Sir, that a matter which concerns human life must necessarily be of some importance, and the fact that it has occupied the attention of the Home Parliament for nearly 100 years should also be taken into account as to its merit.

The subject matter is one on which I have the strongest views and, like Lafayette, I shall go on demanding the abolition of capital punishment until the infallibility of human judgment has been proved to me. Of course, the counter may be put forward that an innocent man or woman is never hanged today, because we have the Appeal Courts. We have the right to go to appeal, and after the Appeal Courts we also have the right to go to the Privy Council, and finally to approach the Governor for a reprieve. Nonetheless the point I wish to make at this early stage of the debate is that it is still possible, and it will remain possible for mistakes to be made, so long as human judgment remains fallible, and as long as the death penalty is irrevocable. Therefore, in my small way my small voice shall continue to cry out in this Colony that there should be either abolition of capital punishment or some review of our Criminal Law relating to murder.

In dealing with penal questions one finds difficulty in overcoming inherent prejudices which are invariably based upon past habits. I think it is Dicey

who, in his "Law and Public Opinion", puts it this way:

"The opinion which changes the law is in one sense the opinion of the time when the law is actually altered; in another sense it has often been in England the opinion prevalent some 20 or 30 years before that time; it has been as often as not in reality the opinion not of today but of history."

Let us, therefore, turn back the pages of history to look at the past habits and prejudices and see whether in this 1955 those habits and prejudices are not really making us cling to a system, which our natural sense and our discretion and our objective contemplation would tell us is a system that deserves and is in need of a change. It may be a little tedious in presenting this motion to go through all the historical background but, I think, it is very necessary that we do so in order to have a full and firm grasp as to what is the position.

Hon. Members, from the 13th to the 18th century people were liable to be hanged for the larceny of any amount in excess of five shillings, and persons were in fact so hanged. What was then regarded as serious is today a trivial offence. The right of inflicting capital punishment was not only that of the kings but of the Lords of the Manors and Abbeyes. Hume, the historian, wrote —

"75,000 men and women were put to death for theft and robbery in the reign of Henry VIII."

In those days hanging was regarded as being a natural penalty for those offences. It is said that even interfering with or cutting away a piece of the stone in one of the main bridges in London was a serious enough matter to invoke the death penalty. In those days hanging was regarded as much a public event as a Cup Tie today, in which the morbid eccentricities of the public were much in evidence.

In 1810 Sir Samuel Remiley introduced a Bill in England seeking to abolish capital punishment for the theft of five shillings and over. The Solicitor General on that occasion opposed it, and the basis of his opposition was "the opposition of theoretical speculation to practical good." What is interesting in that debate of 1810 was the speech made by Chief Justice Ellenborough, because that speech, which he made then, is the pattern of speeches we hear today, and that speech was made in respect of the theft of five shillings and over remaining a capital offence. I would like, with your permission, Sir, to quote that very short and relevant passage from Lord Ellenborough's speech, because I have no doubt that today in this Chamber we will hear similar sentiments being expressed. It reads:

"I trust your lordships will pause before you assent to an experiment pregnant with danger to the security of property, and before you repeal a statute which has so long been held necessary for public security. I am convinced with the rest of the Judges public expediency requires there should be no remission of the terror denounced against this description of offenders. Such will be the consequences of the repeal of this statute that I am certain depredations to an unlimited extent would be immediately committed."

Strong words! His peroration succeeded. It swayed the House of Lords. There was no repeal of this Act which had made larceny a capital offence.

It was only in 1837 when the good Queen Victoria came to the Throne that the old conception that the deterrent effect of a punishment depended on its severity, was discredited. And we find that in the year 1861, for the first time the death penalty was reserved only for the offences of treason, murder, piracy with violence, and setting fire to a dock-yard. They limited the scope. That decision marked the change of popular

opinion. People began to feel that they had a right to treat the sanctity of life in a manner which it deserved. They became horrified at the idea of destroying that which they did not create.

Although it may be argued that a guilty person had no respect for the sanctity of the life of another, that is not the point. Two wrongs never did make a right. A life for a life was not the answer—yes, as from that time there was an awakening in the minds of people. The approach was—who are we to take the life of another or to feel that it is meet that the prisoner should suffer this particular punishment?

We have the first Royal Commission sitting in the year 1864—less than 100 years ago. This Commission was set up with terms of reference which permitted the recommendation of total abolition of the capital punishment. It recommended that there should be two degrees of murder, and we find that a year later the House of Lords defeated the implementation of this measure, the voting on it being 38-38, as a result of which the Bill was not accepted. In 1881 another effort was made, this time by the Home Secretary, Sir William Harcourt, who, wishing to escape from the maze of legal intricacies, put forward a proposition that murder that was committed with the intention to kill should involve the capital punishment, but all other murders should involve penal servitude for life. The legal brains were not able to conceive of the proposition, and the result was that there was a rejection of this particular measure.

The next step from there was made in the year 1930. We find that a Select Committee of the House of Commons was appointed to report on capital punishment. This Committee reported in favour of a five-year experiment in which there would be no execution. But

[Mr. Luckhoo]

what is true in England is also true here. Customs, habits, prejudices die very hard indeed, and so this recommendation of 1930, to the effect that there should be a suspension of the death penalty for five years, was rejected by the Houses of Parliament.

The next step in this sequence of events over the years took place in the year 1947. In the House of Commons, in a free vote 245 abolitionists voted in favour of the abolition of the death penalty for a five-year experimental period, while those on the other side numbered 222. Despite this very strong recommendation approved by the House of Commons, we find that the House of Lords took exception and would not accept the idea of an experimental period. Arising out of this, in 1947 a Royal Commission on Capital Punishment was set up, and it reported in 1953. I shall come to that Report a little later in my contention, but here it is interesting to observe what was said by Viscount Templewood, who was Home Secretary in 1937, in respect of the question as to whether or not there should be an experimental period of five years. He said this :

“Is it that the British public have been for so many generations habituated to the idea of hanging criminals that the possibility of abolishing death sentences is almost inconceivable?”

That is the manner in which he saw it. The British system of jurisprudence is the finest in the world, but an unhappy relic of it remains in that the penalty of the capital punishment still persists on the pages of the books. It is unfortunate, maybe, that this aspect which has had ample support from people of all walks of life did not find favour with the House of Lords, so that it could not even accept this period of experiment. That, briefly,

is, a historical sketch of the various stages through which the subject of capital punishment has passed from time to time.

What are the main objections to reform? Two objections were put forward in the year 1930, repeated in the year 1947 and, I have no doubt, will be repeated in the year 1955. The first is that the classification of murder is not practicable, and the second, fear of the consequences. In order to answer these I would ask hon. Members to let us consider very briefly the state of affairs in two countries—Scotland and India. I think, if my history is correct, and if I remember the date correctly, it was in 1837 that Lord Macaulay originally drafted the Indian Penal Code Reform. In that Code the death penalty was rigidly restricted, and he allowed the judges to have the right to say that a particular offence, although murder, need not have the death penalty associated with it, but the prisoner could be sent to prison—penal servitude—for life. That system worked. We find that Sir Charles Metcalfe actually suspended the capital punishment in Bengal with success — success in the sense that there were less cases of murder brought up subsequent to the suspension. The responsibility of differentiating as to whether the act was committed with intent to murder rested with the judges, and Viscount Templewood made this observation which, with your permission, Sir, I will read :

“The fact that they were able to carry out their task in conditions much more difficult than in England shows how groundless is the argument that English judges could not and should not be called upon to undertake a similar duty.”

In Scotland, from the year 1929 to the year 1944, there was no execution. An experiment was tried and there was a suspension of execution. The facts

show that during those years there were less cases of murder than for the 15 years previously. It was only during the war years that capital punishment was re-introduced in Scotland. This is a great misfortune, for assuredly the experiment was successful.

I repeat that in my little way I shall go on demanding the abolition of capital punishment until the infallibility of human judgment has been proved to me. And why do I say that? I say that because there are cases on record of mistaken identity — cases which should be well known to the hon. the Attorney General and to other Members of the honourable Bar; cases like that of Oscar Slater and Adolf Beck, cases which Your Honour will still recall from memory. But let me go into a more recent case, the Woolmington case of 1935. What happened in that case? A man, Woolmington, was charged with the offence of having murdered his wife. At the first trial there was a disagreement. There was a retrial and he was convicted and sentenced to death. The learned trial Judge, in the course of summing up in the retrial, said :

"It is incumbent on the accused to prove death was as the result of accident."

The case was taken to the Criminal Court of Appeal and the sentence was confirmed. Later the Attorney General, (I think it was Sir Thomas Inskip — later Lord Calvert)—granted a fiat for the case to be taken to the House of Lords, and the House of Lords quashed the conviction and sentence on the ground that the onus of proof remained with the prosecution and did not shift. It was not incumbent on the prisoner to prove anything.

The point I make is this: That man would have been hanged if it were not his good fortune that the Attorney General granted his fiat whereby he

was able to go to the House of Lords and succeed. There are other cases in which wrong directions or misdirection by the Judge resulted in the accused being sent to the gallows. I could refer to cases in this Colony which show that Judges can make mistakes as much as anyone else. A mistake in the law of the land, or in the interpretation of it, can result in a conviction of murder being wrongly based. We have had such a case in this Colony within my own personal experience. In 1947 there was no Court of Criminal Appeal and one had to seek leave of the trial judge to take a case to the West Indian Court of Appeal: Leave was sought and refused in the case to which I refer, and I remember the words of the learned trial Judge who said :

"If I had one single shade of doubt in this matter—if I could possibly be wrong about it—I would readily grant your request to have a case stated for review by the West Indian Court of Appeal."

Sir, I do not challenge the integrity of that learned Judge when he said that; he was honestly expressing his view but his position did not make him less fallible than anyone else or any more so. The accused, who was sentenced to death for murder, had to seek leave to appeal to the Privy Council, and application to do so was made in England. Fortunately for the accused in question, he was in a financial position so to do. The case went to the Privy Council, and there it was held that the summing up of the learned trial Judge was quite wrong although he had not "a shadow of doubt about it". Mistakes can be made—and will be made—but when the sentence of death has been pronounced, and when it has been carried out, there is no power which can undo errors which a Judge might make in law, or errors which have resulted in an innocent person being condemned. In the case I cite that man is today free, yet he very nearly paid the supreme penalty by hanging.

[Mr. Luckhoo]

Statistics have shown that in no country has the abolition of capital punishment increased the murder rate. The existence of the death penalty makes no difference to the security of life. I would refer to countries where people have adopted measures other than punishment and are sticking by them. You cannot teach people the sanctity of life by hanging. It seems to me that that sanctity would only be observed and respected when those in responsible positions set the example. A moment ago I referred to the fact that there was a Royal Commission on the question of capital punishment. I feel that in this Colony a Select Committee should "be appointed forthwith to enquire into and report on the abolition of capital punishment and with terms of reference that permit recommendation of changes in the law of murder, in and for the Colony of British Guiana."

The acceptance of this motion could make this Colony an example in its practice of the Criminal Law relating to murder. The Royal Commission referred to, stated as some of its recommendations that :

"The statutory age limit below which the death sentence might not be passed should be raised from 18 to 21 years of age.

"The jury should be given discretion to decide whether there were such extenuating circumstances as to justify substituting life for death penalty.

"The jury should decide whether at the time of the act the accused was suffering from a disease of the mind or was mentally deficient to such a degree that he ought not to be held responsible.

"The doctrine of constructive malice should be abolished.

"The nature of provocation should be immaterial.

"McNaghten Rules should be changed."

The House of Parliament, on February 10, 1955—about 14 days ago—accepted an amendment by Major Lloyd George, Home Secretary, that the House take note of the Report of the Royal Commission on Capital Punishment. I have been privileged to see the "Times" air-mail edition in which the amendment made by Mr. Silverman appeared, to the effect that in five years there should be a suspension of Capital Punishment as an experiment.

I would like to read the statement which Mr. Chuter Ede made. He was Home Secretary longer than any other Home Secretary since the Reform Act of 1832.

He said:

"Apart from a few men like Heath and Haigh, if one had said to all the other men on the morning before they committed their crime: 'Before night you will be in danger of the gallows', they would have laughed."

He doubted if at any time in the last 100 years a plebiscite would have carried any of the great penal reforms that had been made. There were occasions when the House of Commons had to say that a certain thing was right, even if public opinion was not, at the moment, of the same view.

And then there was reference to the Evans case. Evans was charged with murder and convicted on evidence which appeared to be abundantly clear. There was an effort to secure an appeal but that was turned down. Subsequently, Christie confessed that in that very house he had murdered six women. The evidence was very strong against

Evans and this is what Mr. Chuter Ede said :

"If ever there was a clear case (when the papers came on to his table) that a man was guilty, it was that of Evans."

Recalling the facts, he said that the evidence was overwhelmingly against Evans, then years after, Christie admitted the murder of the six women found in the house.

"If those facts had been known to the jury at the time", Mr. Chuter Ede said, "they might perhaps have found Evans guilty of murder in conjunction with Christie. I doubt if they could have found Evans guilty of murder in any other circumstances. I was the Home Secretary who wrote on Evans' papers: 'The law must take its course.'"

I think Evans's case shows, in spite of all that has been done since, that a mistake was possible and in the form in which the verdict was actually given in that particular case, a mistake was made. I hope that no future Home Secretary, in Office or after he has left Office, will ever have to feel that although he did his best—and no one would wish to accuse Mr. Chuter Ede of being either careless or inefficient—in fact he sent a man who was not guilty as charged to the gallows.

Mr. Christopher Hollis, M.P., said this:

"There is a morbid fascination with the topic of murder—the drama of men on trial for murder. If capital punishment were abolished there would be a great improvement in the level of public interest which, in the end would lead to a decrease in murder."

Mr. John Paton said he differed from the idea that lawyers had any special qualifications for determining the question under discussion. It was not a legal decision, but a social decision or a moral decision. A penalty which carried with it such utter repugnance for great sections of the community was one which brought the law into contempt.

The amendment was put to the vote and rejected by 245 votes to 214—a majority of 31—but that does not weaken the force of the points made. In this motion one seeks to have a Committee set up which would have the benefit of these reports and all the recommendations therein, and would be able to move on with some advancement with regard to legislation in this Colony. Why should we wait on the inhabitants of England? Surely, we have men in this Colony who are capable of formulating these changes and putting them on the Statute Book. We have done similar things before. Why can't we be progressive enough to move forward in a matter such as this which affects the lives of people? The cry that abolition of capital punishment would lead to widespread murder, and that society would never be protected, is a myth. The action taken in 36 countries is conclusive proof that the abolition of capital punishment has not led to any increase of murder.

I would like to mention the names of some of those abolitionist countries—Austria, Belgium, Denmark, Finland, Holland, Iceland, Italy, Luxembourg, Norway, Portugal, Roumania, Sweden, Switzerland, Western Germany. In the U.S.A. the States of Michigan, Wisconsin, Main, Minnesota, Rhode Island, North Dakota. In South and Central America there are the Argentine, Brazil, Venezuela, etc. Will it be said that those countries are not progressive? What about Australia? The position in Australia is that there is no capital punishment in that country today. In New Zealand, about which Mr. John Fernandes has always told us, there is also no capital punishment. Those are progressive countries enjoying the freedom of no capital punishment. These are only some of the 36 abolitionist countries in which the people have found the experiment working so well that it is no longer an experiment but a permanent feature.

[Mr. Luckhoo]

There is another aspect of capital punishment. It lowers the social standard that should be universally respected for the life of every individual. The relentless finality is inseparable from the capital penalty which in itself denies the sanctity of human life. We are living in an age in which, perhaps, life is cheap. We have wars and liquidation of countries, and it may be said that after Hiroshima and Nagasaki it seems a very small matter whether half a dozen worthless human beings, who have themselves taken human life, should die or live. But surely it is the duty of all of us who value our civilisation, not to depress still further those moral and spiritual values when they are most in danger.

Irrespective of what is the view of each Member (everyone is entitled to his view) I say that the acceptance of this motion can do no harm but ultimately much good. I am fully convinced, because I have had the opportunity of seeing men in the death cell awaiting the final day. It is not a pleasant thing even to recall. I have defended some 50 persons on the capital charge and I have seen very many in the death cell. I have seen human beings behave worse than sub-humans, grovelling there with broken spirits. It is a tragedy to feel that we are perpetuating it. Irrespective of how sanctimonious we can feel about our protection of society we would be doing an injustice to ourselves and to others who find themselves in that unhappy plight.

Mr. Lee: I beg to second the motion. It has been my hope ever since I became a lawyer, that some day the world would realise that human life is a sacred thing and should not be taken even by the law of the land in what is

called legalised killing. The motion calls for a Committee to inquire into the question of the abolition of capital punishment, and the Council should give its approval of an investigation of whether it should be abolished, or whether there should be an amendment of the law with respect to murder. There are countries where the death penalty is imposed only in extreme cases. I commend the hon. Member for his able speech. I could feel the vigour in him when he said he had defended 50 persons on the capital charge and had seen the agony of some of the condemned persons in the death cell. I have also had a similar experience.

It has been the practice of the Crown in this Colony to assign counsel for the defence in a trial for murder of a person who is not in a position to retain counsel. Such an assignment is given to a barrister who has had two years' practice, but the public does not realise the anxiety of the young barrister who accept, such an assignment. I feel sure that if a Committee were set up to inquire into the abolition of capital punishment many lawyers would give evidence before it.

Mr. Smellie: Mr. Speaker, first I would like to congratulate the hon. Mover of the motion on the extremely able way in which he has presented his case and the interesting review or summary, which he gave us, of the historical background to the arguments in this connection. One of his first observations was that he held the deepest possible convictions on the matter. I am sure he would be generous enough to concede that nearly everybody holds the deepest possible conviction on this subject, whether those convictions be his or they happen to be the reverse. As he quite rightly pointed out in his historical survey, measures to bring

about the abolition or the mitigation of the capital or death sentence had been sought for very many years and, I think, it is probably correct to say that, when those measures were first sought, in the obvious arguments which were brought against them was the biblical one expressed in that rather harsh statement "An eye for an eye, and a tooth for a tooth." I would admit quite candidly that, I think, we have got past that stage in so far as opposition to what the hon. Mover is seeking is concerned.

The modern outlook in regard to punishment of all kinds — this is an obvious cliché—is not revenge that is being sought but a deterrent, and I am yet to be convinced, in spite of all the statistics which the hon. Mover has given with regard to countries in which the abolition of the death penalty has been adopted, that the death penalty is not an adequate penalty for the crime of murder. I feel that if the death penalty is not carried out in the case of murder, we are exposing our fellow citizens, especially their safety and lives, and handing over the State to the law of the jungle.

Mr. Sugrim Singh: I rise to oppose this motion, so ably moved by my gallant friend.

Mr. Speaker: Not gallant!

Mr. Sugrim Singh: I spontaneously fell into the use of that word because of the very convincing manner in which my hon. friend has put forward his case for the abolition of capital punishment. Sir, my hon. friend in his usual inimitable style has to a great extent impressed me, but I am far from being convinced that the time is opportune for such a measure or such a motion to be accepted, particularly in this Colony of British Guiana. This motion, as is patent from its wording, has a legal setting, and my hon. friend has given fully his views on that, but

there is also much in this motion which the ordinary layman or the Members of this Council not belonging to the honourable Bar can appreciate.

The case for the abolition of capital punishment, as my hon. friend has mentioned, is one which has been promulgated from time to time over the past century. It seems to me as if the case for the abolition of capital punishment is a matter which has its foundation in jurisprudence. As members of the honourable Bar and hon. Members of this Council know, there has been a school of thought which says in effect that every man who commits murder or a criminal offence is a person suffering from some defect in his make-up; he is therefore sick and instead of receiving treatment because he is sick he is given punishment. In other words, that theory in jurisprudence is known as the "Lombroso Theory" where every criminal is said to need treatment and not punishment.

Taking that theory to its logical conclusion, the road is certainly not smooth, especially when we go into the case of the recidivist or habitual criminal. Several volumes have been written on the subject, and even in the debate in the House of Commons in 1948, and as recently as the 10th February—just a matter of a few weeks ago — this question of the habitual criminal and what must be done to the recidivist has presented a problem.

My hon. friend, eager as he is — and I know he has the courage of his conviction—is anxious to save life. He has given very convincing examples of people who would have been hanged and so lost their lives but for the timely intervention of some sentiment. I would have liked to have heard my hon. friend make mention of the number of persons who have been murdered. One man may, perhaps, have committed a

[Mr. Sugrim Singh]

mass murder of six or seven persons. Those are also lives worthy of being saved. My hon. friend has quoted Dicey, and I also seek sanctuary in Dicey, who says that all subjects are equal in our lands, and the law protects the individual from the time life is in being, even within the mother's womb. I wish to move on by saying it is all well and good from the theoretical point of view to refer to countries and also to quote statistics; but, Sir, statistics are usually very misleading. We cannot in this manner rely on statistics. Because there has been abolition of capital punishment and during that period there has not been any increase of murders, I respectfully submit that we cannot come to the conclusion that it is so effective. There are some points in that for consideration, but they are not conclusive.

Let us look at this matter in its widest form. My research has led me to say that except in New Zealand—I speak subject to correction. The hon. the Attorney General may assist me on this point — and Australia (I am instructed) there is no other country in the Commonwealth in which capital punishment has been abolished. In other words, capital punishment exists throughout the Commonwealth with the exception of New Zealand and Australia. Talking of the Commonwealth, it is true that we put our ears to the ground and hear of the system of law existing in other countries, but conditions in those countries are completely different from what they are here, and so the situation becomes more involved. When you look at New Zealand and at Australia, to begin with, if you take the standard of literacy and the social life of the people, the question of refinement, the question of environment, the social services, and compare them with this Colony of ours — I am not striking a

pessimistic note—it would be seen that the conditions are quite different.

I want to say right away that the motion is a laudable one, but the time of its presentation is premature. It is not without some foundation that I wish to say—and it is a known fact—that we take our law as far as possible, sometimes verbatim from the Mother Country. With few exceptions our entire system of laws coincides with the Laws of England. My hon. friend has quite rightly referred to the Dogs Act, in respect of which there is a difference in our law and, perhaps, there are several other measures in which the question of *scienter* is dealt with differently in this Colony. There are, however, few cases in which the action of our Legislature went farther than the Laws of England. But on such an important question as the abolition of capital punishment I respectfully wish to state in this Council that we have to follow the jurists of the Mother Country. It is the one bulwark that has never shuddered in spite of the passage of time.

We all know that law is not static. It is dynamic, and it changes according to the changing times. The fact that, as my hon. friend has said, there were several attempts made in England on this question, in itself shows that the jurists of the Mother Country and the Members of the Home Parliament are not inactive and are not oblivious to the needs of the changing times. I wish to state further that if in England, where the standard of intelligence, where all the social services are in full gear, where the people are educated and there is no question of illiteracy, where the standard of refinement exhibited by the very charwoman in the house or the street-sweeper is an outburst of courtesy, if in such a country the jurists who have fashioned our laws have thought it unwise—it may not be logic, and sometimes logic leads us into trouble

—at least to abolish capital punishment, then I say it is unwise also in this Colony of ours, where we have still a substantial portion of the population illiterate; where our social services are trying to make a headway but are not yet perfect—I do not wish to paint a wrong picture—where at every corner of the street you find the sanctity of human life broken, where you find adultery in its naked form.

Here I wish to refer to the Annual Report of British Guiana for the year 1953. At page 138 you find a chart with the statistics of the rise in respect of murders and of other offences against the person which do not come within the category of murder. There you see that year after year, in spite of the existence of capital punishment, there has been a rise. It is a known fact—and I am hoping the hon. the Attorney General would supply this Council with the latest statistics—that there has been a marked rise in the cases of murder in this Colony. Right now in the County of Essequibo there are four cases for murder listed for the present session of the Supreme Court. The number has eclipsed history.

Mr. Lee: The hon. Member should not say “There are four cases for murder.” The accused are on trial and the hon. Member should say “alleged murder.”

Mr. Sugrim Singh: I stand corrected. I am very grateful to my hon. friend. It is only my agile and alert friend who could have corrected me.

Never before in the history of this country have there been four cases of alleged murder in the Essequibo district in one year. Let us face these undisputed facts and statistics in our possession. But let me leave them alone for a moment and go out in the broad field and look on our

country. Now, in England they do not have ritual murders, but we have them here and they have them in Africa. For here people murder for obehah. Offences in England are totally different. Quite fresh in our memory is the “cesspit” murder case of New Amsterdam. In England there is mechanisation and people there work with machinery and tractors. Here in this Colony a man has his cutlass, his prospecting knife, his agricultural fork and other tools in his house and at hand. Here we have rum, and it is easy to get alcohol. In England they have only the pubs to sell liquor. What would happen, then, if the capital punishment were abolished or suspended for a trial period?

The motion is good, laudable, but immature. As I said, this very question of abolition of the capital punishment has been thrown out twice by Parliament as late as the 10th of February. Just two weeks ago this matter came up in the House of Commons, and as my friend quite rightly mentioned, the mover of the motion in Parliament referred to certain patent, necessary changes suggested by the Royal Commission on Capital Punishment. But in cases of murder the accused has his defence. He would not be hanged if he were innocent: if he could prove his case. In this country the law says the *onus* is on the prosecution to prove the guilt of the accused beyond reasonable doubt. If the prosecution fails to discharge that burden the prisoner manages to get away with it. It is our privilege and it is the law. And many are the times when the Crown, in all its industry, leaves, not deliberately but innocently, a gap in a case — to defence counsel, a favourable gap—that is made use of, and our law tells us that the accused should be made free.

I do agree with my friend, the hon. Member, Mr. Luckhoo, that there have been accused persons who faced the gal-

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lows innocently, and I know of the cases he has quoted. But they are just the few and isolated cases. If there is one thing a seasonal criminal, a recidivist as well as a first offender says to himself it is: "In all my criminal peregrinations I stand a chance some day of having my head taken off—if I do not stop this nonsense." That is the great point, the great something, the great sobering influence.

But as a result of legal effort by counsel people have been saved from the gallows. We have had cases in this Colony of people with very criminal propensities who, if they repeated their criminal acts, would be doing so at the expense of society, and our laws have let them free. In their freedom they committed again the identical offences, but in some cases they did not turn out to be as lucky as before.

I ask this Council in all sincerity not to pass this motion, but I must congratulate the hon. mover on his enterprise in bringing it forward today. It is an important motion and its subject is causing a good deal of anxiety among jurists of the British Commonwealth and of the world, but we are a small country. I do not wish to digress, but recently we have shown our incapacity even to appreciate the fine things of life, to carry out simple responsibility, and to show allegiance to the Crown. We have people who, but for the capital punishment, would undermine the peace and stability of this Colony. Knowing the reactions of my flock as I do, I think it would be a dangerous thing to try a similar experiment in this Colony.

The Attorney General: They did not experiment in England, they attempted. The House of Lords did not agree.

Mr. Sugrim Singh: I am very grateful to the Attorney General for his

assistance on that point. I begin to feel that I am not a lone voice in the wilderness in this Council, and if I can interpret the expressions on the face of human beings, I feel that this Council will not entertain this motion which, as I said before and I repeat again, is nevertheless laudable. The mover must be congratulated on his gallant and convincing style, but I repeat, perhaps *ad nauseam*, I am impressed but not convinced.

Mr. Gajraj: I would like to say that the hon. mover should be congratulated on the way in which he has put his points before this Council; indeed, I will go further and say, the dramatic way in which he has urged the points for his motion. But I, like the last speaker, would say that I am not convinced by the volume of facts—let us call them facts, because, I daresay, they are correct—that the time has come, or that it is prudent that we should investigate the appointment of a Committee to go into this important matter.

I want to remind Members of this Council that this Legislature has a period of service, and Members are carrying on until the end of 1956. I want to remind Members further that the purpose of this Legislature, as I see it, is to attempt in every way possible to change the economic face of British Guiana during the time we have at our disposal. I feel that we should not allow ourselves to be thwarted from the course which has been set for us and which we accepted, otherwise we would not have an opportunity of fulfilling our task in the manner which, I am sure, all of us would like to fulfil it. For that reason I do not think any useful purpose would be served at the present time were we to agree to the appointment of a Select Committee. Personally, I feel that in cases where murder has been proved by a verdict of the Court, the death penalty is a correct pen-

alty. I want to comment on the hon. Member, Mr. Smellie's remark and say that I agree with him that the death penalty is not a revenge but a deterrent and a fitting penalty for a horrible crime.

I feel, and I am sure many others in this Council share the feeling, that this Legislature has before it a great deal of important business to transact. We will find that in the economic field we have to get together and use our efforts to the fullest in order to bring proposals to this Council and to see that implementation of schemes does take place. Therefore I repeat that we do not wish to be thwarted from our course, and we do feel that we should be spending our time to better advantage for the economic future of the country.

It is not that if a person is convicted on a murder charge and the death penalty is imposed upon him that he would not have an opportunity of having the sentence reviewed. The hon. Mover himself has said that under the law at present we have an opportunity for doing so. We have in these days an opportunity for going to the Court of Criminal Appeal. My hon. friend (Mr. Luckhoo) has himself taken cases to the Privy Council, and it might be said that in many cases it requires a considerable sum of money for lawyers to do so, but I have seen cases go to the Privy Council *in forma pauperis*. We want to make sure that even if a man is unable to pay he would be able to take his case to the highest tribunal, but I think we would be doing much harm to the social and economic life of the Colony if we do not allow the law to stand as it is. In my opinion, an amendment as suggested is not a necessary thing and I regret that from that standpoint alone, apart from my own convictions, I cannot support the motion. My hon. friend has said that from his experience, if the death penalty is removed

offences that give rise to charges of murder might be reduced, but I feel that if the deterrent of hanging is removed and it becomes only a question of serving a life sentence, we would soon find ourselves with more cases of murder on our hands.

My hon. friend, Mr. Singh, has referred to cases of persons dying for mass murder, but I think that if we look at the other side of the picture we would find that murders have been committed and we have not been able to trace the perpetrators, so that the Mosaic law of "an eye for an eye and a tooth for a tooth" was not fulfilled in many cases. If we are thinking of reform we should try to take a balanced view of the situation. We should have a profound respect for the sanctity of human life, and I cannot see myself at any time in the foreseeable future on the side of those who would like to see the death penalty for murder removed from our Statute Books.

Lt.-Col. Haywood: I rise to support the motion, and I do so without any enthusiasm. I have followed most carefully and with great interest the eloquent speech made by the hon. mover, but I do not pretend to hold any unduly sentimental view on the sanctity of human life. I think it is difficult for anyone who has gone through two world wars to have such a view. Both as a child and as a man I have seen much destruction of human lives and I think it is difficult for any of us with such an experience to be unduly sentimental. I do know, however, that within the last 25 or 30 years I have had the utmost distaste for murder trials as they have existed in England, and as they do even in this Colony. To me they have a horrible element of sensation, and there is often a pardonable reluctance, I feel, on the part of juries to send even a guilty man

[Lt.-Col. Haywood]

to his death. On the other hand, I feel that the ability of a brilliant lawyer has made many a man who might have thought of committing murder, feel that he was extremely fortunate to be walking about today. I feel that that particular thing has happened right here in British Guiana—a fact which all of us, perhaps, have stated—and that there are some extremely fortunate men walking around today. I am not, however, unduly biased one way or the other because of that.

The reason why I support the motion is because I feel that there is a tremendous amount of thought being given to the subject, and that there is some reason for having the matter debated in its present form. After all, we are not being called upon this afternoon to vote for the total abolition of capital punishment. The motion is only asking that the matter be studied with a view to recommending changes in the law of murder. As I have said, I am not an expert and if I may, without giving offence to anybody with a legal mind, I would say that I am not altogether happy with the Colony's jury system, while I contend that, with very few exceptions, murders in this Colony are not premeditated, but are rather done in the heat of the moment. One has to find the reason for a murder being committed in the heat of the moment, and perhaps alcohol as much as anything else would be at the back of it. I have heard that personal jubiliations sometimes have a lot to do with it, but what about a man condemned and executed though he proved that it was not premeditated?

I sometimes wonder whether a very sound thrashing and penal servitude for life would not be a more fitting punishment than hanging. Personally, I do not agree that that is one of the things

we could not do. This is an Interim Government, but I feel it is something which could be studied now. I am not saying that the United Kingdom Government should vote on the matter. If I were asked to vote on it I would probably answer that I am in a state of indecision, but if I were forced to vote and unless I hear some very strong reason from the Administration before this debate comes to an end as to why the Select Committee should not be appointed, I would say when the time comes to vote that I support the motion.

The Attorney General: I am quite sure that all the hon. Members of this Council would join me in congratulating the hon. Mover of this motion for the manner in which he has presented it. It will be appreciated that he has gone to considerable pains in going into questions associated with the background of this matter. He has treated us with an historical survey with regard to capital punishment, and the fact that from time to time there have been efforts to deal with this particular aspect of the subject. As far back as over 100 years ago this same question exercised the minds of thoughtful people. I am sure hon. Members will also agree with me that this is a very debatable and highly controversial point. The very fact that we are considering it this afternoon indicates that not only the Members of this Council but perhaps other members of the public have, from time to time, addressed their minds to it. Having had an historical survey from the hon. Mover of the motion, I would suggest to this Council that, as the hon. Mr. Sugrim Singh has said, we should have regard to the position which exists in the British Commonwealth and most particularly, in this Colony.

The hon. Mover, evidently, has considered the report of the Royal Commission which was appointed in 1949,

and which submitted its report in 1954 in connection with capital punishment. That was a Commission which had as its members some very outstanding and distinguished men and women in the United Kingdom and, in fact, they sought information and evidence from persons who were not only lawyers with a considerable amount of experience as judges and jurists, but they also travelled about in several of the countries to which the hon. Mover has referred. They therefore considered the views not only of eminent people in society in England, but also in several other countries which they visited. The result of their deliberations are embodied in this very valuable report which—if I may borrow the language of Mr. Chuter Ede, to whom the hon. Member referred, and who was once the Home Secretary—is a mine of information on the various aspects of this very controversial subject.

But I would suggest to the hon. Member that his motion is untimely, inopportune and quite unrealistic. I say that without any suggestion of impropriety or criticism of the hon. Member who began his speech by saying that he was deeply convinced of the necessity of some action being taken in regard to the abolition of capital punishment. I would refer again, Sir, to the Report of the Royal Commission which, as hon. Members have heard, was the subject of a debate which took place in the House of Commons on the 10th February, and perhaps I may quote from the statement made by the Attorney General in reply to some of the criticisms made in the course of the debate. He said:

“The Home Secretary expressed the Government’s view, and there is no need for me to repeat it. I wish to say, however, that I hate murder trials quite as much as does the hon. and learned Member for Northampton. I have never attended one unless it was my duty to do so, and I have never understood the de-

sire of some members of the public to witness the spectacle of a person being tried for his life.

“I doubt whether there is anyone with experience of such trials who is not affected by them, and who does not thoroughly dislike them. But, in approaching this question, we really should try to put our personal feelings on one side and not let them affect our judgment on what, I believe, is a most important issue, and one which may affect not only the lives of a number of people in our land, but also the maintenance of law and order.”

I would emphasise and underline that last sentence. The hon. Mr. Sugrim Singh referred to the difference between conditions existing in this Colony and in other parts of the British Commonwealth, and stressed the fact that social services and very many things of that nature are not the same in British Guiana as they are in the United Kingdom. I think there will be no one to question that statement. He also stressed the fact that many of the implements which are in everyday use by a large section of our population are lethal weapons which could be used with very deadly effect.

The debate in the House of Commons which took place two weeks ago concluded by rejecting any proposal for the abolition of capital punishment. In spite of the volume of evidence which they had, the knowledge and the experience of jurists of high standing, the various social services, the evidence of psychiatrists and expert medical men — people we have not got in this Colony — the House of Commons came to the conclusion, according to the vote to which the hon. Member referred, that it would not advise even a suspensory trial period.

I would remind this Council that within recent years crimes of violence have been on the increase in this Colony. Anyone who has any acquaintance

[The Attorney General]

with the Courts will appreciate that fact. Charges for murder have been on the increase. In 1953 there were 12 indictments for murder—3 in Demerara, 8 in Berbice and one in Essequibo. In 1954 there were 8 in Demerara, 6 in Berbice and none in Essequibo. In 1955 to date there have been 3 in Demerara, 2 in Berbice and, as the hon. Member has said, 4 in Essequibo; and the year is not quite two months old.

So that in relation to the security and protection of the community I think this motion is untimely. We are thinking of the people who are charged and convicted but we very often forget the victims and the relatives of those victims. We do not seek to be harsh or to follow the law of ancient times—"an eye for an eye and a tooth for a tooth"—but we must have some regard to the principle of justice which is not merely on one side; justice looks on both sides—at the whole picture. That leads me to the point as to what are the suggested alternatives. I may be told that that would be a matter for the Committee, but I return to the point which I emphasized at the beginning—that in the United Kingdom there was the Report of the Royal Commission which, if they have copies, hon. Members should examine carefully. With all that evidence before it the House of Commons decided as it did.

I am not suggesting that the hon. Member is not in his own mind convinced, but I am not satisfied that it is desirable, particularly in these times, to even suggest that there should be a consideration of the abolition of capital punishment, because we would obviously be creating a wrong impression. What the last speaker has said—that jurors must have a certain amount of reluctance in coming to a decision which may mean ultimately the taking of life—verifies the statement that before life

is taken by execution every possible safeguard is taken and explored.

First of all, where the crime is committed there is an investigation by the Police Magistrate, who goes into the matter and if he is not satisfied that a *prima facie* case has been made out, the accused is discharged, otherwise the matter goes to the Attorney General. All the evidence is read about three or four times by the various Law Officers, and finally I go through it. Then the accused is indicted and at the trial he is given a counsel to defend him. If he is found guilty he has the right of appeal to the Court of Appeal, and a further right to appeal to the Privy Council, and finally there is the Governor who has the power to go into the matter, apart from the evidence which has been submitted, and apart from the report of the trial Judge on the case, into all sorts of aspects relating to the convicted person—his background, his mental health and all those conditions. With all those safeguards decisions are not reached lightly or inadvisedly, and I move on having put to hon. Members the other side of the picture, and that is the question of Justice.

The removal or the endeavour to remove this deterrent would be, I suggest, unhelpful because there is not yet in the United Kingdom anything which can be regarded as a sufficiently effective deterrent in connection with the commission of crime, especially those of a very brutal nature. I suggest to hon. Members their solemn consideration in a matter of this great importance to society from a jurisprudence point of view—the community point of view, the point of view not only of the convicted person but also of the large mass of law-abiding citizens of this country—whether at this stage we are right in taking any step whatever to convey the idea that we are seeking to make a change in the law, when only two weeks

ago this matter was fully considered by the United Kingdom Parliament.

I suggest to hon. Members to leave this matter alone, however humane we are all in this Council in seeking to do or to come to a decision in the interest of the country as a whole. It cannot be suggested that because we disagree with the hon. Mover we are seeking to be harsh or inhuman, or anything of the sort. I think the approach is, what in the circumstances may be considered fair, just and right in the interest of the Colony as a whole. That is the criterion. I think we should leave the position as it is.

Mr. Ramphal : Your Honour, I rise to express two points on which I object to this motion, but before I do so I wish to apologize to the hon. Mover of this motion for my sudden absence during his speech. No discourtesy was meant. Official duties of quite a different nature took me away and deprived me of, what I believe, must have been a most enjoyable dissertation on this particular subject. I wish to speak but I can hardly speak on what the hon. Member has said and, therefore, I shall only deal with the matter as I see it. I wish also to say at the beginning that when I saw this motion on the Order Paper I was tempted to treat it lightly and to brush it aside as untimely and inopportune, as the hon. the Attorney General has said, but when I considered the person who sponsored the motion I felt it deserved a great deal of my personal consideration.

The hon. Mover is himself one of our most distinguished criminal lawyers, if not perhaps the most distinguished criminal lawyer in British Guiana at this particular time. It is on that ground particularly that I wish to give very special consideration to this motion. I am not attracted to the motion in any way because of what the hon. Member says because I am spared

that bit of it, but because the hon. Mover is practically putting himself out of work if this particular matter were to go the way he intends it.

I rise to reject the motion on two grounds. The first is, there is no public revulsion at this particular time of our life in this country to capital punishment. Law, as I understand it, is an enshrinement of the civilization in which we live. Capital punishment, as the law of the land, expresses the revulsion of the community to the crime of murder. That has been so for hundreds of years in the United Kingdom and as long as this country has existed as a civilized country. And it expresses the ordinary man's point of view as to the sanctity of human life. (I have not seen enough of war, and I do not think I can ever see enough of war, to make human life unsacred to me. I do not care in what part of the world you may place me, human life would always have the same sanctity to me). The enforcement of capital punishment to my mind is merely an expression not only of the deterrent value to the criminal but of the innermost revolting effect of the community at the taking of one human life by another. I know that our community is not revolting against the continuance of this particular measure.

I was in England in 1948 and I remember reading there in the "Times" a statement made by Lord Chief Justice Goddard when the question of the setting-up of the Committee was being debated. The Archbishop of Canterbury took part in the debate. Lord Chief Justice Goddard out of the abundance of his experience had drawn the attention of the House of the Noble Lords to what he had seen and felt, and he ended with these remarkable words:

"Some there be that must be destroyed. Though they may be harsh words, but society has got to be safe from people who destroy life, people who destroy the sacred thing that God has given us—our life."

[Mr. Ramphal]

And, Sir, our community does not revolt against the continuance of the law as it is. The hon. the Attorney General has dealt with the question of the great consideration which has been given to this matter in England, and naturally I feel I should leave it at that point. If in England they feel it is not good enough, if in British Guiana our people do not have any objection to the continuance of capital punishment, then I think this motion is untimely. I have said that I have risen to object to the motion on two grounds. The first is that there is no Guianese revulsion or general revulsion to the continuance of the law as it is.

The second ground is one of more or less the *modus operandi*. Even if we were willing to accept the motion, I feel convinced that we do not have the men who would be able to guide us on this very important matter. I can speak as I do, because no one in this country can charge me for not being a loyal Guianese who believes that there are Guianese of quality and calibre in our community, and I therefore can say that, because I am convinced that in a matter of this kind we do not have the men who would be able to assist us, as we would need to be assisted.

The motion calls for Government to set up a Select Committee. For a moment I was struck by the word "select". I know that in this Council the word "select" has a special meaning. I observe that the word was not written with a capital "S" in the motion, so I do not take it that it is intended that it should have a special meaning otherwise than it is to be a Committee of this Council. I take it that the hon. Mover means a Committee of select persons to make this enquiry. I do not believe the hon. Mover feels that we should get people from outside the Council to make this enquiry. It is a

matter of our own civilization, and the enquiry should be conducted by our own people.

The hon. Member has quoted from the Report of the Committee which was set up in the United Kingdom. I have before me just a few sheets of paper with the evidence of some of the people who testified before that Committee. Hon. Members will be, perhaps, pleased to hear the names of the people who conducted that enquiry. They are—

"Sir Ernest Gowers, G.B.E., K.C.B., Chairman; Mrs. A. C. Cameron, C.B.E., Mr. Wm. Jones, C.B.E., Mr. Morgan Macdonald, Mr. John Mann, C.B.E., J.P., Professor G. A. Montgomery, Q.C., the Earl Peel, Mr. Leon Radzinowicz, and Dr. Eliot Slater, M.A., F.R.C.P., M.R.C.S."

Mr. Radzinowicz is one of the greatest authorities on Criminal Law in Great Britain today. I wish to submit that we do not have here that quality of people, and after all I have said before in this Council and in this country I am saying now, that in a matter of this kind we do not have the quality of men to lead us. This is not a matter of morals, nor is it a matter of idealism. It is a matter of deep juristic learning, and we have to get people of very great standing to conduct that enquiry. And what about the evidence? I have here the names of the people who appeared before that Committee. They are—

"The Rt. Hon. Lord Justice Dennings" — perhaps one of the most brilliant legal brains in Great Britain today. My hon. friend, the Mover of this motion, may take some note of that, because Lord Justice Dennings is one of the foremost advocates of Law Reform. But even Lord Justice Dennings does not say "Abolish capital punishment." He says "There may be other reforms but not the removal of capital punishment." Again there were :

"Mr. Hector Hughes, K.C., M.P.,
Mr. Basil Nield, K.C., M.P."

I submit that we do not have either the people to comprise the Committee of Enquiry or the people to submit evidence of that nature. We do not have such quality of people in our midst. Therefore in this particular matter I would like to rest on the English Common Law on which we have rested these thousand years. I think we should wait until the times have changed, until our people have begun to revolt against capital punishment and, perhaps, until Great Britain has changed her mind on this matter.

But in all this I wish the hon. Mover would understand that I personally understand the idealism. Probably he and I do not feel differently on this matter. But this is not a matter of idealism. As I have said, this is a matter of realism, and on this score I reject the motion.

Rev. Mr. Bobb : After listening to the very brilliant presentation from one side or the other in connection with this motion, there is very little for me to add, but yet I am moved to make a very humble contribution. May I say that I have the very highest regard for the learning, experience and wisdom, of the hon. Mover of the motion.

With regard to this motion I have come to the conclusion that we ought to be very careful and cautious about what we do. I have reached the point where I feel very sorry to say that — much as I appreciate the splendid effort of the hon. Mover in bringing forth a motion on a subject which I regard as extremely important—I myself find it very difficult to agree not only with the eventual purpose of the motion but even the intermediate purpose which is the appointment of a Select Committee for the purpose of investigation.

Now, I have heard references to the Mosaic law—"An eye for an eye,

and a tooth for a tooth." You will pardon me, Sir, if I make a comment on that particular aspect, which serves to give me a further argument along the lines on which I am thinking. We are accustomed to think of that Mosaic law as something we ought to continue as being just, but there is a history behind it that we sometimes forget. That Mosaic law, "An eye for an eye and many teeth for a tooth", was an improvement on the previous civilisation where it was the custom to demand many eyes for one eye, and a whole mouth for one tooth. That was the position, and the law of Moses said in effect: "If a man stole one sheep from you, you can only take one sheep from him and no more, and if he destroyed one field, you cannot destroy more than one field."

And so it was intended to be an improvement on what obtained before. But without wishing to suggest that this honourable Council is not acquainted with the Scriptural reference, we will notice that in the time of Our Lord we have no reference as to what ought to be the punishment for this breach of the Mosaic law. All He said was that there were many conditions leading up to that act. For instance, "if a man looks upon a woman to lust after her, he has committed adultery with her already in his heart. If you think murder in your heart, it is murder already." The Master did not say what the punishment should be. He was very careful about setting down any laws in His own time which might give wrong direction in the exercise of social responsibility in matters of such extreme importance later on.

This whole question has gone through centuries of change. We have reached the point where we are beginning to ask: is it proper to take a life? Is the death penalty the true penalty for a murderer? I myself

[Rev. Mr. Bobb]

have had second thoughts about this every time I have read in the newspapers about the death sentence being passed; every time I go to the prison and see a man in his cell awaiting execution. Is it indeed the right penalty? Is it just? I have to depend upon the accumulated wisdom and experience of our times and of the times before, and I am not prepared to go so far as to say that I would accept the responsibility, personally or socially, for varying that form of penalty unless I see clearly, by the guidance of those better able to express judgment on this than myself, what can be substituted for it.

Referring to our own local situation I feel very much, as some hon. Members have felt, that our contemporary situation in this country hardly, if at all, justifies any variation of this law. I am not a lawyer, but I did come across something written by Professor Robson on "Justice and Administrative Law" which I cannot now quote correctly, but I am sure about my paraphrase, "that the law is the reflection of the best thinking of the prevailing society." Well, if I am to be guided by that and by the judgment of some distinguished persons associated with the Report of the Royal Commission on Capital Punishment, which I am sorry I did not have a sight or hear of until I came here (I wish I had heard of it before, for I would have wasted a few moments in getting some facts out of it) my duty is clear.

The Attorney General: Not wasted
--used.

Rev. Mr. Bobb: I used the word advisedly, because some people feel that here my time is wasted. But I will continue to 'waste' it. Yes, we have associated with the Report some names which the hon. Member, Mr. Ramphal,

gave us, and which, I am sure, one can hardly read without being impressed with the breadth of intellect, wisdom and experience reflected in it. I ask myself this question: If I go as far as assisting my friend the mover in getting through this motion, and saying that I will vote for the setting up of a Select Committee, who will be the members of that Select Committee? Maybe, persons from British Guiana. I am judging from the calibre of men like the mover. How many more like him have we, sufficiently saturated with this subject and emotionally interested to give enough time and thought to produce a comparable report to that of the Royal Commission? I ask myself another question: What documentary evidences will this Committee use in order to assist it to come to a desirable conclusion? Surely, we would have to fall back upon a report such as that of the Royal Commission.

In view of these things I feel sorry indeed that it is not within my discretion to offer the hon. Mover any assistance in this motion, but I am persuaded that this is not the time, from the point of view of the total development of our society, for us to pursue a motion of this kind, for the appointment of a Select Committee which, in my opinion, would have less to offer than is offered by the Royal Commission.

I finally would like to compliment the hon. Mover of the motion on his very ardent presentation of the motion. I have extremely benefited. I do not think I need read through the Royal Commission's Report any more. I have really sat at the feet of Gamaliel this afternoon. I really compliment him for pressing his own point and cleverly putting the blind on the other side. I am sure we are all indebted to him for his presentation. My only regret is that it is not one of his master performances in which I can give him my support.

Mrs. Dey: I rise to oppose this motion, and in so doing I offer no apology to the hon. mover. Knowing him as I do, I know that he appreciates only too well that each and every one of us around this table must have an opinion and is entitled to voice it; it has nothing at all to do with the individual concerned. I have heard arguments for and against, from Members of the Bar, Commerce, and then came the Church, and I said to myself: Should I speak? 'Yes', I considered, 'as a woman.' So from that standpoint I shall speak, and I shall try to be brief.

The motion before us is for a Select Committee to be set up. The hon. mover made reference to his experience when having to defend individuals and sometimes, to see them in their last moments. I, as a woman, have had the unique experience of having to be with women who were charged with the capital offence. I have had to be with them while they were awaiting trial and I have had to take them to the Court to be tried. So I perhaps have had some experience of the reaction of such individuals when charged or condemned. I am convinced that no Committee, no matter how select or whether it happens to be from British Guiana or outside, having heard evidence adduced from the Colony of British Guiana, would decide that now is the time for the capital punishment to be abolished. I say, "No." The time is not now; it is most inopportune.

The Revd. gentleman made reference to the Bible; he is a preacher, but I am not. He knows only too well, however, that I also have had to explain portions of the scripture to persons awaiting trial for their lives, during service with the Prison Authorities. On this question of capital punishment, I should like to recall the words of Mahatma Gandhi, a personal friend of the

late Rev. C. F. Andrews in India. I quote:

"If all the Christians in the world would only live up to their Christ's sermon on the Mount, then and only then would they get nearer to the Kingdom of God."

That is my challenge, Sir. If only the Church — the religious leaders of every section of the community—would only get down to the people, there would be no need for capital punishment. Reference has been made to other countries like Sweden and Norway. I happen to know that economic conditions in Sweden are of such a nature that the country could afford to abolish capital punishment. There is no unemployment and therefore no unemployed in that country, since its economic conditions are stable. We, in British Guiana, however, are now trying to see how we can get at the root of such evils here. Perhaps if we had the presence of another Gandhi we would have been able to say that capital punishment should be abolished.

My hon. friend on my right (Mr. Lee) has said that the hon. Mover, in spite of the fact that he would be out of practice if the motion is carried, should be congratulated for bringing it before the Council. I ask his pardon, however, as I want to assure him that the hon. Mover would not be out of practice if the motion is carried. He would still get his cases and would be fighting for acquittals. I am not in favour of a Committee being set up, as suggested. This country has had too many Committees set up already to decide "this and that", and we are far from perfection in very many matters. Finally, I say that I am opposed to the motion because I think the time is not yet ripe for the abolition of capital punishment in this country.

Mr. Tello: I rise to support the motion and I want to preface what I have to say by making it clear that I

[Mr. Tello]

have no opposition against capital punishment as such. As a matter of fact, I have every respect for our form of justice as meted out or administered. But, Sir, time moves on and each day brings its own experience and its own change. We have listened to the history of capital punishment and it has never been questioned as in some of the speeches I have heard today. From this history we find that capital punishment was instituted by people who not only gave special consideration to post-war conditions as affected by time and tradition, but they varied it as time moved on, and in accordance with contemporary social structures.

This motion, as I understand it, is not seeking to abolish capital punishment, but is asking us to set up a Committee so as to bring us up to date as regards its justice or otherwise. We have accepted the practice in certain countries, but we have not established anything of our own. We have just accepted our present practice or system because it was traditional to do so. We have, really and truly, no scientific foundation for doing so in this Colony. We are merely saying that we should carry on in the normal way because there has been no public resolution. I want to say that I know of people who did away with public resolutions but were always awaiting a challenge of specific danger. Our people like to express themselves other than by a display of violence, and if there is to be the greatest amount of public reaction relating to this motion, I can assure my hon. friend who has always been in intimate contact with the masses, that we could expect to see even a revolution with a certain degree of violence. The point is that even intelligent people have always struck out and moved against a certain amount of public pressure. Why should we wait

for public pressure to do what some of us believe is an intelligent thing to do?

Further, I take objection to the statement that we have not got the proper people here to tackle this question. I have a great deal of respect for all the persons whose names have been mentioned, and it is not always true to say that the best brains occupy the heights. I think the hon. Mover of the motion, with his knowledge and experience of local conditions, has every right to deal with a question of this kind, and that tends to prove that we have men with the mental calibre necessary to deal with it. We have only to look around in this Council to see whether those who are questioning this matter of capital punishment are not equal in mental stature to the great stalwarts who lived in our society in the past.

Why should we retract because some of us, for social reasons, are beginning to anticipate the result of the findings of the Committee? Why should we be a stumbling block to the possibility of having a Committee, because we fear the social consequences of the recommendations of the Committee? I think it is quite possible that a Committee might go into the question and give us a sound reason for abolishing capital punishment. We would then be able to say that we have investigated conditions as they existed locally, and in spite of the fact that we may have followed tradition blindly or otherwise for many years, we are now satisfied that we have done right and should continue to do so. I would ask this Council not to be prejudiced by the motion because we want to protect society, and feel that if we remove capital punishment offences would increase.

I think the hon. mover has produced evidence to show that in certain

countries the absence of capital punishment impeded the growth of capital offences. I think the time has come when we should investigate all the various aspects of the question dispassionately. It might be well to decide that we have reached a milestone in this Colony and should sit up and take stock. We must admit, however, that crime is on the march—is on the increase—and it is in this light that the question of continuation of capital punishment becomes so very important. There appears to be some weakness that we should discover and remove.

I invite this Council to give serious thought to the question of accepting this motion, and also to the question of appointing a Committee to investigate the matter. Much valuable time will be spent by the Committee, but why should we sacrifice this time if it would serve no good purpose and might be better spent for the economic development of the Colony. What is the purpose of economic development? Is it not to provide better living conditions for the inhabitants of the Colony so long as they live? I think the time has come when we should accept this motion and be satisfied that a decision is necessary one way or the other—whether right or wrong.

Mr. Luckhoo: Let me make what I regard as the chief point in this matter. First of all, this document—the report of the Royal Commission to which I referred—has been so much misconstrued that I should like to make certain points clear. It has been read by the hon. the Attorney General, then by the hon. Mr. Ramphal and others in opposition to my motion. I desire to point out that it is the latest authority on the question and I read it because it is the result of an inquiry (by a Royal Commission) as to whether there

should be capital punishment or not. Let me read the final conclusion by the Royal Commission in Chapter 10. It says this :

“605. The principal question we were required to consider was “whether the liability under the criminal law to suffer capital punishment for murder should be limited or modified.” The wider issue whether capital punishment should be retained or abolished was not referred to us.”

The recommendations made by the Royal Commission are those which I accept, and I am urging that this Colony should decide which of those recommendations should be accepted here and implemented on the basis of that Report. That is where a Select Committee comes in. Although the hon. the Attorney General has spoken against my motion he would be one of the first persons I would suggest for appointment to a Select Committee. We also have the Chief Justice and other Judges of our Supreme Court, the Archbishop of the West Indies, who is himself a lawyer. Are those men not capable of examining the question in the light of the Royal Commission's Report, or must we sit supinely by and wait until England takes action?

Let me reply briefly to some of the points made during the debate. The hon. Mr. Gajraj described the motion as a waste of time. Is it a waste of time where the sanctity of human life is concerned? The hon. Member asked: “Why don't you move motions and let us occupy our time more beneficially?” I am surprised that a Member of the Government should use words of that kind. Was the House of Commons wasting time when it was considering the same question? I know that every Member has the right to express his own conviction. I admire a man like the hon. Mr. Smellie who says he does not agree, because it is not his view. I respect and admire his stand. Many

[Mr. Luckhoo]

other hon. Members have expressed their views and I bow to them.

The hon. the Attorney General made use of the words "untimely" and "unrealistic" I would like to be told when it will be timely and realistic. If there is a better time than now please give me an example. Is this not the time when the House of Commons has considered the Report of the Royal Commission and passed a resolution based on its recommendations? Col. Haywood put his finger on it when he said that if he were asked to vote for or against the abolition of capital punishment he would probably vote against it. That is not the purpose of the motion. The motion recommends that a Committee be set up to examine the question.

Mr. Speaker: The hon. Member's motion might have read "recommendations as to changes in the form of punishment for convictions of the crime of murder." That is what the hon. Member means, I take it. The reference to "changes in the law of murder" is not plain to me. I think changes in the form of punishment is what the hon. Member is aiming at.

Mr. Luckhoo : Not necessarily Recommendation of changes in the law.

Mr. Speaker: The hon. Member is dealing with punishment.

Mr. Luckhoo: I am not restricting it to punishment, because in this very Report of the Royal Commission they say:

"We agreed in recommending:

- (a) that the doctrine of conservative malice should be abolished;
- (b) that "aiding or abetting suicide" should no longer be treated as murder, but should be made a substantive offence punishable with

imprisonment for life or for any lesser term;

- (c) that the law should be amended to enable a jury to return a verdict of manslaughter where they are satisfied that the accused was deprived of his self-control by provocation, and that a reasonable man might have been so deprived, notwithstanding that the provocation was by words alone;
- (d) (by a majority) that the M'Naghten Rules should be abrogated, or, (with one dissentient) that, if they are retained, they should be enlarged to cover cases where the accused, as a result of insanity or mental deficiency, did not know the nature and quality of the act, or did not know that it was wrong, or was unable to prevent himself from committing it; and
- (e) (by a majority) that the Law should be amended to provide that the sentence of death should not be passed on any person convicted of murder who was under 21 years of age at the time of the commission of the offence."

I rely on this Report of the Royal Commission. I feel that we have men in this Colony of sufficient ability and experience, men who have spent a lifetime in the law, who would be capable of advising, after perusal of this Report and a study of other evidence, whether there should be any change in our law relating to murder. No useful purpose could be, or would ever be, served by saying that crime is on the increase, because we have capital punishment now. Is that the answer to it? The answer is that we do not know, if capital punishment were abolished, what effect it would have in British Guiana, but we do know what the effect has been in those 36 abolitionist countries to which I have referred. We know that they are holding on to the new principle because they feel it is working satisfactorily.

I repeat that it is not a question of deciding today whether there should

be abolition of capital punishment or not. It is a question of inquiring into it and utilising this mass of evidence we have in this Report of which we should take full notice. I remember reading a certain prophetic statement by Your Honour when a Member of this Council. Let me take a small leaf from your book and say that if my motion is not accepted today it will come up again before this Council, and we will have changes in our law relating to murder within my brief lifetime which could well be made now, but which hon. Members in their wisdom and vision cannot foresee at this moment.

Mr. Cummings: Member for Labour, Health and Housing): I seek Your Honour's guidance as to whether at this stage the hon. Member would be prepared to accept an amendment in the light of certain statements he made. I do not know if I indicate the nature of the amendment, whether it would assist you in your ruling.

Mr. Speaker: When the Mover of a motion replies the debate ends.

Mr. Cummings: But would you permit me to indicate the amendment?

Mr. Speaker: I do not think I would be correct in doing that. However, I would allow the hon. Member.

Mr. Cummings: The hon. Member in his reply said—I do not believe it is understood by this Council that way—that he is seeking to have this Committee to consider the Report of the Royal Commission and such other evidence—I do not agree with him on the “such other evidence”—in the light of local conditions. I feel that the motion might be acceptable or more acceptable if it were amended along those lines, seeing there is considerable force at the back of it that a high level

committee had sat and made the recommendations.

Mr. Speaker: I ask the indulgence of hon. Members to be allowed to say that we had the opportunity of listening to splendid, eloquent, convincing and persuasive argument from the mover's lips, and I would invite him to say whether I am not correct in saying that this motion aims at the appointment of an *ad hoc* Committee of Enquiry into the kind of offences which should be decided on before a man should be charged with the capital offence, the limitations as regards age and probably whether he is *corpus mentis*. In my opinion it is to report adversely or favourably on the abolition of capital punishment which is the only punishment available for murder. There can be no disagreement on that.

I would like to point out the extremely difficult position in which I am placed as Speaker of this Assembly, as the motion is for the appointment of a Select Committee. I think I am right in saying that here we have no Standing Committee on Motions. My recollection is that in the House of Commons the procedure followed is that a motion for the appointment of a select Committee is divided into two—one is for the appointment of a Committee and the other indicates the personnel. Hon. Members would permit me saying that while I am not afraid of accepting the responsibility of appointing a Committee and nominating the personnel, I am not prepared at the moment to allow the motion to be carried except with a recommendation that I accept responsibility of that kind.

I should like to have an opportunity of speaking to His Excellency the Governor about this motion. Having regard to the legal position, the majority of opinion being in favour of the contin-

[Mr. Speaker]

uance of the existing penalty or punishment, I do not hesitate to say that I very much doubt that if I did decide to appoint a Select Committee on such a very controversial social question His Excellency would give his assent to any recommendation the Committee might make. I do not think you would find any Governor in a Colonial territory doing that on his own, and as the law stands I am quite sure in my mind that Her Majesty would disallow any such change in the law.

As regards the position here I do not agree that you will not find people who are competent to examine and report on what is more than anything else a sociological question. You do not require a lawyer to express an opinion and take evidence on what form of punishment a person convicted of murder should receive. Any educated person, any person who has done some reading and self-examination and can form an opinion, can do it, for it is purely a sociological question.

But I would prefer that lawyers should sit on the main question as to whether the capital punishment should be continued; and also whether a person accused of an offence of that kind should not be held responsible.

The Chief Secretary : Before the question is put, may I say that Members of the Executive Council have no collective views on this question. They are free to speak as their conscience dictate, and they are free to vote.

Mr. Smellie: I hope the hon. Member, Lt. Colonel Haywood, has heard what the Chief Secretary said.

Motion put, the Council dividing and voting as follows:

<i>For</i>	<i>Against</i>
Lt.-Col. Haywood	Mr. Singh
Mr. Luckhoo	Mr. Jailal
Mr. Lee	Dr. Fraser
Mr. Tello—4.	Mrs. Dey
	Mr. Rahaman
	Rev. Mr. Bobb
	Mr. Carter
	Mr. Phang
	Mr. Ramphal
	Mr. Lord
	Mr. Gajraj
	Mr. Smellie
	Mr. Kendall
	Sir Frank McDavid
	Financial Secretary
	Attorney General
	—16.

Did not vote

Miss Collins
Mr. Cummings
Chief Secretary—3.

Mr. Speaker: The motion is therefore lost.

The Chief Secretary: I do not think we have business for tomorrow. We have two private motions and, subject to what the Council thinks, we can adjourn until next Friday.

Mr. Speaker: The Council will adjourn until Friday, 4th March, at 2 p.m.