THE

# PARLIAMENTARY DEBATES

## OFFICIAL REPORT

[VOLUME 1]

PROCEEDINGS AND DEBATES OF THE FIRST SESSION OF THE FIRST PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF GUYANA

*24th Sitting* — *Tuesday, 6th December, 1966*

# NATIONAL ASSEMBLY

*The Assembly met at 2 p.m.*

*Prayers*

[Mr. Speaker *in the Chair*]

*Present:*

His Honour the Speaker, Mr. A. P. Alleyne.

*Members of the Government*

*Ministers*

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| The Honourable L. F. S. Burnham, Q.C. | – *Prime Minister* |
| Dr. the Honourable P. A. Reid | – *Minister of Home Affairs* |
| The Honourable N. J. Bissember | – *Minister of Housing and Reconstruction (Leader of the House)* |
| The Honourable R. E. Cheeks | – *Minister of Local Government* |
| The Honourable E. F. Correia | – *Minister of Communications* |
| The Honourable Mrs. W. Gaskin | – *Minister of Education and Race Relations* |
| The Honourable L. John | – *Minister of Agriculture* |
| The Honourable R. J. Jordan | – *Minister of Forests, Lands and Mines* |
| The Honourable M. Kasim | – *Minister of Works and Hydraulics* |
| The Honourable D. Mahraj | – *Minister of Health* |
| The Honourable C. A. Merriman | – *Minister of Labour* |
| The Honourable J. H. Thomas | – *Minister of Economic Development* |
| The Honourable S. S. Ramphal, C.M.G., Q.C. | – *Attorney-General and Minister of State* |

*Parliamentary Secretaries*

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| Mr. D. B. deGroot | – *Parliamentary Secretary, Prime Minister's Office* |
| Mr. G. Bowman | – *Parliamentary Secretary, Ministry of Labour* |
| Mr. O. E. Clarke | – *Parliamentary Secretary, Ministry of Education and Race Relations* |
| Mr. P. Duncan | – *Parliamentary Secretary, Ministry of Local Government* |
| Mr. J. G. Joaquin, O.B.E., J.P. | – *Parliamentary Secretary, Ministry of Works and Hydraulics* |
| Mr. C. V. Too-Chung | – *Parliamentary Secretary, Ministry of Finance* |

*Other Members*

Mr. W. A. Blair
Mr. J. Budhoo
Mr. W. G. Carrington
Mr. R. G. B. Field-Ridley
Mr. T. A. Sancho
Mr. R. Tello, Deputy Speaker
Rev. A. B. Trotman
Mr. H. M. S. Wharton, J.P.

*Members of the Opposition*

Dr. C. B. Jagan, Leader of the Opposition
Mr. A. Chase
Mr. B. H. Benn
Mr. Ram Karran
Mr. R. Chandisingh
Mr. H. J. M. Hubbard
Mr. C. V. Nunes
Dr. F. H. W. Ramsaboye
Mr. E. M. G. Wilson
Mr. M. Hamid, J.P.
Mr. J. R. S. Luck
Mr. D. C. Jagan
Mr. H. Lall
Mr. M. Khan, J.P.
Mr. Y. Ally
Mr. L. Linde
Mr. R. D. Persaud
Dr. S. A. Ramjohn
Mr. S. M. Saffee

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

Deputy Clerk of the National Assembly – Mr. M. B. Henry

*Absent:*

The Honourable P. S. d'Aguiar, Minister of Finance – on leave

The Honourable W. O. R. Kendall, C.B.E., Minister of Trade, Shipping and Civil Aviation – on leave

Mr. H. Prashad
Mr. M. F. Singh – on leave
Dr. Charles Jacob, Jr.
Mr. M. Poonai
Mr. E. M. Stoby
Mr. M. Bhagwan – on leave

## ANNOUNCEMENT BY THE SPEAKER

### LEAVE TO MEMBER

**Mr. Speaker:** Hon. Members, leave has been granted to the hon. Member, Mr. Feilden Singh for one week from today.

## MOTIONS RELATING TO THE BUSINESS OR SITTINGS OF THE ASSEMBLY

**The Leader of the House** (Mr. Bissember): I move that the proceedings of today's sitting dealing with the National Security (Miscellaneous Provisions) Bill be exempted from the provisions of Standing Order 9 (2), and that the Assembly should continue to sit until midnight.

*Question put, and agreed to.*

## PUBLIC BUSINESS

### NATIONAL SECURITY (MISCELLANEOUS PROVISIONS) BILL

The Assembly resolved itself into Committee to resume consideration of the Bill intituled:

"An Act to make provision for divers matters touching on National Security."

*Assembly in Committee.*

*Clause 8.*

**The Chairman:** When the Adjournment was taken last night the Assembly was discussing the Amendments by Mr. Chase and Mr. Persaud under clause 8.

**Mr. Persaud:** Last night, just before the Adjournment was taken, the hon. Attorney-General cited sections of Acts in India and Malaya. Both cases cited by the Attorney-General referred to grounds to be submitted to the detainee and not to the Tribunal. In this Amendment we are seeking that the word "grounds" should be deleted and the word "evidence" substituted for it, and that such evidence should be sent to the Tribunal for perusal and for a decision as to whether the detainee should remain in detention or should be released. The word "grounds" would give the Minister the right to say a person was detained (1) because he was seen with someone; (2) because he acted in a manner prejudicial to the public safety or public order and so on. This is not enough. We want the word "evidence" substituted for the word "grounds".

**Mr. Chase:** The hon. Attorney-General --

**The Attorney-General and Minister of State** (Mr. Ramphal): On a point of order. I think it was fairly well understood last night that the two Amendments to clause 9 in relation to the substitution of the word "evidence" for "grounds" would fall away with the rejection of Mr. Persaud's first Amendment on similar lines. In fact, these Amendments would be inconsistent -- [*Interruption.*] Is he speaking again on his own Amendment under clause 8? I am surprised to hear that the hon. Member is speaking again on that Amendment.

**Mr. Chase:** The hon. Member was replying to the debate on his Amendment, which I think he has a right to do, and I am seeking, subject to your Ruling, sir, to reply now to the discussion which emanated following my Amendment to clause 8 (1). I do not think we have reached clause 9. Apparently, the Government is so insistent on proceeding to the late hours of the night that some of the Ministers are a little tired when they come to continue the debate. The position is that we are on clause 8 (1).

I am now replying to remarks which the learned Attorney-General made. He said what was included in clause 8 (1) followed precedents in other countries and, in particular, he cited certain Commonwealth countries, India and Malaya. We are in the difficulty in this country of sometimes relying too much upon what exists in other countries. For example, the hon. and learned Attorney-General a few days ago made special reference to what takes place in Westminister, and I had occasion to remind him that this is the National Assembly of Guyana and not the Parliament of Westminister.

I should like to say the same thing on this matter. In his remarks the Attorney-General referred to "troubled" countries like Malaya and India. That very epithet distinguishes those countries from this one. The trouble which existed in Malaya when this sort of legislation became necessary was actual fighting in the jungles by a group seeking to physically overthrow a Government by force of arms. In India there were widespread riots and loss of life. It was in those circumstances that certain measures of an emergency nature became necessary. This country, Guyana, is by no means troubled in the same way as those countries had been at the time when this type of legislation became necessary. Therefore, the comparison with those two countries is odious.

Further, when you compare Malaya and India with this country you run up against the snag that India, for example, is a very big country with a tremendous population running into hundreds of millions as against this country, which has a population of 600,000 people. Guyana is a country in which the Minister himself will personally know a number of people against whom he has to execute the provisions of this Bill or whom he may seek to detain under this Bill. It is quite a different situation in India where the Minister, or the people who are servicing this machinery and those who are, or were, detained would not be personally known. Those are large countries with large populations. Here we have a very small population concentrated on the coastland, which is heavily populated, and we have an interior which is extremely sparsely populated and from which not a shred of trouble has emanated within recent times. That answers the question of trying slavishly to compare our country with Malaya and India.

Then the learned Attorney-General went on to say that unlike those countries, India and Malaya, we were giving greater safeguards under our National

Security Bill to persons who will be detained, because, he said, we will be establishing a Judicial Tribunal to which the case of the detainee will have to go before his detention can be continued. It is this very reason, which the Attorney-General gives, which should strike him as being extremely inconsistent. Whereas those countries may find it necessary to keep away from certain persons who are to sit on Tribunals matters of state security, state secrets, we are doing more. We are bringing the Judges, Her Majesty's Judges, right in at the beginning. Whereas in those countries it may have been necessary to keep certain things away from the persons who investigate the cases of their detainees, in our situation, since we are establishing a Judicial Tribunal, there is absolutely no reason why the full case to be made out against the detainees should not be presented to the Tribunal.

*2.20 p.m.*

Consequently, I have not been impressed by any of the arguments put forward by the Attorney-General as to the reasons why we should not have this Amendment carried to have deleted from this clause the final phrase which reads: ". . . as the Minister thinks fit, due regard being had to the public interest."

The hon. Attorney-General further opined that, if the Minister of Home Affairs did not put the full case before the Tribunal and sought to take refuge in an omnibus clause such as that he could not disclose certain matters because of the public interest, the Tribunal could express the opinion that there was not sufficient cause for the further detention of that person. With that I respectfully beg to differ wholeheartedly from the hon. and learned Attorney-General because, implicit in that ground, the Tribunal is bound to say that there is good and substantive ground - so good, indeed, that even the Tribunal cannot be informed of it - for the continued detention of the person. This ground, in my respectful submission, would be sufficient for the Tribunal to say that there is good ground for the continued detention of the person.

The hon. Attorney-General must remember that this is a tribunal which is set up by the Government and the Secretary is appointed by the Minister. This is a tribunal in which the dice is heavily loaded against the detainee, a tribunal before which he is presumed guilty - the Attorney-General must remember this - and he has to establish his innocence. This is so. We are transgressing all the principles of English law where a man is presumed innocent and has to be proved guilty. Here it is presumed that there is good cause for his detention and he has to prove to the Tribunal why he should be released.

When this is taken into account, the fact that the Minister will give an omnibus ground - which will indeed be a shield hiding a multitude of sins - will, in my respectful submission, be sufficient for a tribunal to say that there is good cause for the continued detention

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of the person. Therefore, because of the real possibility or the real probability that such a thing can happen, and also because of the fact that the Tribunal before which these grounds are going to be stated will be a tribunal of men of high repute - I should hope - in this country, there is more reason why the full grounds should be disclosed to the Tribunal. Because of that, I respectfully ask the House to support the Amendment that I moved, that the phrase "as the Minister thinks fit, due regard being had to the public interest" should be deleted and the Minister should be required, before the Tribunal, to give full grounds for the detention of the person with respect to whom he has made an Order.

**Dr. Jagan** *rose* --

**Mr. Bissember:** To a point of order. Mr. Chase moved a Motion for the Amendment of a certain clause. He has replied. I submit that after he has replied no other speaker may speak. The Motion before the House is Mr. Chase's Amendment. Dr. Jagan has already spoken. I agree that when you are in Committee you can speak more than once. Mr. Chase rose and said that he was replying on his Amendment. Standing Order 33 states:

> " (1) The mover of a motion may reply after all the other Members present have had an opportunity of addressing the Assembly and before the question is put, and after such reply no other Members may speak, except as provided in paragraph (2) of this Order."

[*Interruption.*]

**The Chairman:** Allow the hon. Minister to make his point.

**Mr. Bissember:** I am saying, with the greatest respect and in all humility, that, apart from the actual words used by Mr. Chase, what we were discussing in Committee was a Motion moved by Mr. Chase for the Amendment of clause 8 (1). Mr. Chase got up and replied to the Motion. Therefore, according to the provisions of this Standing Order, after he has replied no other person can speak, whether the House is in Committee or not.

**The Chairman:** Does the Standing Order deal with the discussion in Committee?

**Mr. Bissember:** The Standing Order dealing with the discussion in Committee deals with an Amendment in Committee whereby the speaker can speak more than once. The Amendment is a Motion. The hon. Member Mr. Chase has moved a Motion and he has replied to that Motion. Therefore, the matter is closed. With respect, when we are finished with this clause, this is what is done: The Motion is put to the House. I submit that, after the hon. Member has replied on his Amendment, the matter is closed as far as that Amendment is concerned, and it is put forthwith, regardless of whether the House is in Committee or not. Dr. Jagan has already spoken on this and Mr. Chase got up and replied.

**The Chairman:** Let us hear Mr. Chase.

**Dr. Jagan** *rose --*

**Mr. Bissember:** The Chairman called on Mr. Chase.

**Mr. Chase:** I asked Mr. Jagan to reply.

**Mr. Jagan:** Standing Order 33 deals with a Motion which has to be moved and seconded by a Member. When a person moves a Motion and it is seconded by someone, the mover of the Motion has a right to reply to that Motion. When a Motion is moved and seconded, Members can only speak once and the mover of the Motion can reply. But in Committee a person can speak more than once, so it does not mean that the Motion that is moved in Committee is the Motion contemplated under Standing Order 33.

**Mr. Bissember:** I will refer to Standing Order 51 (4). This is in further support of my argument, though I rely on my first submission:

> " (4) The provisions of paragraphs (4) and (5) of Standing Order No. 31 (Amendments to Motions) shall apply to the discussion of amendments to bills, with the substitution where appropriate of the word 'clause' for the word 'motion' or the word 'question', and of the word 'Chairman' for the word 'Speaker' and the word 'Committee' for the word 'Assembly' throughout."

The Motion before the House is Mr. Chase's Amendment to clause 8 (1). We have had a complete discussion on that Amendment and Mr. Chase has replied. I submit that since Mr. Chase has replied the matter is closed.

**Dr. Jagan** *rose --*

**The Chairman:** I have heard enough. I uphold the objection raised by the hon. Leader of the House (Mr. Bissember). I will now put Mr. Persaud's Amendment to the House.

*Amendment put, and negatived.*

*2.30 p.m.*

**The Chairman:** I am putting Mr. Chase's Amendment.

*Amendment put, and negatived.*

**The Chairman:** Mr. Chase, I think you have another Amendment here.

**Mr. Chase:** Before I formally move this Amendment, I wish to refer to a typographical error, that is, where the word "Commissioner" is, it really should be the word "Minister" Consequently, the Amendment to clause 8(2), which I propose to move, reads as follows:

> **Substitute** the words "to answer the case to be made out by the Minister for his detention" for the words "to present his case against the detention" in the **sixth line.**

The reason for this is based on the accepted English principle. It is the duty of the Secretary of this Tribunal to furnish the detainee with particulars in support of the grounds made by the Minister for his detention, and the Secretary is also

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required to supply the detainee with information as to the time and place where his case will be heard. For the purposes of the succeeding section of this Bill, the information must be sufficient to enable the detainee to present his case against the detention.

As I understand it, the position will be that the Minister will make an Order to detain a person and then serve that person with a concise statement of the grounds of his detention. Thereafter, the Tribunal will come into play. The Tribunal, as well as the detainee, will be supplied with a copy of those grounds under which the detainee is detained. Having served those grounds, the onus is then on the detainee to establish before the Tribunal that he should not be detained. In other words, the onus will be on the detainee to exculpate himself from the charges or the allegations which will be set out in the statement to be made by the Minister.

To understand the basis of this objection, one has to look at the way in which the English law in the normal criminal proceedings operates. It operates like this. A person is charged. He appears before the court, and the first thing that has to happen is that the police, or the Crown, has to prove that there is some *prima facie* case against this person before the person is required to make a defence to the charge. Therefore, the onus is on the Crown in a criminal matter to prove its case beyond a reasonable doubt, whether it is an indictable matter or a summary matter.

Under the proceedings before the Tribunal, it will be the detainee who will have to begin. He will have to start right away to present his case against his detention. In clause 8 (1) which we have just passed with the word "grounds" remaining, it makes the situation all the more oppressive because it means that the detainee will not have his accusers brought face to face with him. He cannot insist that his accusers be brought before him and before the Tribunal to say that they saw the detainee handling guns, explosives, burning, or going to the home of the Leader of the Opposition, or whatever may be the charge.

Statements will be tendered, more grounds will be given, but persons whose testimony will be required in the normal course of law to substantiate those grounds or those statements will not be called at all, and the detainee will be put in the position of having to start off and present his case against the detention without having seen or heard those persons on whose statements he is detained. This makes the position for the detainee very difficult indeed.

Let us look at what would be the position if my proposition were incorporated in the Bill. The Minister or, perhaps, more appropriately, someone on his behalf will be required to present the case made out by the Minister. The position will be that counsel on behalf of the Minister will present to the Tri-

bunal the case that Government has against the particular detainee, and will seek to establish good reasons why the person should be kept in detention. Following this must be the evidence given by persons who have seen certain things, or who have heard certain things, and who can produce documentary evidence against the detainee. If that is presented, the detainee will have an opportunity to test the veracity of the statements by cross-examination.

In cross-examining the witness, one can test the credibility of the witness; one can test the accuracy of the story and the allegations, and in so doing, it might well be that there is absolutely no case for the detainee to answer. The case of the Minister can well be considered frivolous and vexatious. Perhaps hon. Members on the opposite side are aware of the method by which certain submissions are made by counsel, and following upon those submissions, the case is usually dismissed without the defendant being called upon to go into the witness box in his defence.

In essence, this is what I am trying to put before the House this afternoon. The Minister, or someone acting on behalf of the Minister, should be required to present his case, to the Tribunal, in the first place, not the detainee's case, but the case against the detainee. If a good case is established, then the detainee should be required to answer the case made out by the Minister for his detention.

*2.40 p.m.*

I can see no serious objection to this because the Tribunal is going to be one which the Government itself will set up. The members of the Government will have all the information volunteered by witnesses or informers. They will have all the facts; the facts will be in their breasts, not in the breasts of detainees. A detainee will not know for what reason he is detained; they will know and, that being so, the onus ought to to be on them to present a case to the Tribunal, which they will set up, and, if they have made out a case, then the detainee will be required to give an answer. If they have not made ont a case, then there will be no need for the detainee to make out a case.

That is why I move this Amendment, because it is placing an unnecessary burden on the detainee to ask him to present a case when all that he is going to see up to that stage is a written document put, perhaps, in as concise language as possible of the grounds on which the Minister has sought to detain him. Therefore I move that the Motion standing in my name under clause 8 (2) of the Bill be accepted by the Assembly, and that the clause, be accordingly amended.

**Mr. Luck:** I rise in support of the Motion moved by my hon. Friend, Mr. Chase. We have been brought up in the tradition of Anglo-Saxon jurisprudence. We all have been taught, and I think we believe, that there are certain principles which govern a fair trial. However, in clause

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after clause in this Bill we have found all safeguards, which protect the liberty of the citizen, set aside.

First, the proceedings before the Tribunal will be in secret and we all know that Courts should not work in secret. Secondly, last night we passed a clause which precludes the detainee from being face to face with the accuser. Thirdly, the procedure envisaged before this Tribunal is that there will be no rules of evidence, as we understand the term, and, most fundamental of all, all that the Minister has to prove before this Tribunal is that the detainee is likely to misbehave himself. The Minister does not have to prove acts; he does not have to prove crimes. All he has to maintain is that a fellow is likely to make himself a nuisance to the state.

With all the guarantees having been swept aside, very little is left to the detainee, but we are seeking, by this Amendment, to remove the burden of proof from the detainee and to place it on the Minister. By all that is honest and right this is but a reasonable change. Look how heavily the scales are stacked against the detainee! One, the proceedings shall be in secret; two, the accuser does not come before the Tribunal. He does not see the detainee; the detainee never sees him. His story is not subject to cross-examination. All the rules of evidence known in our legal system will be broken, and these rules of evidence, I am constrained to believe, do ensure that justice, as between the state and the detainee, is done.

All these things are swept aside. What more does the Minister want? Under this Bill the Minister will not have to prove that the detained person is guilty of any crime; he does not have to prove that the man did anything. All he has to say is that it is necessary to provide for the preventive detention of this man with a view to preventing him acting in any manner prejudicial to public safety or public order.

The learned Attorney-General last night gave us a staggering proposition. We had contended that if the Minister is empowered to place before the Tribunal only such allegations, and only such particulars, as he thinks fit, having regard to the security of the state, then he will give certain particulars and, in his letter of transmittal to the Tribunal, he will conclude with these words: "and there are other things which this fellow has done which, in the interest of the state, I cannot tell you". We have said, on this ground alone, the Tribunal may detain a man for ever. The Attorney-General has said this cannot be done. I see nothing in this Bill to support his contention. The thing is quite clear. It would depend on the Tribunal, for this is arbitrary law in the extreme. If the Tribunal thinks it is reasonable to detain such persons, that would be the end of the matter. What is reasonable in these matters will be purely subjective, and justice dealt out by the Tribunal will, of

necessity, vary with the conscience and the concept of reasonableness of the members who comprise the Tribunal, and the members will be men who are appointed by a political Government to inquire into political detentions. We will be going back to the days, as they were in England, when the concept of equity varied with the length of the Chancellor's foot, and I have absolutely no doubt that there will be men on the Tribunal - I do not impute their integrity - who will find any reason good enough for detention. I have had my share of political detentions. I did a lot when the Imperialists were in power overt, but it is different now that they are behind the scenes.

*2.50 p.m.*

There were several thousand people, and a learned magistrate stood up on the steps of a "court-house" with Mr. Burnham and me and observed that there was a tremendous commotion going on. Jeeps and big lorries were there and the policemen started to catch people like fowls. "Catching fowls" is a Guyanese expression; you run and throw, and run and throw into the pen. I turned to the learned magistrate and said: "Well, sir, I wonder how the Police can prove any case against these people. When they were caught, they were not marked with a tape, so what case will be brought against them tomorrow?" The magistrate said to me: "Luck, if they come before me, I would lock them all up." I said: "On what charge?" He said: "Lock them up."

The next morning 26 of them appeared before the same magistrate. The gentleman who is now Prime Minister was the senior counsel in those matters and I suggested that we should object to that magistrate trying them as he had already tried them before in his own mind and he had said that they must be locked up. The hon. Prime Minister pointed out that if we moved from that magistrate we would collide with another gentleman who is today, amazingly enough - Let that pass. One cannot imagine how high that gentleman is today.

These will be in the nature of political trials, so it is only eyewash when the hon. Attorney-General says that, when we go before these people, their concept of reasonableness will be what we consider to be reasonableness. The history of political trials in this country clearly shows that there are some people contemptuous of human liberty, and these people have infiltrated into our machinery of state. Now what are we asking? In the face of all these harsh and oppressive laws, we say that the burden of proof, of proving what has to be proven - and only a little has to be proven - should be placed on the Minister. This would also give the detainee the right of answering and not of beginning. Every lawyer knows that, for sound reasons, a person would prefer to answer rather than to begin. Even if a man is charged with murder, there must be an inquiry into the matter, so that the man is apprised of what he has to answer, and he replies. Now these detainees are not being accused of murder, they are merely being held by the Minister with a view to preventing them

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from acting in any manner prejudicial to public safety or public order. That is all the Minister has to assert. We are saying that he must not only assert this, but that he must assert and prove this.

Extremely vague and arbitrary as is the concept that a man can be detained with a view to preventing him from acting in any manner prejudicial to public safety or public order, we say it is only to put the final nail in the detainee's coffin to say that he must prove his innocence and that he must first begin his case. This is not the time to attack this thing but, surely, a measure like this should pass through this House only after the most vigorous opposition. This is entirely alien to the concept of jurisprudence in which all of us have been trained and have grown up, and I hope you will bear with me if we seek only a moratorium on the passage of this iniquitous legislation. It cannot be said that we on this side of the House were silent when such substantial liberties were being so arbitrarily taken away from the people in this country.

If trials are to be held - as these are - in secret, no accuser at all appears. A written testimony from the Minister is all that would appear. There would be no cross-examination of the accused person and absolutely no rules of evidence. Hearsay evidence would be freely admitted before this Tribunal. There would be all sorts of evidence: hearsay evidence, circumstantial evidence, direct evidence, rumours, and, as the hon. Attorney-General pointed out, even the state of tension in the society would determine whether a man should be locked up. For instance, if there are a few strikes, or if the domestic servants give the Tribunal trouble, I suppose that would be regarded as a circumstance. The Attorney-General has agreed, he has admitted that one of the circumstances which would determine the matter, so far as the Tribunal would be concerned, would be the atmosphere in the country. I suppose if all the members of the P.P.P. were to lie down and die, the man would be released. But we will not lie down and die.

So little liberty is now left that I ask all those who really value liberty to show their support to this matter by leaving the Chamber when the vote is being taken. How can we set up procedures whereby all these things happen? I have a strong feeling that once laws of this nature are enacted, they are never repealed. That is the gravest tragedy of all. It took Europe hundreds of years to abolish the tyranny of the Star Chamber, and here we, who have been so recently set free, are enchaining ourselves and our children with a monstrous tyranny. Sometimes I wonder if the members of this Government have no children.

*3. p.m.*

Laws such as these stay on. The country stays on. Parties come and go, and to be truthful,

even ideologies come and go. But I hope that those who teach history - and I speak directly to my friend Mr. Sancho - will see in the historical process no blind impersonal force, but the constant striving of mankind to be free from material enslavement as well as physical and spiritual bondage.

This is the final Bill which will completely rob the average Guyanese of his liberty. After this Bill nothing will be left except charity. We will have to beg for the detainees to be released. Secret trials will be endorsed. The concept that political enemies should be locked up will be endorsed. A man will have no right whatsoever. A man will be spirited away from the bosom of his family and carried to a remote corner of this country. Only one thing is left with the passage of this Bill. Small as the burden of proof is on the Minister, he should prove what the detainee has done. The detained person should not be called upon to do this. This is the only thing left. After this, our whole jurisprudence will have gone upside down. I am not one to extol Anglo-Saxon jurisprudence, and I make no apologies for it.

I studied law as a little boy, and I believe these are solid rights. Human society has evolved for millions of years, and while principles and rights in my view are never absolute but relative, these principles which we now set aside are so deeply cherished in all forms of societies that one must believe that they form part of human nature and are worth defending. All our rights under the criminal law are swept aside.

One thing is left. I speak subject to correction. When, as a little boy I studied law, they told us of the case of the Director of Public Prosecutions versus Woolmington, where the doctrine of the Burthen of Proof was established. What form of indignity is this that a man must prove his case? What he has to do, if our Amendment is not accepted, is to present his case against his detention. How ludicrous, as a safeguard, this Tribunal now appears, and how right was Mr. Carlos Gomes in refusing to have anything to do with a procedure so irregular, and a concept so iniquitous!

Sir, I speak for myself in this matter. If ever I happen to fall under these provisions, I would refuse to have anything to do with any Tribunal such as this. It would take nearly a score of years to lift this thing from our country. One Government and the next will find it necessary to continue with it. That is the nature of things. Once a law of this nature is made, it will continue until nothing is left. Those of you who have children must understand that they may well stand in the same jeopardy in which you now place other people, and these people have committed no crime, they have not been accused of anything. They are to be locked up and the key thrown away.

One wonders how free one is! What is the significance of May, 26, in circumstances such as these? Milton wrote this: "Des-

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perate diseases by desperate remedies are relieved or not at all." Such is the nature of the argument of the Government. It is a desperate disease; that it is a desperate remedy is clear to all thinking people. It is a remedy of desperation. But where is the disease, if not in the minds of a few men? Where is the disease which afflicts this country to justify such a remedy? Where is it?

A man is to be locked up and he has to present his case against his detention, and all the Minister has to say is: "Look, I am locking up this chap with a view to preventing him from acting in a manner prejudicial to public safety or public order." How can this be enough? Let those who believe that this weapon is being fashioned to lock up communists, or dissidents, or outsiders in the society, know that the very independence of this country is due to the outsiders, the dissidents, and indeed, the communists. What ingratitude!

**The Prime Minister:** I move that the Question be now put under Standing Order No. 38.

*Motion put.*

**Mr. Luck:** Division!

*The Clerk began to take the Division.*

**Mr. Persaud:** When I was asked to vote just now, I thought you were putting the Amendment. I wish that my vote be recorded

[**Mr. Bissember:** "You can do that after the Division is taken."]

**The Chairman:** A Division is being taken.

**Mr. Persaud:** I should like my vote to be recorded as "No" because I was under the impression that the Amendment was being put at the time.

*3.10 p.m.*

**The Prime Minister:** On a point of order. The hon. Member should not be allowed to do so until the number has been announced.

*The Clerk announced that 24 Members had voted for the Motion and 13 Members against.*

**Mr. Persaud:** Mr. Chairman, when I was called upon to vote just now, I was under the impression that you were putting the Amendment moved by Mr. Chase and that is the reason why I voted "Yes". Now that I know that you were proposing the Motion moved by the hon. Member, namely, that the Question be put, I wish that my vote be recorded as "No". I wish to rely on Standing Order No. 44.

*The Chairman directed the Clerk to alter the vote accordingly.*

*The Division was: Ayes 23, Noes 14, as follows:*

| *Ayes* | *Noes* |
|---|---|
| Rev. Trotman | Mr. Persaud |
| Mr. Tello | Mr. Linde |

Mr. Sancho
Mr. Field-Ridley
Mr. Carrington
Mr. Budhoo
Mr. Blair
Mr. Too-Chung
Mr. Joaquin
Mr. Duncan
Mr. Bowman
Mr. deGroot
Mr. Merriman
Mr. Mahraj
Mr. Kasim
Mr. Jordan
Mr. John
Mrs. Gaskin
Mr. Correia
Mr. Cheeks
Mr. Bissember
Dr. Reid
Mr. Burnham - 23

Mr. Ally
Mr. Khan
Mr. Lall
Mr. Jagan
Mr. Luck
Mr. Hamid
Mr. Wilson
Mr. Nunes
Mr. Chandisingh
Mr. Ram Karran
Mr. Chase
Dr. Jagan - 14

*Motion carried.*

*Amendment put, and negatived.*

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

*Clause 9.*

**Mr. Persaud:** My Amendment —

**The Chairman:** There are two Amendments in your name, Mr. Persaud. The first Amendment is going to be accepted; the second Amendment is unacceptable. Speak to the first Amendment.

**Mr. Persaud:** This Amendment does not deal with the word "evidence" but with the word "reasonably" which should be inserted before the word "practicable" in clause 9 (1). My Amendment to this clause seeks to ensure the speedy trial of a detained person.

There is a maxim accepted in law and that is, the delay of justice is the denial of justice. In view of this, those of us who sit in this Assembly and pass laws should ensure that this maxim is taken into account when Bills are proposed in this Assembly.

**The Prime Minister:** May I interrupt for a moment and indicate to my hon. Friend that the Government accepts this otiose Amendment.

**The Chairman:** I call on Dr. Reid to move his Amendment.

**The Minister of Home Affairs** (Dr. Reid): I propose an Amendment to clause 9 for the insertion of new subsections. From discussions during this debate it seems quite clear that both sides of the House will accept this Amendment, as it provides for legal representation to be given to the detainee. This is in keeping with provisions now in the Court of Appeal Ordinance. Since both sides of the House have discussed this already, there does not seem to be any need to give other arguments for a simple Amendment.

**Mr. Luck:** I assume that this Amendment is being substituted for my Amendment to clause 14, which appears on page 3 of our list of Amendments. Hon. Members on this side of the House cannot agree with the hon. Minister of Home Affairs that this Amendment moved by him is substantially what we seek. By my Amendment to 14 (1) we seek that -

"A person detained in pursuance of the provisions

[MR. LUCK]

> of this Part shall have the right to consult counsel in private ..."

The two last words would have to be changed -

> "... and to be repaid from public funds all reasonable legal expenses incurred in seeking legal assistance to resist his detention as well as his cost of travelling from his place of detention to his home if released."

We would have to strike that out Therefore. what would satisfy us is that the detainee should be given the right to consult with a lawyer of his choosing, and this is not being done under the Amendment proposed by the hon. Minister of Home Affairs. This is what his Amendment states -

> "The Tribunal may, upon the application of the detainee, at any time assign to him a legal representative ..."

"Assign" is the operative word. I suppose - and I am sure I am right - that "assignment" in this case would follow the same principle as that applied in murder cases when lawyers are assigned, that is to say, the Tribunal will appoint a lawyer of its own choosing for these detained persons.

*3.20 p.m.*

One wonders if this Government seriously wants to give to the detainee any right at all. That he should be represented by counsel is clear, that this is desirable is clear, that if he cannot afford it he should be helped is also clear. Indeed, in America, in all cases of crime, the criminal is entitled to be defended by counsel. We are saying that the detained persons should be given assistance in retaining counsel of their own choice.

The hon. Minister wants counsel to be assigned, and I am sure that the procedures of assigning will follow the similar provisions in assigning defence counsel in murder cases. That is to say, there will be on the roster the names of all the lawyers in Guyana who signify their assent to act: P.P.P., P.N.C., U.F., competent, incompetent, Statute Bar claimants and all kinds of people. When a person is detained the Committee says: "All right, the first man take him." Surely, in a country like this where, as hon. Members know, everyone is involved in politics, everyone has a side, can it be said to be fair to the detainee that, in a political matter -- [*Interruption.*]

**The Chairman:** Let us get along with this.

**Mr. Luck:** We are saying that these are pre-eminently political trials and, since the politics of all lawyers are known, it would be infelicitous in the extreme that, just by chance, a known P.N.C. lawyer would be put to defend a member of the P.P.P. when it is a political trial. Someone in this particular matter is indulging in games, because

this is no help to the detained person. You are taking away all rights and giving none in return. Can it be said to be fair that counsel in a political matter will be assigned by chance, assuming that this "picking-out" is fair? I wonder at the sense of justice which is behind this particular clause.

There is one principle in a murder case whereby the accused person has some choice in the matter. If he picks out a lawyer from the start, that lawyer continues, but, since the detained person has no notice of his detention, he has no lawyer and, therefore, he has no choice in the matter. In a murder case, although counsel is assigned, there is a sub-variation of the rule that if the accused person took a lawyer in the lower court, that lawyer will be chosen and the Government will have to pay the expenses for that lawyer. But the detained person is not told: "We are coming for you next week." He is detained immediately. He has no lawyer and, therefore, if a lawyer is to be assigned to him by the Tribunal, it will almost invariably happen that a lawyer from an opposing party will be assigned to his defence.

Even if the detained person rejected the services of that lawyer, we know from experience in this matter that our lawyers - as I say to their shame - would insist that they get a brief fee, and the poor man would be left without a lawyer. How could this be right?

**Mr. Jagan:** If we look very carefully at this clause, we will find that there are about four conditions within: (1) The Tribunal may, (2) upon the application of the detainee, at any time (3) assign to him a legal representative if, in the opinion of the Tribunal, it appears desirable in the interests of the just execution of the Tribunal's functions under this section that the detainee should have legal aid and, (4) that he has not sufficient means to enable him to obtain that aid.

I do not want to repeat what my hon. and learned Friend pointed out, but I wish to say in passing, that it is the Tribunal which assigns the lawyer. The detained person has no choice in the matter, although he may make an application. I am sure that the words: "if, in the opinion of the Tribunal, it appears desirable in the interests of the just execution of the Tribunal's functions under this section that the detainee should have legal aid ... " do not convey the Government's intention. Surely, what we have to consider is not the just execution of the Tribunal's functions, but the detainee's interest.

The function of the Tribunal, first of all, is to discover whether there is sufficient cause for the detention of a person. The detained person should have a legal adviser to put forward his case to show that his detention should cease. So it is not the Tribunal's interest, but the detainee's interest that the legal adviser should seek to protect. The members of the Tribunal would be persons of legal training, either Judges or persons who are qualified to be Judges. Therefore, they would

[MR. JAGAN]

not need a legal adviser to put forward their case so far as their interest in respect of the execution of their duties are concerned. What we need is to have the person represented by someone who would put forward his case to the Tribunal, so that the Tribunal could see whether the detention or the continued detention of the person is justified.

*3.30 p.m.*

We must remember that in many of the cases the persons would obviously be detained for political reasons; therefore they may not want to be represented by legal representatives who do not have their political views. They would want to be represented by persons who share their political views, or who have no political views at all, if such persons could be found.

A detainee who consults a legal adviser would have to give him a lot of details, probably information which he may not want to divulge to the Tribunal. But that information would have to be given to the legal adviser in order to present his case properly. That is why it is very important, if you want to give the person a legal representative, to give him someone whom he desires, someone to whom he may be able to speak frankly. The Government cannot say that the person might want a legal adviser who charges too much because, under the new subsection (4) to clause (9), which is to be moved by the Minister, the money that is to be paid to the legal adviser would be determined by the Tribunal.

For instance, if the detainee wants a Queen's Counsel who normally charges more than the barrister whom the Tribunal may want to give him or her because it feels that the Queen's Counsel would cost the Government too much money, the Government has the power to fix the fee which is to be paid to the legal adviser whom the detainee wants. Therefore, I can see no objection to Government giving to the person a legal adviser of his choice.

Now, how would the Government determine who should be represented? Look at the last condition. The Tribunal has to be satisfied that he has not sufficient means to enable him to obtain that aid. Who would determine whether this man has enough means or not? How is this question to be determined? surely the Minister should give us some indication.

Let us, for the sake of argument, accept the proposition that the detainee would be given a legal adviser whom he does not want. Let us also accept, for the sake of argument, the three other conditions previously enumerated. In what manner would the Tribunal determine whether a person has enough money or not? Would it be determined on the basis that he is a wealthy person; that he has a house? Would the Tribunal take into consideration the fact that the house is mortgaged, or that it is jointly owned? Would it take into account

the liabilities this person may have - the number of persons he may have to maintain?

I remember vividly when my hon. and learned Friend, the Attorney-General, spoke on the Motion for Recall. I am sure Your Honour will recall that that Motion was not as wide as the last part of this clause. When that Motion was moved, the hon. Attorney-General asked a number of questions. Similarly, under this subclause a number of questions may arise.

The hon. Minister of Home Affairs said that this provision is similar to the provision in the Court of Appeal Ordinance, or the practice in the Court of Appeal. [**The Prime Minister:** "The Federal Court of Appeal Ordinance, No. 8."] My hon. and learned Friend may not be aware that we refer to it as the Court of Appeal Ordinance. The hon. Minister of Home Affairs used the term "Court of Appeal" and in replying, I just adopted it. [**The Prime Minister:** "But he is not a lawyer; you are."]

I can see the many difficulties in ascertaining the power of this Tribunal. In what manner would it exercise the power given to it? The Tribunal should have some guide in order to enable it to determine whether or not a person can have independent legal aid, or whether he should have legal aid as provided by this clause. Clause 9, subclause (4), starts off with:

> "The Tribunal may, upon the application of the detainee . . ."

Would the Tribunal also question the detainee as to whether he could afford to pay or not?

I would say that this clause does not go all the way as the Opposition had wished. In fact, we do not think the intention of the Government is adequately put forward here. It is no use attempting to give someone a legal adviser whom he may not want. In such a case, would the detainee be offered another legal adviser by the Government? I understand that the practice with respect to the assignment of a lawyer to defend someone charged with murder is that if the accused person does not wish that Counsel, then someone else is assigned to defend him.

*3.40. p.m.*

One wonders whether that practice will be observed under the provisions of this subclause. It would seem that a person should have a right to refuse a legal adviser for personal reasons, or because he may not have any confidence in the competence of the adviser, or, again, for many other causes. Surely the Government should make provision that in such cases a person should be given a legal adviser who is acceptable to him in view of the fact that the Government will be controlling the amount of money to be paid to the legal representative.

For these reasons I hope that the Government will amend this Amendment in order to allow the detainee to choose his legal adviser. It will do no harm because, under subclause (5), the Government has power to limit

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the amount to be paid to the adviser to be assigned to the detainee, and it will involve no further expenditure of money if that sum of money is paid to a legal adviser selected by the detainee.

*Amendment put, and agreed to.*

**Mr. Persaud:** I am sure the Government will find no difficulty in accepting the Amendment to paragraph (c) of subclause (2). At first glance I would suggest the deletion of the entire paragraph (c), because if a man is detained on a particular day and the Minister submits grounds and/or evidence upon which he is detained, I would assume that the Minister can be in possession of no other information to submit to the Tribunal after the evidence, information, or grounds are submitted in the first place.

Looking at clause 9 (2) (c) a second time, I feel that the intention here is that if the Tribunal feels that the information supplied by the Minister is inadequate or vague —

**The Prime Minister:** To a point of order. An earlier Amendment proposed the substitution of the word "evidence" for the word "grounds". The systematic arrangement of the Bill calls not for the submission of "evidence", but for the submission of "grounds". You cannot submit "further evidence" unless you have an antecedent. You cannot speak of "further evidence" because "further" must have an original. I submit that this Amendment should not be allowed, as it is inconsistent with an earlier decision of the Assembly when the Amendment for the substitution of the word "evidence" for the word "grounds" was negatived.

**Mr. Persaud:** With all due respect to the Prime Minister, in the first place the Minister is called upon, under this clause, to submit grounds to the Tribunal. Under this paragraph, the Minister will only submit if the Tribunal requests him to submit such grounds and/or information.

My submission is that, following any logical argument, the Tribunal cannot, after three months, ask the Minister to submit additional information if he is required to submit to it, within a specific period, his reasons for detaining people. The conclusion I have drawn from clause 9 (2) (c) is that if the Tribunal is in doubt about the grounds submitted by the Minister in the first instance, then the Tribunal, at this stage, may ask the Minister to supply not information but evidence.

On the first occasion the Tribunal asks for grounds and/or information; on the second occasion the Tribunal cannot ask the Minister to supply further information, otherwise the Tribunal would be putting the Minister in the position where he can detain a person on limited grounds and, after submitting grounds to the Tribunal, he can collect additional information for submission to it. This would be striking the death-blow to the rule of law. The Prime Min-

ister is aware of the maxim that it is better to free one hundred guilty persons than to convict one innocent person. This is an accepted maxim for justice. Therefore, I am saying that my Amendment is not inconsistent. It is reasonable and although there are learned persons on the Government side, the Prime Minister and the Attorney-General, I defy them to suggest that the logic I am using in proposing this Amendment is unreasonable.

As I said, we cannot sit here and allow this clause to pass whereby after the Minister has detained a person and has submitted grounds to the Tribunal he can have the right to use decoys and spies to collect additional information for submission to the Tribunal. As Parliamentarians we must make it clear that on the first occasion the Minister would submit all the grounds and information in his possession for the benefit of the Tribunal.

I therefore urge the Government not to allow this clause to remain with the word "information", but to substitute the word "evidence". This is the only reasonable word that can be used. If the Government is not prepared to accept the word "evidence", then the only alternative is for the Government to withdraw paragraph (c) of clause 9 (2).

*3.50 p.m.*

I hope that the hon. and learned Attorney-General will stop being childish and start being logical and reasonable. Last night the Leader of the Opposition (Dr. Jagan) said that the Attorney-General was living in space or in another world. This appears to be true because he has not been able, as a very able lawyer, to get the support of laymen on this Bill.

The hon. and learned Attorney-General quotes about India all the time. But India is different from Guyana. Guyana is far away from India. This is not the only point. The other point is that there is fear and mistrust in this country. If the Government seeks to put permanent laws on the Statute Book of this country, these laws should be so drafted as to give a man a just and fair trial. You are going to detain a man and tell him: "Look, I am locking you up. You are now open to go before the Tribunal and say why you should not be locked up." This again violates all the principles of justice, for it is always the duty of the prosecution to prove the guilt of an accused person, and not the accused person to prove his innocence. We see all principles of law being violated throughout this Bill.

I respectfully submit, for the consideration of the Government, that the word "information" be deleted and the word "evidence" be substituted. If the Government is not prepared to substitute the word "evidence" then it should remove the whole of clause 9 (2) (c) for we cannot, as I wish to reiterate, put the Minister in the position where, after he has detained someone, after he has submitted to the Tribunal, in consonance with this very Bill, his ground for detaining that person, he

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will have the right to submit further information to the Tribunal. This, as I said, would be striking the death-blow to the rule of law. I therefore very strongly urge the deletion of the word "information" and the substitution of the word "evidence".

**Dr. Reid:** I move that the Question be put. [**Mr. Jagan:** "Only one person has spoken on this."] [**Mr. Luck:** "What is this?"]

**Mr. Chase:** Assuming that you have not accepted that preposterous proposition, I wish to address the House. I recognize that there is some difficulty in substituting the word "evidence" for the word "information", having regard to the previous decision of the House on clause 8. But it seems to me that paragraph 2 (c) still requires some Amendment which I shall seek to formulate as I proceed.

The position now is that we are dealing with the Tribunal in motion. The detainee is before the Tribunal and the legal representative of the detainee is presenting his case against his detention. The Tribunal is required to do certain things and one of these is to invite the Minister to submit further information. It is true that the word "information" is a broad and undefined term in this particular Bill with which we are dealing. It may well be that what is intended is that the Minister should be required to submit additional grounds. If it is that we are requiring the Minister to submit additional grounds, then we should say so. But when we leave the word "information" standing by itself, it would seem to me to indicate that we are inviting the Minister to do something which he has not had authority to do in any of the preceding clauses of this Bill.

If it is that what the Government has in mind is that the Minister should be required to give further particulars of the grounds on which the order was made, then we should state "further particulars". Indeed, in clause 8 (1) the word "particulars" is used and we understand what is meant by "particulars". "Particulars" would mean details of the grounds which have already been laid. The Minister may have laid five grounds. If further particulars are required with regard to any particular ground, it means that the Minister would be required to give more and more detailed particulars, or details as to that particular ground.

He should furnish, as lawyers would say, further and better particulars, but if we leave the word "information" as it is, we are really operating in a very vague area in which the Minister may be permitted to bring, what he is often allowed to do, hearsay evidence, matters which he may just go and pick up, matters which may not be within his knowledge at the time he made the Order. I submit that the substitution of new grounds would be a travesty because, under

clause 4, the Minister not only has the right to make a concise statement as to the grounds he made in the Order, but if there was any error, any defect in that statement, it cannot validate the Order.

It seems to me that, having given the Minister that range of error in Clause 4, to give him permission now to submit some new ground which never existed at the time when he made the Order, is really asking this House to commit itself to too much. I would have thought that to insert the word "information" in this Bill would have been rather inconsistent with what has gone on before.

*Assembly resumed.*

**Mr. Speaker:** This sitting is suspended for half an hour.

*Sitting suspended at 4 p.m.*

*4.33 p.m.*

*On resumption - -*

*Assembly in Committee.*

**The Chairman:** Mr. Chase.

**Mr. Chase:** When the sitting was suspended, I was speaking on clause 9 (2) of the Bill, and showing that there was need for some Amendment to the word "information". I had conceded that, having regard to the previous Amendment, evidence would not be included. If it is intended that "information . . . " then it would seem to me that we would have to be much more specific. For those reasons I urge the Minister to reconsider its use in this Clause with a view to making the Bill more precise.

I do not know if the hon. Attorney-General will indicate in his reply whether "information" is the word used in India or in some other part of the world. I am not at all happy that the word "information" should be used as loosely as it is here.

**Mr. Jagan:** Mr. Chairman - -

**The Chairman:** It seems to me that everybody wants to speak. Everybody is putting in an Amendment. I thought you were going to approach this matter as a party and have particular spokesmen. These are delaying tactics.

**Mr. Jagan:** Only a few of us spoke on this Amendment. I should like to inquire from the Attorney-General whether he does not think that the word "information" also includes grounds? The hon. Attorney-General referred to the Indian provision over and over during the course of the debate on this Bill. I think it is quite clear that, under the Indian provision, once a person is detained under certain grounds, supplementary grounds cannot be given to justify the detention of that person. In view of that, I should like to find out from the hon. Attorney-General whether he feels that the word "information" would include grounds, and if that is so, having regard to the Indian provision which he cited so often, the word "information" should be changed so as to exclude the supplying of supplementary grounds to enable the detention.

**The Attorney-General and Minister of State:** Mr. Chairman, this particular provision was included in this subsection with a view to arming the Tribunal with the largest measure of authority that we thought compatible with the exercises of its functions. It does not have the effect of enabling the Minister to introduce supplementary grounds. What it is intended to do - what it achieves - I submit, is to provide the Tribunal with the authority to call upon the Minister, as the hearing unfolds, as the materials are presented before the Tribunal by the Minister, to put forward additional information which it requires. It is information which is required to be communicated to the Tribunal for the purposes of subsection (1) of this section, that is, for the purposes of ascertaining and stating whether there is, in the opinion of the Tribunal, sufficient cause for detention.

In other words, it is an ancillary power with which the Tribunal is armed to enable it to discharge its functions in the interest of the individual. Some of my hon. and learned Friends on the other side, perhaps, in their zeal to be critical, have sometimes put forward Amendments which appear to some of us on this side to be actually inimical to the interest of the individual. I urge them to look more carefully at the Bill and not to be carried away by the exotic word "information", and to see in the Tribunal the power given in the interest of the individual.

*4.40 p.m.*

**Mr. Luck:** I find it difficult to follow this. If, having heard the Minister and having heard the detainee, the Tribunal requires further information, this provision does not help the detainee, whoever else it may help. If the position of the Tribunal is that, from the information supplied by the Minister, it is not satisfied about the detention, then I would expect it would release him. We on this side of the House consider that the effect of this paragraph (c) will be that the Tribunal, having gone into the matter will say, "If we do not have any more information we will have to release the man. We will have to call on the Minister to give us further grounds."

This forms the crux of the proceedings: men are going to be detained on account of information, not on account of evidence. I cannot follow the hon. Attorney-General's reasoning. I would expect that if the Tribunal were to investigate the matter and did not feel satisfied that a man should be detained, then the man would be set free. What the Attorney-General is telling us is that this information is asked for if the Tribunal has looked into the matter and is not satisfied that a man should be detained. That is the only reason why the Tribunal would ask for additional information. Its request for further information from the Minister must be a request for information to justify the continued detention of the man. I am at a loss to understand the logic of the Attorney-General's arguments, unless the Tribunal is to keep the man locked up until the Minister clarifies the position.

Let us say the Tribunal hears the matter. The request for further information must be information to justify the detention. As I understand it, the man would have to be released if the Tribunal is not satisfied. This is one example of the tortuous and false logic of the hon. Attorney-General's argument during the whole of this debate.

**Mr. Wilson:** What worries me about paragraph (c) is that - -

**The Chairman:** Mr. Luck said "we on this side". I thought he was speaking for you.

**Mr. Wilson:** This is a point in addition to what he has said. It seems to me that there is no means of having the detainee informed of the further information submitted by the Minister. I should like the Attorney-General to let us know which clause will provide that the detainee will have an opportunity of seeing this new information.

**The Chairman:** That has been covered already. You are repeating yourself.

**Mr. Wilson:** With due respect, sir, I did not hear you.

**The Chairman:** I am going to ask you to take your seat. Present your arguments, or I will do so?

**Mr. Wilson:** After the Minister has given further information, the detainee should be given an opportunity to answer.

*Amendment put, and negatived.*

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

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

*Clause 11.*

**Dr. Reid:** When a person is put into detention, notice of the Order for his detention is to be published in the *Official Gazette* within seven days after its coming into force according to Clause 4 (2). In like manner this Amendment seeks to make provision for the publication in the *Official Gazette* of a person's release. I think that my friends on the opposite side have also asked for this.

**Mr. Chase:** An Amendment was put down by me to provide for the publication of Orders revoking Detention Orders within seven days of such Orders coming into force. The Minister's Amendment seeks to meet the objection which I had raised earlier in the debate on this Bill. Also, it seeks to meet the Amendment which I have put down, save for the fact that whereas I have indicated a time limit within which the publication may be made, to wit, seven days, there is no time limit in the Amendment which the Minister now seeks.

**The Attorney-General and Minister of State:** On a point of information. I think I can assure my friend that the time limit provided for in Clause 4 (2) would apply automatically to the requirement that the notice of revocation of the Order should be published in the *Gazette*. Both would be required to be done within seven days.

**Mr. Chase:** Following that explanation from the hon. Attorney-General, it would seem that the whole Amendment proposed by me has been accepted by the Government. May I congratulate the members of the Government for accepting that Amendment. I could not, in the first place, understand what was responsible for the decision to publish when a man is detained and not to make any provision for publication when he is released for, after all, he will be detained on grounds of pure suspicion and not evidence.

**The Attorney-General and Minister of State:** I should make it clear that the Bill, as drafted, did make this provision. We have accepted my learned friend's uncertainty in the matter and, to remove any ambiguity, we are inserting this Amendment.

*Amendment put, and agreed to.*

**Mr. Chase:** The Amendments to Clause 11 in my name are now withdrawn.

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

*Clause 12.*

**Mr. Jagan:** I put forward my arguments in respect of this Amendment when I introduced the Amendment that the word "reasonably" be inserted in Clause 4. As I stated on that occasion, I think it makes a difference if the word "reasonably" is added before the word "satisfied" in the first line of subsection (1). I do not think there is any need for me to repeat those arguments. I do not want hon. Members on the other side to accuse me of wasting the time of this House. I hope that the Government will reconsider the arguments put forward in respect to this clause and, therefore, accept this Amendment.

*4.50 p.m.*

**The Attorney-General and Minister of State:** As my hon. and learned Friend said just now, this argument in relation to the power to make the Detention Order has been gone into before. This ground has been fully traversed by Members on this side, and I have nothing further to add. I urge that the Amendment be negatived.

**Mr. Chase:** Throughout the arguments which we were hearing earlier, it was being advanced that we were following the Constitution of this country in so far as the provisions of this Bill were concerned. But this is a clear case in which we are not following the provisions of the Constitution of this country. I challenge the Attorney-General to say that we are doing so in this case.

Let me refer to an Article of the Constitution which deals with the question of restricting the movement of persons. It is Article 5 (1) (j) of *The Constitution of Guyana*. I take the liberty of reading it because it is very important. It states:

> "5(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say -"

A number of cases are set out and we come to the material one for this discussion:

> " (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Guyana or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Guyana in which, in consequence of any such order, his presence would otherwise be unlawful;"

In this Article of the Constitution to which I have referred, you will note that the basis for making an Order restricting the movement of a person must be embedded in something which is reasonably justifiable for restraining that person from leaving the area in which he normally resides.

Clause 12 (1) of the Bill, as printed, states baldly:

> " 12.(1) The Minister may, if satisfied with respect to any person (whether the Tribunal has given any report in his favour in accordance with subsection (1) of section 10 or not) that, with a view to preventing him from acting in any manner prejudicial to public safety or public order or the defence of Guyana, it is necessary so to do, make an order for all or any of the following purposes, that is to say -"

Then the purposes for which the Order can be made are set out. There is nothing in this Clause 12 as printed, which states that the Minister should make these Orders if there are reasonable grounds for so doing, or that he should act reasonably, or that, in making the Order, it must be an Order which is reasonably justifiable, in the circumstances, for restraining the movement of the person. In that connection, the Amendment proposed by my hon. and learned Friend Mr. Jagan for the insertion of the word "reasonably" between the words "if" and "satisfied" is a case in point that the Constitution itself requires it.

It is true that, when we were dealing with Clause 4 of this Bill, the Constitution did not use the word "reasonable." But one could infer, from the totality of the language and the various Clauses of the Constitution, that that was certainly intended and it ought to have been inserted. But then the Attorney-General said that the Government was following the letter of the law. The word "reasonably" was not required and, therefore, the Government was not putting it. Now that we have come to this Clause let us follow the letter of the law which requires that for a man to be restrained in his movements, it must be reasonably justifiable to restrain him.

This is a very serious matter because detentions, as such,

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have certain consequences. We have seen, by way of experience and by way of the provisions of this Bill so far, that provisions can be made for the maintenance of the wives and children of the persons who are detained. However, in the case of persons who are restricted, no such provision exists, and this is the danger. Let us assume that a man is living at Helena, Mahaica. Normally, when he is restricted, he is restricted to Helena, Mahaica. If he is living at Success, Wakenaam, he is restricted to Success, Wakenaam. That is a small part of the country, a small area. If he cannot move out of that area he cannot, in many cases, earn a living because, very often, people work some distance from where they are actually living.

There are cases in point. There is the case of a man by the name of Heeralall who is restricted, at the moment, by the Minister of Home Affairs, to a place called Helena No. 2 at Mahaica. The area of restriction is something like 100 rods by something like 160 rods. He cannot move out of that area in which he is living. [**Dr. Reid**: "Call Heeralall and find out."] He cannot leave there. You are inviting me to bring a man down so that you can charge him! Because of his restriction, this man is unable to earn a livelihood. Before his detention, he lived with his mother and stepfather and he used to do odd jobs - [**Mr. Ramphal**: "Yes, 'odd' jobs."] [*Laughter.*] - whereby he could earn a living. Odd jobs of honourable repute. Of course, there are some people who feel that jobs like cleaning the streets and digging drains are *infra dig*. I see absolutely nothing wrong in this. There is dignity in labour.

*5. p.m.*

Although the Leader of the House and the Attorney-General are laughing at "odd jobs", a lot of people in this country have to do odd jobs. Since he was detained, his stepfather refused to have him in his home because of the terror which the stepfather had been experiencing - searching of his home by the police on more than one occasion; constant watching of his premises; interrogations, and so on. These things have made his father afraid of having him within the precincts of his home.

This is a young man. He is 18 years of age. There is absolutely no place in his restricted area, which is Helena No. 2, for him to find employment. It would be very difficult for him to find employment unless he left the area in which he is living. In the meantime, he has to live on charity. A situation is being created in which people who are restricted cannot earn a living; they will have to live on charity or steal. Is the Government seeking to encourage the choke-and-rob industry?

Let us look at the case of Prakash Persaud. He was a civil servant. He was detained, and he was released. He was summarily dismissed from the Civil Service without a hearing. He went to live at an area just off Parika

called Hyde Park, that is on the east bank of the Essequibo River. It is a very small area, where there is no industrial activity, and it is impossible for him to find a job. Yet this hon. Minister has restricted Prakash Persaud to living at Hyde Park, a very small area which does not even have electricity. He is married and has family responsibilities, and this is his frightful position because of the Order made on the whims of the Minister. We are contesting the whimsical actions of the Minister. We are saying that the actions must be based on the constitutional requirements of the Constitution of Guyana.

There was Pandit Ramlall who was employed -- [**Mr. Bissember:** "What about Samaroo?"] Samaroo? Which Samaroo? Pandit Ramlall was employed as a district organiser by the R.P.A. He was also a school-teacher at No. 64 Village, Corentyne. On his release he was restricted to an area which precluded him reaching No. 64 Village to teach at the high school. He has a wife and family. He has responsibilities, and because of the Restriction Order, he made several applications to the Minister - we also made representations - and it is only recently that the Minister increased the area of his restriction beyond No. 64 Village, so that he can go to the area where he has been employed. But, in the meantime, this man was unable to obtain any employment to earn a livelihood.

We are saying that this Order for restriction must be based on the Constitution, because the Minister will not only use it to restrict persons to their place of residence, but it is going to be used, as it has been used, to prevent persons from leaving this country. I wish to refer to the case of Mr. Jardine. He was detained and, after his detention, he was restricted to his place of residence. He had obtained permission to go with his family to reside in the U.K. He wished to leave this vast prison which this Government seeks to create, and go to live in the Metropolitan State. But what has the Minister done? He has refused to allow this man to leave the country by virtue of restricting his movement to the area in which he lives.

Now, let us be reasonable. Why is a man restricted? A man is restricted because the Minister is of the view that it is necessary to restrict him so as to prevent him from acting in a manner prejudicial to public safety or public order. "Acting in a manner prejudicial to public safety" means the safety of our State. "Public order" I understand to be the public order of our State, and "the defence of Guyana" speaks for itself. If a man wishes to leave this country, how could he, in any way be acting in a manner prejudicial to public safety or public order? The Minister and the Government should be happy for that man to leave this country!

The Restriction Orders are being used to prevent people from seeking medical attention. I am referring to Madramootoo. This man suffered an injury at the hands of terrorists. [*Interruption.*] He got his hand

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blown of during the disturbances. A doctor, who is a Fellow of the Royal College of Surgeons, recommended that this man should go abroad to get medical attention because he cannot get the kind of surgery that is required in this country. He applied, since he is under restriction, to the Minister for permission to leave this country to go to the United Kingdom to have proper medical attention. Would you believe it! The Minister of Home Affairs has refused to give Madramootoo permission to leave this country to get medical attention which he cannot get in this country! [**Mr. Luck:** "Oh good God! That is monstrous!"] And we are asked to give to the Minister of Home Affairs the power to continue these restrictions, without the restrictions being embedded in the Constitution of this country.

The Amendment which my hon. Friend moved is a reasonable one, and, if the Minister wishes to act in a manner that will invoke public confidence, he will not hesitate to accept this Amendment. But if, of course, there is something sinister, as I have reason to believe there is, then we will reject the Amendment. All the Amendment states is: If the Minister is reasonably satisfied he should make the Order. I want the Minister to tell us what he intends to do.

*5.10 p.m.*

At this stage, we are debating this particular section and we are not opposing the legislation as a whole. We cannot do that at this stage. At this stage we are trying to make the clauses as palatable as we can and as compatible with our Constitution as we can make them. That is why we want members of the Government to understand that we are not saying now that the Minister is not to restrict people. The Chairman would rule me out of order if I did so. What we are saying is that when the Minister does restrict people he should do so reasonably. The Constitution requires that when he is going to restrict a person he does so if it is "reasonably justifiable".

I want the Minister to tell this Assembly why he is refusing to accept a reasonable Amendment. The hon. Minister of Home Affairs, of course, does not answer to the points which are being made in this House. Mr. Chairman, you will no doubt pardon my colleagues if, after I sit down, they rise to speak in order to underline and reinforce the arguments which I have been making. It would help a great deal, of course, and make for progress in this matter if, when a point is made by a mover of a Motion, such as I am doing now, the Minister or someone on his side would reply and let us know immediately why reasonable Amendments are being rejected. If the point is well made, we would, of course, concede. If the point is not well made we would reply. If the members of the Government sit down and say nothing, we must assume that they

are not convinced and further arguments are necessary. Consequently, it will be necessary for other colleagues of mine to reinforce this argument.

I wish to appeal to you, Mr. Chairman, to recognise that this is another important provision in the Bill. I think when we were debating clause 4 I intimated to you that clauses 4 and 12 are the pivots around which this whole thing swings. clause 4 deals with detentions and clause 12 deals with restrictions. All the rest furnish the machinery to show how these clauses will be operated. For that reason, there will have to be heavy stress on the application of this section. Inasmuch as restrictions are distasteful it is necessary, if they are to be done, that they must conform with the constitutional requirement, and the constitutional requirement makes it necessary for reasonableness to be applied. The only reason why the Minister should be fighting shy of the insertion of the word "reasonably" is that it would require an objective rather than a subjective test. In other words, if the section stands as printed, it means that once the Minister writes to the Court or to the Tribunal, or gets up and makes a statement and says, "I am satisfied", for all legal purposes that is the end of the matter; but if the clause says he must be "reasonably" satisfied, it means that the Court or Tribunal can go behind his statement that he is reasonably satisfied and can test objectively whether he is making the Order in due form of law. In other words, the matter would then become justiciable.

What my friends are seeking to do is to exclude the Courts completely from the operation of this particular Bill. When our Courts are excluded we must be very concerned. We must be very jealous of our institutions of justice lest they be overruled and circumvented by the law which this Assembly is seeking to promulgate. For this reason I very strongly support the Amendment proposed by my hon. and learned Friend.

**Mr. Luck:** I wish to support the arguments already advanced by Members on this side of the House. This is a matter of substance and not of form. The Amendment seeks to insert the word "reasonably" in the Clause. I think that the legal effect of this will be that we will throw on the Minister the burden of having reasonable grounds for satisfaction. As the clause is printed, if the Minister is satisfied that a person be detained, then that person can be detained. This is complex. If I say I have reasonable grounds, it does not mean that the grounds are reasonable. It must be proved objectively.

One is frightened when one observes that our Constitution, in the Article referred to by Mr. Chase, clearly gives an objective test in this matter.

[MR. LUCK]

There is protection of freedom of movement. Article 14 (1) of the Constitution states that everyone is entitled to move freely. In paragraph (a) of Article 14 subclause (3) there is provision to restrict persons from moving freely. I quote:

> "for the imposition of restrictions on the movement or residence within Guyana of any person or on any person's right to leave Guyana that are reasonably required in the interest of defence, public safety or public order, "

I am alarmed to think that legal scholars in this country can ignore this. If our Constitution states that the restrictions must be reasonably required, then surely this must mean that there should be an objective test to be applied. It must mean that the restrictions are reasonably required and Lord Atkin in the case of *Liversidge v. Anderson*, which has been much referred to in this House, was able to find at least 40 instances in the law where this term has been judicially construed.

If the law says a man must have reasonable grounds for believing, it cannot mean that he may think he has. It requires an objective test. Our Constitution states that restriction must be "reasonably required". I am of the view that, even with the acceptance of our Amendment, this clause is incurable, if we are to follow the terms of our Constitution. This is my honest opinion, but if we are to make an attempt to follow the Constitution, if we are to make some show of obedience, how can the Government refuse this Amendment?

The restrictions, according to the Constitution, must be "reasonably required. I construe that to mean that this clause is not reasonable at all. That word "reasonably" is my yardstick. I would wish to delete the entire clause if we are not to ignore the Constitution. As my hon. Friend pointed out, we are not now debating the Bill. We ask that instead of saying "I am satisfied", the Minister must say "I am reasonably satisfied." If he has no grounds for being reasonably satisfied, then, of course, we would take the matter to the Courts. This, in my view, falls very short of the constitutional guarantees, but lawyers are very tricky and when they use words, the words lose their ordinary meaning. They mean what the lawyers wish them to mean.

*5.20 p.m.*

It might well be that, without the inclusion of the word "reasonable", this section is going to be constitutional. But I would ask the hon. Attorney-General if the Constitution states that the restrictions must be reasonably required, what is wrong with that? What earthly objection has the Government to this Amendment? Is it

the Government's intention to abrogate our constitutional provisions absolutely and completely?

Members of this Assembly are the guardians of this Constitution. I will read article 14 again because we derive our powers from this Constitution and we ought to defend it:

> "14. (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Guyana, the right to reside in any part of Guyana, the right to enter Guyana, the right to leave Guyana and immunity from expulsion from Guyana."

This is our absolute right, and then it is limited. Having given us absolute right at the top, it goes on to state that, if a law is passed for the imposition of restrictions and so on, you may be restricted, if it is reasonably required. That is what it states. Our Amendment seeks to impose on the Minister of Home Affairs the burden of acting reasonably, which burden, I suppose, is imposed by the Constitution itself on all those who seek to uphold the Constitution. The restrictions must be reasonably required, and we are seeking to ensure that the Minister acts reasonably.

Surely, I do not understand what could be the opposition to this. How can we pass legislation empowering the Minister to act as he likes? These phrases have been the subject - [**Mr. Cheeks:** "You have said that twenty times."] - of judical construction. I am waiting for some sign from the Government. I should like to hear the hon. Attorney-General on this.

**The Attorney-General and Minister of State:** I did not intend to speak again on this matter, and I would not have done so except for the fact that my hon. and learned Friend Mr. Chase raised an entirely new aspect of the matter when he referred to some constitutional provisions. I do not think we are going to make any progress in this Committee by proceeding on the basis of abuse. I do not challenge the Judiciary or the learning of all of my hon. and learned Friends over there. There will be occasions on which lawyers will inevitably disagree, and there are institutions where those disagreements can be settled.

I should like to say that, because what we say here is recorded in the *Hansard* of this House, I cannot allow anything to be said on the other side, by way of inference, that any of the provisions in this legislation are unconstitutional, without at least placing on record the view of the Government that the Bill is constitutional, and that the greatest care has been taken to ensure that it is .

My hon. and learned Friend Mr. Luck referred to a provi-

[THE ATTORNEY-GENERAL]

sion - not the provision to which Mr. Chase had earlier referred - in Article 14(3) of the Constitution which, in fact, is the provision which authorizes the clause in this Bill dealing with the restriction of movements of suspected persons, and he suggested that the Bill, in some way, fell short of the constitutional requirements. I suggest that he reads that paragraph of Article 14 more carefully. He will find that what it imposes is a requirement that the law should make provision for the imposition of restriction orders, which provision was reasonably required in the interest of defence, public safety, or public order.

I should like to draw attention to the effect of an Amendment put forward by the Opposition, in the interest of the liberty of the individual, which, once again, were it to be accepted by this House, would, in effect, put the citizen in a worse position than he would be in if the Bill was not amended in this way. The Constitution requires that the law should make provision for the imposition of restrictions that are reasonably required in the interest of public safety and public order. What the Bill does is to authorize the Minister to make the Order, if he is satisfied that it is necessary to do so, in the interest of public safety and public order.

Let us leave aside, for the moment, the question of unconstitutionality because I think my hon. and learned Friend Mr. Luck came near to the truth but, as he approached it, he drew away from it. What then does the Amendment achieve? The Bill, as it is drafted, states that the Minister may make the Order if he is satisfied that it is necessary to do so in the interest of public safety and public order. The Amendment seeks to qualify that provision to say that he may make the Order, not merely if he is satisfied, but if he is reasonably satisfied.

I suggest to my hon. and learned Friends on the other side that, when they examine that Amendment carefully, they will find that it imposes a lower standard on the Minister. Again, this is a matter on which we may differ. I suggest that it imposes a lower standard on the Minister than is required under the Bill. Under the Bill, he must be clearly and absolutely satisfied that it is necessary to make the Order. But my hon. and learned Friends seek to qualify and modify it to say that he may make the Order if he is reasonably satisfied. And they do this in the name of freedom!

**The Minister of Health** (Mr. Mahraj): I ask that the Question be now put.

*Question put, and agreed to.*

*Amendment put, and negatived.*

**Mr. Luck**: May we have a Division on this particular Clause?

**The Chairman:** I am refusing a Division.

*Clause 12, as printed, agreed to and ordered to stand part of the Bill.*

*5.30 p.m.*

*Clause 13.*

**Mr. Chase:** We are reaching the very farcical position in which Amendments to this Bill are being guillotined by Ministers on the other side, by virtue of numbers. This is the second time this afternoon we have had this sort of thing and, perhaps, it will continue.

The first Amendment with which I shall deal is to subclause (4) of clause 13. The Government has taken power to set up an Advisory Tribunal under this Clause, consisting of a chairman to be appointed by the Chancellor from among persons entitled to practise in Guyana as solicitors, and two other persons to be appointed by the Prime Minister, after consultation with the Chancellor. The report of this Advisory Tribunal is to be prepared after due deliberation, and then it is to be submitted to the Minister concerned.

The Tribunal is required to make recommendations concerning the necessity or expediency of continuing the restriction or detention, as the case may be, to the Minister, who shall not be obliged to act in accordance with the recommendations. This is where we join issue with the Minister on this aspect of things. It is stated that he shall not be obliged to act in accordance with the report of the Advisory Tribunal. I am asking that the clause be amended so that the Minister should be required to act in accordance with the recommendations of the Advisory Tribunal. I do not know what the Minister wants. [**Mr. Bissember:** "We agree with that."] Am I to understand that the Government is agreeing with my Amendment? [**Mr. Bissember:** "We agree with the point you are making."] The Minister seeks to have everything.

Let us look at this thing, how it moves step by step. He is satisfied that it is necessary to detain a person, and he detains that person, makes an Order, and then he makes a statement as to why he made the Order. If anything is wrong with that Order, it cannot be the basis for revoking that Order. Next, the matter goes before the Tribunal consisting of three Judges or persons who are qualified to be appointed as Judges, and a Secretary appointed by the Minister himself, after consultation with the Public Service Commission. The Minister need not put all the grounds relating to the Order for the detention before the Tribunal, so that he has protection there again. By clouding some of his grounds, he can have the detention of that person prolonged. After all of this, the man has the right to go before the Advisory Tribunal which will then consider whether it is expedient

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or necessary to continue his detention. But even if this Tribunal makes a recommendation that the man should be freed, the Minister wants the authority that he should not be bound to accept the recommendation of that Tribunal.

Firstly, if the Judicial Tribunal makes a recommendation, the Minister can circumvent it by having the man detained on other grounds or, perhaps, by having him detained on the same grounds after six months and a day have passed. I ask: "What right would the poor detainee have?" We seem to be trampling on the rights of the detainee. He would have absolutely no rights! By the time we have completed Clause 14 of the Bill, it would be virtually impossible for any man to be freed after the Minister makes a Detention Order.

We have had experience with these Tribunals before. Speaking for myself, I have absolutely no faith in them, and I would not advise anyone to take recourse to them. But, for those who wish to go to the Tribunal, it is there. After consideration by the Tribunal, if it recommends that a detainee should be released or the Restriction Orders on an individual should be removed, the Minister wants, even at that stage, to say: "Look, I have read your report and I do not agree with it. I am still having this man detained or restricted." Are we not making it a farce to create a Tribunal whose recommendation the Minister may not accept? Speaking for myself, I would take the view that, rather than create this farcical section, what should be done is to have it deleted because we are making a travesty of justice by setting up a Tribunal to which the detainee may have to go to have his case investigated, and after the Tribunal makes a recommendation, the Minister still has the power to say: "Sorry, I am wiser and better informed than the three of you who have heard everything and seen the man."

Regardless of what may be said by three men, who would have some legal training, the Minister wants to be in a position to say: "I have seen your recommendation, but I will still have him detained." It is like tossing a coin and saying, "Heads you lose; tails I win." On any side the coin falls, the poor person on the opposite side loses the bet. The Minister wants to have it both ways. The security men will say, "Okay, brother, you are appealing to the Tribunal; it may let you off. But I want to tell you that even if the Tribunal lets you off, the power is with the Minister."

*5.40 p.m.*

The Minister is not bound to accept everything the Tribunal says. It is with the Minister to do what he wants to do. Let him sign a statement implicating "X"

and "Y". Let him confess the thing; let there be a statement to show he really did it

This is the sort of thing that is going to be waved in the faces of the detainees. They are going to be told not to worry with the Tribunal, because, regardless of what the Tribunal says, the life of the detainee is in the hands of the Minister. For that reason the security people and persons who will carry out the interrogation are going to use it to try to get the detainee to make statements and confessions falsely implicating themselves or others.

The learned Attorney-General made a reply. I deal purely with the legal aspects of this matter. I wish him to understand we are dealing not only with a legal situation; we are dealing with a political situation and, what we are concerned about, apart from passing this Bill, to which the hon. Attorney-General has not at all addressed his mind, is what happens to detainees after they are detained. If this were a case where people were to be detained and sent to Sibley Hall, or Kamarang, or any other part of this country, and merely kept restricted and allowed to eat, to sleep, to have some recreation, and to read books, that could be considered a different matter. But the detainees are not going to be kept like that.

The security department will set to work to break down their psychological resistance and their mental faculties. There are persons who have been to Sibley Hall whose mental capabilities have been impaired because of the paces through which the security department puts them. At four o'clock in the morning, men shine their torches in the faces of detainees while they are sleeping, wake them up and question them. Men are brought down from the detention centre to Georgetown and promised their release if they do certain things. They are told that "X" has said certain things implicating them. Some are placed in small rooms at Eve Leary; some are maltreated. Things like this will be going on, and that is why we have to be ever so careful. It is not just a matter of law; it is a matter of police third degree methods; it is a matter of politics also. The political opponents to the Minister are going to suffer under this section.

We are now virtually at the end of this important part of the Bill. What is it that the Government wishes? Having completely circumvented the Tribunal, with no holes, no barriers left, with everything plugged, the Government wishes to take every means to prevent the release of the detainee under its control. If the Tribunal recommends that a man should be released, the Minister shall not be obliged to act in accordance with such recommendation. I say this makes a farce of the Tribunal. This would certainly make a man consider twice whether it was worth

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while to go before a Tribunal. He would know that even if the Tribunal made a recommendation the Minister of the Government would not be bound to accept it.

I ask the Minister, at the risk of his not answering me, what is the reason for wanting this provision? I should be grateful if he would enlighten me and enlighten this House on the reason for wanting this. There will be an Advisory Tribunal considering the matter, and this Tribunal will make its recommendation. After all that the Minister may say, "I am not bound by what these people have to say". What is the reason for seeking to have this authority? I do not ask what is the basis for this. I do not wish anybody to point to other pieces of legislation where we will see the same provision. I want to know why the Minister wants this provision in this Bill, and I should be grateful if the Minister would get up and say why he wants it.

Now let me deal with the technicalities which may be raised by hon. Members on the other side of the House. They may say that to leave the clause as I have amended it may not be in accordance with the general flow of words in the particular section. They may say that it cannot be left in the form that the Minister shall be obliged to act in accordance with any such recommendation. I say that there is absolutely nothing wrong in deleting the words "not, however." The clause will still read and flow in a perfectly normal manner and it can stand with such an Amendment.

I must emphasize that at this stage we are not blocking the Minister from setting up an Advisory Tribunal. I think he sometimes has the idea that we are trying to block what he is doing. The Tribunal can be set up with all the power the Government seems to want to have for itself. The Prime Minister is to appoint two persons and the Chancellor is to appoint a person as Chairman.

The point I made in my address on the Second Reading of this Bill is that since this is supposed to be a National Security Bill, and since it concerns the security of the whole nation, there should be some consultation with the Leader of the Opposition in this connection. That has not been taken note of or acted upon by the Minister, and therefore the matter is not being pursued by Members on this side. We are not harping on the way in which the Tribunal will be set up. Far from it; we no longer seek to challenge it; we have thrown out a hint, and it has not been accepted.

The Minister will have this Tribunal. The Tribunal will be able to act in accordance with Subclauses (2), (3) and (5) of Clause 13 of the Bill as printed. All we are asking is that with

regard to clause 13(4), rather than the Minister having the right to reject the recommendation of the Advisory Tribunal, he should be obliged to act in accordance with what the Tribunal has recommended. May I also say this for the benefit of the Minister: to accept the recommendations of the Advisory Tribunal does not mean that he cannot at a later stage, if he is satisfied - and not even "reasonably" satisfied - make a subsequent Order for the detention or restriction of the individual with regard to whom the Tribunal has recommended that restrictions be removed or that he be released. Therefore, even if the Minister accepts the recommendation under this Amendment moved by me, he will still have the power, if he wishes, to make an Order for the fresh detention or restriction of the person.

*5.50 p.m.*

All that I am saying is that, in order that it may look fair, in order not only that justice may be done but that justice may also appear to be done, what should take place is that the Minister should feel himself obliged to accept the recommendation of a Tribunal which his Government, in its wisdom and absolute and unfettered control, will have the right to appoint.

The Government will appoint a committee; the man will appear before the Committee, and if, perchance, per miracle chance, the Tribunal recommends that the man should be released, it is only reasonable to ask that the Minister should feel himself constrained to act upon the recommendations of the Tribunal. There is nothing further that I will urge, at this stage, except to say that, having regard to that fact that the word "reasonable" appears in the operative clause, it would seem to me to be only reasonable and fair that the Minister should accept this Amendment which I now formally move and formally ask the House to accept.

**Dr. Reid:** I oppose the Amendment, and I do not have much to say except to refer to Article 17 (2) of *The Constitution of Guyana.* It seems to me that, sometimes, this Constitution is lifted high by members of the Opposition, and at other times, they act as if they do not know it exists. The members of the Opposition are like Rip Van Winkle. The last speaker was lifting the Constitution high a while ago, but before that he did not mention it at all.

I should now like to read Article 17 (2), so that the last speaker will realise that nothing in this clause is unconstitutional:

> "On any review by a tribunal in pursuance of the preceding paragraph of the case of any person the tribunal may make recommendations concerning the necessity or expedience of continuing the detention or re-

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> striction to the authority by whom it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendation."

It is from this that the Minister gets the authority to make the Order, and he is not obliged to act in accordance with the recommendation of the Tribunal.

I hear my friends on the other side speak about political detainees, but I do not see where it is stated, in this Bill, that political opponents will be detained. Hon. Members on the other side repeat this so often that I sometimes wonder if they are trying to convince themselves that this is true. This Bill is for the public safety and public order of all the people of Guyana. There is no reference to detaining political opponents in this Bill. I just want to make that point clear and to re-emphasize, in no uncertain terms, that the authority in this clause is taken straight from the Constitution.

**Mr. Jagan:** I thought that the hon. Minister would have allowed the hon. and learned Attorney-General to deal with the constitutional points. The hon. Minister referred to Article 17 (2) of the Constitution which states:

> "On any review by a tribunal in pursuance of the preceding paragraph of the case of any person the tribunal may make recommendations concerning the necessity or expedience of continuing the detention or restriction to the authority by whom it was ordered but,

this is the relevant point -

> . . . unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendation."

The Amendment seeks to deal with the words "unless it is otherwise provided by law". In view of the fact that a person may be restricted after he has been set free by the Judicial Tribunal, we say that the words "not, however," should be deleted. We are aware of Article 17 (2) of the Constitution, and that is why my hon. and learned Friend Mr. Chase has suggested the Amendment.

Look at this Bill and this Clause in particular, I was wondering if the hon. Attorney-General would let me know whether a restricted person had the right to go before this Tribunal. It does not seem so because Clause 13 (2) reads as follows:

> "Where any person is the subject of an order made under section 12, his case shall be reviewed by the advisory tribunal not later

> than three months from the making of such order and thereafter not later than six months from the date on which his case was last reviewed as aforesaid."

It would seem that a person who is restricted will have no right to appear before this Tribunal which will be set up under clause 13. If this is so, it will be very strange. Before I continue I wonder whether the hon. Attorney-General will indicate to me if my interpretation is wrong. [**Mr. Ramphal:** "When you are finished."] If my interpretation is correct, and a person would have no right to appear before this Tribunal to present his case, or to say why he should not be restricted, there would be more reason why this Amendment should be accepted.

Let us see what happens when a person is restricted. First of all, the Minister detains a person under clause 4 of the Bill. His case will be reviewed by the Judicial Tribunal. He may be released if the Judicial Tribunal says that there is insubstantial ground for his detention. The Minister can immediately put that person under restriction and, under the clause which we have already passed, the restriction can be to some remote part of Guyana, or anywhere where the Minister wants the person to be restricted. This person, having been released by the Judicial Tribunal, is then restricted by the Minister to some remote corner of Guyana, and he has no right to appear before the Advisory Tribunal in order to protest and to set out his side of the case, although the burden is still on him to set out his side of the case and to say why he should not be restricted.

*6 p.m.*

In such a case the Advisory Tribunal would be considering this man's restriction, and if the Tribunal feels that there is not a case against this man, then I think it would be very strange. I do not think any court of law would permit the person to be detained in such circumstances.

A person has a greater chance of being freed if he has the right to put forward his defence. But if a person is denied that right, and the Tribunal, nevertheless, finds that the person is not guilty of any offence or any act whereby he should be detained or restricted, surely the Minister should accept the finding. That is why we are saying that these words should be deleted. If they are not deleted, what is the use - as my hon. and learned Friend said - of having the Advisory Tribunal if the person is not going to have the right to appear before it, and the Minister does not have to accept its decision? Would the Attorney-General please tell us whether my interpretation is correct?

**Mr. Wilson:** The Minister of Home Affairs quoted from the Constitution, and he said that it is not necessary to delete

[MR. WILSON]

the words "who shall not, however, be obliged to act in accordance with any such recommendation." I would submit that, in accordance with the Constitution, these words should not be put in because, if the Constitution states that the Minister need not accept the recommendation, why put this here? The Attorney-General is very fond of using the word "logic". I should like to give him a little test in logic. Does the word "satisfy" mean to be just plain satisfied, or to be reasonably satisfied?

**Mr. Luck:** In this matter, first let me say this. The hon. Minister of Home Affairs really ought not to have cited the Constitution because it provides explicitly for the Amendment that we are seeking. It states that the decision and the recommendation of the Tribunal need not be accepted unless it is so provided by law, and we, on this side seek so to provide by law. Above all else, this is a human problem.

Let us say these men are fair. Let us say that they seek to do their best. Everything is against the detainee. Let us suppose that the Government is going to provide honest men. This is a small country and the men, unless they are compelled to do otherwise by the clear injustice of the case, would really want to go along with the Government. One would expect this. I defy the hon. Attorney-General to deny this. The Tribunal would have to have the strongest reasons for advising that a man be freed. This is an additional barrier because even strong men may bow to this final pressure with the realisation that, even if they went to all the trouble and incurred the displeasure of the Government and the Minister, and recommended that the man be set free, the man still would not have to be set free. The realisation that the Minister could still detain him would act as a constricting force to prevent them from setting the man free.

Surely, those persons who have experience of human affairs would think more than twice before taking an unpopular position if they realise that their decision could be set aside by men who wield awful power. This is why this clause is so obnoxious. I say that the liberties of our country depend on finding men who could say: "I do not agree with you that this man should not be set free", but I do not think the strongest men in Guyana would say this, knowing that when they say this they say nothing, because the Minister would proceed to lock up the man.

My hon. Friend Mr. Jagan raised a very interesting point. Let us imagine a man being set free by the Tribunal, which looked into the matter of detention, and let us further imagine that he is immediately restricted thereafter. One would believe that the Minister is pursuing the fellow. Let us come to the view that the Advisory Tribunal

said that the restrictions are wrong. Surely, in such a circumstance, the Minister ought to be obliged to follow the advice of the Tribunal!

These powers presuppose at once a lack of sophistication in the society in which we live. Then my hon. Friend wishes us on this side of the House to believe that this unsophisticated society, which requires these unsophisticated powers, will produce a sufficiently sophisticated human being to administer these powers. These powers in the hands of a tyrant would make a gaol of Guyana.

*6.10 p.m.*

We have heard of men wishing to leave this country. Imagine the Minister using the provision for restrictions to deny people the right to leave the country! Surely, if the Advisory Tribunal advises the Minister that this is wrong he should not act in this manner. He should be obliged to follow such advice.

In support of our arguments, I may cite the very Article of the Constitution to which the Minister of Home Affairs referred. We make the laws of the country in this Assembly, and it is stated in the Constitution that laws can be made to provide that the Minister should act in accordance with the recommendations of the Tribunal. I would like to see the Minister act in accordance with such recommendations. It would establish my faith in human dignity if there were a Tribunal which would advise that the Minister release people. It would vindicate my faith in human dignity and human rights.

In the face of this section as it now stands, I think it would be impossible to have such a decision made by the Tribunal. The strongest Guyanese would hesitate to incur the odium of the Government, and, under this section, even if the Tribunal took the risk and set a detainee free, the Minister need not pay heed to such a recommendation. I should really like to see such a recommendation, but I do not expect to see it while I am under the age of three score and ten.

**The Attorney-General and Minister of State:** The hon. Minister of Home Affairs has already spoken on the policy aspect of this provision and the Amendment by the Government. I think it is only right, in relation to what he has said, that I should draw attention to the fact that he has been misinterpreted to have been saying that the constitutional provision in Article 17 requires that the Tribunal should be an advisory Tribunal. I think the hon. Minister was drawing the attention of hon. Members to the fact that the Constitution itself provides this provision giving a very clear guide to what should be the appropriate constitutional standard in relation to the Advisory Tribunal. Let us bear

[THE ATTORNEY-GENERAL]

in mind that what this provision does in fact say in paragraph (2) is that -

> "...unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendation."

This is, perhaps, one case in which the Government might fairly have expected to see learned and hon. Members on the other side, jealous as they are of the rights and liberties of the citizen, stand up and congratulate the Government for having gone as far as it has done in the Bill by stating that when a person has been detained and his detention has been upheld by a Judicial Tribunal on the ground that there was, in its opinion, sufficient grounds for the making of the Order, there should be imposed a further requirement which is not required by the Constitution namely, that there should, nevertheless, be a periodic review of the man's case not less than every six months thereafter.

Of course, the Government does not seek credit for doing what is right in the framing of legislation of this kind, but when an attack is being made on *bona fides*, when it is being said that the Government is using every provision of the Constitution to make this piece of legislation as harsh and oppressive as possible, it would, at least, come with a certain measure of grace if those hon. Members on the opposite side, who appreciate what the legal provisions are, acknowledged that the Government has in this regard - and as I said in my speech during the Second Reading of the Bill, there are several other respects in which a similar approach has been adopted - gone out of its way to impose on the executive this requirement of periodic review

One other question was raised by my learned friend, Mr. Jagan, when he drew attention to the fact that the Bill itself did not contain the procedural provisions relating to the attendance of detainees or restricted persons at the hearings of the Advisory Tribunal. The Bill contemplates that provision of that kind would be provided for under the rules which will be made by the Advisory Tribunal with the approval of the Chancellor. I have already indicated to my learned and hon. Friend, Mr. Chase, that, when we come to the Amendment that he has proposed in relation to Clause 13 (5) of the Bill, the Government will accept that those rules should be published in the *Gazette* and will make it abundantly clear in the Clause that this will be done. The Government will, as well, accept the proposition that the rules shall be laid before the House. Therefore, these important rules - and we recognise that they are important and significant - would naturally be public documents which

would be brought before this House and would be available for the scrutiny of hon. Members and for interrogation of the Minister.

**Mr. Jagan:** The hon. Minister is saying that these rules, which are to be made under Clause 13 (5), would include the right of the restricted person to appear before the Tribunal and also to be represented by legal advisers, if he so desires. The hon. Minister said that Government would accept an Amendment for these rules to be published, but we would like to know what will be the rights of the restricted person in so far as the Advisory Tribunal is concerned.

Secondly, my hon. and learned Friend said that the Government should be congratulated because the detained person would have a right to have his case reviewed every six months by the Tribunal. What is the use of having a man's case reviewed if the Minister is not required to act on that advice? It is a waste of time. The Government can only be complimented if it accepts the Amendment which would mean, as the learned and hon. Minister said, that the case of the detained person would not only be reviewed by the Judicial Tribunal but also by this other Tribunal. Unless the Amendment is accepted the detainee does not really have any rights. The review of the case would be a wasteful exercise by the Advisory Tribunal.

*6.20 p.m.*

**The Attorney-General and Minister of State:** I should like to draw my friend's attention to the fact that the rules have to be approved by the Chancellor; that they have to be published and laid before this House; and that the corresponding rules made under the existing Emergency Regulations, dealing with the function and procedure of the Advisory Tribunal, do make this sort of provision that he has in mind. [**Mr. Jagan:** "Not necessarily."] [*Interruption by Mr. Bissember.*]

**Mr. Chase:** Mr. Bissember says that he would like to say something. [**Mr. Bissember:** "That the Question be put."] [*Laughter.*] After that humorous aside, I should like to state that I had hoped that the hon. Minister of Home Affairs would have attempted to reply to some of the questions which were raised, but I was not at all surprised that he did not answer the questions which I posed to him. Instead, he attempted to take refuge under an Article of the Constitution which he has not carefully studied, if studied at all.

I had asked the Minister a number of specific questions which I had hoped he would have answered when he got up. I had hoped that the Minister would

[MR. CHASE]

have given this House some information with respect to what provision would be made as regards the maintenance and upkeep of persons who would be restricted to areas in which they would be unable to earn a livelihood. The hon. Leader of the House is keeping us here till midnight, night after night, to go through these provisions, and we cannot get answers to our questions.

With regard to the Minister's reference to Article 17 of the Constitution, I think my hon. and learned Friend Mr. Jagan has already underlined the phrase "unless it is otherwise provided by law" which the Minister will do well to rule in red in the Constitution so that, in future, he can understand that this means that the law to make a provision —

**The Prime Minister** (Mr. Burnham): I move that the Question be now put.

*Question put, and agreed to*

*Amendment put, and negatived.*

*Assembly resumed.*

**Mr. Speaker:** This sitting is suspended until 8 p.m.

*Sitting suspended at 6.30 p.m.*

*8.05 p.m.*

[**Mr Deputy Speaker** *in the chair.*]

*On resumption -*

*Assembly in Committee.*

**The Chairman:** The hon. Member Mr. Chase.

**Mr. Chase:** The next Amendment standing in my name is for the insertion of a new Subclause (6) to Clause 13 of the Bill. As printed on the paper that has been circulated, it reads as follows:

> "The rules made pursuant to the provisions of the preceding subsection shall be published in the Official Gazette at least fourteen days before they come into operation and shall be laid in the National Assembly at its next sitting following their publication."

**Mr. Bissember:** I think, subject to correction, that the hon. Prime Minister had moved that the Question be put on the first Amendment by the hon. Mr. Chase. I know that the Motion to the Question was put, but I do not know whether the Amendment was put.

**The Chairman:** The Amendment was put.

**Mr. Chase:** My recollection is that it was put. The purpose of this Amendment is for the

rules which are going to be made by this Tribunal to be published so that all can be aware of them. This is very similar to an Amendment which I had moved to Clause 7 of the Bill, and which the hon. Attorney-General who was present had accepted. He is not in his seat yet, and I am not so sure whether this House will accept the second Amendment. It is along the same lines, and I had gathered from him that we would be prepared to to accept it. But I am not aware whether he has communicated this to his colleagues.

The previous Amendment was further amended by me to read:

> " (5) Rules made pursuant to the provision of the preceding subsection shall be laid in the National Assembly at its next sitting following their publication."

I shall adopt the same pattern of amendment for the purpose of uniformity of the Bill. I ask that the word "The" in the first line be deleted, and in the second line the deletion of all the words from the word "shall" to the word "and" in the fourth line, so that the Amendment will now read:

> "(6) Rules made pursuant to the provisions of the preceding subsection shall be laid in the National Assembly at its next sitting following their publication."

The effect of this will be --

**The Chairman:** Hon. Members, you did mention that you had some sort of undertaking.

**Mr. Chase:** I did look at the Minister of Home Affairs and he said, "Carry on speaking."

*Amendment put, and agreed to.*

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

*8.10 p.m.*

*Clause 14.*

**Mr. Jagan** *rose*

**The Chairman:** Are you moving this Amendment on behalf of Mr. Luck?

**Mr. Jagan:** Yes, sir. Hon. Members will remember that subclauses (4) and (5) were added to Clause 9 this afternoon on an Amendment moved by the Minister of Home Affairs. That Amendment is not exactly the same as what we now propose to move. The difference is that our Amendment seeks that the person who is detained should have the right to select a legal adviser to represent him before the Tribunal and that the expenses incurred as payment to a legal adviser should be borne - -

**Mr. Bissember:** To a point of order. If we were to proceed with this matter it would be inconsistent with a decision already taken by this Committee.

**The Chairman:** I was about to say the same thing.

**Mr. Bissember:** The Assembly did take a decision on this.

**The Chairman:** The insertion of clause 9 (4) would nullify this. Now that Mr. Luck himself has come, he may wish to say something.

**Mr. Jagan:** Surely my hon. and learned Friend, the Leader of the House, is aware that there are Acts with conflicting sections.

**The Chairman:** We do not wish this to be one of such Acts.

**Mr. Jagan:** Clause 9 (4) which was passed has nothing to do with Clause 14 (3) as now proposed, nor with 14 (2) as proposed. Clause 9 (4) and (5) dealt with the question of money.

**Mr. Bissember:** If I may reply. My learned friend was speaking on Clause 14 (1), which deals with the question of counsel. He may rightfully proceed on Clause 14 (2) and (3), but he was dealing with Clause 14 (1), and that matter has already been decided on.

**Mr. Jagan:** We are proceeding with these two subclauses for this reason: during the recent detention of persons, relatives and children who wanted to visit the detainees - -

**The Chairman:** Why do you not permit Mr. Luck to move the Amendments to Clause 14.

**Mr. Luck:** I am very sorry to be late. I rise to move the Amendment standing in my name with the further Amendment that we delete Clause 14 (1) of the Amendment and then renumber subclauses (2) and (3) of the Amendment as (1) and (2) respectively, and substitute the word "Commissioner" for the word "Minister"

The Amendment speaks for itself. It seeks to provide that the Minister shall provide from public funds all reasonable facilities to relatives of detainees to enable them to visit detainees during their detention. Even prisoners in gaol are entitled to be visited by relatives. Psychologists and penologists are alike agreed that visits from relatives have a beneficial effect on prisoners. However, while the prison is more or less centrally located, we all know that detainees are going to be kept in places that are remote and where communications are of a very rudimentary nature.

The whole concept of detention is that persons will be spirited away to remote corners of Guyana and the possibility of relatives visiting detainees becomes severely limited due to the expense involved. We all know that some detainees were kept for some considerable time at Sibley Hall. Hon. Members in this House should be aware that while free vouchers were sometimes granted to relatives to visit detainees, such vouchers were available for the long and tedious journeys to Bartica, from which place the relatives had to obtain transportation to Sibley Hall. They had to pro-

vide, from their own funds, for accommodation at Bartica. Many of the detained persons were very poor people of humble origin, so that while in theory they were allowed visits, in practice visits did not occur as often as the detainees would have liked.

The state allows relatives to visit even condemned criminals. The persons to be detained under this Bill are not going to be detained for what they have done, but for what they may do, and it should be possible for relatives to visit them. I am not saying that the Minister of Home Affairs is deliberately spiriting away these persons to the far corners of the interior to deprive them of such visits, but, the fact that he will spirit them away to the interior is well known. If he does this, it becomes difficult for relatives to visit the detainees and that is why we say reasonable facilities should be provided. I was once asked to accompany a lady, who had never left her village of Skeldon, to Sibley Hall. She was large with child and had obtained a voucher to travel as far as Bartica. From her own funds she had to provide for several days accommodation at Bartica. The journey to Sibley Hall is always a difficult matter, and this lady's journey was naturally rather more distressing than was necessary. We say that not only should relatives be allowed to visit detained persons, but the facilities should be reasonable.

*8.20 p.m.*

If you detained a man at Lethem, it is no use telling us that you will give us a free ride on the boat to Orealla and that we must walk to Lethem. Surely, that cannot be reasonable facilities. In this context, if you are going to drop a man at Lethem, or even at Sibley Hall, his relatives must be given a plane passage there. These were practical difficulties which arose during the previous detentions, and they must arise again. If you are going to carry these people far into the interior, suitable facilities should be offered to them.

The inclusion of this Amendment would also indicate that this House approves of the detainees being visited by their relatives. I should like to believe that no reasonable person in this House would disapprove of a number of relatives visiting these men. I want to believe this because, as I have pointed out, even the worst criminals in this country are allowed visits, I think once a month during a period of good behaviour. By including this provision, we will, be serving notice to the authorities that we want this principle of visits to be established.

My experience has been - -

**Mr. Bissember:** To a point of order. I submit that this Amendment is contrary to the provisions of Standing Order 21. Standing Order 21 states:

[MR. BISSEMBER]

> "(1) Subject to the provisions of the Constitution and of these Standing Orders, any Member may introduce any Bill or propose any motion for debate in, or may present any petition to the Assembly, and the same shall be disposed of according to these Standing Orders:
>
> Provided that, except on the recommendation of the Governor signified by a Minister, . . ."

and this is relevant -

> the Assembly shall not
>
> (a) proceed upon any Bill (including any amendment to a Bill) . . ."

This is an Amendment by way of the insertion of a new Clause -

> " . . . which, in the opinion of the person presiding, makes provision for any of the following purposes -
>
> (i) for imposing or increasing any tax;
>
> (ii) for imposing or increasing any charge on the revenues . . ."

I submit that, in this case, the hon. Member is seeking that "The Minister shall provide from public funds." Standing Order 21 continues:

> "(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of the purposes aforesaid."

The hon. Member is seeking the approval of this House to have this Clause amended so that public funds will be found to meet the travelling expenses of the relatives of detainees. I submit that this must be done by way of recommendation from the Cabinet since the Governor --

**The Chairman:** I uphold the submission. The standing Order is quite clear. [**Mr. Jagan:** "Clause 9 (4) was passed this afternoon."] Clause 9 (4) was passed because the Amendment was proposed by a Minister. I rule that I am not accepting any further discussion.

**Mr. Bissember:** With your permission, I should like to say, for the benefit of my hon. and learned Friend, that the Clause which was passed was for the funds to provide -- [*Interruption.*] Shut up, and listen!

**Mr. Jagan:** To a point of order. The Minister should not be permitted to speak unless another person will be permitted to reply.

**The Chairman:** I have already ruled that the Amendment is out of order. The hon. Member Mr. Luck has another Amendment to clause 14 which can be dealt with.

**Mr. Luck:** Consequent on your Ruling, I would have to further amend my Amendment. Since a new clause 14(1) will not be allowed, we can have no subclause. I merely wish to insert the following as a new Clause 14:

> "Where a person is detained or is subject to an order restricting his movements he shall be provided with reasonable financial assistance to enable him to meet his financial obligations to which he became committed before his detention or restriction."

**The Chairman:** You are still doing the same thing.

**Mr. Luck:** Do you rule the whole Amendment out of order?

**The Chairman:** It is out of order because you are imposing a charge on public funds.

**Mr. Luck:** I bow to your Ruling in relation to a new Clause 14 (1), but may I be heard in relation to a new Clause 14 (2)? I know that I will have to bow again, but may I be heard?

**The Chairman:** You are imposing a charge on public funds. That is why I rule that the whole Amendment is out of order.

**Mr. Luck:** The Government has moved an Amendment, which has been passed, for the supply of money, food or clothing, or the means of travelling, to detainees on their release. This was never signified. The principle is that if the Government was wrong, there is no reason for us to insist that we should continue to be wrong. I should like to say that both the Government and I would be right in continuing.

**The Chairman:** I want you to deal with the Amendment to Clause 14.

**Mr. Luck:** I have to consider it. The first Amendment would be wrong. We cannot re-number the Clause as 15 because we have not made a new Clause 14, so we will have to strike that out. The second Amendment is for the substitution of the word "six" for the word "eighteen" in the second and sixth lines of subclause (1) of Clause 14. I will speak on this, with your permission. Clause 14 states:

> "14. (1) No provision of this Part shall be in force after the expiration of a period of eighteen months commencing with the date of its enactment;
>
> Provided that the period may from time to time be extended by resolution of the National Assembly passed -
>
> (a) within the eighteen months commencing as aforesaid;"

The reason for this is plain. Even the Attorney-General would have to admit that legislation of this nature is most unusual

[MR. LUCK]

and that it should not be on the Statute Book for longer than is necessary. We say that, with the passage of this Bill, it would mean that it would be in force for eighteen months straight. But if during those eighteen months a Motion is moved in this Assembly, it could —

*8.30 p.m.*

**The Chairman:** Hon. Member, I notice that you are dealing with time. You have two Amendments and both of them are dealing with the same subclause. I wish you would make your speeches to cover both of them .

**Mr. Luck:** I would agree with that. I bow to your Ruling. We are proposing that instead of the period being extended for one year at a time, that period should be three months in the tenth and eleventh lines of subsection (1).

As you rightly pointed out, both Amendments are in relation to time and we should like to see this odious statute - since we know it is going to be passed - nullified, in as short a period as is possible. I think all Guyanese would hope that this becomes null and void in as short a time as is practicable. Who can doubt that the period of 18 months for this statute to run is not in itself very long? We feel that if it is to be extended for a further period, that further extension should not be for more than six months and three months respectively.

I would hope that the members of the Government would try to see that this thing is wholly unnecessary. If, however, they cannot agree with that, then at least they may well be constrained to agree that it should not be too long on our Statute Book. I urge hon. Members to accept the Amendment. [**Mr. Bowman:** "Six months"?] Yes Wherever there is 18 months it should be 6 months, and whereever there is one year it should be 3 months. One year is a very long time, and to keep this statute alive merely by a simple Resolution for a period of one year does seem too long.

I read, I think, in this week's paper that the Government of India has had to refresh the validity of the National Security Bill. The events in India did not provide a shining example of the efficiency of those provisions, nor did they provide a shining example of its wisdom. But we are saying that if you want to refresh this enactment, let it be for a period of three months.

There are various ways of running a Government. You can have such Bills as this one for years on the Statute Book, and you can have a hammer held over the heads of your opponents. But those are not approved ways. In the circumstances of this country, I can well see that, because the National Security Bill has so long to run, the Government will not be constrained to take those necessary steps which will

ensure peace and tranquillity in this divided land. This is my real fear about this thing.

In passing the Bill we are also making provision for refreshing it. But if this Bill is to be refreshed over a year or two, the Government will grow accustomed to the odious and tyrannical powers which inhere in the Bill, and it may not find it necessary or expedient to seek a meaningful dialogue with its opponents, however valid the viewpoints of its opponents may be. Therefore, I urge this House that if the Bill is to be passed, as passed it will be, to let us seek to limit its duration.

**Mr. Benn:** I wish to support the Amendment of the hon. Mr. Luck. The Act which we are about to pass can be considered to be extremely controversial, and in spite of what my hon. Friends on the other side may say, there is widespread apprehension at the Government's intention to pursue the road it is pursuing, in relation to the passage of this Bill.

**The Chairman:** Hon. Member, these are two simple and straightforward Amendments and now you want to cover the principle of the Bill.

**Mr. Benn:** You have not heard me, sir.

**The Chairman:** I am sorry, but I have heard you very well.

**Mr. Benn:** Well, perhaps you did not understand me.

**The Chairman:** Thank you. We have two straightforward Amendments and now you want to cover the principle of the Bill.

**Mr. Benn:** In view of the widespread controversy of the Bill, I feel that the Government should consider very seriously the proposition of my hon. Friend, Mr. Luck. During the period which we have just traversed - the Government may describe it as the old colonial days - it was incumbent on this House to renew such legislation every three months. Those were the days when the colonial Government used the mailed fist. In those days it was necessary to review the Bill every three months. Hon. Members on the other side tell us about colonial mentality and yet, now that we have our people running the country, now that we have Independence, our own Guyanese are making laws more stringent than those made by our former colonial masters.

*8.40 p.m.*

In view of the importance of this measure, in view of the controversy over it, we feel that the matter should be brought to this Assembly, as recommended by my hon. Friend, at three-monthly intervals in order that the Assembly may have a look at it. Last night I was reading some remarks of the late Prime Minister of Ceylon on such mat-

[MR. BENN]

ters. He said that matters as serious as this should be decided by a referendum because everyone knows that it is extremely difficult for the Assembly to decide on anything save what the Government wishes. I am sure that the Government would not agree to have this matter go to a referendum. It would, perhaps, bring reasons to show that it would interfere with the Constitution.

What I should like to say, further, is that the Government should modify its position in relation to this by bringing it to the Assembly at three-monthly intervals in order that Members of the Assembly may express themselves fully on the operation of the law, on the manner in which the police have been behaving themselves, and on the way in which the Ministries have been conducting detentions and restrictions, so that the public may be satisfied that what is done is, at least, done with a certain measure of good faith.

**Dr. Ramsahoye:** I would wish to support this Amendment on two separate grounds, the last of which was mentioned by the hon. Member, Mr. Benn, a moment ago. The Constitution of Guyana does not render justiciable the circumstances under which laws relating to preventive detention can come into force in peace time. This I would consider a very serious state of things, but, perhaps, it was intended to be so. For that reason, it is necessary for parliamentary scrutiny of the way in which this power of arbitrary detention is exercised to be regular.

We have known that the Government has found it impossible to answer many questions or to have many Motions debated on very urgent matters affecting this territory. Preventive detention is a matter of such grave importance that there could conceivably be no excuse for not having debates at reasonable intervals, by means of which the conduct of the Minister may come under scrutiny. I cannot conceive of a more suitable forum than the Assembly. Through its Members, the public may express opinions and criticisms, if any, about the way in which the detainees are treated, or about the way the power of restriction is exercised.

I think, for this reason, the period of eighteen months which must elapse before there could be another debate on this Bill, once it is enacted, is ridiculous. It is inconceivable that those who exercise the power of arbitrary detention should feel that eighteen months should be allowed to pass before the measure could come under scrutiny. I think this is one case in which the Government should concede a little bit.

From the debate during the Committee stage, I can see a picture being painted of no reluctance on the part of the Government to take as much extra-

ordinary power to itself as the Constitution is ready to concede to it. Once you look at it the other way as well, once you look at the position of persons to be detained or to be restricted under this legislation, you may see that scrutiny over the exercise of this power should be fairly regular.

The mover of the Motion also suggested that extensions should be at periods of three months. This, too, I consider quite reasonable. Indeed, it was the period to which this country was accustomed until the new provisions in the Constitution altered the period from three months to six. The result, if this Amendment is accepted, is that the legislation would last for six months in the first instance, but every three months thereafter there would be a Motion.

I have also heard remarks being made about the use of preventive detention in India. The fact was mentioned that in India the period may be much longer. I think hon. Members of this House sometimes lose sight of India's history and the Indian character. One should not be too surprised that it is necessary to have a Preventive Detention Act in India. India is the sub-continent that produced the conqueror of Alexander the Great; it is the place where Alexander the Great was defeated after he had conquered almost the whole of the world. The British ruled India for centuries, and yet there were certain tribes in the hills that could not be conquered. Those are the people for whom preventive detention was made in India. People in this country are not to be compared with them. Those were rebels, and this Government does not have rebels in this country. [*Interruption.*]

**Mr. Hubbard** *rose* - -

**Mr. Bissember:** I move that the Question be now put.

**Mr. Hubbard:** I should be most grateful if you would permit me, sir. We are discussing the question of duration of Part I of this strange piece of legislation. It is here proposed that, in the first instance, these strange provisions should remain in force for eighteen months and thereafter come up for renewal annually. The gravest circumstances in which a country can find itself is in circumstances of emergency when one has to virtually suspend institutions and rule by decree.

We can be assured that this piece of legislation is to permit the Government to abandon the emergency which it inherited from the South African, Luyt, and which it has continued in force ever since. The Constitution provided that, under Luyt, in a State of Emergency the Government had to come to this Assembly every six months to obtain approval from the Assembly for the continuance of the State of Emergency. This Bill, according to

[MR. HUBBARD]

what the $4,000-a-month Attorney-General has disclosed, is very much less severe than the emergency. It gives extraordinary and arbitrary powers to a Minister for a period of eighteen months, in the first instance, thereafter to be renewed at annual periods.

*8.50 p.m.*

It seems to me that, in this instance, as in many instances that I have noted since this Government assumed office in 1964, the cart is once more put before the horse - before the donkeys, because donkeys are at the head of the Government. It seems to me inconceivable that any man, guided by reasonable principles, should ask that emergency powers be incorporated into ordinary criminal law, and that ordinary criminal law, with those emergency powers, should have a longer life than the Emergency Regulations which were in force during the gravest period of a country's history.

This is supposed to be a forum of reasonable men, and it is difficult for me to understand the mentality of men who would support such a proposition. I concede that only a half of the number of Members of this House are reasonable men, but, at least, I expect that the other half will wish to pretend to be reasonable. I feel that in the circumstances I have outlined, where people are to be detained at the whim of the Minister in circumstances that are to be secret, those conditions should not remain in force longer than the conditions which would apply if there was a State of Emergency.

Yesterday I heard a remark across the Table that one of my hon. Colleagues would not be detained because information could be obtained from him without putting him in detention. This, of course, makes nonsense of the hon. Attorney-General's declaration that this is not punitive legislation, that it is merely preventive legislation. If the purpose of this legislation is to give power and authority to apply methods to obtain information, I can see that there is grave danger in allowing this power to reside without question, for eighteen months, in the hands of a Minister, or of a Government, or whoever is handling the matter. In law it will be a Minister; he is the individual answerable to no one. All that can happen is that the Prime Minister can withdraw his portfolio and put someone else in his place. But in that space of time a tremendous amount of damage can be done; people can be subjected to all sorts of torture.

In a previous Amendment there was a reference to the word --

**The Chairman:** Try to be relevant. Actually, you are going over covered ground.

**Mr. Hubbard:** I am trying to show why the time factor here is all important because many

things can happen in that space of time. It is a question of eighteen months as against three months. This is a law which affects all the citizens of this country. It may be that some people feel it can only apply to some persons, but every individual, including Ministers of the Government and even you, Mr. Chairman, falls within the ambit of the law.

I, therefore, urge that this proposition, that there should be an eighteen-month initial period and renewal periods of twelve months, is wholly unreasonable and inconsistent with the spirit of the Constitution which provides that, where extraordinary powers are taken in order to deal with an emergency, those extraordinary powers must be subject to the scrutiny of this Parliament every six months. I strongly support the recommendation that since this is, in a sense, a subsidiary to the emergency, then the period of duration should be less than that of the emergency. If when there is an emergency Ministers must come here every six months and satisfy Members of this House, then, in terms of this law, they should come here every three months, as has been proposed in the Amendment now under discussion.

**The Chairman:** There are two Amendments to this Clause. The first Amendment is for the substitution of the word "six" for the word "eighteen" in the second and sixth lines of subsection (1). The second amendment is for the substitution of the words "three months" for the words "one year" in the tenth and eleventh lines of subsection (1). Those in favour of these Amendments say "Aye"; those against say "No". The "Noes" have it.

**Mr. Hubbard:** Division!

**The Chairman:** Let the Division be taken.

***Assembly divided: Ayes 14, Noes 23, as follows:***

| **Ayes** | **Noes** |
|---|---|
| Dr. Ramjohn | Rev. Trotman |
| Mr. Linde | Mr. Sancho |
| Mr. Ally | Mr. Field-Ridley |
| Mr. Jagan | Mr. Carrington |
| Mr. Luck | Mr. Budhoo |
| Mr. Hamid | Mr. Blair |
| Mr. Wilson | Mr. Too-Chung |
| Dr. Ramsahoye | Mr. Joaquin |
| Mr. Nunes | Mr. Duncan |
| Mr. Hubbard | Mr. Clarke |
| Mr. Chandisingh | Mr. Bowman |
| Mr. Ram Karran | Mr. deGroot |
| Mr. Benn | Mr. Thomas |
| Mr. Chase - 14. | Mr. Merriman |
| | Mr. Mahraj |
| | Mr. Kasim |
| | Mr. Jordan |
| | Mr. John |
| | Mrs. Gaskin |
| | Mr. Correia |
| | Mr. Cheeks |
| | Mr. Bissember |
| | Dr. Reid - 23. |

*Amendments negatived.*

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

*9.00 p.m.*

***Clause 15.***

**Mr. Ram Karran:** The Minister in this case is not only judge, jury and --

**The Chairman:** I just want to make a point. We have an Amendment by Mr. Jagan to delete a whole paragraph. I wonder if we can deal with that one first.

**Mr. Jagan:** In moving this Amendment, I have taken into account that this paragraph (g) is giving the Minister very wide powers. When one looks at paragraphs, (a), (b) (c), (d), (e) and (f), one sees the definition of the word "ammunition." A very wide range of materials can be termed "ammunition." One wonders what the Minister has in mind.

Apart from the definition set out in paragraphs (a), (b), (c), (d), (e) and (f), the word "everything" has a very wide meaning, and we must realise that it is the Minister who will be given the power to declare what he feels is ammunition. In paragraph (g) the Minister himself is the only person who has to determine what should be ammunition. The Minister is given very wide powers of delegation. As I have said before, when one looks through the definition of the word "ammunition" in this Clause, one wonders what else the Minister has in mind.

Having regard to the fact that this Assembly is given the opportunity to say what should be ammunition, we feel that this very wide and sweeping power which is being sought to be given to the Minister should be deleted so that whenever the Minister wants the definition of ammunition to be extended, he must come to this House again and let the House approve of it as it is now being done.

My hon. and learned Friend the Attorney-General has referred me to the Amendment which is to be moved by the hon. Minister of Home Affairs. But I shall deal with that when the time comes. There can be no doubt that this very wide power of delegation given to the Minister, apart from what is stated in the preceding paragraphs, should be excluded. In view of what I have said, I hope that the Minister will agree to the deletion of paragraph (g).

**Mr. Chase:** This is a very important Amendment. The section defines what is meant by the word "ammunition." Indeed, it states that even the clip of a bullet can be regarded as ammunition. The clips without the bullets are virtually useless. Yet, even possession of the clip would be an offence.

Now, things such as shell, cartridge case, bomb, hand grenade, bullet or like missile, whether containing any explosive or gas or chemical or not, come within the definition of ammunition. In addition to this, the section continues to interpret ammunition as relating to other matters such as percussion caps, priming caps whether adapted or not for the purpose of exploding any bombs or hand grenades. These are very wide definitions.

Having regard to the Firearms Order, paragraph (g) is contrary to normal practice in this Parliament because, having defined in no less than six paragraphs what is meant by the word "ammunition," paragraph (g) states:

> "everything declared by order of the Minister to be ammunition;"

*9.10 p.m.*

This, in itself, is offensive to those of us who are very jealous of parliamentary rights and privileges. It is surely within the province of Parliament to declare what should be the definition or interpretation of "ammunition". To delegate this to a Minister of Government is really to usurp the functions and the powers of Parliament itself. In delegating this authority to the Minister we would be delegating to the Minister, not the right to make what is normal subsidiary legislation, but the right and authority to make substantive legislation. In that we certainly must part company with the Government.

We cannot, on any score, agree with this Clause which will permit the Minister to make substantive legislation from time to time, to make Orders varying or extending, so to speak, the interpretation clause, Clause 15 of this Bill. I may mention that when a delegation from the Guyana Bar Council met the Attorney-General this was one of the Clauses which the Council objected to most strongly. [*Interruption.*] The Guyana Bar Council, for the benefit of the hon. Minister (Mr. Merriman) who has been making interjections from his seat, is the oldest "Barristers" organisation in this country.

**The Chairman:** You are really speaking to the hon. Member. You cannot allow yourself to do so.

**Mr. Chase:** I would not if I were not interrupted. The Bar Council is the oldest body representing barristers in this country. It made representations to the Attorney-General in very strong terms, opposing Clause 15. Without reciting in detail what were their objections I would say that they felt it was highly dangerous to permit a Minister from time to time, by Order, to extend the interpretation, not only of the word "ammunition" but, indeed, of a term which is fixed by statute in this country.

Their objection to this particular extension of the definition proceeded on these lines. They felt, from a jurisprudential point of view, it was extremely bad and should not be permitted. So far as it impinges on criminal law, they felt this was extending what could be brought within the ambit of a crime, by subsidiary legislation made by delegation of the Legislature. This, they felt, was extremely bad.

I may say that it was pointed out to the Attorney-General that if the Government intended that something similar to (a), (b), (c), (d), (e) and (f) were to be legislated for, so that if persons were not caught in (a), (b), (c), (d), (e) and (f), then they would be caught within (g), then

[MR. CHASE]

a different phraseology should have been used. The Attorney-General rightly pointed out that what the Government was trying to do was to avoid the words used in Section 5 of the Interpretation Ordinance, Chapter 5, which would allow the Courts to follow the rules laid down for interpreting such words as "other" or "similar", as the case may be.

Be that as it may, since that difficulty arises, it seemed to the Bar Council, and it is my point of view here, that the clear way out of this morass is to completely delete paragraph (g). If it is deleted the position will be that the word "ammunition" will come within the paragraphs (a) to (f). If by any chance the Minister or the Government finds that there is some contraption - if I may use that word - which may well be regarded as "ammunition", then an Amendment can be obtained to the Section to include that particular contraption. May I say at once that the coming for an Amendment to the Assembly is nothing novel. Government has done this from time to time and will continue to do it. Legislators, or those who draft laws, are not endowed with such wisdom that they can foresee every human ingenuity.

Counterpoised against that must surely be the cardinal principle of criminal law that a man must know what the law is. Ignorance of the law is no excuse. This is recognised. It is also recognised that a man must know whether his act will amount to an offence against the law. Therefore the law ought to be certain and definite and a man ought to know, when he is walking around with a bicycle chain, whether that bicycle chain is "ammunition" within the meaning of the law of this country. If "ammunition" is not defined you expose the individual to be brought up for an offence when he did not know that an offence was being committed. That, in itself, is contrary to the principles of English jurisprudence as we understand it.

We have thrown all of that overboard. We have done it before, and I suppose it is the intention of the Government to do it again. But even if this is so, I draw the attention of hon. Members to the fact that in later Clauses of this Bill the Government introduces, for unlawful possession of ammunition, the penalty of whipping and flogging. The Government also gives to Magistrates, who sit without a jury, power to sentence persons to three years for being in possession of ammunition. If Magistrates are to have this power and if, indeed, the penalty for contravening the law is going to be so severe, then in my respectful view the law must be clear and definite. If a man is going to be liable to be whipped or flogged, or both, for being in possession of some article, then he must know, even before he is in possession of the article, that that article is "ammunition" as defined by the Legislature.

*9.20 p.m.*

We are leaving it to the Minister, from time to time, to make an Order, on his own, saying what ammunition is, and

we are giving him authority to change the law whenever he chooses. There is no control, up to now, as to how many Orders of this kind he can make, when he can make them, and in what circumstances he can make them. There is absolutely no control. He can make as many of these Orders as he cares to, and at any time that he feels disposed to making them.

Herein lies the great danger which I had hoped the gentlemen on the other side would appreciate and would readily see. In the very first subclause, the word "ammunition" means firearm of any kind. Now that is as wide as you could wish it. In other words, anything which comes within the purview of the definition of firearm in the Ordinance dealing with firearms, would be caught within the definition of ammunition. Then we go on to (b) to define the other particular things, and we qualify this by saying "whether intended to be discharged from or by any gun or other propelling or releasing instrument or mechanism or not, ... " Note those words. This means that any contraption - and I use the word "contraption" because that would seem to envisage any new device - would be caught within the definition which is set out here which refers to any mechanism or any propelling instrument.

Next we go on to (c) and refer to particular articles. It is stated here: "every part of any such shell, . . .". In other words, if a person is found in possession of the cap or any part of a shell, whether that part is, by itself, effective, useless or ineffective, nevertheless, he will be held to be in possession of ammunition. So it seems to me that there is room here for part of any shell, cartridge case, bomb, hand grenade, bullet or missile, to be caught within this definition.

Then in (d) we go on to other terms. Fuses, percussion caps, or priming caps are given very wide terms which can cover any form of ammunition. Indeed, as I have already noted in (e), bullet clips and cartridges are also taken care of. If you look at (f), you will see that contrivances are also included in this definition.

In view of all of that, it would seem to me that (g) is completely unnecessary. I cannot see that the Minister has advanced any reason for the inclusion of (g). We are now dealing with the particular Section. If any reasons are there to be advanced in respect of this, this is the occasion on which they should be advanced. For the reasons that I have advanced, I very strongly support the Amendment by my hon. and learned Friend that this particular subclause should be completely deleted from the Bill. I hope that the Minister will agree to this proposal.

**Mr. Luck:** I rise to support the deletion of Clause 15 (g). I think the point by my hon. Friend Mr. Chase is well taken.

**The Chairman:** "If" it is well taken. Go ahead.

**Mr. Luck:** If it is well taken, I can proceed to go to

[MR. LUCK]

other points. It is early. I think the point is well taken that. to empower the Minister, by an Order, to declare what is ammunition, having regard to the other highly penal provisions of this Bill, must have the effect of making criminal and subject to very condign penalties conduct which, at the outset, was not criminal. [**The Attorney-General and Minister of State:** "You know that that is not true."]

I expect that the Minister will shortly have to declare sewerage pipes as ammunition, for it was reported over the B.B.C. that, in Aden, short lengths of sewerage pipes have been converted into very effective mortars. That was done recently. Let us say that the Minister declares that sewerage pipes, by some strange metamorphosis, will be termed ammunition? What would be the effect? It would mean that those of us who may have sewerage pipes in our yard - all of us do not have - will have to search diligently to see if there are any lying around.

*9.30 p.m.*

It is well known that brass shells, clips, are collected by small boys all over the world, and I suspect that they are collected by many Guyanese. Now that they know that they cannot keep these things they will have to throw them away. That is all right. But what about sewerage pipes? I have two lovely lengths of sewerage pipes in my yard - I do not have the skill as yet, but I suspect they would make excellent mortars. Under this Bill, possession of such pipes may become illegal unless, like the Minister of Home Affairs, one has the immunity to have detonators in one's yard.

The Minister constantly talks about ordinary water pipes. I would think that bicycle frames are very effective. Let us say that the Minister, in his wisdom, declares bicycle frames to be ammunition. There is no doubt about it that only certain people will fall under the hammer blows of this Bill. When the Minister says, "This thing is ammunition"- and I have given certain things that he might clearly deem to be ammunition, such as common water pipes - where will this end? Ammunition will be whatever the Minister says is ammunition. Even if there were laws of this nature in other countries, I am positive they would not expose those who have whatever the Minister claims to be ammunition, to whipping and flogging.

I would give another instance. During the rioting and looting, connected as I am with a laboratory, I urged that everything in the laboratory should be kept under lock and key, and put quite clearly beyond the reach of persons who are inclined to be mischievous. I was aware that the facilities of certain laboratories were at the disposal of arsonists, and I thought it my public duty as a citizen of this town and of this country to recommend that these things should not be made available to anyone. In those days, when detonators were being found, they said, "No man, why bother?"

I referred to that simply to show that if men are bent on mischief, nearly everything is ammunition.

Let us understand this. When scientists of the greatest learning and repute are spending their time inventing these things, it would be very dangerous to allow this Minister at his whim and fancy to declare anything as ammunition. So far, he has even declared bullet clips as ammunition. A fellow who got off had a Tilley lamp, an ordinary gas lamp, and he was able to make a revolver. After hearing this the Minister will probably say that Tilley lamps are ammunition. We would have to pick up our Tilley lamps and throw them away because we would not be as fortunate as the Minister to have detonators and yet not be locked up. Surely, this point must be well known. It is not beyond the wit of the learned and able Attorney-General to give us a definition of ammunition. Indeed, I would have expected that in paragraphs (a) to (f) would have been listed all the conceivable things which are ammunition.

The dangers of which we speak are real. They are not imaginary. I am sure that anybody who keeps rubbish, as most careful people do, will be guilty of offences which carry whipping and flogging if this Clause is passed, and it will become very invidious indeed, if "John" has these things and he is not prosecuted, and "Singh" has these things and he gets a whipping. When that day comes, that would be the end of Guyana as we understand it, not in a physical sense, but even worse, the entire concept of it. I do not know how these fellows would understand that "John Smith" will have things and get off, and "Jasmin" or "Jasodra" will get a whipping. That is inevitable if we declare things to be ammunition when they are not ammunition.

I remember vividly, and I speak with a feeling of great hurt of the emergency legislation which compelled us to hand up all guns. I had to search and ransack my desk so that not a single cartridge remained. Several boxes of ammunition were found in the yard of the person who introduced this Bill, and the impudent defence was raised that he had enemies and they put them there.

*9.40 p.m.*

People like me who have never kept ammunition illegally and have no intention of keeping it, have had to ransack our homes so as not to fall within the law. As I said, if a man has ammunition and the law states that it must be handed in, then he must go to the trouble of doing so, but what happens if the Minister can declare anything to be "ammunition"? Do we have to make constant searches in our homes? The Subversive Literature Act banned all books published by Lawrence and Wishart. Surely this is a similar case. We are empowering the Minister to put people to a great deal of trouble, and I can confidently say that it will not be possible to enforce this law against everyone because it is so wide. I predict that "bicycles" will become "ammunition".

[MR. LUCK]

The truth is that this piece of legislation, if it is at all necessary, will not succeed. I would say that it is wholly unnecessary. It is also my belief that it cannot suppress the kind of conduct which it is designed to suppress. Trouble in this country will be prevented if everybody wants peace. We will want peace if there is an end to oppressive laws, and this is a monstrous law.

**Mr. Hubbard** *rose --*

**Mr. Bissember:** I move that the Question] be now put. Mr. Chairman, I move the Motion. You can rule whether I am out of order, but I think I am in order. When the Chairman rules me out of order I will take my seat.

**The Chairman:** I am satisfied that the question has been thoroughly debated.

**Mr. Hubbard:** I have a very important point that has not been discussed.

**The Chairman:** I am going to allow you ten minutes to make it.

**Mr. Hubbard:** One of the important questions which arise out of this-- [*Interruption.*]

**The Chairman** (to a Government Member): Will the hon. Member please take his seat. The time is going.

**Mr. Hubbard:** The hon. Minister - - [*Interruption.*]

**The Chairman:** Will the front bench members please set a good example.

**Mr. Hubbard:** This aspect of the legislation disturbs me. When the Minister makes an Order defining some new substance or contraption as "ammunition", there is nothing to require him to let his new definition be known. Paragraph (g) reads

> "everything declared by order of the Minister to be ammunition".

There is nothing stated to the effect that it must be published in the *Gazette*.

I want to add this: we pay a lot of money for ignorance in this country. Under the definition in this Bill, I am guilty of having ammunition in my home because I have in my home an instrument or mechanism for releasing a gas mixed with a chemical for killing insects. According to the definition here I am guilty of possessing "ammunition". As I say, in this country we pay highly for ignorance, because aerosol sprays are used widely for killing insects which are harmful to human beings. I am told that at any time the Minister so desires he can send a policeman and find this ammunition in my home, arrest me, put me before a Magistrate and have me flogged.

**The Chairman:** Is that one of the important points? That point was made earlier.

**Mr. Hubbard:** No Member has made that point, sir.

**The Chairman:** Continue.

**Mr. Hubbard:** Already, therefore, this law has determined

that I am guilty of possessing ammunition in my home. The people who drafted this law are apparently not domestic human beings. They receive too much money.

I think this paragraph is obnoxious. There is something terribly wrong with the mind that can conceive giving this power to the Minister. It is the type of mind which would debar, as Mr. Luck said, all books published by a certain publisher. I think a great deal of harm can be done by the wide definitions that exist at the present time as declared in this Bill. As I said, I stand in contempt of the law because I own a pump -

**The Chairman:** I am sure you heard Mr. Chase's speech.

**Mr. Hubbard:** I do not think the Minister should have further power to say behind my back what may be done.

**The Chairman:** I will now put the Question.

**Mr. Hubbard:** You are in supreme charge.

*Amendment put, and negatived.*

**Mr. Hubbard:** Division!

**The Chairman:** Hon. Members, I have already tested the feeling of this House.

**Mr. Hubbard:** I should like to have a record of the vote.

**Mr. Jagan** *rose* - -

**Mr. Bissember:** You have already ruled, sir, and the hon. Member cannot —

**The Chairman:** Is the hon. Member speaking on a point of privilege?

**Mr. Jagan:** Standing Order 38 states that if a Motion of closure of a debate is moved, in order to find out whether Order 38 (3) applies, a Member has a right to call for a division.

**The Chairman:** I have noted your point, but I should like to refer you to Standing Order 4 which reads -

> "The Speaker or, in his absence, the Deputy Speaker or, if they are both absent . . ."

**Mr. Jagan:** That does not apply, sir.

**The Chairman:** Are you telling me what does not apply?

**Mr. Jagan:** Standing Order 38 (3) reads as follows -

> "A motion under this Standing Order shall not be decided in the affirmative if it appears on a division that less than twelve Members voted in the majority in support of the motion."

How can one tell if less than twelve Members voted in the majority unless there is a division?

**The Chairman:** I have already ruled, and I said that the Noes have it. I further refer to Standing Order 40.

*9.50 p.m.*

**Mr. Ram Karran:** It seems to me, having regard to what is

[MR. RAM KARRAN]

stated in Clause 15 (g), that we are making our hon. Minister judge, jury, executioner and law-maker. I do not think, from any standpoint, that we should give to any individual, even though he may have a thorough knowledge of detonators, the power to decide or to make an Order declaring what is ammunition.

It is an accepted principle that a Minister, no matter what his qualifications are, is a layman in his Ministry, and for that reason his Ministry is supplied with technical officers. It does not matter if an Associate Member of the Institute of Civil Engineers holds the position of Minister of Works and Hydraulics. That Ministry must have a Chief Works and Hydraulics Officer, or a Chief Engineer, or some such person who can advise the Minister on matters of a technical nature. [*Interruption by Mr. Merriman.*]

If we had a "Ministry of Burial" we would have appointed the Minister of Labour to it. Fortunately, the Government has not yet reached that stage. Perhaps that will come shortly. There is nothing at all in the qualifications of the hon. Minister of Home Affairs - except his training as a vet - which makes him competent to know what is ammunition.

During the period of repression, in the days of South African Luyt, I remember one instance where a youngster, a boy below the age of twelve, had fitted up the empty metal parts of two cartridges - and I am sure that all of us who belong to this country and who come from poor parentage can remember the toys we used to make with our hands - and he was blowing through the holes of those empty cartridges. My friend Mr. Budhoo, the dumb Member from Berbice, shakes his head.

The British soldiers did not charge this little boy who was below the age of twelve, because the court would have laughed at them. So they ran the boy into his yard and they collected a school-teacher who, fortunately or unfortunately, was an activist of the P.P.P. He was brought before the court and convicted. I noticed that he appealed, but I cannot tell whether or not the the appeal was successful. If it was not successful, it means that this teacher who, from all evidence, was innocent, would have lost his job.

**The Chairman:** What has that got to do with the substitution of the words "Government Analyst" for the word "Minister"?

**Mr. Ram Karran:** I am saying that the hon. Minister is incompetent in many ways, and, particularly in this case, he is incompetent to decide what is ammunition. I am also saying that, because of poverty, the metal bodies of two cartridges put together by an innocent child to amuse himself - this prevails all over the country - would render that child's parents, or any relation or anyone living in the house where that child resides --

**The Chairman:** Let us hear why the words "Government Analyst" should be substituted for the word "Minister".

**Mr. Ram Karran:** I have not reached there yet.

**The Chairman:** Try and reached there, for Heaven's sake!

**Mr. Ram Karran:** I understand that we are in Parliament. Last night you ruled that we should utter English words only. "Parliament" is one of those words that came from France and it means "where we speak". I am doing nothing obscene or unlawful. I am speaking --

**The Chairman:** Speak on the Amendment that is before the House.

**Mr. Ram Karran:** The hon. Minister is incompetent to decide what is ammunition. I must crave your indulgence here because I cannot find the English word for "phookney" but it is something mostly used by housewives to light fires. I hope you will allow me to use that word for the purpose of this discussion. The hon. Minister comes from the countryside, from Pomeroon. [**Dr. Reid:** "You are wrong."] Maybe he comes from a more sophisticated community. That would render him less capable of understanding what a "phookney" is. The hon. Minister of Health (Mr. Mahraj), who was asleep last night - he is awake now - could tell this House, at some stage, whether a "phookney" is a useful instrument. In view of the fact that recently -- [*Interruption by Mr. Merriman.*]

The hon. Minister is disturbing me all the time. Please rule that the hon. Minister is disturbing the business of the House.

**The Chairman:** Allow the hon. Member to continue.

**Mr. Ram Karran:** I am saying that a "phookney" is a very useful weapon - article. [**Mr. Merriman:** "Useful 'weapon'! Well stop using it."] [*Laughter.*] If the Minister is going to make an Order banning the use of it, then it will create tremendous hardships. It is for that reason that I have proposed the Amendment. [**Mr. Merriman:** "A useful weapon."] There is quite a lot of heckling and tomfoolery going on. I thought that all children were in bed by ten o'clock, but I see some children sitting in this House.

We are saying that the power must be placed in the hands of an impartial individual, a person removed fron politics, a person who has not got political enemies, and it is for that reason I propose that the Government Analyst should be the one to decide what is ammunition.

I wish to quote from page 12 of *Highways to Happiness* - Declaration of the Ideals and Policies of the United Force:

> "The political power is confined to policy and lawmaking through the Legisture.
>
> The civil power is confined to the administration of policy and laws through the public services.

[MR. RAM KARRAN]

The police power is confined to matters relating to the protection of citizens through the Police Force.

The Judicial power is confined to the administration of justice through the Courts of Law.

All of these groups in the exercise of their power are independent and are not subject to each other's interference and control.

The ultimate power rests with the free citizens of the State."

*Assembly resumed.*

**Mr. Deputy Speaker:** This sitting is suspended for 15 minutes.

*Sitting suspended at 10 p.m.*

*10.21 p.m.*

*On resumption*

*Assembly in Committee.*

**Mr. Ram Karran:** I wish to quote to show -- [**Hon. Members** (Government): "Page."] I repeat for the hon. Members that I am quoting from the ***Highways to Happiness***. It states that all of these groups in the exercise of their powers are independent, and are not subject to each other's interference. This is the operative sentence, and it shows that we are departing from the principles laid down. With your permission, I now quote from page 94:

"In order to uphold the Constitution the elected Government must have respect for the Law. The Rule of Law in a true democracy really means the willingness of the elected Government and the majority of the people to submit to the law.

Above all it means that the elected Government must not control or interfere with the administration of the Law in any of its aspects, namely:

1) POLICE - Enforcing the law

2) JUSTICE - Administering the law

3) LEGISLATURE- Making the law."

I understand that we have a consultative democracy. In a democracy the law must be enforced by an impartial Police Force.

**The Chairman:** You are not speaking to your Amendment. What is the relevance.

**Mr. Ram Karran:** The relevance is that I am arguing against the retention of the word "Minister". The Minister must not interfere in any way. We are trying to do justice; we are trying to ensure that people are not wrongly charged, and that the Minister does not use political partiality to harass people. Since the hon. Gentlemen on the other side representing the State must protect it, I want to ensure that they do not pervert the law to lock up those

people who are on this side of the House in order that they can sit there indefinitely. [**Mr. Merriman:** "What is the relevance?"] [**Mr. Luck:** "He is advocating the rule of law."]

I am saying that if the Minister decides that my pen is ammunition, he can take me to wherever he decides, Ankoko for instance, and if he does so, he will be doing so unjustly because my pen is not --

**The Chairman:** These points were made already.

**Mr. Ram Karran:** What I want to know is why the Government Analyst --

**The Chairman:** If you continue to quote irrelevancies, I will have to stop you.

**Mr. Ram Karran:** I am not quoting irrelevancies.

**The Chairman:** They are irrelevant to me.

**Mr. Ram Karran:** If they are, I am sorry. The Government Analyst must exercise these duties. I want to persuade my friends on the other side that it is undesirable and it is harmful for the Minister to carry out these functions.

**The Chairman:** Those points were better made by your colleagues.

**Mr. Ram Karran:** Perhaps I shall continue. The Opposition must be given a proper hearing.

**The Chairman:** I will have to ask the hon. Member to take his seat, and I will put the Question.

*10.30 p.m.*

**Mr. Luck:** I should like to participate in the debate, sir.

**The Chairman:** You cannot. I have decided to put the Question.

**Mr. Ram Karran:** Your Honour said --

**The Chairman:** Sit down!

**Mr. Jagan:** On a point of privilege.

**The Chairman:** I refuse to allow --

**Mr. Jagan:** You cannot.

**The Chairman:** Are you telling me I cannot?

**Mr. Jagan:** On a point of privilege the Speaker shall --

**The Chairman:** Sit down until I have finished speaking. You can state your point of privilege after I have put this Question.

**Mr. Jagan:** My point of privilege is in respect of the Question to be put. A point of privilege can be raised at any point of the debate. [*Interruption.*] Why don't the hon. Members listen and learn? My point of privilege is this: unless a Motion of closure is moved, the Chairman cannot put the Question.

**The Chairman:** What are you saying?

**Mr. Jagan:** Under Standing Order 38 a Motion has to be moved before the Question can be put. It seems clear that the Chairman cannot arbitrarily say that the debate should come to an end and put the Question.

**The Chairman:** That is why I should like to enlighten you. Standing Order 51 (3) (h) states:

> "The Chairman may at any time during the discussion of a proposed amendment withdraw it from the consideration of the Committee if, in his opinion, the discussion shall have shown that the amendment violates the provisions of this Standing Order."

**Mr. Jagan:** That does not apply. Surely that does not apply, sir.

**The Chairman:** I am now putting the Question.

**Mr. Jagan:** You cannot put it.

**The Chairman:** I am putting it. You cannot say that I cannot.

**Mr. Jagan:** Under Standing Order --

**The Chairman:** I am asking you to take your seat.

**Mr. Jagan:** I am moving a Motion of privilege. I should like to have it put to the vote.

**The Chairman:** The question is to substitute the words "Government Analyst" for the word "Minister" in the first line of paragraph (g). *[Shouts of "Aye" and "No".]* The Noes have it.

**Mr. Hubbard:** Division, please.

*Assembly divided: Ayes 14, Noes 22, as follows:*

| *Ayes* | *Noes* |
|---|---|
| Dr. Ramjohn | Rev. Trotman |
| Mr. Persaud | Mr. Sancho |
| Mr. Linde | Mr. Field-Ridley |
| Mr. Ally | Mr. Carrington |
| Mr. Jagan | Mr. Budhoo |
| Mr. Luck | Mr. Blair |
| Mr. Hamid | Mr. Too-Chung |
| Mr. Wilson | Mr. Joaquin |
| Mr. Nunes | Mr. Duncan |
| Mr. Hubbard | Mr. Clarke |
| Mr. Chandisingh | Mr. Bowman |
| Mr. Ram Karran | Mr. de Groot |
| Mr. Benn | Mr. Merriman |
| Mr. Chase - 14. | Mr. Mahraj |
| | Mr. Kasim |
| | Mr. Jordan |
| | Mr. John |
| | Mrs. Gaskin |
| | Mr. Correia |
| | Mr. Cheeks |
| | Mr. Bissember |
| | Dr. Reid. - 22. |

*Amendment negatived.*

**Mr. Ram Karran:** The hon. Member (Mr. Joaquin) was not in his seat when the vote was taken.

**Mr. Chase:** Before Clause 15, as printed, is put, may I remind you, sir, that there is another Amendment standing in the name of the Minister. I am sorry there is all this haste.

**The Chairman:** Will the hon. Minister propose his Amendment? Thank you for reminding me, Mr. Chase.

**Dr. Reid:** I move an Amendment to Clause 15, namely, that Clause 15 should become Clause 15 (1) and a subclause (2) be added.

Before we move to Clause 15 (2), I should like to say something on 15 (1). From paragraphs (a) to (f) a series of articles are named as coming within the meaning of "ammunition", while paragraph (g) reads:

> "everything declared by order of the Minister to be ammunition".

Hon. Members will see that very many articles are named in paragraphs (a) to (f), but because of changing circumstances Government sometimes has to deal with very ingenious people, and things which we do not dream of can appear on the scene suddenly and be very lethal weapons. When I was moving the Second Reading of the Bill, I took time to mention to this Assembly a few of the things that could be considered as dangerous weapons. I thought that by now my good friends would have seen the sense in this clause and would have realised that it is not practicable to name all the bits and pieces of equipment that may be termed "ammunition". One speaker said that if he carried a pen this could be considered as "ammunition". Well, we sometimes have many things that look like pens, or even like torches but, in fact and indeed, the things are not what they appear to be.

*10.40 p.m.*

Some people learn to cut pipes and load them up. Not so long ago the Police found a few at Tain. My friend said that only in Aden are such things learnt. [**Mr. Luck:** "I never said so."] My friends on the other side know about the bits and pieces of equipment that have been recovered by the Police from time to time.

On a previous occasion, I explained that when Ovaltine and Fry's Cocoa tins are loaded up and properly charged with sharp bits and pieces of steel, they are not as innocent as they appear to be. I remember an incident at Canje where one fellow blew himself to bits and pieces. I remember another incident on the West Coast where one fellow was left with one hand. My friends know of these incidents. When these pipes, cups, tins, cans, bullets, bottles and torchlights are loaded up, they become dangerous weapons and must be termed ammunition.

It is not practical to successfully put down all these things on this bit of paper, so when these things are found, somebody must have the authority to term them ammunition. My friend acted as Competent Authority some time ago. I do not know what was his qualification, but he was so competent that he kept people on the street for days and nights trying to get gasolene. There must be some person who will be in a position to term these things ammunition when they are so determined,

[DR. REID]

If one listened to the members of the Opposition throughout this debate, one would get the impression that this Bill is specially designed for the purpose of locking them up. I do not know where they got that idea. This Bill is for the public order and the public safety of the country as a whole, and whoever is found with these things, regardless of his name, religion or political affiliation, will be dealt with accordingly.

I know that many of the Members opposite are experiencing more safety and more peacefulness than in times past. But we want to remove all their fears. When these things are termed ammunition it will not be done secretly; we will give them an opportunity to talk about it. I hope that they have read Clause 15 (2) which will satisfy them that when anything is named ammunition or firearm for the purposes of subsection (1) of this section and Section 2 of the Firearms Ordinance, the Order shall be laid before the National Assembly within fourteen days after it has been declared. It will be debated here. If the Assembly decides that something is wrong, it will be annulled. This, I am sure, will remove all the fears of the hon. Members opposite. I now move the Amendment standing in my name.

**Mr. Ram Karran:** I am very grateful to the hon. Minister for expressing so clearly the fears that we have expressed on this side of the House. The hon. Minister spoke about Ovaltine tins. I well remember the case on the East Bank of Demerara where the whole Police Force was alerted when a tin, with a piece of wire protruding, was found to contain human faeces. The whole of the East Bank was alerted. I can well understand that the hon. Minister may declare as ammunition any Ovaltine tin, with a piece of wire protruding, containing human or animal faeces, found on someone's premises. I walk around my yard every morning because I want to make sure that if anything is put there -- [**Mr. Merriman:** "Your conscience is worrying you."] I have a clear conscience.

All these powers are entrusted to the hon. Minister and he can make an Order declaring as ammunition any harmless Ovaltine tin with a piece of wire protruding, or, for that matter, anything that satisfies his whims and caprices, and that Order shall be laid before the National Assembly. I do not want to call this Parliament a farce - God forbid - but it is useless for the Minister to come here and say that the Order will be tabled and discussed within fourteen days after it is made, and that if the National Assembly resolves that it shall be annulled, then it shall be annulled.

I remember one instance where some hon. Members on the other side were shaking their heads in agreement with hon. Members on this side, but because

they fear the terrorists' whip, one hon. Member voted and he withdrew. We cannot hope to alter what is brought before this House, and it is farcical for me to attempt to do so. There was another case concerning the honoraria of Ministers and certain people. I had the honour of tabling a Motion dealing with that, and even though a year has passed and hon. Members and others are receiving pay on that arrangement, it has not been brought to this House. And the hon. Minister talks about consultative democracy! What a mockery! He does not even consult his crypto Deputy Prime Minister!

*10.50 p.m.*

I feel that the Minister should tell this House what are the principles by which he will arrive at an item being termed a dangerous weapon. I agree that a "phookney" can be termed so. I have no objection whatever to the hon. Minister declaring certain items as ammunition. The Government wants peace. The whole country is crying out for peace. But, perhaps, they entertain fears about peace being superseded by something else. Let the hon. Minister tell us the principle by which he will declare these things as ammunition so that the House will go all the way with him, and possibly give him the powers without asking him to come back every 14 days to declare my glasses or my pen as ammunition.

The hon. Minister was making a mockery of this Amendment when he said that this was going to satisfy the House. The point I am making is that the Minister is not qualified to make these decisions. But, if he claims that being a terrorist at one time qualifies him, perhaps he should explain to the House how that is so. Perhaps he should —

**The Prime Minister:** I move that the Question be now put.

**Mr. Luck:** The Amendment as moved by the Minister reads:

> "(2) Every order of the Minister whereby anything is declared to be ammunition or a firearm for the purposes of subsection (1) of this section . . ."

[**The Attorney-General:** "Read on."] I shall read on. I have it here. [**Mr. Merriman:** "Sit down and read it."]

**The Chairman:** Time is rather precious here.

**Mr. Luck:** In subsection (1) of this section, the Minister speaks of Orders declaring anything to be ammunition. Section 2 of the Firearms Ordinance states what a firearm is, and it makes absolutely no provision for the Minister, by an Order, to declare what a firearm is.

**The Attorney-General and Minister of State:** If I may help my hon. and learned Friend. If he will look at the Schedule, he

[THE ATTORNEY-GENERAL]

will see that the Bill itself amends the Firearms Ordinance -- [*Interruption.*]

**The Chairman:** Would the hon. Member continue!

**Mr. Luck:** It is very difficult to find any trend of thought. One must be ready before one speaks. It does appear as though the thing is right. We now have a new point to debate. We are now told that simply by an Order the Minister can declare what a firearm is. If the Minister is honest, it would not be possible for him to declare everything to be ammunition. But I comprehend that it may well be possible for him to declare everything to be firearms. Therefore, for the same reasons that we opposed the Minister being entrusted with the power of declaring anything ammunition, we are fortified in our opposition to allowing the Minister to declare any possible thing a firearm. Any circular object can well be declared.

**The Chairman:** You are repeating your arguments.

**Mr. Luck:** With due respect, I do not believe you are following me. I am saying that it is possible to make a much wider list of what would be considered as firearms than what would be considered as ammunition. Therefore, if it is said that we are arguing against the ability of the Minister to decide what is a firearm [*Interruption.*] This is frightening. This is not a joke. We have seen the experts of the hon. Minister at work. Nearly everything can be converted or can be described as firearms. Let us understand that. One ought not to pass laws that are really too wide in their applications. This is the danger of this thing.

**Mr. Chase:** In moving the Amendment which is now before the House, the Minister referred to the fact that people may have tins or other containers which can come within the definition of ammunition because they can contain explosive materials. The reason advanced is not a sound one, but in any event, I do not propose to pursue that aspect of things. I propose now to examine the way in which he suggested that the fears in this House should be allayed. Unfortunately, in explaining his Amendment, he either fell into error or did not know the effect of his explanation. He said that any Order which is made by him will come before the Assembly within 14 days and will be approved or annulled by the Assembly. This is not what subclause 15 (2) would do. The Minister would be required to lay the particular Order which he makes in this Assembly and then, if a Resolution is moved annulling that particular Order, either in whole or in part, it shall thereby be annulled to the extent set forth in the Resolution.

*11 p.m.*

This Amendment, as presented, is one in respect of which we are

not satisfied, and I should like to refer the Minister to the type of amendment which would meet the Opposition in this connection. Let me refer, first of all, to the Customs Ordinance, Chapter 309. I quote section 9, and I hope the Minister will see the difference between this and what he has proposed:

> "Every order made under section 8 shall after four days and within twenty-one days from the date of its first publication be submitted to the Legislative Council, and the Legislative Council may by resolution confirm, amend or revoke such order and upon publication of the resolution of the Legislative Council in the Gazette the resolution shall have effect and the order shall then expire. If the order be not submitted within the said period of twenty-one days to the Legislative Council for confirmation it shall *ipso facto* expire."

The essential difference between these two types of ways of treating Orders is that, in the case which I have just read, it is necessary for an affirmative Resolution of the Assembly to be passed before the Order can have effect, subject of course to the validity of anything which may in the interim have been done under the particular Order; whereas in the case of this Amendment to Clause 15 it will be necessary for a Member to table a Resolution before the particular Order can be debated in this House. Under the section which I have just read, debate is imperative; under the one which the Minister is moving, the debate is entirely an optional matter.

The reason why we say that the clause, as amended by the Minister, does not go far to cover this is that our experience in this Assembly has been a very sad one in this connection. Under the Labour Ordinance, for example, certain Orders and Regulations that are made have to be tabled in this Assembly after publication in the *Gazette* and, as in this Amendment, if the National Assembly within a period of thirty days, beginning with the day on which the said order is made, resolves that such an Order be annulled, then it is annulled. The Minister of Labour has tabled Orders made under the Labour Ordinance, and we on this side of the House have sought by Motions to have these Orders varied. Our Motions ought to have been debated within this Assembly within the thirty days provided for under the Labour Ordinance. Unhappily those thirty days passed and no debate took place on those Orders, because our Motions were not put on the Order Paper within the stipulated period. Therefore, the Orders remained in force without any discussion taking place.

It is not only in respect of Orders laid by the Minister

[MR. CHASE]

of Labour that this has happened. It has happened in respect of other Orders it has occured in respect of Orders laid by the Minister of Agriculture.

To pass an Amendment like this, in effect, means this: it gives an outward pretence to the statement that the Legislature would have some control over Orders which the Minister will make. In effect, if matters are conducted in the way in which those Orders laid by the Minister of Labour, for example, are conducted, then there is no control by this Assembly. There will be no control whatever, because the Minister will lay his Order and if we feel that it is in any way offensive to the definition of what is "ammunition", we on this side of the House will give notice of a Motion to have the particular Order annulled or varied. Our Motion will be put on the Notice Paper in due course, but the thirty days will pass and the Motion will not be put on the Order Paper. Therefore, this Assembly will have absolutely no control over it.

In other words, this sort of Amendment put forward by the Minister is only a smoke screen to allow the Minister to carry on just as he would wish and to make Orders which the Government need not put forward for debate in this Assembly and which would have the force of law anyhow. There is a particular reason why, in the case of the Customs Ordinance, and in one or two other Ordinances relating to matters with which the Minister of Finance deals, Orders are subject to an affirmative Motion of this Assembly before they continue to have validity. The reason is that it is recognised that there ought not to be taxation without representation and, therefore, in the case of Orders under the Customs Ordinance, and under certain other Ordinances which seek to increase the charges which persons are required to pay, before a higher tax is imposed on citizens of this country, the Orders must not only be laid, but the Minister himself must move a Motion in this Assembly for the Orders to have a further effect and validity.

In this case we are dealing with another important branch of the law. This is not a Labour Ordinance where the provision is there in case people may wish to have certain matters ventilated. This is a matter which touches upon criminal law in the sense that the Minister will be making an extended definition of "ammunition" or firearms. This will have the effect of imposing certain criminal responsibility on the citizens of this country. If criminal responsibility is to be imposed, if people are to be subject to criminal offences by virtue of the Orders which the Minister will make, and if they will thereby be liable not to a fine of $25 or $50, but will be liable to the serious penalties which Part III of this Bill includes, namely,

whipping or flogging or imprisonment for three years; if a person is to be subject to such serious penalties, it is only reasonable that the Order itself should be subject to an affirmative Resolution of this Assembly.

That is why I say that the Amendment, as put forward by the Minister, in all the circumstances, is not a fair and reasonable one. I wish to say further that if the Minister intended, when he requested his advisers to draw up an amendment to this Clause, that his Orders should come before this Assembly within fourteen days and be subject to debate in this Assembly before they are given effect, that is, subject either to approval or annulment, then I am sure that his legal advisers will now advise him that Clause 15 (2) does not give effect to what he really has in mind and that what is necessary is something along the lines of section 9 of the Customs Ordinance, where the Minister would have to come before this Assembly, by way of Motion by the Minister himself, after he has laid an Order in the Assembly.

*11.10 p.m.*

If this was really his intention, and if he still holds to that intention, then I would seriously ask him to say so and we can easily reach agreement by substituting another clause for his clause 15 (2). The Minister is not looking this way, so I cannot get from him an indication whether this is what he really intended to do.

If he does this, then I must say that the Orders will relate not only to the Bill before us but they will also touch on the Firearms Ordinance, Chapter 345. In respect of those Orders, all he will be required to do is to lay them before the National Assembly within fourteen days after they are made and, after he has done so, the necessary consequences as reside in this Amendment will then take place. It is, I say, because of the principle which is involved - and there is a reason for this principle - in matters touching finances, that certain particular arrangements are made. In matters now touching the criminal provisions of the law, similar provisions ought to be made because people are going to be condemned for certain offences, and it is only reasonable that it should be known in advance what things are weapons, whether we refer to the things which Mr. Ram Karran was referring to as weapons or otherwise. And, it is reasonable that these things should be subject to debate in this House.

The position is this: Section 15, as it stands, is now amended to read Section 15 (1). This House has the authority, in the course of this debate, to move Amendments to either (a), (b), (c), (d), (e) or (f). We can delete words, we can add words, we can vary what is put here. But when we give the Minister power to make Orders, which Orders will indeed be published in the *Official Gazette* and laid here, we will thereby be depriving ourselves of the right to

[MR. CHASE]

make Amendments in the normal way. We would not have the authority to change one iota of what the Minister will put into his Orders because, as I have said, in the new subsection (2) which the Minister has put forward, the control in this House over these Orders is more illusory than real. There is no real control in this. All that the Government needs to do is bypass whatever Motion is put by this side of the House. This is not good enough for an important principle such as this. It must be treated in the same way as the financial provisions are treated in the Customs Ordinance and in similar Ordinances.

For these reasons, I would urge the Minister to reconsider this particular Section. I must remind him that if he really meant what he said, that we should have the opportunity of discussing and approving of what he puts up, then this Clause 15 (2), as now put up by him, does not let us and, therefore, he should put up a provision similar to the one I have just read out in the Customs Ordinance. That is all I wish to say with regard to this particular Amendment.

**The Parliamentary Secretary to the Prime Minister's Office** (Mr. deGroot): I beg to move that the Question be now put.

**The Chairman:** I think we have exhausted this.

**Mr. Wilson:** I hope the Government will accept the suggestion or the proposal put forward by the hon. Member Mr. Chase. If it does not, I want to draw attention to something that is very obnoxious.

**The Chairman:** Do you mean that all you want to say is that you hope the Government will accept the suggestion made by the hon. Member Mr. Chase?

**Mr. Wilson:** If the Government does not accept —

**The Chairman:** You have made your point.

**Mr. Wilson:** I said that if the Government does not accept it, I have something else to say.

The Amendment states:

> " (2) Every order of the Minister whereby anything is declared to be ammunition or a firearm for the purposes of subsection (1) of this section and section 2 of the Firearms Ordinance shall be laid before the National Assembly within fourteen days after it is made, and if the National Assembly, within the period of thirty days beginning with the day on which it is laid as aforesaid, resolves that it shall be annulled, wholly or in part, it shall thereby be annulled to the extent set forth in the resolution and the order or part thereof so annulled shall become void and of no effect, but without prejudice to the validity of anything previously done thereunder . . .

- there is nothing offensive about this -

" . . . or the making of another such order."

I say that this is very obnoxious. If this House resolves that the Minister's Order is to be annulled, the Minister can make another Order against a person to the effect that this Order is in order. I am saying that this should be deleted.

*Amendment put, and agreed to.*

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

*Clause 16.*

**Mr. Jagan:** This Amendment is for the deletion of the words and comma " , without warrant" in the second line of subsection (1). This Clause, as printed, gives a police officer, not below the rank of inspector, very wide powers. If I may be permitted, I should like to read Clause 16 (1) (a):

"16. (1) A policeman not below the rank of inspector, accompanied by such persons as he thinks fit, may, without warrant -

(a) enter, examine and search any premises or place for the purpose of ascertaining pursuant to the reasonable requirements of public safety or order whether -

(i) there are in such premises or place any firearms, ammunition or explosives;

(ii) any place or premises in which any firearm, ammunition or explosive is kept or stored is or are adequate to ensure its safe custody and whether the conditions under which it is kept or stored are adequate for that purpose;"

I will stop there for the time being. This means that a policeman, not below the rank of inspector, could enter into anyone's premises, at any hour of the day, to carry out these searches which, according to the policeman, would be for the purpose of ascertaining whether there are any firearms, ammunition or explosives in such premises.

*11.20 p.m.*

At present, although the law is that searches should be made with warrants, many of us are aware that great abuses are carried out. For instance, before an officer could search a person's premises, he has to have a warrant sworn to before a Justice of the Peace or a Magistrate in the district where the search is to be carried out. Normally, the information or the complaint has to be given to the person before whom the warrant is being sworn, and that person has a duty to consider whether in his

[MR. JAGAN]

opinion from the information that is being given to him, there is a likelihood that an offence has been committed, or there is a likelihood that some offence would be committed in the near future.

The person before whom the warrant is sworn may also take other matters into consideration. For instance, the hon. Minister of Labour reminded me that the Prime Minister, some time ago when he was Leader of the main Opposition party said that warrants were being signed by persons before any information was given to the Justices of the Peace. I would agree that if that was the case, there was great abuse. But this Clause as proposed has even gone beyond that. There is no requirement any more for a Justice of the Peace or a Magistrate to inquire whether the complaint has any merit. [**The Prime Minister:** "Not complaint, information."] Yes, information.

At present, the requirement is that there should be a warrant. The obtaining of this warrant may prevent great abuse. For instance, a person may go before a Justice of the Peace stating that he wishes to search someone's home because there is ammunition - let us deal with ammunition. He may carry out the search and find nothing. That may happen two or three times. If after those searches that person again goes before the Justice of the Peace, he may view the information with great suspicion, and he has a discretion which he can exercise by refusing to sign the warrant.

Under this Clause as printed, there is no need to go before someone and put forward the information upon which he should exercise his discretion. Having taken away the discretion, a policeman has the right to enter and examine anyone's premises at any hour of the day. This again could lead to great abuse.

Clause 16 (1) states:

> "A policeman not below the rank of inspector, "

But Clause 16 (2) states:

> "Any power exercisable by a policeman not below the rank of inspector in respect of any place or premises under subsection (1) of this section may be exercised by a policeman below that rank if he is in charge of the police station nearest to such place or premises."

Therefore, it means that if a policeman - regardless of his rank - is in charge of a police station in the district where certain premises are to be searched, that policeman is entitled to carry out those searches.

Let us consider the abuse that might take place in respect of country districts. A policeman may carry out a search and find nothing, but because of some ill will or because he cannot get on with the person, he could go there four, five or six times,

and search this person's home. I feel that the Clause, as printed, would give the policeman too wide powers, and I am sure that these wide powers are not necessary.

It is not difficult for policemen to obtain warrants to search premises. I have never heard a policeman complaining that he found it difficult to find a Magistrate or a Justice of the Peace in order to obtain a warrant to search someone's premises.

*11.30 p.m.*

If it is not difficult to obtain such warrants what is the need to give policemen this wide power? We note that at present, where policemen are required to search premises under a warrant, the warrant may be issued for the purpose of searching for ammunition but once the policeman enters a house he carries out a general search. He can take away anything he wishes, once there is evidence of some other offence, and the owner of the house may be charged for that other offence. I am not saying that anything is wrong with that. What I say is that if the police can enter without a warrant, if they enter and find nothing, then surely, as I have stated, a magistrate who exercises judicial discretion may refuse such a person subsequent warrants unless there is some substantial or reasonable ground to suggest that an offence has been, or is likely to be, committed.

I would wish for an explanation from my hon. and learned Friend on the other side as to why the Government needs such wide power to be given to the police when warrants can be so easily obtained.

**Mr. Persaud:** I have had a look at this Clause, and I see it as a very dangerous Clause. The subclause (1) reads -

> "A policeman not below the rank of inspector ..."

I am worried about this part of it -

> "...accompanied by such persons as he thinks fit, may, without warrant ..."

An inspector may collect a group of people and take them to somebody's home to carry out a search. Is it that Government cannot afford to have enough policemen to carry out searches? I should like the Government to tell us why an inspector and, in certain cases, someone below that rank, an ordinary constable, can collect a group of persons from the roads and take them into the homes of citizens to carry out searches.

In law, even if a person is guilty of contempt of court, it is necessary for the magistrate to sign a warrant before such person is taken to a cell. There is a famous case where the the Court of Appeal held that a warrant had to be signed by a Magistrate. The Prime Minister is supporting my argument, I see.

I hope that the Amendment moved by the hon. Member, Mr. Jagan, will be accepted. I am told that already it is not pos-

[MR. PERSAUD]

sible to obtain caps for toy guns. It may, perhaps, be the intention of this Government to declare that the caps for toy guns are "ammunition". It will mean that when children are playing with toy guns during the festive season, the police can enter premises on the ground that ammunition is on the premises and the policemen may be accompanied by terrorists.

This is a serious Clause, and I hope that the Government will give serious consideration to the Amendment. Mr. Jagan made the point that it is easy to obtain warrants. In addition to magistrates there are a number of Justices of the Peace who, I am sure, will sign warrants when policemen require them. I should like to hear an explanation from the Attorney-General as to why any person may enter the home of a citizen together with a policeman.

**Mr. Luck:** This is very difficult. While this Bill is misnamed the National Security Bill decent householders live in no security at all. One wonders what householders will do when faced with invasion of their homes by persons whose identity they do not know.

I see in this passage the ability of policemen, from the rank of inspector down, to enter into people's homes. It is a grave danger in that people might be sleeping peacefully when men may run into their homes claiming that they are policemen. It may well be that they are not. Let me say that my home is well defended. Like a prudent householder one has to defend one's house in this country.

Let us understand the difficulties in this matter. I have been present when searches have been carried out in homes. I was in the home of our First Secretary to the United Nations, Mr. Martin Carter, when a search of this nature was conducted. Four crude-looking men rushed through the door at six o'clock in the morning. One officer never took off his hat at all during the search. Decent people were "tumbled up". I knew that the men were policemen, so that was all right. But what happens when people impersonate policemen? [**The Prime Minister:** "We will lock them up."]

*11.40 p.m.*

The hon. Prime Minister says that, in such cases, he will lock them up. Will he tell us whether householders bother to contact the Police when their homes are burgled? For myself, I wish to say that when I had a burglary, I informed the Police and an officer said: "You go to work, we will come later." The officer came at eight o'clock in the night to investigate this burglary, and I chased him out of my house. We are creating a Police State under this legislation and I want to believe that, because other people may well take advantage of this proposition, householders would stand in grave jeopardy if men are allowed to enter their homes without reading a warrant before entry.

This Government cannot be unaware of the reign of terror which sweeps the City each night, as darkness falls. Each night, householders are seriously worried whether, that night, their homes will be invaded. If the Minister of Home Affairs does not know of this, let him take a census of the burglaries being committed in Prashad Nagar and in Upper Campbellville where I live. [**The Prime Minister:** "Do you live there now?"] I have always paid my rent punctually, and if, perchance, I was unable to pay my rent, I would not bear malice against my landlord if he had to wait long for his rent.

This right of people to have their homes held sacred is an ancient right. When we examine the history of warrants, we find, as Mr. Burnham said some time ago, according to the hon. Member Mr. Jagan, that they used to sign blank warrants and it was held in England that this was a wrong procedure. You cannot sign blank warrants. In England, it was established that, before the home of any citizen can be searched, a warrant signed by a Justice of the Peace, or a magistrate, or any other proper official, must be presented at the door. One wonders why this Government is so adamant in passing this particular Clause. One must remember that not only are magistrates and Justices of the Peace entitled to sign warrants, but Superintendents of Police can also sign warrants. What is envisaged here is that everybody can go into your house at any time.

I want to say this: The "choke and rob" boys do not worry me, but they worry my immediate neighbours to a considerable extent. They are always tumbling down the steps, running after some thief or the other. I suppose that one of the reasons why the boys do not trouble me, as I said, is that entry is not easily obtained in my home. But what am I to do, and what are people in my position to do when four men push their way through?

This Clause is replete with difficulties and I am making a plea for the decent citizens in this country who cannot rest, whose property is in danger of being stolen every day. I have had to put all kinds of mesh around my house. I designed my window beautifully so that I could look through it and a thief came through it. He got nothing but I had to put expanding mesh on the window, so I am like a chicken in a coop. If the Minister doubts this, he can investigate. All the windows are barred. This is not a political matter. This is a social phenomenon.

I warn this Government that it may frighten decent people and chase them out of this country. You may impose such conditions that those people will run. But this is not building a country. This is a new nation and the fear I now express is a real fear, it is not an imaginary fear. These people run into your home accompanied by a lot of other people.

It is well known that these police officers, rightly sometimes, dress in all sorts of clothes, and so the householders

[MR. LUCK]

cannot tell at a glance who are the men that run into their homes. Our plea is that they must stop at the door. We do not say that there must not be searches, but the searches must be conducted with a warrant, and the warrant should be read and produced for examination. One should see some amount of blue paper. This is what we are asking.

**Dr. Ramjohn:** I rise to support this Amendment. This is an extremely important matter. A man's home is supposed to be his castle. His privacy should be respected. This particular Clause deprives a man of the privacy of his own home.

Taking into account the fact that any policeman not below the rank of inspector can enter a citizen's home and search it any hour of the day or night, and also taking into account the type of Police Force that we have, it is obvious that the average citizen will be open to very great abuse.

*11.50 p.m.*

Now, it is quite possible that matters could be manipulated in such a manner that at any given time the officer in charge of a police station is not an inspector, but an ordinary policeman. I have in mind the theory that there are good members in the Police Force, people who are conscientious. There are also policemen who are tools of the Coalition Government, and are willing to obey it.

Two days ago I had the misfortune to attend to a young man - 17 years of age - from Plaisance, who was most brutally assaulted, kicked and so on, within the precincts of the Plaisance Police Station. The Government would deny that these things have happened. I am relating this so that the hon. Minister of Home Affairs may know and investigate this matter. It was not only that young man, but his friend who was also brutally assaulted on his steps at his home. Even though this Bill is not yet law, citizens are open to very bad treatment. If this Bill becomes law, there will be no limit to the savagery and brutality. I support this Amendment

**Mr. Wilson:** I think I should place on record a hypothetical case as to what might happen. Someone - maybe a policeman - may bring around some terrorists and say that they are looking for ammunition. But they may find P.P.P., P.Y.O or W.P.O.cards and say, "Oh, you are a P.P.P." Some of these people come in and whatever they have in their pockets they just take out and arrest the people for having ammunition or arms. This can be used to terrorise persons who support the party that is not in the Coalition Government.

**The Chairman:** The Question is that the Amendment standing in the same of the hon. Member stand part of the Bill.

**Mr. Jagan:** Surely, I should be allowed to reply.

**The Chairman:** You do not have the right to reply in Committee.

**Mr. Jagan:** The Leader of the House said that -- [**The Prime Minister:** "All right, talk on to midnight."] Apart from that, we do not want to go through the same question that we have dealt with already. Before the Question can be put, if anybody on this side of the House wishes to speak --

**The Chairman:** Has anybody risen to speak?

**Mr. Jagan:** I rose on a point of order, after you had decided to put the Question.

**The Minister of Communications** (Mr. Correia): I move that the Question be now put.

**Mr. Jagan:** This is a question of principle, sir.

**Mr. Chase:** I did not intend to speak on this matter but, because of the lightness with which the Government is treating it, I am constrained to say a few words.

The Guyana Bar Council made representations to the Government in respect of this Bill. It objected to this particular feature of the Bill - the power of police officers to search premises without warrants. It objected because this is a terrific incursion on the protection of persons' premises from arbitrary search or entry; it seemed to that Council that this was certainly an attempt to introduce arbitrary search in our country. Normally, before a policeman can enter the premises to execute a search, he is required to have a warrant. There is good and sound reason why a warrant is necessary. I do not propose to lecture the Members on the other side of the House as to the reasons, because I am sure that they are all aware and fully appreciate why a warrant is necessary.

I wish to draw the attention of Members of this House to something that happened only a short while ago. A man, posing as a policeman entered a person's premises and actually stole goods from that person's house. If we permit this section to pass as it is, it will operate as a licence to those persons with evil intentions. They will be able to enter the homes of decent citizens, and all citizens generally, in order to carry out their nefarious designs. Indeed, they need not show any authority. All they have to do is to go in and say, "I am a policeman and, with a view to making sure that there is public safety and public order, I think it is necessary and reasonable that I should search your premises." The poor occupant of the house cannot really resist or oppose this because we would not have any law which requires a policeman to show any certificate of identity.

I think the time is fast approaching, having regard to what is taking place in this country, for policemen to be armed with the necessary identity papers so that when they visit persons' homes, they can at least show a document which will identify them. The poor citizen does not know who is a policeman and who is not, because policemen

[MR. CHASE]

very often go around in plain clothes. They look like any other citizen when they are attired in plain clothes.

*Assembly resumed.*

## ADJOURNMENT

**Resolved,** "That this Assembly do now adjourn to Wednesday, 7th December, 1966, at 2 p.m." [Mr. Bissember.]

*Adjourned accordingly at 12 midnight.*