

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

30TH NOVEMBER, 1995

(adj to 18th December, 1995)

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Tenth Meeting of the First Session of the Seventh House of Assembly held in the House of Assembly Chamber on Thursday the 30th November 1995 at 10.30 am.

PRESENT:

Mr Speaker..... (In the Chair)
(The Hon Col R J Peliza OBE, ED)

GOVERNMENT:

The Hon J Bossano - Chief Minister
The Hon J E Pilcher - Minister for the Environment and Tourism
The Hon J L Baldachino - Minister for Employment and Training
The Hon M A Feetham - Minister for Trade and Industry
The Hon J C Perez - Minister for Government Services
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport
The Hon R Mor - Minister for Social Services
The Hon Miss K M Dawson - Attorney-General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition
The Hon Lt-Col E M Britto OBE, ED
The Hon F Vasquez
The Hon H Corby
The Hon M Ramagge

The Hon P Cumming

ABSENT:

The Hon J L Moss - Minister for Education, Culture and Youth Affairs
The Hon L H Francis

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 24th April, 1995, having been circulated to all hon. Members were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Chief Minister laid on the table the report and audited accounts of the Gibraltar Development Corporation for the year ended 31 March 1994.

Ordered to lie.

The Hon the Minister for the Environment and Tourism laid on the table the report and accounts of the Gibraltar Heritage Trust for the years ended 31 March 1994 and 31 March 1995.

Ordered to lie.

The Hon the Minister for Medical Services and Sport laid on the table the report and audited accounts of the Gibraltar Health Authority for the year ended 31 March 1994.

Ordered to lie.

The Hon the Minister for Social Services laid on the table the accounts of the John Mackintosh Homes for the years ended 1989, 1990, 1991 and 1992.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the table the following documents:

1. Accounts of the Government of Gibraltar for the year ended 31 March 1994 together with the report of the Principal Auditor thereon.
2. Audited accounts of Gibraltar Community Care Trust for the years ended 30 June 1992 and 30 June 1993.
3. Report and audited accounts of the Gibraltar Broadcasting Corporation for the year ended 31 March 1994.
4. Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 13 to 15 of 1994/95).
5. Statements of Improvement and Development Fund Reallocations approved by the Financial and Development Secretary (Nos. 1 and 2 of 1994/95).
6. Statements of Consolidated Fund Reallocations approved by the Financial and Development Secretary (Nos. 1 to 3 of 1995/96).

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.10 pm.

The House resumed at 2.55 pm

Answers to questions continued.

The House recessed at 5.00 pm.

The House resumed at 5.20 pm.

Answers to questions continued.

MOTION

HON CHIEF MINISTER:

Mr Speaker, I beg to move the motion of which I have given notice which reads as follows -

"That the Honorary Freedom of the City of Gibraltar be conferred upon Her Majesty's Royal Marines in recognition of their long-standing relationship with Gibraltar dating from 1704 and the part played by them in the defence of the Rock since that date".

Mr Speaker, I know that the motion and the granting of the Freedom of the City to the Royal Marines will be something that will particularly be welcomed by all those Gibraltarians who have had links with the military and with the Gibraltar Regiment. The Royal Marines have always been an impressive sight in our city and I think it is an opportune moment now that we have, for the first time in our history, a Royal Marine as the Commander of the British Forces in Gibraltar. Let me say that the record of the arrival of the Royal Marines in Gibraltar in the afternoon of the 21st July 1704 was that in the campaign that was then being waged in the war of Spanish succession, the attempt was made by the ship carrying the Royal Marines to take Barcelona which was not successful and therefore they moved on to Gibraltar. In fact, had that not happened on the 21st July 1704, I suppose we might now have been talking Catalan and they might be talking English in Barcelona. Fortunately for us, Barcelona was not

taken, it was too well protected and a total of 1,800 between British and Dutch marines, arrived here and were involved in the attack and conquest of Gibraltar which.....

[Interruption from the Public Gallery]

MR SPEAKER:

Order. Order. You must leave the House immediately. Order. Order.

HON CHIEF MINISTER:

I think the gentleman is not entirely in control of his grey cells and therefore we must forgive him his outburst, Mr Speaker. I realise you must keep order in the House but I do not think the gentleman is entirely healthy in the upper portion of his anatomy.

In 1704, on the evening of Sunday 24th July, the Governor of Spanish Gibraltar capitulated and Gibraltar became, at that stage, a city which was technically, as is well-known, being captured in the name of the pretender to the Spanish throne, Charles III. In fact, happily for us, the British immediately realised the important strategic value to the British Empire and it remained as a valuable asset for the military which the marines played an enormous part in defending and protecting immediately after when attempts were made to reconquer. The attacks were repelled against enormous odds and that led to the identity in the military history of the Royal Marines with the capture and the defence of Gibraltar notwithstanding that they have, of course, a military history of valour and effectiveness in many, many parts of the world to the extent that Gibraltar was selected in 1827 to be the one battle honour that would be reflected in the Royal Marine Crest. On the 26th September 1827 when new colours were presented, on the part of His Majesty

King George IV, Gibraltar appeared for the first time above the Crown and a globe and the importance of Gibraltar to the British Empire in 1827 made it a matter of national necessity that it should be given such a prominent place and that the connection with the Royal Marines should be reflected in this way. Let me say that the decision to bring the motion, which is something that the Government have been asked to do over a period of years, has produced a response from somebody who says, "The Royal Marines were reported to have removed the word 'Gibraltar' from their cap badge in the 100th Royal Tournament in order not to upset the Spaniards". Such report did appear in the Peterborough Column, I think it is in The Telegraph, and subsequently the Chronicle carried a report from Mr Brufal in London saying that the original story was wrong and that it was not true that this action had been taken to avoid embarrassing the contingent of Spanish marines that took part in the tournament. At the same time the report commented that the Gibraltar authorities did not escape criticism because the Gibraltar municipality - which, of course, ceased to exist in 1969 - had not granted the Royal Marines the Freedom of the City of Gibraltar notwithstanding the fact that they had been granted the Freedom of Deal in 1945, Chatham in 1949, Plymouth in 1955, Portsmouth in 1959, Stanley, Falklands in 1977, Medway in 1979. So clearly they have got the freedom of many, many cities with which they have had a connection and the truth of the matter is that the connection is nowhere as greater as it is with us because at the end of the day one cannot say, "If it had been somebody else in 1704 that took this place or if it had been somebody else that having taken it had to defend it, we would be here today to tell the story". There is no guarantee that somebody else would not have done as good a job but nevertheless the Royal Marines are particularly good at the job they do. I think the people of Gibraltar have always felt very proud and very happy to see them here as they were recently when the band was here and therefore it seemed to the Government that we should take the opportunity, following the visit of the band recently, given the fact that we have as the Commander of British Forces, as I said, for the first time ever in

our history a Royal Marine, that we should move this motion in the House and have him here in Gibraltar to receive the honour on the part of the Gibraltarians and on behalf of the Royal Marines. I commend the motion to the House.

Question proposed.

HON P R CARUANA:

Mr Speaker, I have and my hon Colleagues, in the Opposition, no difficulty in supporting the motion although I cannot help thinking that it is something of a road to Damascus conversion by the Chief Minister. Worthy as the Royal Marines unquestionably are, given their long military and historical association with Gibraltar, worthy as they undoubtedly are for that reason to receive the honorary Freedom of our fair City which we bestow on them from this side of the House with great pleasure, certainly to my knowledge the Royal Marines have not deployed militarily in defence of Gibraltar since 1992. Therefore I can only assume that the Government Members' decision to bring this motion to the House in the run up to this election, is principally driven by what the Chief Minister has himself admitted to, in fairness to him, the hope and indeed expectation that this will be particularly welcome by those Gibraltarians with military connections and the Gibraltar Regiment. Well, I think it is transparently so, indeed, the Chief Minister's regard for matters military is not legion and is certainly not favourable in any well documented sense, indeed, I remember when as Leader of the Opposition..... *[Interruption]* Does the Minister want me to give way? I am quite happy to do so. *[Interruption]* I see, but not in such a loud voice. I recall an occasion when he was Leader of the Opposition when he used to disapprove even of attending at Poppy Day celebrations claiming that he had much better things to do in his job as Branch Officer of the Transport and General Workers Union. So certainly a real road to Damascus conversion. But no less well deserved by the body of the Royal Marines for that. Mr Speaker, if the Chief Minister wants to ingratiate himself to the Commander British Forces who happens to be an eminent Royal

Marine, I would have thought that he could have picked another way of doing so. If he had felt genuine gratitude, not that I think that his gratitude was not genuinely felt to the extent that we can all now so many hundreds of years later feel gratitude, but if the Government Members feel genuine gratitude for what the Royal Marines unquestionably did for Gibraltar over the last three centuries, it seems extraordinary that they should have waited for their eighth year of office to move this motion. Therefore, Mr Speaker, I for my part, have little doubt that this is yet another item in the list of the Chief Minister's pre-electoral gimmicks in order to convey to the electorate of Gibraltar, who are not going to be this easily confused, that somehow the Government Members have rediscovered their desire to profess great friendship with and affinity to Britain and all the things British. Mr Speaker, I have no hesitation, speaking for myself - I do not know if any of my hon Colleagues wish to speak but if they do not - and for them that we will, of course, be supporting the motion.

HON P CUMMING:

Mr Speaker, when I saw this motion I found it hard to believe because it is so innocent, so gracious in tone, so pro-establishment. The Chief Minister seeks to bestow honours on an organ of the British establishment. And I asked myself, "Is this the same man? The same man who rushed to London breathing fire in order to reprimand his Foreign Secretary? The man who refused meetings with the Governor? The man who was going to lance the boil. The man who nearly brought direct rule crushing down on our heads?" And I ask myself, Mr Speaker, would the Royal Marines have hesitated for a moment to enforce direct rule in Gibraltar had they been asked to do so? There are Gibraltarians who merit the honour of the Freedom of the City for having led the struggle to take the Government of Gibraltar from the hands of the likes of the Royal Marines and put it in our own hands. Gibraltarians who led the struggle to advance civil rights against the overwhelming power of the very military that the Government now seek to honour. This motion smells to me of

hypocrisy. The self-government obtained for us by our political forefathers has been put at serious risk by the confrontational anti-British attitude of this Government. Between the Chief Minister and the Royal Marines, the Freedom of the City was nearly taken off us as free citizens of Gibraltar during this summer. We nearly reverted to colonial militarily imposed government during the course of this summer because of the very confrontational style of this Government. These serious underlying major problems of relations between the GSLP Government and Britain cannot be smoothed away by motions like this. This motion is a cynical attempt to please the simple good people of Gibraltar who hold the British Forces in high esteem and to coax them before the elections to overlook the damage that the GSLP has done to relations between Britain and Gibraltar. Thank you, Mr Speaker.

MR SPEAKER:

If no other hon Member wishes to speak I will ask the mover to reply.

HON CHIEF MINISTER:

I am very grateful, Mr Speaker, for the speeches that have been made in the House because, of course, they are heard by our citizens who are listening who will no doubt realise what a farce this institution has become since the arrival of the Opposition Members who irrespective of the subject matter convert the opportunity into a censure motion against the Government, irrespective of whether we were granting the Freedom of the City or canonising somebody. If we do something the position is, why did we not do it before? And if we do not do it, then the answer is, we should do it. It is quite obvious to every citizen in this place that whatever the issue the response is the same. It is like pressing a button and one can predict the nature of the speech that we will get back give or take or another nuance. Obviously

the last speaker whose contribution, as far as I am concerned, is totally irrelevant because he has got no right to be present in this House, was only slightly better than the one that we had from the audience that had to be dragged out by the police in the middle of my speech. I think we can bracket both those contributions to the debate on the Freedom of the City in the same context. Therefore all I can say is that I regret the fact that Opposition Members feel that they have to go back to 1976, which certainly I imagine the Leader of the Opposition cannot remember, I do not know whether he was in Gibraltar or somewhere else, but he was probably in short pants in 1976 which is the incident that he referred to when I was the Leader of the Opposition, in 1976, he needs to go back to that and say..... *[Interruption]* Of course he does not know why. He does not know we were in the middle of a lockout and the line that we took was to say, "How can we consistently go along and defend the freedom of people by commemorating that a lot of people died to have basic trade union rights when all the employees of the MOD had been sent home and had been out for six months locked out?" *[Interruption]* Yes, sent home for six months without pay, Mr Speaker, which is something that of course they might have liked to be able to throw at us but they cannot because we have had many disputes and we have paid people 100 per cent to sit down and do nothing. Given the fact that they have neither a philosophy nor political integrity nor sense of direction they will simply go wherever they need to go and say whatever they need to say in the forlorn hope that they will get elected and be the Government of Gibraltar. God alone knows why they want to do that, other than presumably to have tripartite dialogue which is the only thing that seems to concern the Opposition Member. No doubt if I had included the Spanish Marines as well as the Royal Marines there would have been a more enthusiastic reaction. I commend the motion to the House.

Question put. Carried unanimously.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Monday 18th December 1995 at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 8.25 pm on Thursday 30th November 1995.

MONDAY THE 18TH DECEMBER 1995

The House resumed at 11.05 am.

PRESENT:

Mr Speaker..... (In the Chair)
(The Hon Col R J Peliza OBE, ED)

GOVERNMENT:

The Hon J Bossano - Chief Minister
The Hon J E Pilcher - Minister for the Environment and Tourism
The Hon J L Baldachino - Minister for Employment and Training
The Hon M A Feetham - Minister for Trade and Industry
The Hon J C Perez - Minister for Government Services
The Hon Miss M I Montegriffo - Minister for Medical Services and Sport
The Hon R Mor - Minister for Social Services
The Hon J L Moss - Minister for Education, Culture and Youth Affairs
The Hon Miss K M Dawson - Attorney-General
The Hon B Traynor - Financial and Development Secretary

OPPOSITION:

The Hon P R Caruana - Leader of the Opposition
The Hon Lt-Col E M Britto OBE, ED
The Hon F Vasquez
The Hon H Corby
The Hon M Ramagge

The Hon P Cumming

ABSENT:

The Hon L H Francis

IN ATTENDANCE:

D Figueras Esq, RD* - Clerk to the Assembly

DOCUMENTS LAID

The Hon the Minister for the Environment and Tourism moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of documents on the table.

Question put. Agreed to.

The Hon the Minister for the Environment and Tourism laid on the table the following documents:

- (1) The Hotel Occupancy Survey 1994.
- (2) The Air Traffic Survey 1994.
- (3) The Tourist Survey 1994.

Ordered to lie.

The Hon the Minister for Employment and Training laid on the table the Employment Survey Report, October 1993 and April 1994.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the table Amendments Nos. 1 and 2 to the Integrated Tariffs notified by the Sixth Supplement to the Gibraltar Gazette published on 17 August 1995 and 23 November 1995 respectively.

Ordered to lie.

MOTION

MR SPEAKER:

Before I put this motion perhaps there might be Members in the House who may have to raise a point of order. If that is the case please do it now because later on we cannot at all refer to the question of sub judice.

HON P R CARUANA:

Mr Speaker, we have taken the view that this motion raises an important point of order and our objection to it is not based only on the Standing Orders of the House. Our view is that this motion is a breach of Standing Order 45(4) which reads, "That references shall not be made to any matter on which a judicial decision is pending in such a way as it may prejudice the interests of parties thereto". Erskine May says in relation to the practice of the House of Commons on this matter as follows, and I quote from page 377, "Subject to the discretion of the Chair and to the right of the House to legislate on any matter or to discuss any matters of delegated legislation, matters awaiting adjudication of a court of law should not be brought forward in debate. Following the First Report of the Select Committee on Procedure (1962 to 1963) the House passed a resolution on the 23rd July 1963 which set out the rule in detail. The resolution bars references in debate (as well as in motions, including motions for leave to bring in bills and questions including supplementary questions) to matters awaiting or under adjudication in all courts exercising a criminal jurisdiction from the moment the law is set in motion by a charge being made to the time when verdict and sentence have been announced and again when formal motion of appeal is lodged until the appeal is decided and in courts martial from when the charge is made until the sentence of the court has been confirmed and promulgated" etc, etc. "The resolution of the 23rd July 1963 also applies to the

civil courts and in general bars references to matters awaiting or under adjudication in a civil court from the time that the case has been set down for trial or otherwise brought before the court, as for example, by notice of motion for injunction; such matters may be referred to before such date unless it appears to the Chair that there is a real and substantial danger of prejudice to the trial of the case. The ban again applies from when formal notice of appeal is lodged", etc, etc.

Mr Speaker, there is no doubt that there is a certain amount of discretion permitted to the Chair and what the standing order prevents is references to the issues. Here we have a case, not of references to the subject matter but a suggestion in the motion that the House should actually make the very decision that the court has to make. So in my opinion whereas we have a rule that prohibits references to the subject matter, this motion goes much further because it does not just refer to the subject matter of the case, it actually says what the House thinks the position is in law on the very issues that are before the court. Mr Speaker, it is my view and the view of my party in this House that this motion does not actually represent a sincere or genuine desire on the part of the Government Members that this House should debate a matter of public importance in general terms such as the pensions. Indeed, we have done so in numerous occasions and this House has, on numerous occasions, expressed its support for the resolute defence of the pensions case by the Government and they and indeed us in the Opposition have frequently expressed our view on that issue and indeed the standing order, in my submission, does not prevent the House from discussing generally, at a political level, the question of the pensions issue. But any honest, objective reading of the terms of this motion leads to the inescapable conclusion that this is not any desire for the House to properly debate a matter on which it has, in any case, recently expressed its view. This motion, in the terms on which it is drafted, mentions by name the firm of solicitors conducting the case referred to in every single paragraph except the first two; one, two, three, four, five, six. It is clearly, as far as we are concerned, an attempt on the part of the Government

Members to make political hay whilst they think the sun shines for them in the run-up to an election and frankly a crude attempt to make political capital for themselves on a matter which they think will be electorally popular and not a genuine desire to debate an issue which is of national importance for its own sake. Mr Speaker, as I have indicated to you, our objection to this motion goes beyond the question of the standing order. Our objections extend to what we consider to be much broader principles than the rules of this House and extend to questions of the separation of powers to the proper and separate roles in a democratic state between parliament and the courts. This motion asks the House to take note of the contents of an affidavit filed in court by a civil litigant. I, notwithstanding the fact that I was a member of the law firm that was dealing with the case and my hon Friend, Mr Vasquez, who is still a member of that firm, but speaking for myself, I have not read those affidavits and yet the Chief Minister expects this House to take note of the contents of documents before the court presumably on the basis of his private reading of them. It asks this House to declare on the very issue or one of the issues that the litigants in that court have raised in the House for decision of the Supreme Court of Gibraltar. I sincerely hope that the Government of Gibraltar persuade the Chief Justice that these arguments are wrong and that if they are able to persuade the Chief Justice that the Government are entitled to judgement in this case. I sincerely hope that that happens but my desire for that to happen does not require me to throw out of the window 300 years of democratic and legal-making tradition and convention about what is proper for this House to do and what is not proper for this House to do. This motion requests that the House should declare that the statement made by Triay and Triay referred to above is false. First of all, the statement is on the basis of a document that we have not read. Then he asks us to decide, on the basis of his assertion, that the statement is false. These are subsidiary objections. These are.....

MR SPEAKER:

I think we have got to keep to the point from the legal aspect.

HON P R CARUANA:

Mr Speaker, what the Chief Minister's motion seeks to do is to get this House, not just to make reference - it would be bad enough if we were just being called to make reference to the subject matter of the court case - it actually goes much further and requires this House to, in effect, give its judgement on legal grounds on the very issue that the Supreme Court of Gibraltar has before it for legal consideration. Well, the Government Members may believe that they have us against a rock or a hard place. They may think that they have been so clever.....

MR SPEAKER:

This is what we must not do. All I am interested is from the legal point of view, otherwise I shall have to ask you to resume your seat.

HON P R CARUANA:

Thank you, Mr Speaker, I will limit myself at this stage then to the question of legalities. Mr Speaker, this is my final point. These views that I have expressed are not just my own. The Bar Council of Gibraltar.... *[Interruption]* The Government Members, Mr Speaker, may giggle but when they issue a public statement saying.....

MR SPEAKER:

Order, this is a serious matter and there will be no interruptions.

HON P R CARUANA:

I am obliged, Mr Speaker. The Government Members say that the GSD have jumped to conclusions as always. Well, if we had jumped to conclusions which I do not believe that we have, Mr Speaker, we are not the only ones. The Bar Council has issued a public statement saying that the tabling of the motion constitutes a serious threat to the independence of the Supreme Court which has yet to decide upon the matters raised in the motion and is an attack on the proper administration of justice and ultimately to civil liberties in Gibraltar. This is not the Opposition speaking. This is not Mr Caruana speaking because he is embarrassed.....

MR SPEAKER:

I think you have made the point. It is the Bar. You need not emphasise that anymore. I take full recognition of what the Bar Council has said. Have you concluded?

HON P R CARUANA:

I have concluded on the point of order, Mr Speaker.

MR SPEAKER:

But remember the question of sub judice cannot be referred to when we are discussing the motion later. Does any other Member wish to add on the question of sub judice only, from the legal aspect only?

HON P CUMMING:

First of all I would like to associate myself with the remarks made by the Leader of the Opposition. It seems to me that in Part X of the rules of debate "Miscellaneous", rule 45(4) clearly prohibits....

MR SPEAKER:

This has already been mentioned. This is again repetition.

HON P CUMMING:

Mr Speaker, I feel that I have never had any complaint whatever about your own impartiality and your own.....

MR SPEAKER:

Yes, but do not come into that now. The point is that you are repeating what has been said and that is repetition.

HON P CUMMING:

I am sure Mr Speaker would not have allowed me to bring forward this motion and very rightly so.

MR SPEAKER:

Of course.....

HON P CUMMING:

And neither should you have allowed the Chief Minister to bring it forward.

MR SPEAKER:

This is not a motion, this is just a point of order on the question of sub judice. So you can speak on that but you cannot repeat what the other Member has already said. That is all I am saying, alright?

HON CHIEF MINISTER:

Mr Speaker, I have not yet moved the motion and I have not yet explained the reasons for it and everybody else has pronounced themselves on it which is a very peculiar thing for these great defenders of 300 years of democracy that they condemn something without having had an argument. I find it odd. Let me say that whether the Opposition Members are aware of it or not and whether the Bar Council has been put in full possession of the facts, it is of course a fact that one of the peculiarities of the constitution of the Bar Council is that the people who are QCs, by virtue of their title, automatically constitute members of the executive committee of the Council and that most of the QCs happen to be with Triay and Triay. That is an independent.....

HON P R CARUANA:

Mr Speaker, on a point of order. The Chief Minister is misleading the House because he knows jolly well that the Bar Council has said that all QCs and all lawyers in the Bar Council.....

MR SPEAKER:

Order, order.

HON P R CARUANA:

.....from Triay and Triay or from Hassan and Partners did not participate in this decision so for him now to come and attribute the decision to the fact that most of the QCs belong to Triay and Triay is first of all, factually inaccurate and, secondly, misleading of this House and of the public at large.

HON CHIEF MINISTER:

Mr Speaker, I have not given way and therefore the hon Member is not entitled to interrupt.....

MR SPEAKER:

He raised on a point of order. I allowed him on that.

HON CHIEF MINISTER:

It is not a point of order. He is saying that I am misleading the House because I have said of the constitution of the Bar Council, which is not the first time that it has been wound up to do something. In 1993 the Bar Council was wound up to do and complain to the Governor asking him to use his powers to overrule the elected Government in a decision on the Companies Registry and it was the first thing that I put before Sir John Chapple when he was in the House of Assembly being sworn in as Governor of Gibraltar. I have no doubt that it will not be the last time that the Bar Council as an institution is asked to intervene in an issue which is something that can be debated politically but which people tend to use whatever orders are available to them to promote their cause and good luck to them.

There are, Mr Speaker, two issues currently on which a ruling is pending and it seems to me that under the rule of debate the motion should be debate cognisant of the fact that these two issues are pending a ruling and aware that, as I have already stated publicly, it is not the purpose of the motion to tell the people who have to take the decision that are pending how they should decide.

One issue is the question of security for costs where the judgement has gone in favour of the Government and Messrs Triay and Triay are appealing against that. It will be the Court of Appeal that will decide that and I doubt very much if the Court of Appeal that is nowhere near us is going in March next year to have its decision on whether security for costs should be upheld or overruled and if it is overruled we will appeal against that decision when the time comes. But I doubt very much whether anybody can argue that the debate on this motion is going to influence the Court of Appeal but we will be careful not to say

anything that is likely to make it impossible for the judges from the United Kingdom to come to any conclusion other than the correct one in their judgement on a matter of law.

The other issue which is pending is the leave that Messrs Triay and Triay have sought - I am not sure on whose instructions. That is not clear because they say their sole client is this new gentleman who has substituted for the previous one - to move for my indictment on a criminal offence of contempt of court because of the Government press releases and therefore it is whether leave should be granted or not and we, that is to say the Government, have argued in this case that leave should not be granted and we have made clear that if leave is granted that decision will be appealed against. It is quite obvious that a number of important statements have been made which are not true in this case and which are not public and which should be public. It is quite clear that having sought to silence us and prevent us from making that information public by moving in the courts to put the case that if we publish information we are in contempt of court that now an attempt is being made to silence us in this House so that the people are not told what are the arguments being used and why those arguments are not true. I believe we have a right to bring that information out and I believe the hon Member who has consistently said publicly that he is a 100 per cent behind the Government, that if he were the Government he would go to even greater lengths than what we are going to defend the position, should not try and stop me from saying what I know and he does not know. All that it does is it gives him an opportunity to distance himself quite properly because he is on my side and not on the side of Messrs Triay and Triay. Distances himself quite properly and therefore strengthens the position of the Government in our argument by affirming the views of the Government being the views collectively of all the elected members. The fact that they are our views does not mean that the court has to agree with us. All that the motion does is it gives Opposition Members an opportunity to put their money where their mouth is and associate ourselves with the arguments we have already put but which people should

know about. People should know why we feel that certain statements have been made and why we feel that there are certain things that should be made public which just do not make sense in the context of the issue of whether the fund should have been dissolved or not have been dissolved which is the matter on which ultimately in some remote date in the future..... We do not know when because we have not go anywhere near the original court case. Nowhere near it and we have been two years at this. At some stage somebody will decide whether the decision to dissolve the Social Insurance Fund of Gibraltar as a result of an agreement entered into between the Government of Gibraltar and the Government of the United Kingdom in 1989 was constitutionally correct or not and that is not something that bothers me one way or the other and I am able to explain why without any problem. It will not take me 10 minutes to explain why that is not an issue. It is everything else that has happened which is not an issue which really is not justified by that original issue and that should be told and should be known.

HON F VASQUEZ:

I would like to reply to that. There are various other.....

MR SPEAKER:

This is not a debate. You have to address yourself to me on the actual legal side of sub judice. I will not allow any more rumbling now. We have had enough of that on both sides.

HON F VASQUEZ:

There are various points, certainly points of fact that the Chief Minister is saying.....

MR SPEAKER:

First of all are you still with Triay and Triay?

HON F VASQUEZ:

Yes, I am indeed.

MR SPEAKER:

You must declare an interest if you are going to speak on the motion or anything to do with it.

HON F VASQUEZ:

Mr Speaker, I declare the fact that I am a partner in the firm of Triay and Triay which is precisely why, Mr Speaker, this motion should not be before this House.

MR SPEAKER:

Alright you have declared your interest.

HON F VASQUEZ:

The Chief Minister has said in the course of that submission to you, Mr Speaker, that the Government are seeking to publicise various lies contained in the case brought by the applicants in the court proceedings of which this House can have no knowledge at all. The fact is that in relation to the contempt proceedings that have been brought, what is clear from the record and the reports that have been issued in the press, from the public record, is that the party moving for the contempt is alleging that the Chief Minister or the person issuing public statements on behalf of the Government of Gibraltar himself has been telling lies about the parties conducting that case before the Supreme Court, been making scurrilous allegations.....

MR SPEAKER:

I am not interested in that. You are saying what is happening in court. *[Interruption]* Order, order. When I speak you should stop speaking. The point is this, if you have anything more to say on the legal aspect, not of what is going on in court or coming out of court, only that, if you have not then I am afraid that is the end.

HON F VASQUEZ:

There are two points I seek to make, Mr Speaker, and that is the very point about the issue of sub judice.....

MR SPEAKER:

You have to refer to the Standing Orders. I am not interested in the rest.

HON F VASQUEZ:

Mr Speaker, I am most certainly referring to the Standing Orders and the Standing Orders say that no reference should be made to any matter on which a judicial proceeding is pending.....

MR SPEAKER:

Already that has been said. You are repeating yourself. I have had enough. What is the other point? You are going back over the same now.....

HON F VASQUEZ:

We are not going back over the same.....

MR SPEAKER:

Order. I say we are and therefore you must accept my decision.

HON F VASQUEZ:

But I have not made the point yet, Mr Speaker.

MR SPEAKER:

Yes, you have, you were referring to a standing order which the Leader of the Opposition has already referred to.

HON F VASQUEZ:

I am turning to another point now, Mr Speaker.

MR SPEAKER:

Oh, alright, let us see.

HON F VASQUEZ:

And that is that in the course of this submission the Chief Minister also said that he is not going to refer to any matters which is going to make it impossible for the Court of Appeal or for the Supreme Court to make its decision. The only point I am seeking to make is that the standing order does not say that it has to be impossible. The standing order says that no matter should be discussed which is before a court.....

MR SPEAKER:

All that has been said by the Leader of the Opposition.

HON F VASQUEZ:

Let me make my point, Mr Speaker.which may prejudice the interests of the parties. This House has not considered the meaning of the word prejudice. I can explain.....

MR SPEAKER:

Order, order. I am not going to accept that. People know exactly what the word prejudice is and I am not going to have any more. I have had enough. I have heard both sides and as in every court you will find that one lawyer will argue in favour of one thing, the other one will argue in favour of the other and both believe that they are right and then the judge has got to make a decision but it is almost impossible to find two lawyers to agree when they are defending a case. You will find one side which is prosecuting will have all the good reasons why that is the right course for the judge to take and you have on the other side the defence saying all the reasons why it would be right for the judge to dismiss the case. I have given a lot of thought to this and therefore before calling on the Chief Minister, the Hon Joe Bossano, to move the motion standing in his name, I must tell the House that prior to giving the Chief Minister leave to introduce the motion I examined it as I am required to do with all motions to ensure that it was admissible. Indeed, I scrutinised it with particular intensity because the matters it touches on are immersed on local and international politics and particularly because it refers to a case in court on which a judgement is pending and therefore is sub judice. As a former law student, I am very conscious of the gravity of the sub judice aspect in the interests of justice generally and on the personal rights of citizens to a fair trial without interference. This cannot be taken lightly by the legislature and it has to be weighed up with other relevant factors. Thus the rules of procedure are protective for the judiciary in this respect but not inflexible. Having considered it from all aspects, on balance, I came to the conclusion that it was in the national interests as provided for in Erskine May that the motion should be allowed to be tabled especially as it deals with issues that affect the legitimate functions of Government, the welfare of elderly people belonging to Gibraltar and the supremacy of the House of Assembly as Gibraltar's parliament based on the communal and individual democratic rights of the electorate. After carefully weighing these matters up I decided that it would be a travesty of the privileges inherent in this House

to carry out its functions if I had disallowed the tabling of this motion and that I would thus be setting a precedent detrimental to parliamentary government. I came to this decision after fully taking into account the rules of procedure as set out in our Standing Orders and in Erskine May in the latter case as relegated to it in our rules of procedure and after exercising the discretion the Speaker has in the interpretation and the application of the rules in instances such as this. I have listened to the two sides of the argument. Nothing that has been said in this House changes my mind on what I consider to be my right decision and now I say that there is no appeal to my decision. If the House wishes to change my decision then it has got to be done with a motion after notice. I will hear no more about that and no more references will be made in this debate to the sub judice clause.

HON P R CARUANA:

As Mr Speaker has rightly said there is no appeal regrettably against your.....

MR SPEAKER:

Order. That is the end. I will have no such insolence in this House and Members must respect the Chair otherwise everything that has been said about the sub judice clause is just hollow and humbug because it is just as important to respect the Chair of this House as it is to respect the judge of the court.

HON CHIEF MINISTER:

Mr Speaker, I beg to move that:-

"This House :

- (1) Notes that Gibraltar Community Care Limited is a private registered charity established in 1989 which provides assistance to senior citizens in Gibraltar;

- (2) Notes that the Government's Social Assistance Fund whose objects include providing support to registered charities has provided grants to Gibraltar Community Care Trust;
- (3) Notes that by affidavits submitted to the Supreme Court, Messrs Triay and Triay have alleged that Gibraltar Community Care are distributing public funds in order to discriminate against Spanish pensioners following the dissolution of the Social Insurance Fund on the 31 December 1993;
- (4) Declares that the statement made by Triay and Triay referred to above is false in that the payments made by Gibraltar Community Care Limited are not public monies, that this entity is not the agent of the Government but a private registered charity and that it has not been making substitute payments following the dissolution of the Social Insurance Fund for the purpose of discriminating against Spanish pensioners;
- (5) Notes that Triay and Triay consider the statements published by the Gibraltar Government giving details relating to the Spanish court case to be detrimental to the prospects of obtaining a judgement in favour of the Spanish litigant;
- (6) Notes that on this basis Triay and Triay allege that by publishing such information the Gibraltar Government has acted in contempt of Court;
- (7) Notes that pursuant to this view, Triay and Triay has sought leave of the Court to an action for the indictment of the Chief Minister the Honourable J J Bossano;

- (8) Totally rejects the above views expressed by Triay and Triay and fully supports the Gibraltar Government in the action it has taken to defend Gibraltar's interests including publishing information relating to the conduct of the case".

Mr Speaker, I think to tell the story we need to start at the beginning and right at the beginning we have the peculiar situation that the Andalucian Parliament is quite free to debate this matter without anybody claiming that the statements, which are public statements, are a contempt of the court of Gibraltar or can influence the decision of the court in favour of the Spanish litigants and against the Government of Gibraltar.....

MR SPEAKER:

We have got to be careful Chief Minister not to go into the question of sub judice please. Argue basically on the merits of your motion.

HON CHIEF MINISTER:

I am simply pointing out, Mr Speaker, that the motion to which I am speaking can be moved in the Andalucian Parliament without any inhibition.

MR SPEAKER:

It is being moved in this House now.

HON CHIEF MINISTER:

Therefore I am going to be using in my submission to the House references to statements made in the Andalucian Parliament in relation to this case. The Andalucian Parliament decided after the dissolution of the fund took place to do two things. To provide support by way of loans to the Spanish pensioners who were previously obtaining up to and including the end of December 1993 the payment which had been financed by the

United Kingdom Government. Let me remind the House that those payments would have ended in 1988 had the Government of Gibraltar not argued with the United Kingdom Government for their continuation. I think that is relevant because we have been accused of putting in place something designed to deprive Spanish pensioners of the payments they were getting whereas it is a matter of public knowledge, published at the time, that the payments would have ended in 1988 had we not been able to obtain the agreement of the United Kingdom to continue those payments at vast expense, let me say, of £10 million a year. Much more than Gibraltar ever got through the years of the closed frontier to the benefit of course of Spanish former workers in Gibraltar. Those payments were made on the condition that they lasted for five years; that the fund was dissolved at the end of the five years. The Government are not seeking in this House a motion which deprives or criticises the Spanish pensioners for challenging that decision nor does it criticise Messrs Triay and Triay for acting on their behalf in challenging that decision. Anybody that was a former recipient of money from the Social Insurance Fund irrespective of his nationality has got a right to go to court and question the decision and the judgement on that particular decision is not something that creates a particular problem for Gibraltar because at the end of the day what we did was we implemented an agreement with the United Kingdom Government which the United Kingdom Government with their vast resources and their knowledge of the constitution and their knowledge of Community law advised us was perfectly legal. This is why the United Kingdom Government have a responsibility to defend that decision in court alongside us but what has happened since January 1994 is that we have not actually got round to somebody saying that the dissolution of the fund agreed in 1989 was right or was wrong. If that is all that the court case had produced until now this would not be the contentious issue it is. As far as I am concerned what I think I have got a right to bring to the attention of the public is that there has been an awful lot of political statements made in this case which I am entitled as a politician to make public and refute which has nothing to do with whether constitutionally the fund

was possible to be dissolved or not possible to be dissolved. It seems to me a fairly straightforward thing on which a judge can make a judgement. The motion draws particular attention to the question of Gibraltar Community Care Limited. Let me say this is not a matter that is sub judice in the sense that the courts are not being asked to express any view on whether Gibraltar Community Care Limited is or is not the agent of the Government. There is before the court a demand for the Government.....

MR SPEAKER:

I would not like you to carry on referring to the court. You can explain what Gibraltar Community Care Limited is without referring to the court. I think you are quite entitled to that but I would not go into the question of the court otherwise we are on the verge again of the sub judice.

HON CHIEF MINISTER:

Very well, Mr Speaker. Messrs Triay and Triay have demanded of the Government information as to the payments made by Gibraltar Community Care Limited and the Government of Gibraltar refuse to provide that information. The motion seeks the support of the House in a clear statement that Gibraltar Community Care Limited is not the agent of the Government but an independent entity. Let me say that it is the view of the Government that involving Gibraltar Community Care Limited in this matter when it has absolutely nothing to do with it and I can prove it is an extremely dangerous thing for Messrs Triay and Triay to have attempted to do and totally unnecessary.

When the case was first presented it was presented in the name of a certain Senor Clavijo Ruiz and the Government responded to that by seeking information as to who was financing the action. It may well be that it is perfectly admissible not to have to disclose who is ultimately the litigant on the other side but it has been disclosed publicly in Spain. In Spain public statements were

made saying that a law firm had been engaged in Gibraltar in order to pursue the defence of the Spanish pensioners in the context of the dissolution of the Social Insurance Fund. We have been accused, hence the reference in the motion, of setting up Gibraltar Community Care Limited specifically for the purpose of discriminating against Spanish pensioners by continuing pension payments from January 1994 and this is not true. We have been accused in correspondence of acting in a way which is motivated by anti-Spanish feelings in the defence of our interests. This is not the case. We have been accused of trying to deprive an impoverished Spanish pensioner of exercising his constitutional rights in Gibraltar and it is not true. When we have a lawyer telling us, "I am taking instructions" we do not know who he is taking instructions from but if the name of the client is Senor Clavijo Ruiz in a representative capacity albeit presumably he is the one giving the instructions and since he is saying he cannot afford to guarantee that we will recover the many thousands of pounds we have spent so far in this case if we win, as I hope and expect that we will eventually when the case eventually is heard - which has nothing to do with this motion - then we have to go and we are entitled to go into the details of the thing and bring it out into the public. I do not believe that the rule of law, the independence of the judiciary, the views of the Bar Council, or anything else is there in order to enable a law firm to make totally unjustifiable accusations and we are not allowed to tell anybody that this is being done. We are required to shut up and put up with it and therefore I believe people are entitled to know that when we challenged the argument that was being put what we discovered was that the client had in fact not stopped being paid. He had continued collecting money from the Key and Anchor. The lawyer receiving instructions from the client did not know this, which shows a very peculiar level of instruction giving and instruction receiving. We discovered it because we said, "Well, right you have got to declare the income that you are getting" and then it came to light and when it came to light we were told that Mr Clavijo Ruiz had been picked at random simply because of the 10,000 pensioners, or whatever, he happened to be the first name on the list. This is a very strange way of conducting

the case. I do not know if this is not malpractice that lawyers in Gibraltar obtain clients by taking a list and at random picking the first name on the list and he is now their client who gives them the instructions. I believe that much of what is the subject matter of this motion has nothing to do whatsoever with the basic argument of a constitutional right that somebody has to say, "I contributed to the Social Insurance Fund of Gibraltar before 1969. The Government of Gibraltar may have done an agreement with the Government of the United Kingdom but I do not think they have a right to do that agreement. I am going to go to court. I am going to put my case in court and I want the court to say either the agreement is right or the agreement is wrong" and we have no objection in that happening. We will then go and argue that it is right and then the judge will say whose case is better argued and more powerful and that is what we employ lawyers to do. But when we are being told many other things let me say that we can only defend ourselves against those other accusations in the political arena and we can only do it in public without being stopped in the House and that is what we are trying to do today. Therefore the sequence of events is that Community Care, as the motion demonstrates, existed prior to the dissolution of the fund in 1993. The facts are that Messrs Triay and Triay, in correspondence with the Government, has claimed that Gibraltar Community Care Limited is relevant to the case because it commenced making substitute payments in January 1994. This is not true. It is public knowledge that it is not true because if it were true there would be people receiving such payments and there are people within Messrs Triay and Triay who receive community care payments so they know it is not true. How do the Government deal with this situation? How do the Government bring out into the public that things are being argued in court which are demonstrably not correct but which in our judgement, if pursued further, create a danger which has nothing to do with the legitimacy or otherwise of the decision which everybody supported in this House. The decision that was taken to dissolve the fund is something that the Leader of the Opposition has always quoted in public as something which he supported and I thanked him for. The fact that he supported it

and I thanked him for does not mean that a third party may not think we are both wrong in having done it. It does not matter if we are both wrong because all that we did was what the UK said was right and at the end of the day if we acted on their advice and they got it wrong then we have got a clear-cut argument for going back to them and saying, "Look, you cannot leave us now holding the baby and meeting the bill because we did what you said". But of course, Gibraltar Community Care Limited has nothing to do with the British Government. This is a home-grown outfit and to challenge the legitimacy of that is an extremely dangerous thing to do if somehow in a court somebody puts an argument which is totally unnecessary, totally irrelevant, certainly did not occur to Senor Clavijo Ruiz who does not have a clue about the existence of Community Care. I can tell the House that I have had a number of meetings with the organisation that represents Spanish pensioners in the Campo Area. It is something that Messrs Triay and Triay have objected to very strongly. They have objected to it on the grounds that by meeting these elderly people I was planning to take advantage of their advanced years and lack of knowledge in order, somehow, to con them. I find that objectionable. Presumably, since I am not a lawyer and not a member of the Bar Council and not a QC and not anything else people can say all those things to me and that is not contempt of anything but I cannot answer. Well, I have to say I come to the conclusion that the reasons why Messrs Triay and Triay did not want me to meet the pensioners was because they did not want me to find out that the pensioners, as far as they were concerned, did not have a clue what was going on in the court case; were not giving instructions to anybody and, as far as they were concerned, this was something that was being done by the Junta de Andalucia and good luck to the Junta de Andalucia because it is the responsibility, as far as the pensioners are concerned, of an organ of the state to fight the case, be it in the Gibraltar courts or in the European courts. But we are not in a situation where we are dealing with a collective of elderly people who are being persecuted by the Government of Gibraltar so that they are deprived of their rights.

The motion, Mr Speaker, seeks the support of the House in order to ensure the protection of Gibraltar Community Care Limited. It seeks to do it by declaring what is the view of the House, which is not a matter which is sub judice. The view of the House has to be that Gibraltar Community Care Limited is an entity at arm's length from the Government of Gibraltar because if that is not the view of the House then a lot of other people can challenge the existence of Gibraltar Community Care Limited. This is why the Government of Gibraltar have always been careful to say that we will ensure when the time comes that the interests of present and future Gibraltarians are fully protected and we have not, as the alternative motion published by the Leader of the Opposition suggests, made a statement saying that we are able to guarantee the payments by the company to the senior citizens or that we support it because in fact we are not doing anybody any favours by doing that. I would have thought that the hon Member with his legal training would understand that the wording of his alternative motion is not going to strengthen my defence. It is going to strengthen the other side. I am not for one moment suggesting that that is his intention but that in fact is what he is doing, whether he realises it or not.

MR SPEAKER:

The amendment has not been proposed.

HON CHIEF MINISTER:

No, no, I accept that.

MR SPEAKER:

So please refer to your own motion.

HON CHIEF MINISTER:

But I need to explain Mr Speaker.....

MR SPEAKER:

Yes, but there will be plenty of time for that when the amendment is proposed.

HON CHIEF MINISTER:

I need to explain because in fact in previous debates in this House I have cautioned Opposition Members in the use of words because of course those words can then be quoted and are quoted. Let me say that although it is argued that I may not quote what is said in correspondence or what is said in affidavits, it does not seem to stop them quoting what we say here. They do it quite liberally, and therefore I think we have to measure our words carefully on the basis of defending that the structure that exists is that here is an entity created in 1989 set up for a particular purpose; that entity has been making payments prior to 1994 and post 1994 and those payments have not in any way been influenced by what took place on the 1st January 1994. To attempt to say that they do is in fact to say something that is not true, that can be proved not to be true and that the people making it should know that it is not true because the facts are public facts. It is difficult to understand that such statements have been made on instruction from anybody as it sometimes appears to be the case. Therefore if we ask in the House to declare that Gibraltar Community Care Limited is not an agent of the Government and has not been making substitute payments, it is because these allegations have been made, they are not true and the House should say that they are not true. That is the best thing the House can do to protect Gibraltar Community Care Limited and that will not alter one iota what decision is taken on whether the dissolution of the fund was right or was wrong. It does not really affect us one way or the other which way the decision goes. In seeking to do that we have made public a number of statements again reflecting information available to the Government and not available to the public. It is the view of Messrs Triay and Triay and it may be the view of other members of the legal profession that we are not entitled, as a Government,

to publish that information. We believe we are entitled to publish that information because particularly where the information is not correct, it seems to me that publishing it is an important element in making people understand the nature of the challenge that we are facing. Mr Speaker, the argument that has been used in relation to Gibraltar Community Care Limited is that the purported abolition of the Social Insurance Fund is part of the strategy of the Government intended to discriminate against Spanish nationals, whilst continuing to provide pension benefits to Gibraltarians. The suggestion is made therefore that it is to make these continued payments that Gibraltar Community Care came into action in 1994 which, as I have said, is not in fact true. The argument that has been put is based on assumptions which are incorrect and the Government have refused to provide information about the nature of the payments that Gibraltar Community Care Limited makes to people because as far as we are concerned if we accept that we had a responsibility to provide such information we would in fact be proving the case for the other side. Why should we, as a Government that make grants to a separately constituted charitable institution, be required to provide information of the work of that institution any more than tomorrow somebody can say Mount Alvernia is an agent of the Government, under Community law every Spanish national is entitled to a place in Mount Alvernia and because it gets Government grants it is not really independent and consequently the Government can be sued in court on the grounds of discrimination under Community law; discriminating between pensioners of different nationalities. Mount Alvernia accepts Gibraltarians and permanent residents of Gibraltar and nobody else and it does discriminate because there is nothing in the law of the Community to say that private charities cannot be set up for whatever is wanted. One can set up a private charity for any particular segment of society and there are many. What Community law says is that the state cannot treat different Community nationals in different ways. The fact of the matter is that Community law clearly applies in one way on this side of the frontier and in another way on the other side of the frontier. That is clear and it is quite clear that in Gibraltar we are much more

anxious to prove how law-abiding we are in defending the right of others than they are on the other side of the frontier because one of the things that the Junta de Andalucía did when they brought in their decree to pay advances to former Spanish pensioners is that they made it to former Spanish pensioners not to pensioners residing in Spain of any other nationality and any Gibraltar living in Spain, after the dissolution of the fund, if not paid from Gibraltar would not get a penny from the Junta de Andalucía whereas in the case of the Gibraltar end the interim payments that have been paid post January have been paid irrespective of nationality. Yet on their side, when they are accusing us of discrimination on grounds of nationality, they actually pass a law which says only Spanish nationals. Indeed, only Andalusians are going to get this, and I imagine nobody would even dream of starting an action over there with the remotest hope that it would ever get anywhere.

Mr Speaker, the support of the House for the motion is an important contribution to the commitment that has been given publicly to take steps to protect the independence and the continuity of Community Care and that is what it is designed to do and to refuse and rebut incorrect statements that have been made which if not countered eventually - not immediately - when they get there, could represent a risk. Let me say that the position of the Government of Gibraltar is not only that we refuse to provide information as to what Community Care does, if anybody wants to know what they do they ask Community Care not us. But should at any stage we be asked to do it we will appeal that particular decision all the way to the House of Lords and we have made that clear. This is going to be a long and expensive business. Explaining as we have attempted to do through press releases the sequence of events is important so that people understand why it is that we have been placed in a situation where what we are defending Gibraltar against is a range of accusations going beyond the dissolution of the fund. The first press release we issued which was related to the question of security for costs which I have explained was an important element in protecting the pensioners' funds that are

being currently used to meet the defence of the case. We said in that first press release that without taking full instructions from their clients, Messrs Triay and Triay had accused us in a lengthy letter - and this is not an affidavit in court. This is a letter from Mr Triay to us and presumably if he writes me a letter I am entitled to say what he says in his letter. In a lengthy letter he put a whole range of arguments saying that by seeking to be able to recover our costs when we win this case we were impeding the constitutional rights of the Spanish pensioners to have recourse to the Gibraltar courts and that these were reviving the memories of the discrimination that these pensioners had suffered when they had worked in Gibraltar. These, to my mind, Mr Speaker, are not arguments on points of law. They are arguments that one may be perfectly entitled to hold but in my judgement what one is not entitled to hold those arguments, to put those arguments but to insist that nobody should know. If one believes that then one should come out and say so openly and therefore if they do not want to know then I think we are entitled to say, "This is what we are up against and this is what we are arguing against". As I have demonstrated, in fact the impoverished pensioner who we were supposed to be discriminating against has since been removed from the case because when it turned out that he was actually collecting the money and the case was because supposedly we had stopped paying him, how could he sue us for not paying him and be collecting it, and the lawyers that represented him apparently did not know? If we were told at the time without taking full instructions and we say Messrs Triay and Triay are contesting the Government's arguments that the Spanish side should pay our costs if we win then why should Messrs Triay and Triay object so virulently and accuse us of being malicious and also some other things simply because we say publicly what they have said to us privately in a letter? It may be, as they argue, that the normal courtesies between lawyers and the gentlemanly conduct with which they behave in respect of pursuing their clients' interests does not normally lead to such statements reaching the public. Well, I am afraid the public in this one has to be told what is going on because this is not a private case against me about my money. The money that we are

talking about and the payments that we are talking about are payments which every working man in Gibraltar has made a contribution to and which 4,000 pensioners depend on and they are entitled to know that these things are being said. Having disposed of that argument we have then been in great difficulty in trying to establish precisely how it is that the instructions come. It may well be that - here I am only surmising - the Junta de Andalucia believes that we have set up an alternative system. It may well be and therefore have instructed their lawyers to try and uncover this alternative system and their lawyers have got it totally wrong and are making all sorts of judgements reflected in statements without knowing what they are talking about. That is the most generous interpretation that one can put on it. If that is indeed the case then the motion may help those lawyers to go back and do their homework and discover that they have made false statements which presumably can be something that we could take actually the courts on. I do not know but I imagine if somebody makes a statement saying, "I declare that this is true" and it is not then presumably we can do something about it in court but presumably also if we point out to them publicly that the statements that they have made are not true they can go back and withdraw those statements and therefore withdraw the inherent threat to the survival of Community Care as an independent entity which is an important thing that we should all be united in defending.

Mr Speaker, I am asking the House, effectively, to join the Government in defending two positions. The independence of Gibraltar Community Care so as to ensure that it is kept out of the issue of the dissolution of the Spanish Pensions Fund with which it has absolutely nothing to do and to defend my position which is supported by the whole of the Government. Let me say that when Messrs Triay and Triay took objection to our press releases it initially asked every single Government Member, elected and non-elected, to disown the press release, which did not happen. It then threatened to take action against every single member of the Government including Her Majesty's Attorney-General, the Financial and Development Secretary, His

Excellency the Governor and the Deputy Governor. At the end of the day they decided just to go for me. Obviously, this was a purely legal decision and had nothing to do with politics because lawyers do not indulge in politics, but they decided just to go for me. And since lawyers do not indulge in politics but politicians do, I am asking my fellow politicians in this House to close ranks with me against Messrs Triay and Triay and say that they defend the correctness of the Government of Gibraltar politically in publishing information relating to the case of which I can assure the House there is a considerable amount still to be published which will be published. And as we publish we will then take at the same time if we need to take, legal remedies to stop the attempts to put the information that is in our possession to the people who effectively are the litigants because if it is argued that the litigant on the other side is not the Spanish Government but impoverished Spanish pensioners, then presumably the litigants on this side are equally impoverished Gibraltarian pensioners who are the people who stand to lose if the other side wins because the money does not belong to us. It is not part of the Consolidated Fund or the Improvement and Development Fund, the Social Insurance Fund belongs to the people who paid money into it. That is who it belongs to and it so happens that these ill-treated pensioners on the other side have done remarkably well so far. Having paid in £0.25 million before 1969, they finished up with that money and £0.25 million that Gibraltarian employers paid growing to be worth £4.5 million and that £4.5 million entitled them to a pension for life of £1 or £1.50 which would have cost £4.5 million because that is what they paid for and that is what they bought and instead in his wisdom Sir Geoffrey Howe decides in December 1985 that instead of getting £1.50 they will get paid £47. Well, obviously the money that was supposed to last 25 years lasted eight months. They have done very well because they have actually collected millions. In the last five years alone £50 million. In the previous year £20 million. Now, £70 million for an investment of £0.25 million must rank as the biggest return on investment since the Klondike gold rush in Canada. I have never heard of anything like it but if they still feel ill-treated, by all means let them put their

case and if they win it will be the British Government that will have to meet the cost of that because it was the British Government that told us what we were doing was perfectly legal, it was perfectly constitutional and that it could not be challenged. We have religiously observed the agreement with Her Majesty's Government, religiously! The only area, as I have informed the House before, of disagreement between us and London has been on the question of the successor to the Social Insurance Fund and I have had questions in the House and I have explained to hon Members in the House that our view is that we are not going to put in a successor to the Social Insurance Fund because that would pre-empt the decision of the courts. If the dissolution of the fund is being challenged then presumably if we were to lose that we will have to restore what we dissolved. If we restore what we dissolved and we have a new one in place then presumably we would have to dissolve the new one which then somebody else could challenge us on so our view to London has been to say, "Look, we cannot go ahead and put something new in place. All that we can do is pass interim arrangements which will protect people, which is being done and which will ensure that people do not face hardship which is being done and that therefore at the end of the day when either there is a ruling in the courts in Gibraltar or a ruling in the courts in the European Union where the Spanish Government at national level is pursuing the argument. Then, depending on that ruling, if it comes down on our side we are then free to proceed with something else. If it does not come down on our side then you will have to tell us where we go from there". That on which we are all in agreement, which is the challengeable bit, is not what is at the core of this motion because as I have said a consistent attempt has been made to bring in and mix with the issue a totally unrelated and independent activity which preceded the dissolution of the fund by five years. Community Care was doing before 1993 what it has been doing post 1993, nothing different, so why should it be brought into this issue? We have told Messrs Triay and Triay on nine separate occasions that Community Care has nothing to do with the Social Insurance Fund; nothing to do with any payments made because of the dissolution and nothing to do with the

Government and that therefore it is not something we are prepared to assume the responsibility for providing information about. We are very clear about one thing; that if we had been stupid enough to respond positively to that request for information we would have created a link which we are not prepared to see created because we went to great pains initially to devise a way of making grants to a private institution which was no different from the making of grants to any other private institution. We went to great pains when we thought about the future to make sure that things were being done in a way that the independence and the integrity of Community Care was not something that could be put back on our plate. Therefore I think it is pernicious to try and put it on our plate which does nothing to help the case of the Spanish pensioners and potentially does a lot of harm even to the people who are arguing the case who themselves are getting nearer to becoming entitled to community care payments than I am and some of whom, as I have said before, have already been getting them and they know what they are getting. I would like somebody to explain to me when I get a letter from a law firm telling me, "I want to know what payment is being made to pensioners" and I said to myself, "But you have got a pensioner in your ranks why do you not ask him?" He knows what payments are being made. He is collecting them. We know he is collecting them. I cannot explain the strategy but I can only suppose that there is an objective which is not immediately visible. It certainly cannot be an objective which Opposition Members can want because they are on public record, inside the House and outside the House, repeatedly saying they fully support the Government's actions in defence of Gibraltar's interests and if need be they would go even further than we are going. Well, now it is an opportunity for them to go at least as far as we are going, not further, and when that happens what do we get? Before we have even argued the case we get an attempt to stop us putting the case in this House, like an attempt has been made to stop us putting the case in the public domain where it belongs. Where it belongs! I cannot possibly accept, Mr Speaker, the technical arguments in the court case, which is a matter for the court, and where we will

engage the best brains in England when we need to defend that and where we are already saying we will go all the way to the House of Lords irrespective of the judgement. This is not going to be a battle that we are going to give up half way. Irrespective of that there are serious, emotive, totally unjustifiable arguments being reflected in these things which we feel we are entitled to refute and deny because (a) they are not true, and (b) because they are not technical arguments on law. On technical arguments on law then fine, if somebody says to me that it is contrary to regulation 1408 let him argue that it is contrary to regulation 1408 but if somebody says to me, "This is something that you carefully planned because of your hatred of the Spaniards and therefore it must be contrary to regulation 1408", well, no, in order to break regulation 1408 we do not have to hate anybody, we can love them and still break regulation 1408. It is the nature of those arguments in this correspondence and in these letters which we intend to make public and which we feel we have a right to make public and which we feel Opposition Members should say yes we have a right to make public. Perhaps the hon Member when he contributes can stand up and say from his personal knowledge, if he has. I do not know, because he has always maintained that he has nothing to do with this case. Well, if he has nothing to do with this case, presumably he does not know the letters that I have been getting from his partners and I imagine that if he knew he would agree with me and not with them. Then, Mr Speaker, if he has read my press releases.... *[Interruption]* If the press releases of the Government contain lies then the answer is not to stop us issuing press releases but to issue a writ against the Government.... *[Interruption]* No, Mr Speaker, because the issue of proceedings for contempt of court and I do not want to get into that matter which is sub judice.... *[HON F VASQUEZ: Perish the thought.]* Perish the thought, yes. Not my language but I will use his terminology which is not one that I am familiar with, I used stronger words than perish the thought as he knows. If, indeed, the Opposition Member believes that the Government press releases are full of lies which he believes that to be the case and which I can assure him they are not because I can assure him

that every single word in the Government press releases can be backed by the publication of the source and the source of those words are not in the Government office but in his chambers. We have copied word for word the stuff in the press releases but even if it were the case that in a press release, the Government made a false statement, as I am saying, Messrs Triay and Triay have made false statements. I am saying, Mr Speaker, that it is a false statement to say Gibraltar Community Care is making substitute pension payments post the dissolution of the fund, that is not true. Everybody in Gibraltar knows that it is not true. *[Interruption]* No, why should I have to go into court and argue because Messrs Triay and Triay have invented something. I am telling the Opposition Member not only is it not true I am saying Messrs Triay and Triay knows it is not true because one of the members of Messrs Triay and Triay has been getting community care payments since it started in 1989 and therefore he knows that he is not getting a substitute pension, he knows it.

HON F VASQUEZ:

On a point of order, Mr Speaker, the issue in the contempt proceedings is not that the Government of Gibraltar are issuing press releases on the case, which they are entirely justified to do, not one is arguing that the Government of Gibraltar have every right to tell the people of Gibraltar what is going on inside the case. What the Government of Gibraltar cannot do is to launch into attacks against individuals making representations and that is the issue in the contempt proceedings as the Chief Minister knows perfectly well. The Chief Minister has made repeated attacks against the integrity of the lawyers representing the parties in that case. He has told lies.....

MR SPEAKER:

Order, order. The Chief Minister is entitled to speak on his motion. That has been decided here. The question of sub judice as it stands now, the Chief Minister can speak on his motion and to change that ruling has got to be a substantive motion with

notice and therefore the Chief Minister is fully entitled to talk on this motion. The question of sub judice cannot..... *[Interruption]* Order. That is the ruling.

HON F VASQUEZ:

Is the Chief Minister allowed to tell lies in this Chamber and make misrepresentations?

MR SPEAKER:

The Chief Minister is not allowed to tell lies but the Chief Minister is responsible for his statements and that is that.

HON CHIEF MINISTER:

Mr Speaker, let me make absolutely clear that I will unreservedly withdraw anything that I have said which can be demonstrated to me to be a lie. The Opposition Member says our press releases are lies. Let me quote one of the press releases and it says in January 1995, "Earlier this week the Gibraltar Government made its application to obtain security for costs at the Supreme Court against those who are financing the legal challenge instituted on behalf of the Spanish pensioners by Messrs Triay and Triay. The cost to the Government of the court case is substantial and it is necessary to protect the position of taxpayers and keep them informed of the action being taken to the court". Presumably, there is no lie there. This is a fact. We have made an application to obtain security for costs because we know who is paying for the case. The case was presented in the name of Senor Clavijo Ruiz in a representative capacity and Clavijo Ruiz did not have a clue what was being done except that his name happened to be the first on the computer printout. We then have a legal firm that keeps on telling us they are receiving instructions from impoverished pensioners which are things that have been said which do not seem to us to be in accordance with the fact and I do not know whether that is something that is correct. Is it correct to argue something which is not the truth? I do not know. All I

know is that we..... *[Interruption]* The court has been asked to decide whether the Gibraltar Pension Fund was properly dissolved or not properly dissolved on the 31st December 1993. That is what the court has to decide. That is the argument that is being put by the people who were being paid out of that fund. An agreement was done five years ago. The agreement was implemented. We were told by the British Government, "This agreement is foolproof, go ahead and do it". We did it. The people who got money from the fund go to court and say, "I do not agree with the British Government and I do not agree with the Gibraltar Government" and they are perfectly entitled to do it. We are not disputing that except that..... *[Interruption]* I am not trying to put Senor Clavijo Ruiz in Moorish Castle and they are trying to put me in Moorish Castle for issuing press releases. That is the slight difference. The press release says, "Messrs Triay and Triay have argued that the Government's legal attempt to obtain security for cost is an act of discrimination to deprive Spanish pensioners with limited incomes from pursuing their case". This is a fact, they have argued that. They may not want people in Gibraltar to know it. Well, look, hard cheese. If they do not want people to know that their argument is that we are leaning on poor, impoverished pensioners, they should not use that argument because I think that if they use it I am entitled to make it public. We then go on to say that we have made enquiries and it has been revealed that the Junta de Andalucia is meeting the cost of the applicant, Senor Clavijo Ruiz, and that therefore there is no question of anybody being deprived. In fact the Junta de Andalucia has said publicly that if need be they are prepared to meet security for costs to let the case get on. This is a press report. I have no way of knowing whether the press report is accurate or not accurate. All I can say is that the politician that made it on the other side was not inhibited in any way from making any statements he wants but then I am entitled as a politician on this side to say, "Well, look, if it is true that the people who are putting up the money are prepared to meet the cost why do we have a fight on our hands to obtain security for costs?" On whose instructions? Certainly not on the instructions of the individual. That has now been established beyond doubt.

In this press release in January we revealed that the argument had been used that Senor Clavijo Ruiz could not give security for costs because he had no income. We then said, "Well, then you must provide us with a detailed breakdown of his income" and when they provided us with the detailed breakdown of his income was when we discovered that he was one of the ones who had continued getting payment after the dissolution of the fund and apparently Messrs Triay and Triay discovered it at the same time when they had to provide us with the information. Obviously, we could have found that out earlier by checking the names of all the people who were coming to the Key and Anchor to collect cheques but it never occurred to us to go and check if the person that was suing us was actually suing us and collecting the money simultaneously. That is what we made public in January 1995. This is one of the things which we are being told we should not be doing. I see nothing there, Mr Speaker, nothing at all in that press release which casts any aspersions on any of the members of Messrs Triay and Triay. We are saying this is what they have argued and it is true that is what they have argued because I have got it black upon white. If the hon Member says there is a press release in that then all that is needed is that somebody should come out saying, "This is not true. We have not argued that" and then we would have had to check our facts and if we had got it wrong we would have had to come out apologising and withdrawing what we had said. It is not the case. At no stage has that been done. In fact, Mr Speaker, the Opposition Member is wrong when he says we are entitled to publish information but what we are not entitled to do is to publish lies. Of course we are not entitled to do it and nobody disputes that but that is not the case that is being made. The case that is being made against me making me personally responsible for everybody including the actions of His Excellency the Governor which is quite an extraordinary thing constitutionally that I actually am in a position to bear the responsibility for anything that he does and that he has now become one of my agents. Constitutional progress at last, that is all I can say.

Mr Speaker, the position is what we are being told is we should not say anything in any shape or form in any way remotely connected with anything to do with the Spanish pensions case. It is an attempt to gag us totally and completely and in every manner. That is an extraordinary thing for people who are constantly parading the rule of law, the right of democracy and free speech and all the rest to try and stop us from making public anything whatsoever. Let us not forget that we are not suing anybody. This is not us. We are not the aggressor in this business. We are the respondent. We are defending ourselves against an attack and all that we are doing is making public what is the nature of the attack, that is all. We have not published anything else. We have not published any argument other than to say, "This is what is taking place and this is what they are saying to us and either they are saying it in court and the argument of Messrs Triay and Triay is that the things that they are saying in court is privileged information which the public should not know". We think the public should know it. It may be that if it was a private case between two private individuals it would be nobody's business but this is not a private case between two private individuals. This is a case where the Government of Gibraltar are being taken to court by the Government of Spain. Let us be clear. This is what we have got. The Government of Spain are using Messrs Triay and Triay not, Mr Speaker, because no other lawyer would take their case and in order to uphold the independence of our system of law here. They have to take cases as they originally argued whether they are murderers. Lawyers have to defend murderers and so on otherwise what would happen if a murderer found nobody to defend him then he would not get a fair trial? That was the argument at one stage. We know that this is not true. The truth of the matter is, and I am sure the Opposition Members know that, that ever since the frontier opened in 1985 the Government of the Kingdom of Spain notified the Government of Gibraltar that they wanted Messrs Triay and Triay to handle all the cases for Spanish nationals. We have got that in our records, or have they forgotten that we have got it? I did not know it then when I was on that side but I know it now that I am on this one. That is

why they used Messrs Triay and Triay as they use them in all the cases, and why not? As long as the money comes into our economy and we receive tax on it, as far as I am concerned the more that they charge them the better. I understand that they claim to have spent already £0.33 million. It is good for our economy that we should keep this case going. Not only are the Junta de Andalucia's finances anywhere near as strong as ours, of course, from what I hear in the Spanish press but nevertheless as long as they are prepared to finance the court case by all means it is good that Gibraltarians should be able to earn money at the expense of the Spanish exchequer and pay tax to the Government of Gibraltar. It all helps.

So, we need, Mr Speaker, to put the motion in the context and in the spirit in which it has been intended. I can understand the emotional responses of the Opposition Member to whom I gave way earlier. It indicates that this is an issue that frequently generates more heat than light but I am trying to shed light on it, and therefore what I am saying to the members of this House is that the correct thing for the Government to do, politically, and the court may say technically, legally the political decisions that we take are in conflict with the law and we will then dispute that in court all the way up. But politically is that we keep on churning information and that we point out that the refusal of the Government to have Community Care drawn in is totally, totally backed by the House of Assembly which supports the contribution as grants but does not accept that because we contribute grants they are an arm of the Government. If we were to even remotely consider there was validity in that argument let me assure this House that they would drive a coach and horses through the system and that there would be little we could do to prevent it. It is absolutely fundamental that we have a position where we maintain collectively that this is not the case and then if we need to prove it in court we will prove it in court. I can say to the House quite honestly that the information which shows that this is indeed the factual position is already in the public domain and we should not need to prove anything. I believe that if Opposition Members can accept that by supporting this motion

all that they have to do is to gain politically and not lose then they should have no problem in backing the position of the Government as they have long promised to do and this is an opportunity to do it. I commend the motion to the House.

MR. SPEAKER:

Before I put the motion I must now propose it and I will not read it. I take it that the members of the Opposition have got copies of the motion and all members of the House as well. I now propose the terms of the motion moved by the Chief Minister. A debate now can ensue and any Member who wishes to speak can do so.

HON P CUMMING:

Mr Speaker, when this debate was last before the House, when we were voting to wind up the Pensions Fund I did point out to the House that there were human rights aspects to the whole debate. That we were voting on taking pensions away from innocent elderly people and although there are many circumstances that made that right thing to do at the time, or that it seemed to be the right thing to do at the time, nonetheless we had to be very careful of the colour that we gave to the debate because obviously we know that history has produced in Gibraltar anti-Spanish feelings and anything that could be said here could be interpreted by the people as a kind of making it right that because the pensioners are Spaniards therefore it is perfectly alright to take their pensions off them. At no time could anybody in this House sanction that kind of attitude to go down from this House into the people because in that way we would be damaging the social fabric of the Gibraltarian community. It is one thing to say, "Look, we cannot pay the pensions and in any case we have no moral obligation to pay the pensions" and quite another thing to say, "Look, we do not care at all what happens to these Spaniards". Because we have seen recently on the television the horrors that have gone on, for example, in Bosnia, a Serbian general standing on a hilltop with a cannon

cannonading women and children queuing up for water and being interviewed by an international reported and saying, "Why are you doing this? This is a war crime" and he said, "War crime? I am defending my people from their enemies", How can it be that a whole people can come to be so brainwashed and to rationalise their crimes in such a way that this obviously can happen? What I am saying is that it can happen and we have to ask ourselves as we treat this subject what kind of people are we? We have to make sure that we do not stir up anti-Spanish feelings in this issue because otherwise we ourselves would descend to those racks of ethnic cleansers.

I did urge, Mr Speaker, at the time, the Chief Minister to meet with the Mancomunidad and to try and organise something to help the pensioners continue to receive payments from UK, from Spain, from wherever in order to show that there was no anti-national feeling. That it had nothing whatever to do with the way Gibraltar looks at this case and, of course, I was indignantly told whether I thought I had been elected here to defend the interests of the people in the Campo. I am going to go very briefly into the history of the case as I see it. The problem was initiated of course by the hostile actions of General Franco in removing the Spanish workers from here and of course in doing that he not only made the Gibraltar economy a victim, but also and in particular the Spanish pensioners themselves. I believe that what was done in those days then was to separate the fund of the Spanish contributions that they were taken apart and it was attempted to give it back to the Spaniards and of course the Spaniards would not receive it. Therefore this money was invested separately to gain interest for them until such a time until the money could be paid back to them. So as far as I can see, there were two funds. We did what we thought was proper according to our own laws and we thought that the matter of the Spanish pensions was closed and then we come to the Spanish accession to the European Community. We have many times asked ourselves whether Sir Geoffrey Howe did his homework properly on this issue. Of course that is a matter for him, because of course the British Government had a veto over

Spanish entry into the Common Market. The same as when Britain was applying to join the Common Market it had to overcome the French veto. For many years the French were exercising their veto and Britain could not get into the Common Market. I remember the headlines on one famous speech of General De Gaulle saying no very nicely, but saying no and it was called the velvet veto of General De Gaulle against Britain. Britain was in a position of great strength at that moment and they were able not only had they wanted to get concessions for Gibraltar from Spain which they did not but also on this specific issue to arrive at a bilateral agreement with Spain on how that separate fund that had been taken away was going to be dealt with. I have it from Sir Joshua Hassan directly looking into his eyes he said, "I never took any responsibility for the payment of Spanish pensions. It was Sir Geoffrey Howe" and therefore I believe that to be exactly the position. Now we are in a position that, having started the pensions, we are in a different moral position when the pensions are taken away because if one has no responsibility to give somebody a pension and one does not one has not done them any harm. But if one gives somebody a pension which they believe to be for life and make them depend on it and then take it away then one has done an injustice to those people. Whilst it is true that the British Government in my view are totally responsible for the payment of these pensions, nonetheless we cannot get away from the fact that in a superficial, legalistic, technical sense the responsibility falls to the Gibraltar Government. Therefore the court case against the British Government can only be taken in the first instance to the Gibraltar courts and not in UK. Nonetheless the moral responsibility belongs to the UK and I say this against the background of the recent statements made by Mr Tristan Garel Jones, ex-Foreign Office Minister, very recently in charge of Gibraltar's affairs, in an article where he makes an amazing statement that Gibraltar is being reduced to an undignified squalor by the two bullies of Britain and Spain, that our economy is being reduced by the actions of these two enormous countries against tiny Gibraltar. It is against that background that we say, "Look, the moral responsibility for these payments is entirely in

the hands of the British Government" which brings me to what I would call the demographic argument. In most developed countries the elderly population is increasing and those in employment are decreasing and therefore it falls to a smaller number of people to maintain a larger number of people earning payments from pensions. This is bringing a problem to England where those funds borders on deficits and has to be corrected so that a crisis can be avoided for their pension fund in the future. This is something that all developed countries have to deal with. A problem that we ourselves also as a developed country would have had but that problem has been distorted by being magnified hugely by the labour needs of the British Garrison, that brought 16,500 employees of the Garrison to work in Gibraltar who became, for a short time, contributors to our pension fund. Then what happens is that the frontier closes. The Spaniards are taken away. Their contributions are left in the account. Obviously time passes. We increase the contributions and the benefits but from a smaller base the Garrison in the meantime is being dismantled so that there are constantly less and less people in employment in Gibraltar maintaining a fund to pay a lot of elderly people of our own plus a responsibility to 16,000 people who worked for the MOD. The injustice that at any time Britain should think that we have an obligation to pay these pensions is simply mind boggling. The British Government should at any time try to pursue that argument and that all Gibraltar would not be united in rejecting that view is simply beyond question it seems to me. So that then is the demographic argument. If we have two funds, that is to say, if according to Gibraltar law we separated the Spanish contributions at an early stage, keeping them invested for early return to the Spaniards then our own fund is not bankrupt. We are able to pay our own way and to continue on the road but if for technical reasons it is considered that there is only one fund then obviously that fund is technically bankrupt but it has been bankrupted by the initiatives that Britain has taken. If there are two funds then our fund is OK and the Spanish pensioners' fund is only bankrupt when Britain refuses to pay any further payments into it. I hate to take a position that may sound anti-British but the truth as they say in Spanish, only has one

road, that British pressure to freeze contributions and benefits is not entirely honourable because it puts people in difficulties in order to save money that they already made a commitment to pay. I remember a very important question that I asked the Government in the debate that we had on the dissolution of the fund and I said, "Are these new arrangements for the pensions legally watertight?" I was answered that according to advice they had received from the British Government they were legally watertight. This is a very important question and a very important answer and why am I asking and why is it that the Government are already ready with an answer? Obviously because we are anticipating that there is going to be a court case. If people have a pension and it is taken off them it is obvious that they are going to be aggrieved and that they are going to try and seek redress and the obvious way to seek redress is through the courts of law. It seems to me that that advice about the legal water tightness in view of the apprehension that is current about the Spanish court case seems to make that legal advice dodgy. I would question the quality, frankly, of the advice given by the British Government. But it seems to me that both UK and Gibraltar being jurisdictions subject to the rule of law, we have to have a total respect for any person who seeks justice through our courts as according to the rights conferred by our Constitution. The Chief Minister has sought now to question the reputability of the involvement of the Andalucian Government in this question as though if some impoverished, aggrieved pensioner comes in on his own to go to court then that is fine but if he comes with the backing of the Andalucian Government somehow that is very wrong. It seems to me entirely natural. How can a poor pensioner challenge in the courts? The ex-Attorney-General said in this House a few months ago, "Take the matter to court. The court is open to all like the Ritz Hotel". Of course the Ritz Hotel is closed to the poor Spanish pensioner unless he is able to get powerful people to help him. Of course they have organised with their unions. They have sought the help of their politicians and they have obtained it and they have organised themselves in a structure in order to be able to take this step, but this is perfectly natural. Why should we question the reputability of that

behaviour? It seems to me that it is what we should have expected and our constitution and our rule of law and our belief in the need for the rule of law means that we have to grid our teeth and bear it when this case is proceeded with through the courts. I give way.

HON CHIEF MINISTER:

Mr Speaker, I want to clarify for the hon Member that we are not saying the Junta de Andalucia should not do it. What we are saying is it has been denied here and admitted there. The reason why they do not want to meet our cost if they lose is because they say the poor Spanish pensioner has no money.

HON P CUMMING:

Personally, I think they must pay for their court case as I would have to pay for mine, which brings us to the more painful question of Gibraltar Community Care Limited.

The House recessed at 1.05 pm.

The House resumed at 3.20 pm.

HON P CUMMING:

Mr Speaker, I was saying, to get us back into the mood of the subject that there is a background to this case of human rights aspects and the care that we must take not to colour with anti-Spanish feelings this debate. I got in briefly to the history of the case as I see it, highlighting the question of the two funds, ours and separating the Spanish contributions to return to them under our own laws and how we thought that the battle was over then until Spanish accession to the EC. I questioned the amount of homework Sir Geoffrey Howe did prior to the Spanish accession and said that he could have made more of his strong position prior to Spanish accession. I said that the legalistic responsibility may be ours but without a doubt the moral obligation to pay the

Spanish pensions lies with UK. I got into the demographic argument about how huge numbers of pensioners would have to be supported by a small number, by 13,000 working people at present in Gibraltar, and the problem being enormously aggravated by the sheer weight of numbers of Spanish employees in the MOD. I had gone into the question of the morality or otherwise of attempts to freeze the pensions in order to let Britain off the hook and that it had impaled itself on with its own eyes open. I had gone into the question of the dissolution of the fund, how really our own pension fund was not bankrupt and the Spanish pension fund was bankrupt only if Britain refused to pay any more money into it. The very important question that I asked in the last debate, "Were these arrangements watertight?" and this is more or less where we left what I said this morning. The importance of the arrangements for the pensions being legally watertight obviously was in anticipation of court cases which of course in due course have come.

This brings us to the question of Gibraltar Community Care Limited and its role. I am not sure whether the British Government's advice covered not only the dissolution of the fund but the setting up of Gibraltar Community Care Limited. I assume that it was part and parcel of the advice. It seems to me that we have built a house with match sticks and that the Government are anxious that nobody should sneeze lest the building should come tumbling down. In spite of the obvious fact that sooner or later a court case would come and it seems to me that there is no justification in stirring up public opinion in Gibraltar against the Spanish pensions court case because this is an inevitable result of the course of events that we have embarked upon. Their rights under the constitution to pursue the issue in the courts is clear and we have no alternative but to abide by the rule of law in this case. It seems to me that as decent, democratic people we must respect the on-going conduct of this case. This is where I see, shall we say, malice in this motion and in the information campaign that the Chief Minister has embarked upon. He seems to be saying to Mr J E Triay, "Look, as a Gibraltarian it is your patriotic obligation not to be such a good lawyer in pursuing your

case because you keep sneezing and this house of match sticks is going to come tumbling down" and it seems to me that this is a question of professional ethics. Mr Triay has no alternative but to pursue this case to the best of his ability and if that means sneezing in the precinct of Community Care then we have to hold our breath and wait to see what happens. Because you see, Mr Speaker, I feel that in this campaign of information there has been a process of personal harassment directed against Mr J E Triay and I feel that this is an abuse of power and authority and abuse of this House also to continue the campaign.....

MR SPEAKER:

I must call your attention to that now. The ruling has been passed by me and the Chief Minister and any other Member can speak on this case. Therefore you must not repeat that otherwise I shall ask you to resume your seat.

HON P CUMMING:

No, Mr Speaker, I am not talking about sub judice.....

MR SPEAKER:

You were giving the impression that he is using the right given in this House to do that and that I cannot allow.

HON P CUMMING:

Mr Speaker, by publishing outside this House communiqués which discuss the case at the same time the spotlight has been put on a person, Mr J E Triay, who is taking the case and the name of the lawyer who is taking the case is totally irrelevant but the spotlight keeps being put on this person. I associate myself with him in the way that he has had to suffer this persecution on the case of professional ethics because I myself have been subject to a similar campaign of vilification on the grounds of a dispute arising from professional ethics. I had to suffer exactly

the same case when as a trade union leader he made a campaign against me arising from the question of professional ethics. Therefore I sympathise with Mr J E Triay who is now in a similar position. In my own case it went on, a Government cannot pursue a personal vendetta as though it were an equal to a private citizen. The whole power of the establishment is used to focus attention against somebody that they want to present in a bad light and I have been on the receiving end of that kind of publication. Eventually when my own case came to the Governor, under the law, the Governor stated that this was not a question of a disciplinary action and re-instated me in my job in the hospital. There was a constitutional crisis mostly behind closed doors but some of it also in the press and on television whereby the Governor's constitutional role in disciplinary cases was challenged by the Government and of course the question of the professional ethics involved was what persuaded the Governor that I was in the right. Mr Speaker, it seems a gross abuse of power and authority when the office of Chief Minister is used publicly against an individual and of course history repeats itself. There is a new vendetta against Mr J E Triay but there was a previous vendetta and members of the GSLP already in the past successfully stirred up the public against Mr Triay because of his politics and the hon Member sitting across here took a leading role in taking so-called patriotic pleasure in terrorising a decent Gibraltarian family. This now, it seems, is part of the same on-going campaign of using access five times a week to headlines in the press to put the spotlight on an individual who is legally and decently going about his business according to the ethics of his profession. It seems to me, Mr Speaker, that the Chief Minister has been blaming Mr Triay for sneezing and threatening the match stick house where perhaps he should be examining himself for his role in putting up such a flimsy structure. The supply of information to the public which has culminated in this motion of course has been a most selective desire to inform the public. We would only wish, and I am sure I am speaking for the whole Opposition, that the Chief Minister was as anxious to inform the people about Government business in such detail on every matter and if this had been his practice

perhaps we would not question it in this case. It has not in fact been a campaign to inform but a campaign to harass and of course Mr Triay has access to the courts and he has tried to put a stop to this campaign by his action on the contempt of court. This has put the Chief Minister on thin ice and persuaded him to stop the flow of information until this new opportunity in the House today. I believe that underlying all these manoeuvres is the Chief Minister's defiant, rebellious, unconventional attitude and this is a source of great damage in my opinion to Gibraltar.

In passing I should like to mention the problem of the Moroccans who if the original Spanish pensioners were innocent victims, these are even more totally innocent victims of the manoeuvres with regard to the pensions. The Moroccans who came to serve Gibraltar when the frontier was closed and the Spanish workers were taken away who in those days were received with great sympathy and even gratitude when they came to live amongst us at first. Now we tend to see the question of the Moroccans as a problem weighing upon Gibraltar but until recently the community expressed gratitude to the Moroccans who came to live and work amongst us. Naturally they were contributors to the pension fund and now in order that the bill to the UK should not be increased we have agreed to freeze the pensions and the Moroccans' pensions remain frozen from 1988 or 1989. Not enough years have passed yet so that they feel any big disadvantage but it will not be too long if we continue down that road that they will be greatly disadvantaged and it seems to me an injustice that we should deprive them of a pension which keeps up with inflation and retains its buying power to the best of the ability. It seems to me therefore that alternative arrangements should be extended to them without a hesitation so that this injustice can be rectified.

I should like to think back to November 1994 when we debated this issue and we were told that the dissolution of the fund would result in the Spanish pensions stopping being paid as from the 1st January. We read in the press how the pensioners received in their pension packets information that they would cease receiving their pensions from that date. In fact it was the Chief

Minister himself who made the warning bells in the Mancomunidad to be fair to him when they should have been aware five years before that the pensions were stopping and they should have made alternative emergency arrangements to protect their own people. Six weeks before it was the warning from the Chief Minister that started the pot boiling and that was an action on behalf of the pensioners which I take to be an action in goodwill. But nonetheless we were all led to believe that the pensions then were stopping in January 1995. We were discussing this in November 1994, in mid January of 1995 I came across in the Europa Sur an interview with the Chief Minister by a Spanish reporter of Europa Sur called Guillermo Ortega who I know personally and of whose professional competence and professionalism I am convinced and if I was not convinced I would say this is nonsense what he is writing. In interviewing the Chief Minister he takes up the question of the pensions and he says, "The dissolution of the fund is the big problem that we are facing now with Spanish workers on the Rock" and, hey presto, the Hon Joe Bossano says to him, "Look the pensioners are receiving the same pension now as they always have the only change that we have made is that they used to get £10 a week, now they are getting £40 monthly and the British Government instead of sending us the money on a monthly basis they are sending it on a three monthly basis, these are the only changes. So why is it that the Junta de Andalucia is warning them not to accept these on-going payments of their pension?" I was amazed when I read this. Seeing the signature at the bottom of Guillermo Ortega, I thought this is very strange business here altogether so I cut it out and I put it away for future reference and with my antenna open to see if I could pick up some information as to what on earth was going on. Of course shortly after that my questions were no longer answered to help in keeping me and the rest of the people in ignorance at what was really happening. It seems to me if I can speculate for a moment that what is actually going on behind closed doors is that Britain is getting cold feet about the legal advice that it is being given on the issue and in fact may have involved themselves and us in what is commonly known as a "cock up" because the whole purpose of

the European law in this issue is to forbid discrimination. It allows us to do with the pensioners whatever we like on the only condition that we do the same thing to our own people as to other Europeans. So long as the treatment is the same we can do with the pensioners what we like but how could we possibly dissolve our pension fund? How could we leave our pensioners? It is out of the question. How come that there has not been an uprising against the question of the freezing of the fund? Well, of course, there has been a matchbox structure been put up so that we get out of the problem. But the whole question is was this legally watertight from the beginning because if it is not we cannot blame Mr J E Triay for the matter, we can only blame those who gave wrong legal advice if what is claimed to be watertight is not afterwards found to be watertight? I hesitate around this issue because I do not want to be the sneezer that brings down the matchbox building. But it seems to me, Mr Speaker, that we are in difficulties with the question of European law on this issue and it seems to me that for the way ahead we must expect Britain to urgently seeks a bilateral agreement with Spain as to how it can acceptably deal with a separate fund for the Spanish pensions. The monies that we separated from the beginning and from the beginning we believed that that money had been put aside for repayment to Spaniards as soon as possible and then our own fund instead of being dissolved can function properly and fully in a statutory way to continue serving the people of Gibraltar. In the meantime Britain must bite on the bullet and pay the pensions as Sir Geoffrey Howe undertook to do. They should not seek to freeze our pensions on the grounds that this helps them. I know that Britain is our only friend and ally and when they came asking for assistance to get them off the hook it is hard to say, "Look.....". In the end this is a question also of human rights. They went into this problem with their eyes open. They must bite on the bullet and pay up. I believe that our fund should continue as it was, that it should be unfrozen, that our elderly peoples' pensions in its entirety should be statutory and not of a charitable, voluntary nature. I believe that the fund should absorb into itself Community Care and its payments. I would venture to predict, Mr Speaker, that the Spanish pensions

case will be settled out of court and in the meantime of course I have no alternative but to support the continued existence of Community Care. Thank you, Mr Speaker.

HON P R CARUANA:

Mr Speaker, I have expressed my views this morning on the substantive motion which I have not the remotest intention of supporting. Not now and not in a month of Sundays. If the Chief Minister wishes to preside over the brick by brick dismantling of what this House is for he can do it.....

MR SPEAKER:

I must stop the Leader of the Opposition there and now. No references must be made to the ruling that I have made. Anything that is said now on this motion is valid in this House and if the Leader of the Opposition pursues that line I shall have to ask him to sit down.

HON P R CARUANA:

In my opinion this motion is a cynical attempt on the part of the Chief Minister to manipulate this House for his own political ends. It does not represent a genuine desire on his part to secure the supportive unanimity of this House on any matter because if it were, if such were his motives - which I hereby declare them not to be - would not the normal thing have been for him to have rang me up as Leader of the Opposition and said, "Now, look here, Leader of the Opposition, it is absolutely vital for the defence of Gibraltar's interests that the House of Assembly speaks with one voice on this terribly important issue on this motion. How about you coming to have a cup of tea with me and we both see if we can together draft a motion that will have that effect?" No! Instead he drafts a motion which he jolly well knows I will not and cannot support and I do not get to hear about it until it gets served on me by the House and he has the audacity, the gall, to come to this House, not even able to keep a straight face.

Look at him. I was going to say with a straight face but he cannot keep a straight face. He comes to this House with the audacity to pretend that he is motivated by the unselfish defence of the bests interests of Gibraltar. The problem with the Chief Minister is that he has not yet learnt that the times when he could say what he likes in this community in the certain expectation that he would be believed at face value, has finished. The people of Gibraltar have seen through his goings on. The people of Gibraltar now know how he operates and the people of Gibraltar know when he is winding them up for his own little political purposes. Frankly, the Chief Minister's presentation of his motion this morning confirmed my worst fears about his motives in bringing it to this House. He has converted this august chamber into a kangaroo court and he can conduct however many kangaroo courts he likes inside or outside of this House, he cannot count on the support or co-operation of the Opposition in doing so. The Chief Minister urges me to support the motion because it will be "we will only gain politically". Exactly! That is all he is interested in. Gaining politically! He thinks that because he is willing to mortgage the democratic future of this community in order to make politically popular sound bites, he believes that I am going to mortgage the democratic legacy of my children for votes. Well, he is mistaken. He is mistaken and he misjudges the opinion of the people of Gibraltar if he thinks that he has a blank cheque to do on their behalf whatever he likes regardless of the consequences to the difference between right and wrong because it is the Government that are supposed to be setting the example for the rest of the community. "The attack is on me", he kept on referring this morning to "attacks on us. These attacks on us by Triay and Triay". I have to say to the Chief Minister that I have not read any attacks on him from any law firm in Gibraltar, everything has been said by him. When I was a member of that firm one of my complaints was that they would not react publicly to the allegations that he was making. They have said nothing in public. Everything that has been put in the public domain, damaging or undamaging to Gibraltar's public interests, has been put in the public domain by the Chief Minister. The Chief Minister has selectively put material in the public domain for his own

personal political ends. That the Chief Minister of Gibraltar should have the temerity - not heard, I venture to suggest, in a civilised democracy in the last 50 years - to stand in the parliament of this country and say that it is dangerous to raise arguments in a court of law about Community Care because others will then be able to challenge it. Listen to the words, listen to what he is saying, Mr Speaker. What he is saying is that we in this House are going to decide what arguments litigants can deploy in our courts of law because we will decide if it is in the national interests for arguments of such nature to be deployed or not. It is an outrage. I am not going to give him one iota of assistance in doing away with what freedoms there are in this society. In all free societies people can challenge things in court regardless of what parliament thinks about the merits or the dangers of their arguments. Furthermore, it is not what this House thinks that protects Community Care from legal challenge. I think I have him in quotes when he said this morning, "If the House does not think Community Care is independent a lot of people can challenge it". He must know that people can challenge it whether this House thinks it is independent or not, but that is not frankly of all the diatribe that I have heard this morning from the Chief Minister what I have said so far is not the most duplicitous. The most duplicitous comes now. Of course he had to find, Mr Speaker, the reason why he did not want to support my motion because of course my motion although it serves all the useful purposes of showing unanimity and support and solidarity. It does not serve his purpose.....

MR SPEAKER:

The amendment to the motion.

HON P R CARUANA:

Yes, I beg your pardon, Mr Speaker. He has already indicated that he will not be supporting my amendment and then of course he had to find a reason for not doing so because that would spoil the party. It would spoil the party because he is not really after

unanimity. He is not really after unity. What he wants is to try and embarrass me because he thinks it would be desperately embarrassing for me to point a finger at my ex-partner or at my father-in-law or even at my hon Colleague Mr Vasquez who is still in this House. That is all that he is interested in and the proof is that he will not vote in support of my perfectly uniting motion. That he, of all people, Mr Speaker, should stand up in this House and say, "I cannot support Mr Caruana's motion because it....."

MR SPEAKER:

Would you please correct that - the amendment.

HON P R CARUANA:

"Mr Caruana's proposed amendment to his motion because it says that it expresses the House's assurance to our senior citizens that payments currently being made to them will continue regardless of the outcome of any case currently....." and he says, "Be careful Mr Caruana, I do not impute to you any improper motives but be careful with your choice of words because you could be doing terrible damage to our argument". Mr Speaker, this is the man who gets Gibraltar Community Care Limited to write a letter to the pensioners of Gibraltar saying to them, "Mr Bossano has phoned us" or "we have consulted with Mr Bossano and he has told us not to worry because whilst he is Chief Minister of Gibraltar your payments are guaranteed" and I immediately put pen to paper and I said, "Dear Mr Community Care....." I think the Manager's name is Santos, "Dear Mr Santos, be careful with what you write for goodness sake in these letters because the whole essence of the Government's case is that Gibraltar Community Care Limited is independent of the Government so how on earth can you tell the senior citizens of this community that Mr Bossano, the Chief Minister of the Government of Gibraltar, has personally confirmed to you not to worry because he is a very clever man and whilst he is in No. 6 Convent Place payments by Community Care are....." and I say the same thing and he has got the cheek to stand up and warn

me about the possibility of doing damage? He who has spent the last three weeks telling every old age pensioner that would listen to him that their payments are guaranteed, not to worry because Uncle Joe is here to look after them. He now has the audacity to stand up in this House and say, "Mr Caruana's proposed amendment to the motion links the Government to Community Care because it suggests that this House is able to guarantee the continuation". He has told the whole of the world over the last month that payments are guaranteed. He has told the pensioners in my earshot on several occasions. Community Care has written this letter or are we to believe that the General Manager of Community Care wrote that letter without consulting the Chief Minister? Who on earth is he trying to kid about that? And let me give a warning to the Chief Minister who has this morning demonstrated an enormous amount of ignorance on matters which are clearly beyond his understanding. If he is genuinely concerned not to damage the Government of Gibraltar's case against the Spanish pensions, I would seriously advise him to refrain from using phrases like he did this morning about the great pains to which he went to devise a system to overcome the problem because he must know, but I can only suspect, that the essence of the Spanish pensions case is precisely that Community Care is just a device so he ought to be careful. He is the one who should choose his words more carefully. The Chief Minister's motion seeks support from the House on two fronts, he told us this morning. The first he said was that Community Care was independent of Government. We in the Gibraltar Social Democrats - I cannot speak any longer for the Hon Mr Cumming but I suppose that he will not disagree - inside and outside of this House have always proceeded and acted on the basis that Community Care is indeed a private registered charity with a legal status and existence independent of Government. That is the view that we hold and that is the view that we would defend politically and in court if we were the Government, as I presume this Government are doing in the conduct of this case. That is why when I was drafting the proposed amendments to the Chief Minister's motion, I did not tamper with the first two paragraphs of it which would remain in

my proposed amendments so that the first two paragraphs would continue to read, "Notes that Gibraltar Community Care Limited....." Mr Speaker, I am now delving into what will be the wording of my motion, perhaps Mr Speaker prefers that I leave that until I have.....

MR SPEAKER:

No, no, I do not mind.

HON P R CARUANA:

"Notes that Gibraltar Community Care Limited is a private registered charity established in 1989 which provides assistance to senior citizens," and my intended amendment would have stopped there but having heard the Chief Minister this morning and wishing to go as far as my conscience would permit me in supporting him, I would propose to add to that proposed amendment "and has a legal status and existence separate and distinct from Government". The second paragraph of the motion continues even as amended by me to read, "Notes that the Government's Social Assistance Fund whose objects include providing support to registered charities has provided grants to Gibraltar Community Care Trust". Mr Speaker, those two paragraphs make it more than crystal clear that what the political position is on the status of Community Care. It cannot be a private registered charity if it is a Government department. The only way of protecting the national interest on the question of the separateness of Community Care is not only one way of skinning that cat, anyone listening to the Chief Minister would have thought that it was necessary to mention the words Triay and Triay 10 times in order to provide the support of this House to our view that Community Care has always been treated by this House as being a separate legal entity. See how relatively easy it is to do it without all the vitriol and without all the ulterior motives that lie behind the drafting of the Chief Minister's motion.

The Chief Minister, Mr Speaker, also asks for our personal solidarity with him on the question of contempt, so you see what he is asking us to do is to say, "Now look chaps we are all buddy politicians here". We know the way footballers all hug each other when they score a goal, "We are all buddy, buddy members of this House. I mean it does not matter what we try to do. It really is not right that someone should be wanting, that someone should even be arguing that I might have transgressed the law. I think that you should all now rally around me and send a loud and clear signal that you are all behind me. Whatever I have done, never mind, what I might have done or not done or whether it was proper or improper, legal or illegal. We are all politicians. We are all colleagues in the House. You all give me a vote of confidence here and you see how we deal with this". I am sorry, he cannot have that. He just cannot have that. No one in this community and certainly I think it is unbecoming of the Chief Minister to be heard with an argument on his lips that he might be above the law. Nobody in this community is above the law and certainly the Government are not above the law. If the Chief Minister had been subject to arguments like the ones that he tried to give the impression this morning attacks on us as if solicitors had been standing on a soap box here on a Saturday morning in Main Street shouting out to the whole world what the arguments were going to be and what a dreadful man the Chief Minister is. If he had been subject to attacks of that kind I would have been the first one to stand up here and recognise, "No, no, if you are being attacked, you must defend yourself". I will defend the Chief Minister's rights to make public statements. Certainly I endorse 100 per cent the comments of my hon Colleague in the House, Mr Cumming, when he says that it is all hypocrisy. How a Government with such an unblemished record, unblemished in the sense that no one could possibly accuse them of having been excessively accountable, should now want to tarnish their image for transparency machismo by now pretending on this issue it is vitally important for the people? I endorse the Hon Mr Cumming's comments 100 per cent but let us all leave that to one side. Even if the Chief Minister's craving for keeping his citizens, his people as he now likes to call them,

informed, even if that were another conversion on the road to Damascus it would be welcomed. The only constraint that I put on it is that it must be within the laws of Gibraltar to do so. He cannot come here and say, "Support me in whatever I want to say in public". I say, "No, I support you in saying in public whatever you want provided it is not against the laws of Gibraltar to do so because you are bound by the laws of Gibraltar and it is not for me to say whether you are in breach of the laws of Gibraltar or not". That is what we have courts of law for; to decide whether or not the Chief Minister has transgressed the laws of Gibraltar in the public statements that he has made and certainly he can, with my blessing, indeed with my encouragement, make any statements he likes to keep the people of Gibraltar as informed about this as I think he should have been keeping them informed about everything else that he has done over the last eight years and has not, subject only to not transgressing the rules of law and the rules of court in doing so. That is what he is asking and I have dealt with that matter also, Mr Speaker, in my proposed amendment to his motion in which I have included a paragraph which reads: "Approves of the Government publishing information relating to the case in manner that complies with the laws of Gibraltar". If he wants my legal advice as to what statements comply with the laws of Gibraltar or not, for a fee I will give it to him, or indeed perhaps given that I know that he is only motivated by the interests of Gibraltar I might even waive the fee. Of course, this House is the lawmaker. We are sovereign subject to one or two unfortunate antiquated constitutional provisions. We are sovereign. We make the laws in this community and everybody has to live by them. Are we not powerful? Well, if the Chief Minister thinks that the laws of contempt of court are not to his liking, the proper thing for him to do is to bring a bill to this House to change the laws to the extent that he feels they cramp his style but what he cannot do with my help certainly is to say, "Because I am the Chief Minister I can say what I like even without whether it is legal or not" and this is the only condition I am imposing on his liberty. The only restriction I am imposing on his freedom of speech is the same

restriction that applies to everybody else in this community and that is that we do not break the law in doing so.

MR SPEAKER:

We have greater privileges in this House than the general public.

HON P R CARUANA:

Inside this House, not outside. I am talking about outside, Mr Speaker. Inside this House there are many people sitting in Irish Town today who have learnt at their cost the extent of the privileges that we have in this House.

MR SPEAKER:

Almost identical as those of the House of Commons.

HON P R CARUANA:

Yes, the interesting thing would be, Mr Speaker, to hear how many of those things would be repeated outside as well. *[Interruption]* Well, yes, but as hon Members know he has gone considerably further this morning than he has in his press releases. For the reasons that I have just at length gone through I am not willing to even address the motion as drafted. I propose now with Mr Speaker's leave to propose an amendment and my amendments have the effect of providing to the Chief Minister all the political support that he could probably expect from the Parliament of this community and if he is interested, as he claims to be, in unanimity that the whole world knows what we politicians think about these things, he should support our amendment and to the extent that he chooses not to, I charge him with not doing so because really what he wants is his pound of flesh in the terms of his own motion and that he is not getting from me. I have got this ready now.....

MR SPEAKER:

Go ahead and read it.

HON P R CARUANA:

But I can circulate.

MR SPEAKER:

The hon Member should read the amendment.

HON P R CARUANA:

Yes, indeed, Mr Speaker, I will. I beg to move an amendment to the motion standing in the Chief Minister's name by deleting all the words after the words "This House" and substituting therefor the following words:

"Notes that Gibraltar Community Care Limited is a private registered charity established in 1989 which provides assistance to senior citizens, and has a legal status and existence separate and distinct from Government;

Notes that the Government's Social Assistance Fund whose objects include providing support to registered charities has provided grants to Gibraltar Community Care Trust;

Supports the provision of grants by the Social Assistance Fund to Community Care Limited and the making of payments by that company to senior citizens in Gibraltar;

Expresses its assurance to our senior citizens that payments currently being made to them will continue, regardless of the outcome of any case currently, before the Courts;

Supports the Government's attempt to protect Gibraltar's interests by its defence of the case brought by Spanish pensioners;

Approves of the Government publishing information relating to the case in manner that complies with the laws of Gibraltar;

Condemns the Spanish Government for the hypocrisy demonstrated in pursuing the pensions claim at all levels while at the same time seeking to deny and obstruct Gibraltar's status and rights in the European Union".

Mr Speaker, for the record of Hansard as I have already indicated paragraphs one and two, that is to say, the first two notes are the same as they are in the Chief Minister's motion except that I have added to the first paragraph the words "and has a legal status and existence separate and distinct from Government" and I have done so, Mr Speaker, not because that was not implicit in the fact that what the statement already said that it was a private registered charity which implies that it has a legal status and existence separate and distinct from Government but as the Chief Minister has asked that it is particularly important to make that, that is a demonstrable fact and I am happy that that goes in. As I have said and I have deployed much of the argument in support of this amendment before actually reading it so I will not repeat myself except to this limited extent that in my submission that motion fully and properly expresses the solidarity of this House with the issues upon which this House ought in my opinion to properly express the view. I am surprised that the Chief Minister should have any difficulty expressing the House's assurances on a matter on which he has repeatedly expressed his own assurance and that is in the assurance to our senior citizens that payments currently being made to them will continue regardless of the outcome of any case currently before the courts. I am disappointed as I am sure will be our senior citizens that the Chief Minister does not feel able to give that assurance. I can and I do because what the paragraph says is that one way or another, payments in those

amounts will continue to be made and if the court finds that the way it is presently being done is not quite up to scratch well we shall just have to find another one and if we are ready to do that. So if the Chief Minister feels that he is not in a position to give an assurance to our senior citizens perhaps he ought to get Mr Santos, the General Manager of Gibraltar Community Care Limited to write another letter to the senior citizens saying, "I have had another chat with the Chief Minister and he is now no longer able to give you his assurance that your payments are secure" and in the same letter he will say to them, "But do not worry because Mr Caruana is able to give you those assurances". I commend, Mr Speaker, my amendments to the House.

MR SPEAKER:

This is an amendment that modifies the original motion so we will now debate the amendment. The Leader of the Opposition of course will have his reply on the amendment. All Members can speak on the amendment.

HON CHIEF MINISTER:

Mr Speaker, one valuable thing about the fact that the proceedings of the House are being transmitted live on the radio is that nobody listening in can have any possible doubt in whose contribution the vitriol and the malice and the venom is to be found - whether in the contribution that I made this morning or in the contribution we have just heard from the Leader of the Opposition. It seems to me perfectly clear that the Leader of the Opposition made up his mind about this motion before I spoke and continued with the speech that he intended to make after I spoke and that that was going to happen, it is quite obvious, irrespective of anything that I said and therefore he has not addressed any of the issues that I put to the House this morning in defence of the motion that I was moving. He is, of course, responsible for the truth of the things that he says in this House as I am. I already in giving way, to the Hon Mr Vasquez said this

morning that if anything that I have said here or anything that I have said in a press release is not true, I will unreservedly withdraw it because I have factual evidence of the truth. I am quoting things in my possession received from the firm that is defending the Junta de Andalucia and I am quoting what they have said. The Opposition Member claims that the letter was sent to everybody saying that I will guarantee their existing payments and that now I am going back on that in not accepting his amendment. It is not true. That is not what the letter says. I was particularly careful not to say that for the reasons that I gave him this morning. The letter says, "Mr Bossano has told us that his Government will ensure, when the time comes, that the interests of present and future Gibraltarian pensioners are fully protected". The difference is that if I had said I will guarantee whatever the outcome of the case, I would have had that tomorrow appearing in an affidavit from Messrs Triay and Triay. I will put to him why, because in the latest piece of paper in the Supreme Court in Gibraltar to which he has put his name - in the contempt case - which he has said he is going to withdraw but up to now I do not think has happened, and he certainly has not spoken this morning as if he did not believe in supporting that case, he supported it before, he said he was going not to support it any more and this morning has spoken as if he was going to support it. I have to tell him that in support of that one of the things that Messrs Triay and Triay used in support of their case is a claim that we are suggesting that the Government will protect present and future Gibraltarian pension rights against the action of Messrs Triay and Triay whatever the final outcome of the court case. I have not actually said whatever the final outcome of the court case. He has said it and yet that is used in the piece of paper that he has signed as evidence against me. This is the degree of duplicity and double standards of which the Opposition Member is capable. The motion was intended to give him the opportunity to say here, irrespective of the arguments that Messrs Triay and Triay may be putting which we do not agree with and he does not have to agree with because he is no longer a part of the firm, "We support the stand of the Government of Gibraltar" and by saying, "We support the stand of the

Government of Gibraltar" then they would strengthen the stand of the Government of Gibraltar. He is not prepared to support the stand of the Government of Gibraltar because I have explained to him that it is not simply a question of whether the courts here in Gibraltar or indeed in the House of Lords - because that is where it will finish up if need be - determine that by publishing the contents of letters from Mr Triay we are in contempt of course because we intend to carry on publishing them. The courts can say that. I want to know whether he agrees that I should not do it or he agrees that I should do it. I think I am entitled to ask of him, independent of what the courts think, because if he says if he were the Government he would defend the position even more than I am doing, well, what I am doing, which is less than what he would do, is being challenged every inch of the way and he would do more, and he supports what I am doing and supports the challenge. He cannot run with the hare and hunt with the hounds. I am not asking him to do both. I am asking him to do one of the two things and the motion gives him the opportunity to do it and therefore we cannot accept that everything should be deleted. Therefore we would ask that a separate vote be taken on the proposed amendment of the Opposition Member because for example he knows that we have no difficulty whatsoever in condemning the Spanish Government for the hypocrisy they demonstrate in this which is no different from the hypocrisy that they demonstrate all the time on everything else. I am quite happy to join him in condemning the Spanish Government for their hypocrisy and certainly, as far as we are concerned, the information that we have published, we consider and are going to defend in court, is not in conflict with the law. We intend to keep on doing it because we do not believe it to be conflict with the law. The fact that we do not believe it does not mean that the court may not decide otherwise. The fact that we state we do not believe it is anything in conflict with the law does not mean that the court will change their minds because we say so and the fact that the House of Assembly says we support the press release will not in one moment interfere with the independence of the people who are looking at the merits of the case. They will not be influenced by the fact that

he says he agrees with the press release. But of course he has difficulty in saying that he agrees with the press release because he does not agree with it. Then he has to say he does not agree with the press release. I think I am entitled to say to him, "Is it that you do not accept that we should come out saying Messrs Triay and Triay are making statements which are false or is it that you do not believe them to be false?" It is not simply a question that the court will rule whether it is false or not. We have got incontrovertible evidence and when it comes to the court we will prove it. We have no problem with that but he is supposed to be sufficiently well informed about the dissolution of the fund to know whether what we are saying is true or not and we are saying that it is true because we can prove that it is true. We are saying, and this is what I pointed out this morning and I even went as far as to suggest that perhaps the most generous interpretation that one could put on the totally false arguments that are being put forward, is that Messrs Triay and Triay did not know what they were talking about. But if Messrs Triay and Triay write a letter to the Government and in that letter they say, "It is our submission that the matter of the role of Community Care Limited is relevant because it is only following the abolition of benefits under the Ordinance that the company has played a role in the social services of Gibraltar". If that is the reason, that it is only following the abolition of benefits then that reason is wrong. It is not true. They have not only been involved since 1994. They have been involved since 1989. He knows that; I know that; 4,000 people in Gibraltar know that and one of the 4,000 people was a partner in Messrs Triay and Triay when this was written because he was collecting the payments of Community Care. I am entitled to say, "How can something like this be put down black upon white?" and we write back and say, "You have got it wrong, this is not the case" and because we tell them nine times they then go to court to seek information which they can only justify by saying Community Care is the agent of the Government. The Opposition Member does not agree that Community Care is the agent of the Government because he has just amended the first clause to reinforce the independence of Community Care by saying it is a separate entity. Well, then if he

agrees with me that it is not an agency of the Government he cannot also agree with Mr Triay that it is the agent of the Government. If we say in this House it is not the agent of the Government then it may well be that the matter will be reviewed by Messrs Triay and Triay who may then realise they are totally up the creek and not pursue it any further. Who knows? Maybe if they see that not only am I saying it but they are also saying it, maybe they will believe it. At the moment we have not been able to persuade them and certainly we are going to resist the link-up because we believe the link-up has got implications which goes beyond this and it is a point that I have made on many, many occasions, the independence of Community Care is very important. It is not something that can collapse just like a match stick house. I have said we are going to fight it all the way to the House of Lords at vast expense, totally unnecessarily. The point that I have been making and the point that I made this morning and the reason why we feel this has had to be highlighted is not to make political capital, embarrass the Opposition Member because it is his father-in-law or his great uncle. It is because what they are doing is playing with fire. It has to be said that they are playing with fire because this goes beyond winning the next election. This is about putting at risk something that was created in 1989 and kept separate from what was going to happen in 1994, in the full knowledge that steps were being taken well before the event so that nobody could say this is something that has just been brought into play. It was not the case and therefore the people who are saying it have got it wrong. All these arguments when the case is finally heard will be put and since we are able to document everything that we are saying, we are very confident but in the interim we have got a situation where by raising these matters are totally unnecessary. I made this point this morning and I make it again. Nobody is saying to Messrs Triay and Triay, "We are trying to deprive you from arguing in the courts in Gibraltar that the fund should not have been dissolved". They can argue till the cows come home that the fund should not have been dissolved. We have no problem with that whatsoever. I said so this morning because we dissolved the fund on the basis of the advice that we got from the United Kingdom and this

is why the United Kingdom is joining us in defending that decision. They are confident that the dissolution of the fund is not challengeable and either they are right or they wrong but whether they are right or they are wrong is not a matter which alters anything else. But of course if what is argued, as is being argued is that Community Care has been making substitute payments of pensions since January 1994, which is not true, then the people who have put these arguments surely..... I do not pretend, Mr Speaker, to be as eminent a lawyer or even a lawyer at all as the Opposition Member but instead of giving me free legal advice perhaps he had better give that legal advice to his father-in-law who seems to have made a total cock-up of this case. Maybe he can tell his father-in-law that the submission that Community Care only came into being after the abolition of benefits is wrong; that it is not true and that consequently the argument that Gibraltar residents are getting payments which until December 1993 were being paid by the Social Insurance Fund and since January 1994 are being paid by Community Care is wrong. That is not happening and the fact of the matter is that the interim payments since 1994 are being paid to the Gibraltarians because the Gibraltarians are accepting them and they are not being paid to the Spaniards because the Spaniards are refusing them. It is as simple as that. It is that simple. There is a cheque in the Key and Anchor which people are not collecting on instructions from the Junta de Andalucia who then is suing us because they are not collecting the cheques on their instructions. We are very confident of our ability to demonstrate the insanity of this case. In the interim, while this is going on, we have created a monster in a situation by bringing in totally irrelevant and unrelated arguments and at the same time by finding ourselves in a situation where the case cannot be defended in court because there are so many subsidiaries before the substance is heard. This case is going to take years because at the moment we have got a situation where the other side is appealing against the decision of the court of Gibraltar that the Government of Gibraltar should be given security for costs so that in the event that it wins it is able to recover the money that it has spent. The Junta de Andalucia apparently instruct their

lawyers in Gibraltar to contest this and appeal against it and to say they are not willing, as a sovereign state, they are not willing. That is what their lawyers claim the Junta says to them. It is not, of course, what the Junta says in Spain to the Spaniards because when we read the Spanish newspapers we hear there that they are saying to their constituents that they are willing to put up security for costs so that the case will proceed. We do not have to suppose that what they say politically is the truth and what they say through their lawyers is not the truth but the fact is that presumably we can in court produce as affidavits the articles which allege that the Junta de Andalucia is willing to meet these costs. Presumably we can do that as an argument. Now, given the fact that we have not even got to considering anything other than who is going to foot the bill at the end of the day and we have been at it for two years. It may well be that well before anything is decided here of course the United Kingdom and the Kingdom of Spain may sort it out between them. We do not know. But certainly, Mr Speaker, we cannot accept the motion that the hon Member has moved because it is quite obvious..... Well, it is a motion that is different from mine other than the first two paragraphs.

MR SPEAKER:

I have defined it as a motion that modifies the original motion.

HON CHIEF MINISTER:

Thank you, Mr Speaker. The motion that modifies the original one, the reason why I cannot accept it is because it is quite obvious that in moving his amendment the Opposition Member has moved the amendment not on the basis of the text of the motion but on the basis of the motives that he imputes to me for moving it. He says he cannot accept this because of all the explanations that he has given which have not referred to anything in the text because he is arguing that in bringing this motion what I am trying to do is to dictate to the courts what they must decide and there is nothing here that says what the courts

have to decide or does not have to decide in the matters which are before the courts. But either the Opposition Member agrees with me that the statement by Messrs Triay and Triay that payments by Community Care are public monies and that the entity is an agent of the Government and that it is making substitute payments following the dissolution of the Social Insurance Fund for the purpose of discriminating against Spanish pensioners, that statement has been made and he either has to agree with me that Messrs Triay and Triay are wrong or he agrees with them that Messrs Triay and Triay are right, it is that simple. If he agrees with me that they are wrong then I do not see what it is that inhibits him from saying they are wrong. That statement is false and that is not true and that is the view not just from the Government but the view of the House. If it is not the view of the House, it is the view of the Government and the Government will pursue that view and have already pursued it and will continue to pursue it with or without the view being shared by the Opposition. Obviously, if the view is shared by the Opposition then I believe it will strengthen our hand in the case but it will not guarantee the result except that I am saying to the House quite categorically that I make myself responsible for the accuracy of what there is in this motion and that I have everything that it says here documented and I can produce it. I would not have put it down if it were not so because obviously when we bring a motion to the House we have to make sure that we are able to demonstrate the accuracy of the statements that we make and if it were not the case then I would be bound to come back and put the record straight in Hansard that a statement that I had made previously in the House was incorrect and therefore I had misled the House in coming to a decision by giving it information which was not true. But of course as I have already pointed out to you, Mr Speaker, I am unable to understand how it is that the information which presumably the Opposition Member has in his possession the same as I do, I can only imagine that even though the hon Member may not have been involved in the actual exchange of correspondence with the Government and may not have been involved in the actual arguments put by Messrs Triay and Triay as to the role of

Community Care and I understand that he always made clear that he had no involvement in that even though he has not been involved in any of that presumably before he has put his name to the question of seeking leave of the court on the basis that the contents of five press releases constituted a contempt of the court he must have presumably checked the five press releases and checked the references in the five press releases.....

HON P R CARUANA:

If the Chief Minister will give way. As I have repeatedly said the answer to that question is no. I am not familiar with the papers in this court, any of them. What I know about this case is what he has told me across GBC air waves, that is what I know about this case.

HON CHIEF MINISTER:

Mr Speaker, then I do not understand how the hon Member can be included in the list of applicants before the Supreme Court of Gibraltar, where I am the respondent, as one of the persons who alleges that my press releases are a contempt and that they contain matter which is not true if he does not know whether or not that is the case. I would have thought that if he was going to allow his name to be included he would have said, "Before this goes forward I had better make sure that I agree". I am in fact giving him the opportunity now.

MR SPEAKER:

He will have the opportunity because the Leader of the Opposition will have the last word on the amendment.

HON P R CARUANA:

I can do it now if the Chief Minister will give way. For two reasons, Mr Speaker. Firstly those press releases speak for themselves. The Chief Minister can only be expressing these

views based on total ignorance of what the rules of contempt of court are. I do not know whether the Chief Justice is going to find that they are in contempt, in fact, or not but anyone who knows what the rules of contempt of court are would at least immediately recognise that he is in the ball park, that he is in danger, that he is in jeopardy and that the case is arguable. One has just to read the sheer malice with which the press releases are drafted, and as to why my name appears as a party, first of all because I was a partner of Messrs Triay and Triay and because if my partners told me that something is factually incorrect I believe them, unless he thinks that all 17 partners in the firm have read every scrap of paper in this case if so he just lives in cloud cuckooland.

HON CHIEF MINISTER:

No, Mr Speaker, the answer is quite simple, it is not that I live in cloud cuckooland, it is that I do not accept that the courts have ruled to determine that this is contempt. I am telling the Opposition Member that it is not a universal view because in fact when the first one came out his firm wrote to the Attorney-General and the previous Attorney-General disagreed with his firm. We have brought a QC from the United Kingdom who disagrees and the answer why he disagrees is because it is not as straightforward as he thinks because the very essence of contempt, little though he claims I know about it, and much as he knows about it, is that the essence of contempt is that all previous incidents where there has been such an allegation has been in the situation where it is conjectured that juries can be influenced by matters being published before a judgement is made. Mr Speaker, whether it is or it is not..... *[Interruption]* No, no, Mr Speaker, the standard of the advice I have got is that exposing a judge to improper influences happens when somebody actually leans on a judge. Not when somebody issues a press release. What the hon Member is saying is the absurdity of the position, Mr Speaker. The absurdity of the position that the hon Members are trying to do which is that they are trying to prove that what is black is white which presumably is how they

earn their living so they are comfortable doing it. It is that we quote publicly something that the judge already has. He is not going to discover anything in the press release that he does not know already because we are quoting what Messrs Triay and Triay have told the judge. So the judge is going to be influenced by hearing it the first time from Messrs Triay and Triay, why should they be further influenced because we say in a press release, "In an affidavit Messrs Triay and Triay have made the following complaints and allegations"? We say that that is what they have said. Either they have said it or they have not, but we are not saying anything that is news. The public may not know it but the person who has to make the judgement knows it already. He had it first, before we did and I think it is unprecedented for anybody to suggest that if a lawyer puts an argument to a judge and somebody then makes that argument public then the judge is going to be influenced against the case that the lawyer is putting. Why should he be influenced? Because there is a public reaction to the information and that is going to influence the judge? It is total rubbish. It presupposes that when a case is heard a judge first tries to find out whether his judgement is going to be popular or unpopular before he comes to a conclusion, that is nonsense. The matter will be determined.....

HON P R CARUANA:

On a point of order, Mr Speaker. I am quite happy to debate all day the question of sub judice but Mr Speaker will no doubt recall that when we had tried to incorporate arguments about sub judice all morning Mr Speaker has come down on us like a ton of bricks. I am afraid that what is sauce for the goose has got to be sauce for the gander otherwise we must be released from our restraints as well.

HON CHIEF MINISTER:

Mr Speaker, I am only answering it because they raised the point. It certainly was not something I was going to raise in my contribution. As far as I am concerned the motion that we are

moving in this House has no effect whatsoever on the decision the courts may or may not take and none of the press releases has had effect and either he agrees with me or he does not and what he is actually doing, wriggle though he may, is in fact demonstrating that when the crunch comes he agrees with the arguments that have been paraded against the Government of Gibraltar and then he says..... *[Interruption]* He does or he does not do, one of the two. *[Interruption]* No, Mr Speaker, the motion is to give the hon Member the opportunity to agree with us, that is the opportunity that I am giving him. I am not putting him in any difficult or embarrassing position, all he has got to do is to say, "Yes, we agree they have got it wrong" and we are asking him to do that because we know we are right and we know we are going to win and we know we are going to prove it and when we do he will of course regret not having taken the opportunity that I am giving him because he will not be able then to argue as he is trying to argue now that there is some doubt or some question mark about the legitimacy of the statements that we have made publicly and which we intend to continue making.....

HON P R CARUANA:

On a point of order, Mr Speaker, he cannot make that remark. It is completely unsupported by anything that I have said. He cannot stand up there and say that there is a doubt in his mind about the correctness of the independent of Community Care when only 10 minutes ago he was thanking me for having amended my motion to say it. He has got to stick to the truth of what I have said and not invent attributions to me in order to continue to cover his arguments.

HON CHIEF MINISTER:

Mr Speaker, if the hon Member is as convinced as I am and he claims to be then presumably he should not have a difficulty in declaring that the statement by Messrs Triay and Triay, that it is not independent, is false. He cannot agree with me that it is independent but not be willing to say so in the context of the

allegation by Messrs Triay and Triay that it is not independent. If Messrs Triay and Triay argue that Community Care is an instrument of the Government making substitute pension payments and it is his business to know that they have argued that. He has to know that because he cannot claim to be taking sufficient interest in this matter to the extent of allowing his name to be put in an attempt to institute contempt of court proceedings and not having taken the trouble to find out whether in fact such a statement has been made. I am telling him the statement has been made. I am telling him I am making myself responsible for the truth of what I am saying. I am telling him I can prove it. I am telling him he can find out for himself because he has got access to the source of that statement and I am telling him the statement is false and Messrs Triay and Triay have got it wrong. We will prove that they have got it wrong and he agrees with me that Community Care is a private registered charity and to reinforce that he has added that it has a legal status and existence separate and distinct from the Government. Precisely because it is a private charity, precisely because it has a legal status and existence separate from the Government, precisely for those reasons there is no need whatsoever to attempt to portray as something that it is not. *[Interruption]* No, Mr Speaker, I can support the amendment that I have just read out but I certainly cannot support the hon Member saying that we support the payments made by Community Care because that will be used by Messrs Triay and Triay against me in court and I can demonstrate it because he has used far less than that. *[Interruption]* Mr Speaker, when I warned the hon Member this morning and, Mr Speaker, you told me that I had to wait until the amendment was moved, I was anticipating it. It was not some roundabout way to try and find an excuse for saying no. I do not need an excuse to say no. I can simply vote against it and since we have the majority this will not be passed. I am explaining to him that there are elements of this which give us no problem and that there are elements of this which are dangerous and which we cannot support and for the House to say, "The House will continue and support the continuation of grants to a registered charity" is one thing and for the House to say, "And the payments

the registered charity makes which we are insisting is a totally independent thing" we should not be expressing in a motion in the House because I have no doubt that that is something that somebody can make capital out of. I have no doubt of that because they have attempted to make capital of far less than that so far in the case. Far less than that! So therefore in that situation we would move an amendment deleting part of it. This is why I am saying, Mr Speaker, we would want the different elements to be taken because some we will oppose, some we will support and some we will leave unchanged.

MR SPEAKER:

I think the answer to that is that you shall have to make an amendment to the amendment in the way that you would like to have it and then we will talk on that amendment and if that amendment is passed then it becomes the amended amendment.

HON P R CARUANA:

Mr Speaker, I am very happy during the tea adjournment to get together with the Chief Minister for five minutes to see if we can eliminate what he now finds dangerous. Let us keep the language as uncontroversial as possible with the elements of my motion which he thinks are dangerous and to see if we can come to the sort of unity that he appears to think is desirable.

MR SPEAKER:

Remember that we are talking about an amendment to the original motion and therefore if the amendment is agreed by both parties here and it is passed then obviously the motion will be defeated, do you follow?

HON CHIEF MINISTER:

Mr Speaker, the point that I am making is that the Opposition Member has moved an amendment that removes the entire contents of my motion and replaces that with a number of new paragraphs. The first two of which restore what he has removed. Some of which introduce some new elements and which also leave out some statements which they are not prepared to support but which we will include and which we will carry with our votes if necessary. So therefore rather than have the situation where the Opposition may have to vote against the whole motion because there is a paragraph in it which we will put back and carry, I am suggesting that we take separate votes so that if we are all agreed on the first one and we are all agreed on the second one but they do not agree with the fourth one then we will take a vote on the fourth one. Alternately, then we will, Mr Speaker, move to defeat their amendment and move our own amendment to our own motion incorporating some of theirs and that is it.

MR SPEAKER:

I think that is the best way because I cannot see the other way working. The answer is then that if the Government feel that there are matters in the amendment that they can support then the answer is for the Government to amend the amendment, take that and then we will amend the original motion accordingly. Has the Chief Minister finished his contribution?

HON CHIEF MINISTER:

Yes, Mr Speaker, I have finished on the amendment of the hon Member.

MR SPEAKER:

We have another five minutes. If anybody wants to speak on the amendment for five minutes.

HON F VASQUEZ:

Mr Speaker, I want to speak in support of the amendment proposed by the Leader of the Opposition and in so doing, before speaking I think I must bring to the attention of the House what was already mentioned this morning, the fact that I have an interest in this matter in that I am a member of the firm Triay and Triay which is referred to repeatedly in the course of.....

MR SPEAKER:

I will just ask you one question. You obviously receive remuneration from this firm?

HON F VASQUEZ:

Yes, I am a partner.

MR SPEAKER:

Although you can speak you cannot vote on the motion.

HON F VASQUEZ:

Presumably I can vote in favour of the amendment?

MR SPEAKER:

You cannot vote on the motion. Not if you are receiving remuneration from Messrs Triay and Triay but you can speak.

HON F VASQUEZ:

Thank you, Mr Speaker, the fact is that I am not going to vote for the Government's motion anyway but be that as it may. I really want, as it were, to recapitulate on the thinking behind the Leader of the Opposition's modifying motion because it is not

really an amendment, it is a modification, to try and recap. The Chief Minister in the course of his submission this morning in support of his own motion said that there were two principal reasons for bringing this motion to the House. The first was to try and throw the weight of the House behind Government's efforts to keep Gibraltar Community Care Limited out of the Spanish pensions litigation. He said very clearly that this point was fundamental. It was important that this House stress the independence of Gibraltar Community Care Limited and this House must stand collectively behind the point that payments by Community Care are not payments made by the Government of Gibraltar. That was his first and paramount concern and the second concern which he expressed in this House was that he wanted this House to throw its weight behind him to defend his position personally in the contempt proceedings. These are the matters that he seeks the support of the House on. It has to be said that subject to the acceptance by this House that whatever this House says the law of the land is the law as applied by the courts of Gibraltar such desires on the part of the Hon Mr Bossano, the Chief Minister, are laudable and are perfectly acceptable. For this reason the Leader of the Opposition has proposed modification to the motion that precisely addresses those very points.

The first paragraph notes, as the Chief Minister requires, that Community Care is a private registered charity; the second paragraph supports the making of payments by that company to senior citizens in exactly the same way as the Chief Minister had in his own motion. The third paragraph supports the efforts of the Government of Gibraltar in protecting Gibraltar's interests in defending the case. It then goes on to approve the publishing of information by the Government in a way that complies with the laws of Gibraltar and, surely the Chief Minister is not asking this House to endorse the Chief Minister's breaking of the laws of Gibraltar and, finally, it condemns the Spanish Government for the hypocritical attitude in bringing the whole case on the pensions and in seeking to sue the Government of Gibraltar for their pensions whilst refusing to recognise that Gibraltar has any

rights in the European Community otherwise. Consequently, the modified motion attains to achieve everything that the Chief Minister said he wanted to achieve by his motion and by voting against it as he has indicated that he intends to do he demonstrates that the Chief Minister has no good faith in bringing the motion to this House in the way that he has brought it. There are no matters of national interest that the Chief Minister is seeking to protect. He is merely protecting..... *[Interruption]*to making political capital and protect his own political position in relation to the whole issue of the Spanish question on the litigation relating to the Spanish pensions in court. In fact as my hon Colleague, the Leader of the Opposition, already pointed out various elements of his submission this morning betray the mala fide, the bad faith in which that motion is brought to this House. He actually referred to the fact that the litigants were seeking to raise dangerous arguments in a court of law as if implying that this House somehow had the jurisdiction, had the means, to prevent litigants from bringing arguments to a court of law. The most astounding statement that I have certainly heard in my four years in this House and it betrays the failure on the part of the Chief Minister to understand the essence of litigation before the courts and to understand the fundamental constitutional guarantees that individuals have in bringing matters to the courts. It seems to me that in seeking to pursue the motion in the way that he has, the Chief Minister is hell-bent on creating a constitutional crisis between this House and the courts of Gibraltar and that is something which this House must endeavour to avoid. The justification for the motion in the form that the Chief Minister has brought it is based on a fundamental, mendacious premise. It is a lie which founds the substance of the Chief Minister's argument and that is its main premise is that he has to bring a motion in the way that he is doing it because the court and Messrs Triay and Triay somehow are muzzling him from making statements to his people, to the people of Gibraltar, about the case. I quote him directly. He said this morning, "Triay and Triay are objecting simply because the Government say in public what Triay and Triay say in a letter and this", he says, "is the foundation of the contempt proceedings". That, Mr Speaker,

is simply untrue, that is not the case at all. It is a lie. Nobody anywhere has ever attempted to prevent the Chief Minister from publicising information, from commenting on matters that are going on in those proceedings. It is not because the Chief Minister is divulging information or details of the court proceedings that the contempt proceedings have been brought against the Chief Minister. The contempt proceedings have been brought against the Chief Minister because the Government of Gibraltar have been telling lies, have been making misrepresentations, have been distorting and have been making fabrications about the role of Messrs Triay and Triay in the conduct of those proceedings and that is what constitutes the contempt, not anything he is saying about the case. He can stand up and say anything he wants about the case and about the arguments. I give way.

HON CHIEF MINISTER:

Mr Speaker, if the Government of Gibraltar have been saying in the five press releases that are referred to, lies, then the hon Member is assuming personally now the responsibility for demonstrating that there are lies in those five press releases and he has either got to withdraw what he has just said or prove it. The reason why I believe that I was saying the truth this morning was because I was quoting on what the piece of paper to which he put his name says which is that they are asking for an order that the said Hon Joseph Bossano, by himself and his Ministers or other officers of the Government of Gibraltar, its servants or agents be restrained from publishing or dealing with evidence relating to any issue arising therein or contain any discussions of the merits of the case or the conduct of the case. If stopping me, my Ministers, any officer, my servants, my agents, from publishing, causing, authorising or procuring to be published or printed any matter that deals with any evidence or any matter arising or containing any discussion on the merits of the case is not an attempt to shut me up totally, never mind whether it is a lie or not. I could understand if he had said to stop him saying lies but he does not say that. It does not say here that it cannot be

true, it says whether it is true or not true I should not be allowed to say it.

HON F VASQUEZ:

Mr Speaker, the essence of the contempt proceedings brought against the Chief Minister is that by publishing and by disseminating lies about Messrs Triay and Triay's role in prosecuting the pensions case that they are contentious because they are attempting to bring pressure on Messrs Triay and Triay and there is one fundamental misconception that the Chief Minister has betrayed in the course of his submission this afternoon. He seems to think that contempt of court only amounts to bringing pressure on a judge or bringing pressure or doing something which may or may not influence the jury. That is not the case, there are many different types of contempt and one very important element of contempt is in contempt of court as much as it is in contempt of the House is to bring pressure on individuals, on officers of the court, who are discharging their responsibility to try and dissuade them or pressure them from conducting their professional responsibility in arguing the case on behalf of the client. The Chief Minister has brought my attention and asked me to stand by the allegations that I have made which I maintain that those press releases contain lies about the firm of Triay and Triay and I will very happy go through them now. First, repeatedly the Government have stated that the firm of Triay and Triay is not taking its clients. How more can one try and discredit a professional man than to argue that they are bringing a case, not because they are being instructed by their clients but they are doing it on their own bat. Secondly, and in support of that, he then says repeatedly that Messrs Triay and Triay are fighting the case politically and not legally, that they are bringing political arguments to the court. Thirdly, they stated quite clearly that Messrs Triay and Triay have behaved unprofessionally and unethically. They said it, I have got the press release in front of me, "The Government consider that the actions of Messrs Triay and Triay are the very opposite of what they claim. They are indulging in making judgements, valued

judgements and allegations of a political nature". Constantly, for the last year and a half the firm of Triay and Triay have been subjected to misrepresentations and abuse in public in an attempt that can only be seen as an attempt by the Government of Gibraltar to try and scare the firm of Triay and Triay away from doing this case. That is a contempt of court in the same way as if somebody stops me on the way to this House and tries to bully me from taking up a point in this House he is in contempt of this House. Lawyers are there to do a job and they will do it and it is a contempt to try and dissuade them, to bully them, to blackmail them or to bring them to public opprobrium which is what the Chief Minister and those Government press releases have been trying to do in relation to Messrs Triay and Triay. That is the essence of the contempt. No one is going to say, "You cannot disseminate this information". I will say what it amounts to. A case in point where the partners of Triay and Triay really came to the conclusion that the Chief Minister was trying to start a riot against the partners of Triay and Triay who are only discharging their obligation. Yes, they are making sucking breaths but the Government Members know full well the history of what has happened in relation to the Triays in the past. I give way.

HON CHIEF MINISTER:

Mr Speaker, that may make the individual concern perhaps ultra sensitive but that is the reason why I have said that we are not lying and that we can prove everything we say. The hon Member has just said that we have repeatedly said that Messrs Triay and Triay were acting without instructions. The press release that we first issued was on the 23rd May 1994 (Press Release 23/94) and we say, "Without taking full instructions from their clients Messrs Triay and Triay are saying that in seeking security for costs the Gibraltar Government is impeding the constitutional rights of Spanish pensioners to have recourse in the Gibraltar courts". This is a lie if we had invented it but we have not invented it. I have got the letter from Messrs Triay and Triay dated 12th May, 11 days before which said, "Without full instructions on the question of security for costs, however

pending receipt of this we make the following points....." These were not points made after receiving full instructions and we have said so publicly because they say so in their letter and if somebody tomorrow presumably takes us to court and says, "You are doing this to turn people against Messrs Triay and Triay", we can say, "No, we are doing this because this is what they put in their letter". On the 12th May and we published it on the 23rd May, 11 days later.

HON F VASQUEZ:

Mr Speaker, the difficulty that we now find ourselves is the very reason that the procedures of judgements are taken this morning. This House cannot now start pouring through correspondence and affidavits in those proceedings which are sub judice in an effort to try and determine who is lying and who is telling the truth. That is what the court is there for and those contempt proceedings have been brought for the reasons that I have said, because this Government have made attack after attack on a professional firm. It gets to the stage where the people of Gibraltar must think that Messrs Triay and Triay are arguing this case on their own behalf, that this is Messrs Triay and Triay's case. It is not Messrs Triay and Triay's case, Mr Speaker, it is the representative action brought by the Spanish pensioners, funded by the Junta de Andalucia and they have instructed the firm of Triay and Triay who are discharging their professional duties by arguing the case on behalf of their clients in court. It is not Messrs Triay and Triay's case.

MR SPEAKER:

Let us go back to the amendment.

HON F VASQUEZ:

It is quite clear from the Chief Minister's objection to the modified motion that what he is interested in doing is not seeking unanimity. He is not protecting Gibraltar's interests but in

continuing to fight the Government's case, not in the courts but on the streets of Gibraltar and in this House and that is not what the House is for, Mr Speaker. To have the Chief Minister of Gibraltar justifying the scurrilous and repeated statements he is making about the case publicly in those press releases on the basis that he feels he has to inform his people, keep his people informed, Mr Speaker. This is the man who has made it the very essence of his Government that they do not divulge information, that they are unaccountable who on countless occasions has refused to provide his people with any sort of information, now claims, over this issue that it is bound in duty to keep his people of Gibraltar informed. Nonsense! He is trying to make political capital. He has been doing it for the last year and a half and he is trying to do this in this House. He is abusing this House for his own political ends. What is achieved by the motion that he wants this House to pass? He wants this House to declare that he is not in contempt of court. Who is this House to determine whether he is in contempt of court or not, Mr Speaker? That is what the court is for and it seems very clear to members in the Opposition that the Chief Minister is hell-bent on bringing this House into a constitutional conflict with the Supreme Court of Gibraltar because it is in his own interest to do so and it is certainly not in the interests of this institution, under the Constitution of Gibraltar, to embroil itself in that sort of political argument.

MR SPEAKER:

You are now getting again into deep waters and I told you before the question of sub judice has now been settled and I have passed the ruling.

HON F VASQUEZ:

Yes, and I have to abide by that ruling, Mr Speaker. To close, it is very clear, the Spanish pensions case is not a popular case in Gibraltar. This House has already expressed the view, time and again, in support. Both sides of this House have expressed their view in support of the Government of Gibraltar in resisting the

claim of the Spanish pensioners. The firm of Triay and Triay have an unpopular case on its hands but the place to fight that case is in the court and not in this House and certainly not through press releases in the local media. For that reason I commend the amended motion. The amended motion does everything that the Hon Mr Bossano this morning in this House said he wanted his motion to achieve. It expresses the unanimity of this House in noting that Gibraltar Community Care is a private charity; it notes that the Government Social Assistance Fund grants monies to Gibraltar Community Care Trust; it supports the provision of the grants by Gibraltar Community Care Trust to the citizens of Gibraltar; it supports the Government's attempts to protect Gibraltar's interests by defending the Spanish pensioners case; it approves the publishing of information relating to that case in a manner that complies and it condemns the Spanish Government for their hypocrisy in bringing the case. What more can the Chief Minister ask for, Mr Speaker? The answer is that what he wants is to make political capital out of this for his own ends and in that way, as a side issue which no doubt is of no concern to him, provoke a constitutional crisis and that is not the business that the Opposition is in this House for, Mr Speaker.

MR SPEAKER:

I take it that there are other Members and certainly the Leader of the Opposition who would like to wind up. So I think the time is right now to have a 20 minutes recess.

The House recessed at 5.10 pm.

The House resumed at 5.35 pm.

HON P CUMMING:

I only want to say, Mr Speaker, that I support the Leader of the Opposition's amendment because I believe that it extracts from the original motion the unnecessary evils and leaves only the necessary evils.

HON P R CARUANA:

Mr Speaker, the Chief Minister says that he is entitled to ask me why I will not support his motion. The answer is as I explained at length this morning and Mr Speaker refuses to allow me to explain again and therefore I will not. It has nothing to do with the content of the motion. I explained this morning at length that the Opposition's refusal to support the Chief Minister's motion had nothing whatsoever to do with the content of the motion in terms of whether it was factually right or wrong. Then we got into all those arguments about sub judice which Mr Speaker will not allow me to address again so I will not. But those are the reasons why notwithstanding the fact that Mr Speaker has ruled that it is not a breach of the rules of the House which is why the debate has carried on, I am still free to decide that I do not wish to participate in this motion because I believe that what we are being asked in this House to do is to express legal judgements on matters that are before the court. What is more, what we are being asked to participate in and that is why I will not support the Chief Minister's motion is what has been described by the Bar Council, a view which I share, and adopt as my own, and I had said so before I had seen the Bar Council's statement. The Bar Council's statement is entirely independent of my own that this procedure is a threat - leave aside the question of sub judice - to the proper administration of justice and ultimately to civil liberties in Gibraltar. I would urge the Chief Minister whatever political motives he feels he can attribute to me for adopting the position which he says I am adopting, whatever personal difficulty or embarrassment he imagines I still have as a result of my family involvement with the firm of Triay and Triay, being as ungenerous as he wants to be with me on those issues, he should ask himself what manner of concern does not provoke the entirety of the senior Bar of Gibraltar to convene spontaneously an emergency meeting and issue a public statement to say that the tabling of this motion constitutes a serious threat to the proper administration of justice and ultimately to civil liberties in Gibraltar. Just so that the Chief Minister might know and just to place on record once again that

the reasons why I do not support his motion are not silly little wriggling reasons as he has tried to make out. I am not wriggling unless of course the Bar Council is also wriggling and they have not got a political hook to wriggle off. Nor have I incidentally got a political hook to wriggle but they certainly have not and they have got the same view as me. He said that he was entitled to ask me whether I agreed that he should publish. I agree that he is entitled to ask me and I answered even before he asked me so when I repeat my answer now it is not because he has put me against the ropes and forced me to give the answer. I am repeating the same things that I said before he asked me. He is entitled to my support which he has to making such public comments for the purposes of informing the citizens of Gibraltar as of the conduct of the pensions case as he is permitted by the laws of Gibraltar to make. It is not for me to adjudicate about whether a particular publication is or is not in breach of the laws of Gibraltar. That is a matter for the judgement of him and his legal advisers and for the ultimate adjudication of the Supreme Court of Gibraltar which is the other reason why I do not want to support the motion. I am not trying to run with the hares and hunt with the hounds, I have expressed myself in terms which I would have thought were perfectly clear and of course they are clear but the problem with the Chief Minister is that he is frustrated that I have found a formula to uphold my obligation to defend the political interests of the people of Gibraltar without at the same time dismantling and irreparably damaging another vital interest of the people of Gibraltar and he may not have the dexterity to protect two vital interests but I do and his frustration stems from the fact that my formula allows me to defend both interests whereas his formula is making political hay at the expense of what the entirety of the senior profession in Gibraltar has described as an assault on the administration of justice and ultimately to the civil liberties of Gibraltar, and that is the reason why I do not support his motion. If the arguments being used by Messrs Triay and Triay are wrong what is he worried about? If the arguments used by Messrs Triay and Triay are false and wrong, then I suppose that the Supreme Court of Gibraltar will find in favour of the Government and everything will be OK. Why

is he working himself and his whole community up into this tizzy because some lawyer that he considers to be incompetent has alighted upon arguments which he assures us are bound to fail because they are wrong? Of course, the answer is that he wants to make political hay because if the arguments of the lawyers for the plaintiffs are wrong they will lose. He will not have to go to the House of Lords. He will not have to go beyond the Supreme Court of Gibraltar and we can all sleep comfortably in our beds in the knowledge that because the arguments are wrong the case will be lost by the Spanish pensioners. Surely, he ought to be thankful that the Spanish pensioner is deploying false arguments. Presumably he would be more worried if they were deploying correct arguments because then there would be a risk of losing. All this just shows, Mr Speaker, beyond the pale of doubt if indeed there is a pale of doubt which frankly I cannot see that there is, but all this demonstrates beyond the pale of doubt that this motion that the Chief Minister brings to this House is not motivated by any desire to achieve anything except what he thinks is good stuff for the electorate in the run-up to a general election. That is all that motivates this motion and the rest is demonstrably not true. I agree, as a lawyer, that the Government's case is best served, as the Chief Minister says, by resisting the link-up between the Government and Gibraltar Community Care Limited but that is not a link-up that he has been particularly concerned not to make. When it has suited him, yes he may frown, but he may think that there is a difference between my words guaranteeing the continuity of payments and what he actually had Community Care tell the pensioners in his letter about, "Do not worry when the time comes everything will be alright". What does he think the difference is between guaranteeing the continuity of the payments on the one hand and telling the pensioners and the world, "Do not worry chaps, whatever happens in the case, when the time comes you will be alright"? Seriously, is he seriously arguing that those two formula of words convey a different meaning? Do they not both say to the senior citizens of Gibraltar which is my political commitment to them and his, repeatedly stated in function after function, after which I have had to be traipsing behind him listening to him, is it

not both our political positions that whatever happens in the pensions case, payments will continue to be made one way or the other to our senior citizens? My formula of words, which is identical in effect to his, damages the case but when he wants to bolster his electoral appeal amongst the 4,000 elderly people in this community, he is quite happy to go in print to say, "Do not worry Uncle Joe is here to save you all from the terrible fate that you may suffer at the hands of this dreadful law firm and his son-in-law who are taking us to court". What is sauce for the goose is sauce for the gander and the Chief Minister's cynical, transparent and crude attempts to deceive the old age pensioners in Gibraltar that pensions are safe with him but not with me will not wash. At least I am going to do everything that I can to make sure that it does not wash by with the same political force as he does explaining how secure the pensioners are going to be with me just as he explains, whenever it suits him, how secure the pensioners are with him. I do not care how many times he tells me that when I say it it is bad for Gibraltar but when he says it it is perfectly OK. He complains that the case will take years. If this case is going to take years what is the urgency of working us all up a few weeks before a general election? The purpose of working us all up a few weeks before a general election in respect of arguments in this case that are not going to come to the court for years is evident to everybody including the Government Members. They cannot even be persuaded themselves, let alone hope to persuade anybody else. I would have thought that as far as the Government were concerned the longer the case goes the better. Mr Speaker, without making any comment on your ruling which Mr Speaker knows I accept because Mr Speaker has ruled on the general principles of sub judice, the Chief Minister cannot argue in this House as if something is only sub judice if we are dictating to the judge how he must find. I do not know what first year law student sort of shorthand book he has read but I cannot imagine where he gets the notion that sub judice means that we all rush up to the Chief Justice's house, corner him, all 15 of us and tell him how he must rule. That is the definition of sub judice? He cannot be taking legal advice. Sub judice means to prejudge the issue and he is

asking me to prejudge whether or not he has been in contempt of court and I say I am sorry. It is not my job to do that and I think it is improper to be asked to do that which is why I will not do that. I am not prepared to say that he is in contempt and I am not prepared to say that he is not in contempt. I am not prepared to be put in the position by the Chief Minister where these 15 or 17 people in effect become a court adjudicating on facts; interpreting the law. As far as I am concerned, there are only three people here competent to do that and it does not include anybody on the elected side of this House. So it is not a question of whether we share the Chief Minister's view. I am not prepared to tell the Chief Minister whether I share his view or not. What I am saying is that it is a thoroughly improper use of the procedures of this House to ask me to express my view on a point of law which is before the court for decision. Or does he think that when the Bar Council said that his motion constituted a serious threat to the proper administration of justice and ultimately to civil liberties in Gibraltar, what they were really saying was that there was a connection between Gibraltar Community Care Limited and the Government, that it was not independent? He seems to think that everything in life has got to be black or white. Because I am not willing to be supportive of him in exactly the same words as he writes on a piece of paper, it must mean that I think that what he is saying is wrong and he is mistaken. He is not going to use false patriotism to wind us up to express a view on an issue which we believe and the Bar Council believes is an abuse of the functions of this House. For the Chief Minister to say it is dangerous for this House to support payments by Community Care when this House annually..... Certainly this House does not. But whoever controls the Social Assistance Fund obviously supports the payments made by Community Care or they would not be making the grants to the Community Care Trust. The same man who thinks it is alright for us to express the view on what the court has not yet decided, also thinks that it is wrong for us as a parliament to say, "Well done Community Care we support what you are doing. Please carry on because it is a jolly good thing". Where is the consistency of principle there? They want us to pre-empt the

court's decision but they do not want us to pat Community Care on the back. The duplicity and hypocrisy is self-evident and the Government Members may think they are fooling some people. I venture to suggest that they have fooled nobody at all and certainly I am confident that they have not fooled themselves so what they are doing they are doing with their eyes wide, wide open. They can do it by themselves, they cannot do it with our support. As far as we are concerned, our amendment to the Chief Minister's motion is a perfectly proper political defence of Gibraltar's legitimate political interests. The Government Members can vote for or against it as they please, I would urge them to vote in favour. If they do not vote in favour I believe that that will expose their strategy for the crude machination that it is. It certainly will not result in us voting for their motion, which we will not for the reasons that I have now stated repeatedly. Mr Speaker, I call for a division on the vote of my amendment

MR SPEAKER:

Before I put the question I want to correct a ruling that I made before. I told the Hon Mr Vasquez that he could not vote. I am afraid that I was listening so much about Messrs Triay and Triay that I thought that he was related with Messrs Triay and Triay and of course the subject matter is not Messrs Triay and Triay, the subject matter is the pensioners and he gets no money as far as I know as a pensioner so the Hon Mr Vasquez can vote, of course.

Question put on the Hon P R Caruana's amendment.

The House divided.

For the Ayes:	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon H Corby
	The Hon P Cumming
	The Hon F Vasquez

For the Noes: The Hon J L Baldachino
 The Hon J Bossano
 The Hon M A Feetham
 The Hon R Mor
 The Hon Miss M I Montegriffo
 The Hon J L Moss
 The Hon J C Perez
 The Hon J E Pilcher

Abstained: The Hon Miss K M Dawson
 The Hon B Traynor

The Hon M Ramagge was absent from the Chamber.

The amendment was defeated.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, if I can speak on behalf of the Attorney-General and myself. We have abstained from all the votes in these motions which is not to be taken as any expression of dissent but simply because as the issue is one where there are wide political differences between the Opposition and the Government, we think it is more appropriate for us to abstain.

MR SPEAKER:

So now we continue with the original motion and those who have spoken on the motion cannot speak again but those who have not can of course do so.

HON J E PILCHER:

Mr Speaker, just to put the record straight, particularly in the final comments of the Leader of the Opposition, when he said that by voting against his amendment to the motion would show the crude machinations of the Government benches and to clarify the reasons why the Government have voted against the

amendment, which I think has been clearly explained by the Chief Minister. There are elements in that although we have voted against which as a Government we support and therefore what we are trying to do both in standing up to the challenge and showing that it is not crude machinations by voting against and incorporating what we feel makes sense from the original motion. Mr Speaker, I am moving an amendment to the original motion by the Hon J Bossano as follows: first.....

MR SPEAKER:

Have you circulated the amendment?

HON J E PILCHER:

Yes, Mr Speaker, although given the fact that there are very few people in the Opposition benches, I am not sure.....

HON LT-COL E M BRITTO:

Mr Speaker, the amendment is not available in this side of the House.

HON J E PILCHER:

The amendment was given to the Clerk and is now coming.

Mr Speaker, now that it is clear that the two Opposition Members have got the amendments I am about to propose I will then start. Paragraph (1) is amended by adding at the end and after the words "in Gibraltar," the following words "and has a legal status and existence separate and distinct from Government." Paragraph (2) is amended by adding at the end and after the words "Gibraltar Community Care Trust;" the following words "and supports the continued provision of the present level of grants". Delete all the words after "Triay and Triay" in paragraph (8) and add the following paragraphs at the end of the original motion - New paragraph "(9) Expresses its assurance to our

senior citizens that, when the time comes, the interests of present and future Gibraltarian pensioners will be fully protected". New paragraph "(10) Supports the Government's attempts to protect Gibraltar's interests by its defence of the case brought by the Spanish pensioners". New paragraph "(11) Approves of the Government continuing to publish information relating to the case in a manner that complies with the laws of Gibraltar" and new paragraph "(12) Condemns the Spanish Government for the hypocrisy demonstrated in pursuing the pensions claim at all levels while at the same time seeking to deny and obstruct Gibraltar's status and rights in the European Union".

Mr Speaker, as can be seen what this amendment has done is it has clarified not the positions because I think the positions are quite clear and I do not intend to add anything to the position raised by the Government. It is up to the Leader of the Opposition but it follows the arguments that have been produced by the Chief Minister and it is clear that the only paragraph that has been left out of the amendment produced by the Leader of the Opposition is his paragraph (3) for the reasons that the Government have already stated. Whether the Leader of the Opposition believes or does not believe that a formula of words means the same it appears to me that he is the one that is hypocritical from the point of view that he is always the one in this House that is checking every single word because the Leader of the Opposition sometimes does not know where his role as lawyer ends and his role as politician starts. Even his demeanour in this House and the fact that he sometimes mistakes Mr Speaker for Your Lordship which he does quite often I think clearly shows that. The formula of words is important for the reasons which the Chief Minister has mentioned. Again as I said for the record what this does is it puts back all the areas that the Government are able to support in the amendment so that it is quite clear that we are not voting against, for example, the paragraph where it calls on the Government to condemn the Spanish Government. We have said we are quite happy to do that and by adding virtually the whole of the amendment to the

motion by the Leader of the Opposition it is quite clear that what will now be left is for him to show the crude machinations and not being able to vote clearly for a motion that now contains both sides plus declaring quite clearly the positions as it declares in paragraphs (3), (4), (5), (6), (7) and (8) of the original motion. I will leave this House with one comment and that is that the hon Member and I think it follows from the fact that as I said before he does not know where his role as lawyer starts and his role as politician ends. What I think has not been discussed or mentioned by the hon Member which I think is the basis of what the Chief Minister has been saying that at the end of the day the protection that politicians need against the assault of their basic rights in informing their electorate is this House and it is quite clear that in this area the whole House should be speaking with one voice and the amendment allows the Leader of the Opposition to do that unless of course he clearly shows that it is him who is politicising this motion from the point of view that he thinks that there will be an election within the next two or three weeks, Mr Speaker.

MR SPEAKER:

Now we have another amendment to the original motion and I now propose the question in the terms of the amendment to the original motion. Except for the Hon Mr Pilcher all the other Members can speak except that the Hon Mr Pilcher of course has the right to wind up.

HON P R CARUANA:

Mr Speaker, either the Minister for the Environment has not understood anything of what I have said today or he is trying to get the last word in the hope that his description of what I have been saying will be the one that people remember. If I said to him repeatedly today that my objection to this motion is that having called upon this House to make a legal judgement on matters which are before the court, he does not address that by simply adding in his motion to mine. Therefore leaving in the

combined motion all the objectionable parts of his original motion. If I were willing to vote in favour of his own amendments to his own motion we would not have been here all day. I would simply have voted for his motion at 10.30 am. He has addressed nothing. He has addressed none of the arguments that calls the Bar Council to say that he was assaulting the proper administration of justice and ultimately the civil liberties in Gibraltar. When he has addressed those concerns, when he has addressed the parts of the motion that are open to those legitimate and justifiable criticisms I will then vote for his motion. Not until that time arrives, however many additional paragraphs he adds to it, so the answer is that our views remain exactly the same as it has been.

HON CHIEF MINISTER:

Mr Speaker, the amendment to my original motion that has been moved incorporates in the original motion the text of what was moved by the Leader of the Opposition and we have just defeated and therefore although he might not be able to support the amended motion, it is very peculiar that he should not support the amendment since the amendment is in fact what he was asking us to vote for two seconds ago. *[Interruption]* Yes, Mr Speaker, it is not the first time that this House has had motions before it, or legislation before it, where members of the Opposition have been in favour of part but not in favour of the whole. It has happened consistently and the House.....

MR SPEAKER:

By supporting the amendment you are not necessarily supporting the motion because then the motion will have to be taken as amended and this if you so wish is when you can vote against. What I am saying is that you are voting only for the amendment.

HON P R CARUANA:

Yes, Mr Speaker, but we all know what this is about. This game of cat and mouse is about whether the Government can draw me into a procedure which I think is disreputable. I will not through the device of an amendment to his own motion be drawn into playing a voting part in a procedure which I think is disreputable to this House. It is as simple as that and he can amend his motion as often as he likes. Unless he accepts the principle of the Opposition's view, we are not participating in the same process, Mr Speaker.

HON CHIEF MINISTER:

Mr Speaker, the Opposition Member is totally incapable. I do not know if that is how they behave in court, because it is not my practice to turn up there, I only turn up when I am facing an indictment for contempt but it seems that he cannot deliver an argument without casting aspersions on anybody that does not agree with him. It seems to me that the entire process that lawyers use, if his is an example, is to intimate people who disagree with them as a way of persuading them to change their minds. The position is that since the Opposition have now disappeared from the House of Assembly, which is no bad thing, we are able to say that we make our own the alternative that he produced and without any help from them I have the opportunity of being able to say that it is exclusively on the vote of the Government that this House will pass a resolution asserting the independence and the separate existence and the distinct status of Gibraltar Community Care because the Opposition Member proposed it five minutes ago but has now disappeared. It is only on the Government vote that we are going to pass a motion maintaining a commitment to provide support from the Government Social Assistance Fund to Gibraltar Community Care Trust. It is only the Government that are expressing their assurance to our senior citizens that when the time comes the interests of present and future Gibraltarian pensioners will be fully protected. I will not go into the type of language that the

Opposition Member seems to relish using of talking about inconsistency and hypocrisy. He has got a track record of inconsistency and hypocrisy which is difficult to match. He is the man who one minute is burying Brussels but the next minute resuscitating it and then burying it again. He clearly has a similar approach in this issue because as far as we are concerned the Bar Council may hold the view that it does presumably we are entitled in a democracy to hold a different view from the Bar Council and we are not committing some heinous crime by saying that we disagree with the Bar Council. I predict, Mr Speaker, that the rule of law in Gibraltar and civil liberties tomorrow will not be changed one millimetre because we pass this message today. It is not the first time that the Bar Council has got itself engaged in party political disputes. It did it with the issue of the Companies Registry but it has certainly never done it in all the disputes in the history of Gibraltar when I sat on the Opposition, ever. In nothing that has ever happened in Gibraltar between 1969 and the GSLP administration did the Bar Council ever find anything to criticise in the public administration of Gibraltar, quite extraordinary. But, of course, we respect that the Bar Council are entitled to hold the views that they hold and we say to the Bar Council, "We disagree with you" and we are entitled to say we hold a different view. We are entitled to say this motion is simply asserting a statement which when the courts have to decide they will have to decide on the evidence put in front of them but when that happens and it may happen a long time in the future well before that happens let us make clear that if we have not until now made public statements, out of deference for the fact that the courts were thinking to whether leave should be granted or not be granted, it is not because we are in any doubt about the fact that the statements that we have got before us that have been made. The five press releases we have made in two years comply with the laws of Gibraltar in the judgement of the Government of Gibraltar. Whether they comply with the laws of Gibraltar in the judgement of the Opposition is not clear. It would appear that since they are not prepared to express a view on it they must be doubtful whether it does or it does not. Presumably, when we win as we will in court, they will

agree that we were right throughout. We have no doubt that we will win and we have no doubt that the arguments that we will put in that court will win it but we are entitled to say like any litigant we believe we are right. If we did not believe we were right we would have in fact taken action to correct it. If somebody had been able to demonstrate to us at the time that the press release was made that there was something in that press release which was going to influence the course of the action and we have been told today that when they are talking about the matter being sub judice it is not what everybody thinks it is, it is not that we are going to be intimidating the judge, now that is not an issue so it does not make any difference now as to the judgement of the case. We are told by the Hon Mr Vasquez that the people that we are intimidating are Messrs Triay and Triay. Well, we have been singularly unsuccessful in intimidating if that had been our intention because the first press release was made on the 23rd May 1994 and it certainly has not done anything to stop them going on with the argument. They have carried on with exactly the same argument post that release as they were doing before the release. I have demonstrated today when challenged, Mr Speaker, that if we said in a press release on the 23rd May 1994 that Messrs Triay and Triay had put a series of arguments without taking full instructions this was not casting an aspersion on their integrity, this was quoting their letter. I said the letter that we were quoting had that sentence in it and was dated the 13th May which was 11 days before we issued the release and when I say that the reaction of the Opposition is well that proves he should not get into details because this is a matter for the court to decide. Well, it is not a matter for the court to decide. It is a matter for the court to decide on the evidence whether we have done anything that we should not do but what we cannot have is "Let the court decide whether it is true that there is such a letter" and what we cannot have is people saying to us "We are claiming there is a letter but we are not allowed to publish it." Well, if we are not allowed to publish it and there are people saying these are fabrications by the Government how else can we defend ourselves because we are being attacked? How can we defend ourselves against the scurrilous accusations we have

heard in this House today unless we are able to do it either outside the House where there is an attempt to stop me making any reference on anything to do however remote through my agents, Ministers or anybody else who I can think of, that has anything to do with that case or inside the House where, according to the arguments that were put by the QC that came from the United Kingdom to argue against the leave being granted, one of the arguments that the QC used was, "Look even if it was argued that these things could not be said in Government press releases there is absolutely no doubt that they could be said in the House of Assembly". That is what was said in the court when the court considered this matter and that was not disputed in the court. So having had a situation where in the court it is said, "Well even if the argument is that it cannot be made public there is nothing to stop the Government making the same point in the House where they are not subject to any action" and where it is being heard over the radio and where it can be repeated in print and where nobody can get writs because we seem to forget that there are writs flying to the Chronicle, to GBC and to all and sundry from the Governor down. It finished up with an action just against me but it started off with an action against everybody and it is peculiar that if these things are not politically motivated why is it? Is it that somebody thought, "This is a dangerous thing and if we are going to upset so many people we better concentrate on just one guy who it does not matter if we upset because we know he is on the other side. There is no way that Joe Bossano is going to vote for Caruana because we bring an indictment against him. His vote is lost already so we are safe by going for him". But the others it might be a mistake. It is not an unreasonable thing to speculate on that. To speculate about that and then to go on to say that proves the hypocrisy, the bad faith, the ill-will of the other side. Well we have not said any of those things and I find it peculiar that we are being lambasted the way that we are given the moderation of our language in this case and we are supposed to be the aggressors who are putting the rule of law, parliamentary democracy, the freedom-loving people of Gibraltar, all at risk simply because we are..... *[Interruption]* Yes, Mr

Speaker, that is the essence of the kind of attack we have been subjected to today. It is the end of the Western system. This is what we are doing. We are putting in I think one particular view which appeared in print somewhere called "This is the last nail in the coffin of parliamentary...." I do not know who wrote that one. No doubt it emanated from Irish Town where most of these things seem to emanate from but that is the essence of the way it has been portrayed. Well, I can tell the Opposition Member that will not be accepted and believed and washed with anybody. Nobody really believes that this motion, which may be difficult for the Opposition Member to support for reasons which he could have validly made clear, is going to create a situation where as from tomorrow the rule of law disappears from Gibraltar. If that is what the Bar Council believes then, by Christ, we better have a look at regenerating the Bar Council, most of whom, as I said, appear to be recipients of community care anyway and bring in some younger blood who may have more open ideas as to the fact that..... *[Interruption]* I have little influence over the Bar Council. My only bone of contention with the Bar Council, Mr Speaker, was that shortly after we came into Government I was presented with a draft to change the Supreme Court Ordinance in order to provide for the constitution of the Bar Council and not unnaturally I said, "Well, look I know nothing about this and if I am going to take a piece of legislation to the House of Assembly I do not expect to have it presented in draft form simply because somebody somewhere has negotiated this draft with the then Attorney-General in 1988". I said the answer is, "No, we take to the House of Assembly the legislation that we are prepared to support politically" and if somebody wants us to introduce legislation to the House they do not come to me and say, "Look this is what you have got to vote for". I do not know if that is how it used to be done before 1988 but it is certainly not how it is done since 1988. Unless we can be given sound reasons for wanting to do it and then have to come here and defend it we do not do it. One of the peculiar things about the constitution which I found very odd was that the constitution provided for QCs, as I mentioned earlier on, to be automatically on the governing council by virtue of being QCs and it did not seem to me to be

the most democratic of constitutions. If that is the constitution they want to have good luck to them. The profession can constitute themselves in whatever way they like but if it is a constitution that we have to defend then presumably we have some say in it. That is the only time I have had anything whatsoever to do with the Bar Council. I have never had anything to do with them since and I do not know whether it is that they still feel that I put the rule of law in jeopardy by not doing what they wanted me to do in 1988 and they have never forgiven me since, but certainly they have never come back with any alternatives for us to consider.

Perhaps, Mr Speaker, I can also mention that the only things that may be of benefit to the Opposition Member in not voting for the amendment is that in fact one of the clauses of the amendment, in paragraph (9) expressing our assurance to our senior citizens that when the time comes the interests of present and future Gibraltarian pensioners will be fully protected. The hon Member has made a big song and dance about saying that there is no difference between that and what he had. There is a difference and it is a difference that the firm of lawyers in question would no doubt home in like a Polaris missile given the way they have dealt with everything else up till now and of course that is what was said in the letter from Community Care but he need not, if he has been following this with the interest which presumably he ought to be following it given his commitment to the cause, he would not have made such a big song and dance about the Community Care letter because all the letter did was to repeat verbatim what was in Government press release 64/95 of September 1995. In press release 64/95 of September 1995, it said, "The Government of Gibraltar will resist this action by Messrs Triay and Triay with all the means at its disposal" which the Opposition Member agrees that we should do. "Whatever the final outcome of the court case the Government of Gibraltar will ensure, when the time comes, that the interests...." without spelling out what that means ".....of present and future Gibraltarian pensioners are fully protected". That, which appeared in print in a press release and was publicised

everywhere in Gibraltar in September 1995 was the only thing that was repeated in the letter. That is the only thing, nothing more than that, we did not make any further promises or quantify or called them payments or said anything else, that is all we did. However, little as that is, in the court case which I am facing, to which the Opposition Member is a party, as one of the partners, that is one of the things that he has complained about. Amongst the complaints listed is listed interference with Messrs Triay and Triay and one of the things which Messrs Triay and Triay claim that impinges on the professional integrity is press release 64/95 and Messrs Triay and Triay say that one of the things that impinges on their professional integrity is that it is suggested that the Government of Gibraltar will need to protect present and future Gibraltarian pension rights against the actions of Messrs Triay and Triay whatever the final outcome of the court case. Obviously, it is fortunate that the Opposition Member has decided not to vote for the amendment because otherwise he would be voting for an amendment which in the judgement of Messrs Triay and Triay, with his support, impinges on their professional integrity. Therefore, one of the things that clearly comes along and having made up his mind what this is all about, he has not bothered to read any of it because if he read it he would realise that if he agrees that to say, "We will look after the interests of present and future Gibraltarian pensioners when the time comes, whatever the final outcome of the court case". If that is something he thinks we cannot do without impinging on the professional integrity of Messrs Triay and Triay why is it that Messrs Triay and Triay do not take him to court when he says it. I have no doubt that I can defend that this impinges on the professional integrity but if he agrees with me that it does not then by his logic that is interference with the independence of the judiciary because presumably it is the judge who will have to decide when the time comes whether by saying what I have just quoted which I am quoting from the affidavit of Messrs Triay and Triay, presented in the Supreme Court of Gibraltar, which is I understand a public document because it is criminal proceedings and this is what he read out in court and the press was there, then if the judge has not yet made up his mind whether I am

attacking the integrity of Messrs Triay and Triay he and the rest of the Bar Council agree with him, cannot say that they will protect present and future Gibraltar pensioners whatever the final outcome of the court case. Well, I am afraid in the amendment that he brought to the House, if I am not mistaken, the words "whatever the final outcome of the court case" also appear "regardless of the outcome of any case currently before the courts". Those words are not identical to mine, mine say "whatever the final outcome of the court case" he says, "regardless of the outcome of any case before our courts". Mine attacks Messrs Triay and Triay's integrity. His does not attack the integrity. I give way.

HON P R CARUANA:

Mr Speaker, I am only speculating you understand, but does he not think that the allegation that that phrase defending the interests of the pensioners is an interference with Messrs Triay and Triay, he is focusing on the wrong words. It is a suggestion that the pensioners need protecting from Messrs Triay and Triay not that they need protecting by their payments being guaranteed, does he not see that? Or does he think that Messrs Triay and Triay think that it is interference with them for them to agree that they will carry on paying the pensions, is that what he thinks? He cannot possibly think that.

HON CHIEF MINISTER:

What I think, Mr Speaker, is that he cannot say we can vote in this House saying we will guarantee whatever the final outcome of the court case and that is not casting any aspersions on Messrs Triay and Triay but if I say it then it is because if the words are virtually identical, one says regardless of the outcome we will assure that our pensioners are looked after when the time comes. Messrs Triay and Triay say the fact that the Government say they will need to protect whatever the outcome of the case, well of course. If we win the case we will not need to protect anybody, we lose the case, we will need to protect them. If he

protects them who is he protecting them against? The Junta de Andalucia, who is using Messrs Triay and Triay to attack the system we have got and if I protect them I am protecting them against the same but if I say I will protect them it must follow, according to his analysis and the analysis of other people in his camp, that the only reason why I am saying it is to cast aspersions of Messrs Triay and Triay. Well, no, I am saying it because it happens to be Messrs Triay and Triay who are conducting the case against us and they are conducting it in a way - and we have not finished dealing with that - that certainly in my view is something that we will need to pursue outside the House. They are conducting it in a way which to me seems clear, goes beyond purely legal arguments because I do not think that it is a legal argument, I have my doubts now after hearing the way the hon Member has been conducting the court case in this House. I suppose it is possible that when the hon Member interrogates a witness on the other side he says to the witness, "Your malicious statements in order to undermine the poor guys" and says them before he gets a chance to do it. It may be the way they behave all the time, I do not know. All I can say is that if Messrs Triay and Triay say that something that we are doing is malicious, then to me that is not a matter of law and I do not think any judge in any court of law is entitled to say, "I will rule whether what the Government are doing is malicious or not malicious". The judge will rule whether what we are doing is contrary to law or in keeping with law. If Mr Triay says that our handling of the case is malicious then we are doing something that is not permitted but if I say that his handling of the case is malicious then that is something that we have to be prevented from. I do not see why he can call us malicious and we cannot call him. It seems to me that we are as entitled to express value judgements about the conduct of the case on behalf of the Junta de Andalucia as the lawyer paid by the Junta de Andalucia is entitled to express value judgements about the way the Government of Gibraltar behave and it seems to me that it is in fact quite incredible that that should be questioned in Gibraltar because I have no doubt that on the other side it would be totally one-sided. The Junta de Andalucia presumably would be able to

say whether they like and they do with great regularity and nobody would try and muzzle them. On this side we are not trying to prevent them from saying what they like. We are simply asking that we should be able also to say what we think is relevant and what we think is pertinent and what we think puts the thing in balance and therefore if Messrs Triay and Triay say Gibraltar Community Care Limited is a sinister device to discriminate against Spanish nationals, I am entitled to say that is a lie. Community Care is not a sinister device and if Messrs Triay and Triay say Community Care started operating after the dissolution of the fund, I am entitled to say that is not true and I am entitled to say Mr Triay knows that it is not true because it is possible to establish that it is not true and because the Junta de Andalucia might not know it but presumably the reason why they have lawyers here is so that the lawyers establish the truth and they cannot expect to establish the truth by asking us because we are not there to help them in their case. They have got independent means of establishing it which are very easily established and they have chosen not to do it and this is why throughout we have been trying to demonstrate that the pursue of the case, without bringing Community Care is perfectly possible that Messrs Triay and Triay could do a 100 per cent perfect job in challenging the dissolution of the fund and in trying to get the fund restored - which as I say is a problem for Her Majesty's Government because we did what we were advised we should do and could do and we have no problem with them - without having to bring in anybody else or anything else or any other payments or any other activities of the Social Fund or Community Care. None of it has anything to do with it and we have told them nine times and they say, "We do not believe you". "Well, look if you do not believe me then do your own inquiry and then find out for yourself and then advise your clients but what we told you is the truth but you are not doing that and therefore I have to ask myself why? Why are you not doing it?" I cannot come up with an answer and since I cannot come up with an answer I say, "Well, right, here we have an opportunity to strengthen our argument" because presumably if he does not believe it from me he will believe it when he is told by the whole

House that one thing has nothing to do with the other and that really without wanting to interfere on the job that he feels he has to do for his paid masters - and good luck to him, he can do as good a job as he likes - he should not stray away from the subject matter and delve into other areas which are not going to be good for anybody. That is what we try to put across and we have tried to put it across here because we have difficulty in putting it across outside because when we have tried to do it there has been clearly a number of threats over two years to try and stop us and finally action initiated where at the stage that we are is that the courts have to decide whether that action can proceed or not proceed and we are arguing that it cannot. I commend the amendment to the House.

HON J E PILCHER:

Mr Speaker, I have not got a lot to say because the point has been made. But I would like to comment again on the smoke screen of the Leader of the Opposition when he took us back to everything that he said this morning. He did not take the trouble to read the motion as amended, in that he has been quite clearly saying that he cannot support paragraphs (3), (4), (5), (6), and (7) because that is referring to in the case of paragraph (3), noting the affidavit, declaring the statement, noting that Messrs Triay and Triay consider the statement published, noting the basis of Messrs Triay and Triay alleging that the publishing of such information by the Gibraltar Government and then noting that pursuant to this all are facts which the hon Member has accepted that the Chief Minister, in putting those facts in front of this House, is in fact clearly stating something which is fact. Then paragraph (7) notes that pursuant to that Messrs Triay and Triay have sought leave of the court to an action for the indictment of the Chief Minister, the Hon J J Bossano. Paragraph (8) which is the only thing that the Leader of the Opposition cannot get to is "totally rejects the above views expressed by Triay and Triay" because everything else, Mr Speaker, is noting, declaring, noting, noting and, finally, noting that a summons has been served so the only thing of the whole thing is "totally rejects the

above views expressed by Triay and Triay". It is of course because we want to abide by the law but the amendment, Mr Speaker, in paragraph (11), "Approves of the Government continuing to publish information relating to the case in a manner that complies with the laws of Gibraltar". So here we have a situation of an Opposition that over the last four years have been saying that we should have open Government, that we should have freedom of speech and that there should be more meetings of the House of Assembly that we are gagging everybody for fear of reprisals and after all that the first time, according to them, that the Government go public on what I consider is a major point of information to the public, first of all the Chief Minister is gagged by Messrs Triay and Triay, a firm of which the hon Member was a partner till up to a few weeks ago, failing that they then try to gag us through you this morning, Mr Speaker, so that we then are not allowed to say that in the House of Assembly. After that since they are not able to do that when we out manoeuvre, out negotiate, out discuss them and convince them, what do they do? What do this Opposition that is abiding by the rule of law, believes in discussions, open government, what do they do? When we get to the vote they all walk out, Mr Speaker, every single member of the Opposition walked out. Having not appeared to have gagged us what do they think they do? They do not listen to us that is the same thing but of course the information is information to the public and what happens after that? What happens after that is that the Government were in the House at the time but I can imagine the Leader of the Opposition who thought that by walking out that would bring the debate to an end, the debate continues and he must have been walking up and down in the ante chamber and then given the strong convictions of their actions he walks back in and sits there on his own, Mr Speaker. That epitomises what this Opposition is all about and what the hon Member should be voting for in this House is whether they vote for the Government and the House of Assembly or whether he votes for Messrs Triay and Triay. That is the machination that the hon Member does not know how to get out of and what has he done, Mr Speaker? *[Interruption]* End of debate, no. *[Interruption]* We will end the debate when we

feel we have to end it, I said it at the last House of Assembly. I have been in this House for 12 years. I have been sitting in the Chamber for the last 20 because I always followed politics. I have never seen, except on one occasion, the continuous bickering and laughing and switching off of microphones that goes out on the Opposition side of the House when they want the public either to hear bickering or to hear laughter. This is the party that genuinely says that they believe in democracy, that they believe in free speech, that they believe in everything. Now is the time to prove it. This motion is about democracy. This motion is about free speech. This motion is about defending this House against the machinations of the Bar Council or any other legal entity that thinks that they can quash information that is duly owed to the people of Gibraltar, Mr Speaker, and with that I commend the motion, although the Chief Minister commended it before to this House.

Question put on the Hon J E Pilcher's amendment. The House divided.

For the Ayes:

The Hon J L Baldachino
The Hon J Bossano
The Hon M A Feetham
The Hon R Mor
The Hon Miss M I Montegriffo
The Hon J L Moss
The Hon J C Perez
The Hon J E Pilcher

Abstained:

The Hon Miss K M Dawson
The Hon B Traynor

Absent from the Chamber:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon M Ramagge
The Hon F Vasquez

The amendment was carried.

HON CHIEF MINISTER:

Obviously the House is a much better place when they all walk out, it ought to be encouraged. Mr Speaker, the amendment that we have just passed incorporates virtually in its entirety the motion that originally sought to amend mine and which we defeated. I think it is important that we have done that because, as I said, there were certainly things there, such as condemning the Spanish Government for its hypocrisy, which we would not have wished to miss the opportunity of voting upon and therefore they introduced that amendment, we voted against it as a substitute and replacement of our motion not because we are against that sentiment and we have reinstated it and given them the opportunity of voting for their own proposals which they have declined to take. We therefore now have an amended motion which has got, as I said, the support of all the Government Members. It clearly does not have the support of the Opposition Members that are not here and of the one Opposition Member who should never have been here for a very long time now. The amendment does not alter of course the original motion, it adds to it and adding to that original motion it does nothing of course to address the arguments that were.....

MR SPEAKER:

Members cannot be approached from the Gallery.

HON CHIEF MINISTER:

.....it does nothing to address the nature of the arguments that we have paraded. As I have said, the Government are fully confident that the passing of this motion will have absolutely no effect whatsoever on the issues that are pending before the Supreme Court which, as I mentioned at the beginning, is the granting of leave on the question of whether the five press releases constitute a contempt of court - which we do not believe

they do and which we will argue when the time comes in court - and the question of security for costs where we have already won the case and Messrs Triay and Triay allegedly, on instructions from the Junta de Andalucia, denied by the Junta de Andalucia in Spain. It is something we will no doubt have to bring to the notice of the courts how it is that the principal denies publicly in Spain what their lawyers claim here. If they were saying that the Junta de Andalucia is not prepared to put up security for costs we could understand it because it may be that that would be a situation where one good thing would have come out of all this presumably which would have been the first time that an institution of the Spanish State has recognised the courts of Gibraltar because one thing that we cannot forget, which is one of the pernicious things about the conduct of this case, is that, as I mentioned in my original opening remarks, this case has been brought in the name of a Spanish pensioner and it was only as a result of constant probing by the Government that it was revealed that the Spanish pensioner was not paying for the case, that it was the Spanish Government that were paying for the case and that therefore when the lawyers tell us "We are acting on instructions" we are entitled to say "Whose instructions are you acting on?" It certainly cannot have been the instructions of the named pensioner, albeit in a representative capacity because the named pensioner has had to be removed because what he complained of, which was not getting paid in the Key and Anchor, was not true because he was getting paid and the lawyer who was defending him for not getting paid did not know that he was getting paid until after he had collected three payments of 13 weeks each. These things, none of which had yet been considered by the court are all things that will need to be brought up when the substantive hearing gets under way. In the meantime it may well be that although we do not expect that this motion will influence the judge and now the Opposition has made clear that that is not what they considered to be what makes the case sub judice or capable of being in contempt, it is not that the judge will be influenced but that the lawyers might be frightened to carry on because of a nasty experience they had many years ago. Well, we would not expect that the lawyers

should be frightened but we hope that it may well be that if they have listened into what is being said they will go back and do their homework and correct the submissions that they have put which are false and having been told repeatedly that they are false and now having had a motion in this House declaring them to be false perhaps they will now go back and check it and having found that they are false presumably they will go back to the court and withdraw those submissions knowing them to be false. I cannot understand how they did not know them to be false in the first instance but I thought, generous enough in my opening remarks, to say, "Perhaps the most generous interpretation that one can put is that they have put these arguments without realising how wrong they have got the whole thing" and if that is indeed the case then they can rectify not because we are intimidating them but because we are being given an opportunity to put publicly an argument which they have sought to deny us. They have sought to deny us that opportunity outside the House and they sought to deny us that opportunity inside the House presumably on the basis that if we say as we say, "The statement made by Messrs Triay and Triay that the arrangements that exist and making substitute payments following the dissolution of the fund is false", that we are doing that to put people against them. We are not doing it to put people against them. We are doing it because that is the truth. That is why we are saying it. Now, if we are told, "You must not say it because people will be worked up against the firm of Triay and Triay" well, look, what are we supposed to do? If Messrs Triay and Triay make false statements what do we do about it? If we tell them that they are wrong and they say, "It is not enough that you tell me. Give me a detailed account of the payments made by Gibraltar Community Care Limited" and we say, "No, we cannot give you a detailed account of the payments of Gibraltar Community Care Limited because if we gave you a detailed account then you would be right and we would be wrong. If you are saying Community Care is our agent and we are saying it is not our agent, and you say, "To prove that it is not your agent tell me every payment they make". Well, if I told you every payment they make you would then use that in evidence against me as

proof that they are my agents" and do they think we are stupid? So we have said to them, "No, no, we do not need to tell you anything. We are telling you that this is the case and we are telling you that this is possible to establish and it is up to you to establish it" and we maintain that position and we will maintain it in court and we will win in court, of that I have no doubt because we are able to document and prove every single thing I have said in this House today and therefore we move forward with this motion in the confidence that it does not represent any threat whatsoever to the civil liberties unless the civil liberties that exist in Gibraltar are one where the legal profession are free to say what they like about anybody and are immune and none of us who are normal mortals can do the same to them. If that is the case then it is a very one-sided set of civil liberties, that is all I can say, Mr Speaker.

MR SPEAKER:

Before the Chief Minister finishes his contribution I would like him to read the motion, as amended, for the record.

HON CHIEF MINISTER:

Mr Speaker, the motion, as amended, reads:

"This House :

- (1) Notes that Gibraltar Community Care Limited is a private registered charity established in 1989 which provides assistance to senior citizens in Gibraltar and has a legal status and existence separate and distinct from Government;
- (2) Notes that the Government's Social Assistance Fund whose objects include providing support to registered charities has provided grants to Gibraltar Community Care Trust and supports the continued provision of the present level of grants;

- (3) Notes that by affidavits submitted to the Supreme Court, Messrs Triay and Triay have alleged that Gibraltar Community Care are distributing public funds in order to discriminate against Spanish pensioners following the dissolution of the Social Insurance Fund on the 31 December 1993;
- (4) Declares that the statement made by Triay and Triay referred to above is false in that the payments made by Gibraltar Community Care Limited are not public monies, that this entity is not the agent of the Government but a private registered charity and that it has not been making substitute payments following the dissolution of the Social Insurance Fund for the purpose of discriminating against Spanish pensioners;
- (5) Notes that Triay and Triay consider the statements published by the Gibraltar Government giving details relating to the Spanish court case to be detrimental to the prospects of obtaining a judgement in favour of the Spanish litigant;
- (6) Notes that on this basis Triay and Triay allege that by publishing such information the Gibraltar Government has acted in contempt of Court;
- (7) Notes that pursuant to this view, Triay and Triay has sought leave of the Court to an action for the indictment of the Chief Minister the Honourable J J Bossano;
- (8) Totally rejects the above views expressed by Triay and Triay;
- (9) Expresses its assurance to our senior citizens that, when the time comes, the interests of present and future Gibraltarian pensioners will be fully protected;

- (10) Supports the Government's attempts to protect Gibraltar's interests by its defence of the case brought by the Spanish pensioners;
- (11) Approves of the Government continuing to publish information relating to the case in a manner that complies with the laws of Gibraltar;
- (12) Condemns the Spanish Government for the hypocrisy demonstrated in pursuing the pensions claim at all levels while at the same time seeking to deny and obstruct Gibraltar's status and rights in the European Union."

I commend the amended motion.

Question put. The House voted -

For the Ayes:	The Hon J L Baldachino
	The Hon J Bossano
	The Hon M A Feetham
	The Hon R Mor
	The Hon Miss M I Montegriffo
	The Hon J L Moss
	The Hon J C Perez
	The Hon J E Pilcher

Abstained:	The Hon Miss K M Dawson
	The Hon B Traynor

Absent from the Chamber:	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon H Corby
	The Hon P Cumming
	The Hon M Ramagge
	The Hon F Vasquez

The motion, as amended, was carried.

BILLS

FIRST AND SECOND READINGS

THE MONEYLENDING (AMENDMENT) ORDINANCE 1995

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Moneylending Ordinance be read a first time.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have the honour to move that the Bill be now read a second time. I think the explanatory memorandum is fairly informative and really says it all. The House might wish to know that the introduction of the Bill is as a result of complaints received by Government of oppressive behaviour on the part of moneylenders in Gibraltar. I do not want to go into detail of the cases. The rate which has been 48 per cent has been fixed at 25 per cent because this is, broadly speaking, the rate which is comparable to that charged by credit card companies. The provisions of the Moneylending Ordinance do not in fact apply to banks and in fact most credit cards are now issued by banks. Since moneylending can be a lucrative activity it was felt that the fees charged under the Ordinance to those who obtain a licence and a certificate were rather low and the opportunity has been taken to increase these to a rate more in keeping with modern times. That is all I think I need to say, Mr Speaker. I commend the Bill to the House.

MR SPEAKER:

Before I put the question does any hon Member wish to speak on the general principles and merits of the Bill?

HON P R CARUANA:

Mr Speaker, I think it is absolutely dreadful that people should be charging others 48 per cent per annum interest, in most Arab countries they would have both hands chopped off for that and if that is the only purpose of this Bill then obviously we support it. I am not sure that 25 per cent is any more reasonable but I would say that 25 per cent per annum rate of interest is still pretty excessive but still if the sole object of this Bill, both in intention and in effect, is to reduce the rate of interest from 48 per cent to 25 per cent then I feel it is a move in the right direction.

HON CHIEF MINISTER:

Mr Speaker, all I can tell the Opposition Member is that until very recently 25 per cent was what was being charged on credit cards. That is how reasonable it is and that in fact... *[Interruption]*it is still excessive of course, yes because the money they pay on deposit keeps on coming down but the money they charge on the lending does not seem to but nevertheless it is not out of the realms of what banks charge and it is the kind of rate which normally would not be charged on an agreed overdraft, may well get charged on unexpected overdrafts where banks charge penal rates. It is something that has been there unnoticed for a very, very long time irrespective of what the market rate is and because we have had a number of recent instances brought to our notice where people borrowing small sums never seemed to be able to repay the principal because they could never get past paying the interest, we thought we had to act quickly on it. Let me say that the one thing that we have done is that as well as establishing the rate at 25 per cent we have left it open for the rate to be changed without having to introduce primary legislation so that we can take account of the market if rates keep on coming down as many people predict.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The only thing I need say, Mr Speaker, is to rectify the omission in my introductory remarks and to point out what I should have said in my little speech that the opportunity has been taken to change the penalties for offences from being references to a fixed monetary amount to being references to a level on the standard scale. I apologise for omitting that in my earlier remarks.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

THE CRIMINAL OFFENCES (AMENDMENT) ORDINANCE 1995

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Criminal Offences Ordinance be read a first time.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that the Bill be now read a second time. This Bill modifies section 279 of the Criminal Offences Ordinance by making a reference to the Nature Protection Ordinance of 1991 and any subsidiary legislation made thereunder. It is necessary to ensure that there is not a conflict between the provisions of section 279 from the provisions of subsidiary legislation made under the Nature

Protection Ordinance 1991 which sets up and regulates the Marine Nature Reserve. Section 279 of the Ordinance provides that a person who firstly carries or uses an aqualung or any other respiratory apparatus for the purpose of underwater fishing in the seashore, in the port, or in the harbour and seas adjacent thereto, which is subject to the Dominion of Her Majesty or, secondly, carries or uses any weapon constructed or adapted for the purpose of underwater fishing within an area designated by order of the Governor in the Gazette, and marked by notice boards at or near such area as an area within which such carrying or using is prohibited is guilty of an offence. The regulations made under the Nature Protection Ordinance 1991, for setting up the Marine Nature Reserve deals in much more detail with diving activities and with underwater fishing. The provisions of section 279 therefore remains with the general prohibition but it is subject to the licensing regime created by the Nature Protection Ordinance 1991, that is to say, a person will not be in breach of section 279 if he is, for example, carrying out diving activities under the terms permitted by the regulations setting up the Marine Nature Reserve. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

Before I put the question does any hon Member wish to speak on the general principles and merits of the Bill?

HON P R CARUANA:

Mr Speaker, we support the principles of the Bill in terms of what it seeks to achieve. I would make only one caveat which will not affect our support of the Bill but as a matter of legislating technique we dislike making one primary legislation subject to what might be done in subsidiary legislation under another. In effect the Criminal Offences Ordinance can be amended in its effect by regulations made under the Nature Protection Ordinance. As a legislative technique we are not greatly enamoured of it but in this application of it, it is in relation to a

subject which I think is right and we do not think that it is capable of harbouring the sort of dangers that could flow from a wider use of that technique in legislation and therefore we will support it notwithstanding.

HON ATTORNEY-GENERAL:

Mr Speaker, I have nothing to add. I have noticed the hon. Member's remarks.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

HON P R CARUANA:

Yes, Mr Speaker, I would hate if all of these Bills did not get into the statute book before the House was dissolved. So to ensure that happens we are co-operating with this device.

THE HOUSE OF ASSEMBLY (AMENDMENT) ORDINANCE

1995

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the House of Assembly Ordinance be read a first time.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that the Bill be now read a second time. This Bill does exactly what the explanatory memorandum says it does. It puts in the list of public offices to which section 10 of the House of Assembly Ordinance applies for teaching grades. Teaching grades are now grades that can enjoy the opportunity to stand for election without having to resign from the civil service on the undertaking that should they be elected they will resign. If they do not resign they cannot take up their seat in the House. Teaching grades are now in the same position as the majority of civil servants in relation to standing for the House of Assembly. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

Before I put the question does any hon Member wish to speak on the general principles and merits of the Bill?

HON P R CARUANA:

Mr Speaker, this Bill gives us the opportunity to state our view generally on this matter which is that we believe that the law of Gibraltar is far too restrictive as to who can stand for election. We therefore have no objection in expanding it. We believe that a system that requires people to resign from their post if elected is too harsh, if it does not also allow some sort of way back in after being de-elected at some future stage. It is all very well to say to people, "Look, you can stand for election so long as you resign your job if you are elected" but the fact of the matter is that the salary of a member of the Opposition is £11,800 or thereabouts and therefore the financial sacrifice is real. We will therefore be supporting politically provisions which are much more liberal in freeing people genuinely to stand for election rather than just tackling it in this way. Of course we will support this, we see no reason at all why teachers should not benefit like everybody else from the rules such as they are but it is very

curious that this should be rushed through just before an election and of course I can only assume that there is a member of the teaching profession wanting to stand for a party and of course several names are being mooted. Initially I thought this might be the big gun that the Chief Minister has been threatening to wield, Maurice Xiberras or somebody like that but I took the precaution of establishing that Maurice Xiberras' name is not on the Electoral Register so it is not a question of giving him a job as a teacher and then putting him up as a candidate, in case they get into a position which they must be reckoning on. But there are other teachers being mooted. I can only suppose that this Bill is brought at this stage because a teacher who is considering standing has complained and Ministers consider that he ought to be free to stand notwithstanding that he is a teacher and of course we support that. The longer the list is the better and we do not think that teachers are in a profession that requires them to be deprived of the same freedom that extends to other non-sensitive employees of the public service. This decision should certainly help other parties find the necessary number of candidates with which to contest the election and the move is to be approved of for that reason if for no other.

HON CHIEF MINISTER:

Mr Speaker, the move to widen the franchise has always been led by the GSLP in this House and every change that has taken place has taken place as a result of arguing by the GSLP from the Opposition that it needed opening. In fact, way back in 1972 when I stood for the House 70 per cent of Gibraltarians could not stand. That was the degree of democracy we used to enjoy here which apparently nobody in the Bar Council at the time thought needed questioning, that only 30 per cent of the citizens of Gibraltar were able to stand for the legislature and it was thought to be very dangerous to the stability of our society and our democracy that people who were in the public service should be allowed to have political opinions and stand for election and if not elected go back into the public service, to the degree that when I stood for election in 1972, having given up my job in Birmingham

University and came back here, and having been interviewed for a job as a night telephonist in the Health Centre, there was a ruling made by the then Attorney-General that because I was a member of the House earning £500 a year I was in conflict as a public servant with answering the telephone at night. I assured those concerned that if somebody ran up dying in the middle of the night I would not ask him who he was voting for before I sent the ambulance, but they did not believe me and I was forced to give up my job and finished up working in the construction industry, just to give the hon member some background as to where we come from. Eventually, we persuaded the previous administration to widen the franchise considerably and of course it became less of a problem with the decline of the MOD since at the time that I am talking about with the MOD and the Gibraltar Government virtually as I said seven out of every 10 Gibraltarians was debarred. In 1988, when we came in, we reviewed the position and added to this list and in fact in the General Orders we introduced the provision allowing teachers to stand on the same terms as other civil servants, and it has been recently brought to our notice that there is a conflict between the provisions in General Orders which makes it possible for teachers to stand and the Ordinance which should have been amended at the time and was not amended at the time. So that in fact although under the terms of employment they can stand and have been able to stand for a very long time they would be in breach of the law if they did and it is a nonsense to say, as an employer, "I allow you to do it but it is illegal" so what we are doing is correcting that anomaly. Whether the representations that have been made to us pointing this out is indicative of somebody wanting to stand or not I am not privy to such knowledge.

HON ATTORNEY-GENERAL:

I have nothing further to add, Mr Speaker, other than I have noted the comments made.

Question put. Agreed to.

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

THE INCOME TAX (AMENDMENT) ORDINANCE 1995

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Income Tax Ordinance be read a first time.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have the honour to move that the Bill be now read a second time. This Bill to amend the Income Tax Ordinance has been drafted to ensure that there cannot inadvertently be indictable offences under the Income Tax Ordinance which would force Gibraltar to give assistance to other jurisdictions pursuing unpaid tax. The background to this is quite fortunately, I have the edition of Hansard in front of me, the discussions on the Criminal Justice Ordinance taken earlier in this year which the Members of this House will no doubt remember and the Chief Minister explained at the time that we would be reviewing some elements in our Income Tax Ordinance and bringing legislation to the House to do it because we do not want to find that because what is an indictable offence in the law of Gibraltar may be a summary offence in the laws of the United Kingdom, we may finish up with also covering things that not even they cover and that is a condition for our introducing the Criminal Justice Ordinance which, as the Chief Minister pointed out, had been cleared with London at the time. I note that the Leader of the

Opposition himself in commenting on this made the point that the laws of the United Kingdom and in most of the civilised world had for centuries treated breaches of tax laws very differently from the way they had treated breaches of other laws even when it comes to such things as extradition and things of that kind. The Leader of the Opposition pointed out in effect that this sort of legislation but for the amendment to the Income Tax Ordinance which we are introducing now, could have damaging consequences for the finance centre insofar as it might bring fiscal offences within the ambit of the all crimes, anti-money laundering net and that in effect is the purpose of the Bill before the House today, Mr Speaker, as I have no doubt hon Members of the Opposition will have already realised themselves. The essence of it is that unless an offence is indictable it cannot be pursued across national boundaries. I commend the Bill to the House.

MR SPEAKER:

Before I put the question does any hon Member wish to speak on the general principles and merits of the Bill?

HON P R CARUANA:

Yes, Mr Speaker, I am not sure whether the Financial and Development Secretary was trying to ensure that I could not possibly argue against the Bill by reminding me of all the things that he, the Chief Minister and I had said at the time. We recognise this if that was what he was doing there was no need for him to have concerned himself. We recognise this Bill was being precisely for the purpose that he has described. It really is unfortunate that this point has to be saved in this way because of course it is reducing the criminal seriousness of what still is a serious criminal offence in Gibraltar. The only consolation is that it is not a law that to my knowledge has ever been used. In other words, I do not think that anyone has ever been prosecuted in Gibraltar for false tax returns or reduced tax returns or no tax returns or things like that. *[Interruption]* Not as an indictable

offence exactly. Whilst we are giving up something we are gaining something which I think is also very important to Gibraltar, this protection from tax enquiries and at the end of the day what we are giving up is not a legal device that had ever been used as a tax collection or tax enforcement means anyway. So really it is regrettable that we should have to resort to this sort of thing but in the events as they are I think it is correct that we should do so. We will support the Bill.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have nothing really to add, Mr Speaker, except to say that I am delighted to find on such an occasion as this there are some measures which unites both sides of the House.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

COMMITTEE STAGE

MR SPEAKER:

Before we start on this, I do not believe that there are any amendments at the Committee Stage. So if there are no amendments then I think it would be a waste of time to read clause by clause and therefore if the Clerk would call all the clauses.

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause -

- (1) The Moneylending (Amendment) Bill 1995.
- (2) The Criminal Offences (Amendment) Bill 1995.
- (3) The House of Assembly (Amendment) Bill 1995.
- (4) The Income Tax (Amendment) Bill 1995.

THE MONEYLENDING (AMENDMENT) BILL 1995

Clauses 1 to 8 were agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THE CRIMINAL OFFENCES (AMENDMENT) BILL 1995

Clauses 1 and 2 were agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THE HOUSE OF ASSEMBLY (AMENDMENT) BILL 1995

Clauses 1 and 2 were agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THE INCOME TAX (AMENDMENT) BILL 1995

Clauses 1 to 3 were agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to report that the Moneylending (Amendment) Bill 1995; the Criminal Offences (Amendment) Bill 1995; the House of Assembly (Amendment) Bill 1995; and the Income tax (Amendment) Bill 1995, have been considered in Committee and agreed to without amendments and I now move that they be read a third time and passed.

Question put. Agreed to.

PRIVATE MEMBERS' MOTIONS

HON P CUMMING:

Mr Speaker, I wish to withdraw the first motion referring to the Freedom of the City and to proceed with the second motion.

HON CHIEF MINISTER:

Does he not need leave of the House to withdraw the motion?

MR SPEAKER:

I will check on the Standing Orders. I know that if it has not been proposed he can withdraw it but I would like to check the Standing Orders. It is a technicality.

HON P R CARUANA:

Mr Speaker, standing order 22 "Once a motion has been proposed by a Member it may be withdrawn only with the leave of the Assembly but if still withdrawn may be made again at some other meeting of the House on due notice".

MR SPEAKER:

He has only been given right of note to propose but has not been proposed.

HON P CUMMING:

I wish to propose, Mr Speaker, the second motion which reads:

"That this House takes note of the mutual hostility that exists between Spain and Gibraltar, and believes that a peace process is needed to bring about a settlement".

Mr Speaker, I have for a long time been saying that the style of the GSLP produces polarisation in our problems with Spain because of the confrontational, provocative and defiant attitudes. It seems that in the near future we may be exposed to a further twist in the screw of increasing polarisation as across the way they consider imposing a toll for entering into Spain and proposed reactions suggested locally whereby there will be calls for discrimination against Spanish workers that would aggravate on both sides the question of polarisation of the dispute between Gibraltar and Spain. So why is it then, Mr Speaker, that I wish to propose a peace process and a settlement? Why have I been willing to stake my political future in an attempt to put a settlement with Spain if not on Gibraltar's political agenda at least to plant the seeds of the idea in the minds of the people. The main reason is the inevitability of the economic decline. Already our unemployed who do not have any dole are the worse off unemployed in the European Community and we want for our children and we want prospect of decent living standards and as things are within the next few years it will be very hard to reverse the economic decline. In this House, at the beginning of this term of office, on the first budget day the Chief Minister said that unless Armageddon came he would increase our economy by 50 per cent and this would only leave us in the same place with 14,000 jobs in the economy. Of course, now we have gone down

to less than 13,000. Armageddon has not arrived, and we only have 6.5 per cent economic growth and zero growth achieved last year shows that if we made a graph from next year there would be the beginning of a sharp recession. The next major factor other than the economy which makes me realise that we must begin to think on the lines of putting a settlement with Spain on the agenda is the British attitude which is one of marked apathy when dealing with Gibraltar's problems. Gibraltar has been relegated to the back burner and it is a low priority in their foreign affairs. A recent example of this is quite clearly the acceptance by Britain of the appointment of Senor Solana to NATO where we are told reassurances were sought and given that he would not use his new position against Gibraltar. But, of course, what credence do those assurances carry when only recently we saw him standing beside Douglas Hurd whilst Douglas Hurd discussed the tripartite mechanism that was going to be introduced and Senor Solana who speaks English perfectly did not interrupt to say, "No, the talks are not trilateral, they are bilateral" and the phrase 'qui facit vide consentit', the one who keeps quiet is seen to agree, we saw him agreeing with the states of those talks and afterwards it came to nothing? Britain did not consider that a serious enough matter for a veto in the question of Senor Solana's appointment to NATO which to me, who favours the peace process, then came as a shock and filled me with dismay. This is a recent example, Senor Solana, but an old example of the apathy with which Britain considers this problem is the acceptance of Spain in the Common Market without requiring from Spain any concessions on Gibraltar. For example, they could have required the recognition of the self-government of Gibraltar, and of course in considering that the problems of Gibraltar are dealt with apathetically by Britain we have the amazing declarations made recently by Mr Garel Jones when Ministers come from the UK and they say they are in little bits and pieces, one sometimes wonders what they really think inside and are restrained from saying by the responsibilities of their office. Of course with Mr Garel Jones the top is blown off now since he has no further political ambition and he has said what is in his mind about the question of Gibraltar and of course

he is in a position to know all the recent ins and outs of the question of how Britain sees the future of Gibraltar. In his article in El Mundo on the 10th November last Mr Garel Jones refers to Senor Felipe Gonzalez who says that the Rock of Gibraltar was a stone in the Spanish shoe and confesses that to the English it is a very tight-fitting shoe so in other words major problems for both is how they see it. The amazing statement that Gibraltar is being reduced to undignified squalor between the two bullies, between them having a 100 million population, bullying the 30,000 Gibraltarians, he says is a sorry sight and he calls upon the three sides in the dispute to confront reality. The Spanish reality of course is that we must have a voice in debating our future and of course he is right and we welcome that statement by him. For the British, the reality is that they are stuck with the preamble to the Constitution, that they cannot betray us, that we are the last symbol of empire and they want to relinquish that phase of their history with dignity. But for the Gibraltarians the reality that Mr Garel Jones calls on us to face is the fact that we need a new constitution and that a new constitution must carry the approval of Spain. There have been other clues that this is the thinking of the Foreign Office. I wrote recently to Mr David Davis on the question of a settlement with Spain via an Andorra situation and he answered me not in the terms of a settlement but in terms of constitutional reform. In other words, the same thing. They are looking for a settlement via constitutional reform that will carry the approval of both Britain and Spain and of course in the last talks to be held under the Brussels process, I believe if my memory does not fail me, that Mr Douglas Hurd invited the Chief Minister to join him in discussions about a new constitution for Gibraltar with Mr Solana. The people hope that British aid will be forthcoming to prevent any marked economic decline in Gibraltar. That was my view when I began this term of office but I must admit that my opinion has evolved and it is my belief now brought about by studying all ministerial statements from UK and with slight contacts with the Foreign Office as junior members have come to Gibraltar that they will not support any local political programme. They will not support financially any local political programme that goes against their own policy

which is a policy of seeking a negotiated settlement to the problem of Gibraltar's future. The Chief Minister in the past has referred to the preamble of the Constitution as a minimal position on the part of Britain and of course I think most of us would agree that it is a minimal position from our point of view but my understanding of the matter is that from the British point of view it is not the minimal position it is the maximum position. That is what they are going to do and no more. They have relegated us to the back burner and are going to allow us to stew in our own juice. The result will be within the next few years mass immigration, decline in living standards, the standards of our unemployed as I say already the lowest in the Common Market. I scrutinise the press and public statements, letters to the press and so on for the beginnings of a recognition amongst our people that at some future time if we want peace and prosperity we can only have it in a settlement. That does not say what the terms of the settlement will be but a settlement with Spain nonetheless. People will face that reality and political leaders will not hide the harsh realities from the people and I was surprised, gratified really, to find just the beginnings of a flicker of that recognition in the Chief Minister's very recent speech at Chatham House to the Royal Institute of International Affairs on the 13th December, in the final paragraphs of which he makes mention of this problem. He says, "My appeal to the UK Government is to honour their obligations to my people by giving us access to the UK market and to the market of other member States so that we can survive economically. Unless this is done the commitment to honour our wishes in the Constitution is a hollow one. If we have to defend our birthright by sacrificing our living standards, not because we cannot compete to earn a living but because we are not permitted in order to appease Spain". So here we see in this very recent statement the flicker of a facing of the reality that unless Britain shakes off its apathy on our behalf, which it shows no sign of doing, that our economic survival is in doubt and in those circumstances the preamble to the Constitution becomes a relatively hollow one. He goes on to say, "If we have to defend our birthright by sacrificing our living standards....." This is now a possibility that he is beginning to face, that we will have to

sacrifice our living standards in order to defend our birthright. In the press recently, two months ago, the National Party referred to this matter saying that most Gibraltarians will prefer to accept falling standards of living and emigration as an acceptable price to pay in order to prevent a surrender to incorporation into the Spanish state and I must say that I agree with that of course. I agree that that is a price, if we have to pay it we will pay it rather than being incorporated into the Spanish state. Of course it has never been my political position that I propose or would have any track with incorporation into the Spanish state. My position is entirely different. It is looking for a fair compromise in which there is no surrender on either side. Whilst I have, Mr Speaker, the Hon Mr Bossano's speech in my hand of Chatham House there are another few matters that I would like to comment on. He refers to the British policy of the preamble to the Constitution on the one hand and telling us that they will never sell us to Spain as it were on the one hand and telling the Spanish Government that they should woo the Gibraltarians and that that has been their policy for 30 years and it has failed. I remember of course Douglas Home I believe was the first to make that suggestion about the wooing and I think its result was to us Gibraltarians to give us a rather smugly feeling that we now had to be wooed and we could reject them and send them off and they would come back to woo us and it would be a relatively nice position to be wooed. Now, they of course are well-known for their national pride and really it is not surprising knowing the Spanish character that they are not prepared to take that slightly humiliating position of wanting to woo the people of Gibraltar, but that of course wooing can work both ways, the ideal situation I believe, Mr Speaker, is that they should woo us and we should woo them and that is the way to bring about a peace process and a settlement favourable to all sides. The Hon Mr Bossano made reference in this conference to Sir Joshua Hassan's speech in 1983 in that Royal Institute and he says, I am quoting Sir Joshua, "The majority of Gibraltarians want to live under British sovereignty but given normal and friendly relations, mutual respect, co-operation in tourism, trade and outbound contacts and common status as nationals in the European Community,

the people of Gibraltar may one day take a different view of this relationship with the Spanish state". He added that this is not a promise, not even an offer. Of course we cannot guarantee what our grandchildren or great-grandchildren will think in the future but nonetheless it is obvious that if confidence-building measures were taken rather than counter-productive aggravation to Gibraltarians there would be a gradual changing of views. What the results of that could be we cannot tell of course. Neither must one assume from what Sir Joshua Hassan has said that he is thinking that if they woo us long enough we might be willing to be Spanish. All he said was a different view of the relationship with Spain. The relationship does not need to be one of integration. It could be of a link that falls far below integration with Spain. Now, the Hon Mr Bossano goes on and he says, "I will go further. If that gives Spain hope then Gibraltar will never be Spanish. I will campaign as long as I live against my country's incorporation into the Spanish state and others will follow me". I agree with the content but not with the inflammatory way that this is put. I also will campaign against incorporation into the Spanish state and I have said my first reason for wanting a settlement is the economic one and incorporation into the Spanish state that will not get us economically anywhere at all. It will make us like La Linea which is the poorest city of the poorest province of the poorest autonomic region and we will be reduced to those circumstances unless we can have fiscal independence there would be no economic advantage in a settlement which required incorporation to Spain. Therefore, I have absolutely no desire, on the contrary I also will campaign against incorporation into Spain.

If I can just read the paragraph that I read before, "My appeal to the UK Government is to honour their obligations to my people....." I would just like to make a little comment on this phrase that the Chief Minister is using quite often nowadays, talking about my people and it seems to me that the use of this phrase to arise from the same attitude which allowed the GSLP in its GBC political broadcast to use our national anthem as those were the legitimate use of it for promoting a political party to say my people for a Chief Minister to say my people is equally

inappropriate. The Queen can say my people. Perhaps the Governor who represents the Queen could say my people. Perhaps even His Worship the Mayor could say my people since his is a symbolic representative non-political role that he plays but a Chief Minister who plays a role of political leadership in a community should not. It is inappropriate for him to say my people because large sections of the community do not consider themselves to be his people. For example, the present opinion poll shows that 70 per cent of Gibraltar do not consider themselves to be his people and therefore there is a fraternalistic inappropriateness here about referring to my people. Certainly I would prefer not to be called his person. The plea to the United Kingdom to pull its finger out on the question of the Common Market, I do not know whether this plea will be effective or not but of course I hope that it would be but I do not see any signs and I do not have any great expectations that Britain will suddenly become hammer and tongs to give us the level playing field that we have been wanting. But nonetheless in this paragraph where he shows the awareness that unless something happens soon our living standards will be sacrificed compares rather sharply with the attitude that he took in this House last July when the GSD presented a motion saying, "The House declares profound anxiety at the deepening economic and employment crisis" which of course they shrugged off with one of those hijacking motions which changes everything after "This House" and says that reducing it to such an extent to say, well yes they take note that some people are worried that the economy could slow down but there is no sign whatever that unemployment is down, that there are more businesses. In other words, generally putting a very good gloss on how things were going which compares very drastically with this latest statement to the international affairs body. We have to defend our birthright. Now of course we say our birthright. It is becoming popular to say our birthright but what is our birthright? This is really a very ambiguous emotional statement. I have frequently been branded as seller of our birthright and what does it mean? What does it mean? It seems to imply Gibraltarian sovereignty over Gibraltar and there is nothing that I would more greatly want than that but

regrettably we have not been born with sovereignty. It is something we still have to fight for. We have some sovereignty represented by this House. This House exercises some sovereignty but it is a minor shareholding in the sovereignty of Gibraltar so this is something still that we have to fight for. "Let us get on with the job of building a sustainable economy for Gibraltar by exercising our rights in the Union and forget the Brussels process". It goes on to complain "That our rights are being ridden over roughshod by the Spaniards and we hope that Britain will redress that but up to now they have not shown great desire to do this". The question of the rights in the Union makes me wonder how far Spain can go and get away with abrogating our rights in the Union.

There was the case in the European Courts where there was conflict between Greece and Macedonia which is one of the newly independent countries of Yugoslavia which borders on Greece and there was a dispute. There is ongoing dispute about the use of the main Macedonia which Greece claims to be a Greek prerogative and which they believe to be their prerogative. It does not seem like much of a hassle to us but to them apparently it is a very important matter. In spite of Common Market agreements with Macedonia that they had Common Market rights of freedom of movement into Greece the conflict came to a stage when there were problems at the border, apparently something similar to the ones that we have and the Macedonian Government sought an injunction from the European Court. One would have thought a most excellent case, it was obviously a case where the Greek Government were overriding rights that they had because of their treaty with Europe and yet the judge refused to grant an injunction on the grounds that the question of Macedonia was a matter of huge national importance to Greece. They had to be allowed a court case of course but the court case may go on for years and years, the injunction was denied. In the same way of course it would be illegal for Spain to close the frontier with Gibraltar. That is no guarantee that they will not do it and that they would not get away with it for some time if they decided to go down that road

and I hope that they do not. The Hon Mr Bossano goes on to say in this talk, "Forget the Brussels process" in the hope that developments in the Union and in Spanish society will produce new opportunities for putting the Spanish/Gibraltar relationship on the basis that should have happened 10 years ago and did not of mutual beneficial co-operation and peaceful coexistence. In other words this is the way that the GSLP and many in Gibraltar think that a settlement will have to come. That is to say, by Spain backing off, forgetting its claim altogether and beginning to treat us with the respect that we deserve as neighbours and fellow partners in the Common Market. He says, "in the hope that" and it seems to me that if we are going to be realistic at all, this is a vain hope to put this as the main policy of our future to put it in the hope that Spain will develop and change and so on. We cannot wait long enough. Our economy will not stand the pressures. I had great difficulty of course with explaining, trying people to see the difference between compromise and surrender which are very different. I will not surrender to incorporation into the Spanish state but I do propose and try to encourage the view that a compromise settlement is in our interests. I was interested to read in the recent Panorama poll that people had been asked whether they thought Gibraltar should have a Spanish head of state and one person is claimed to have said yes. I would like to meet that person because it certainly was not me. If I was asked in the street "Do you think there should be....?" I would say, "Of course, jolly well not" and I hope that the vast majority of people see it like that, out of its context of course not. We have to look at the question in the context of a gradual evolution towards a solution that may take 30 or 50 years of confidence-building measures of co-operation, of building up of mutual trust, of every safeguard built into the process that is possible and in those circumstances as the one concession with sovereignty implications the accepting of a co-head of state, not the King. I have always felt that the King is far too close to the Spanish Government. The King of course would probably be dead by that time but rather somebody out of the line of succession and certainly this head of state would exercise an honorary role because the powers vested in Spain through

this arrangement would have to be very minimal. I suggest of course the constitutional court, a role in the constitutional court as being the only role that Spain would play in our affairs under this kind of arrangement and of course the most important thing of all about the head of state is that the only way that a Spaniard could ever become co-head of state in Gibraltar is by a free act of self-determination on the part of the people of Gibraltar through a referendum and through a map of our own parliament in which that Spaniard is given the title of head of state. There is no other way that it would be possible and there is a lot of mileage and a lot of work to be done to bring on both sides of the border to bring that day forward. I mentioned that I had written to Mr David Davis on the question of an Andorra solution and how he had answered me about constitutional reform. I also took the opportunity when he was here to ask him what he meant by propositions for constitutional reform. He happened to be realistic and he answered me that the bedrock of realism in this issue was first the preamble to the Constitution, that the Spaniards had to be realistic and accept that but the second one was that proposals had to take account of the sensitivities of Spain. Later on, on television, he was interviewed and he hummed and hawed round the subject of realism but never actually said in public what he had said to me in private, which leads me to think that there is of course that the British Government do not want to send ministers out to Gibraltar to accept the natives and cause kerfuffles and riots and demonstrations and things they do not want, the boat to be rocked and so I understand the constraints that there are upon him. But there is no doubt in my mind that the Foreign Office see the subject of constitutional reform in the light of producing a final settlement. In Sir Joshua Hassan's biography there is a reference to 1971 when Sir Varyl Begg consulted Sir Joshua who was then Leader of the Opposition about a possible proposal from Spain to which Sir Joshua is said to have answered, "Any proposal which comes from Spain which would not lead to total sovereignty will be worth looking at". It goes on to say in 1972 the electorate did not fall for what the AACR dubbed the big lie about Sir Joshua being willing to make unwise concessions and they voted for him for at least three

more elections, in spite of having said that. An attitude which to me seems like sheer flame common-sense to say yes we must find a compromise and if there is a compromise proposal which does not involve full sovereignty then we have to look at it with a view to perhaps accepting it and of course on those lines I would not agree with the AACR calling it a big lie, I would call it a little lie because obviously if someone is prepared to examine something it can only be because perhaps he will be prepared to agree with it. But in the same way that I would say we must look at any proposal, surely Spain will have the common-sense to say the same thing in reverse, that any proposal from Gibraltar, which in some way took account of their historical claim, would be worth looking at and this is why I feel that we want a level playing field. We are the ones to take the initiative to level it and not wait for Britain or Spain or the United Nations or the European Common Market to level the playing field for us. We have got to be the ones to take the initiative in dialogue and in discussions to see whether it is possible to find an acceptable compromise. It seems to me, Mr Speaker, that the hope of mutually beneficial co-operation and peaceful co-existence without any gesture on our part to take account of their claim is a vein of hope and to make it the central policy for our future condemns us to mass emigration and increasing poverty. There has been a campaign recently spearheaded by the GSD, taken up very strongly by Sir John Chapple, looking for a voice for Gibraltar. We have heard of flags and voices. Sir John Chapple declared very strongly that Gibraltar must be given a voice and of course I support that campaign. Of course, we must have a voice in all negotiations concerning our future but what do we want a voice for? The important thing about a voice is what are we going to say with that voice? What I would like to say with a voice such as that is that we want a just settlement that will guarantee our right to our land and to self-government, that we want a peace process that will also take account of Spain's historical claim. Thank you, Mr Speaker.

Question proposed. Debate ensued.

HON P R CARUANA:

Mr Speaker, the wording of this motion is not, in our opinion, appropriate. The use of the phrase "mutual hostility" connected to the phrase "peace process" may import into the minds of people accustomed to watching international news bulletins that there is a genuine process of two-way aggression. Spain is hostile to Gibraltar. She is hostile to Gibraltar in that she constantly harasses us and attempts to deny us our international and our European Union rights. The people of Gibraltar are not naturally hostile to Spain were it not for what I have just said but what the people of Gibraltar do is quite understandably resent that they are subject constantly to the aforementioned harassment. Therefore I believe and as do the members in the party that I lead in this House, that it is not appropriate for this House to adopt a motion which somehow might suggest to the uninitiated observer that the Gibraltar problem is a case of six of one and half a dozen of the other. It is not. It is a case of a dozen of one and the victims of the dozen resent the fact that they are constantly under assault, and that what we need from Spain is not a peace process because peace processes, as all three parties in the Bosnia conflict have just discovered, invariably require the making of substantial concessions by all parties. Whilst Spain maintains the position that the only thing she wants from us is the sovereignty of Gibraltar there is nothing about which peace can be made and therefore a peace process is not appropriate. What we need is a process that will establish normality in a European and civilised context between Gibraltar and Spain. In other words, normality as good neighbours living in mutual co-existence and respect for one another as befits two parts of the European Union. What we need is not so much a peace process although I make due allowance for the Hon Mr Cumming, the mover of this motion, it is in his general nature and style perhaps because he is not a lawyer to apply too much careful attention to the exact words that he chooses. What we need is not a peace process but a process of dialogue in which Gibraltar is able to represent itself with its own voice so that in

such a process of dialogue we can establish that relationship of good neighbourliness and mutual coexistence that befits two parts of the European Union to which I have just referred. Mr Speaker, I think that it is one thing for this House as I think we have done several times in the past, to recognise that there is a problem but in recognising that there is a problem I think it is a mistake to misstate the nature of that problem. Therefore, as drafted we in the Opposition cannot support the motion because, as I say, it fails to recognise the causes of the reality of the situation and suggests a degree of equality in responsibility for what the position actually is which we do not accept is true. We do not accept that the problem that we are faced as a community at the moment derives from the fact that there is mutual hostility. It derives principally from the fact that there is hostility by Spain to us which the people of Gibraltar resent and are not willing to submit, surrender or capitulate to. Maybe we can agree that the difference is semantic and we will see if that is true. I propose, Mr Speaker, an amendment to the motion presented by the Hon Mr Cumming. I hope I have not made a mistake in the papers that I have passed up because I have had various drafts of this but it is one that had writing down the side.

Mr Speaker, I now propose that we delete all the words after the words "That this House" and substitute them by the following -

- "(1) Takes note of Spain's constant harassment of and hostility to the people of Gibraltar, and of Spain's attempt to deny us our international and EU rights;
- (2) Notes that the people of Gibraltar understandably, resent such behaviour on Spain's part;
- (3) Calls on Spain to recognise our right to determine our own future;

- (4) Invites Spain to engage Gibraltar in a process of dialogue in which Gibraltar represents itself with its own voice in order to establish that relationship of good neighbourliness and mutual co-existence that befits two parts of the European Union".

I commend my amendment to the House.

HON CHIEF MINISTER:

Mr. Speaker, let me say that in relation to the amendment that the Opposition Member has just moved and as regards his opening remarks, I of course entirely agree with him that it is a serious misconception to have anybody saying in this House that there is mutual hostility since to my knowledge we have never sought from Gibraltar to doing anything to interfere with Spain's rights anywhere and it is entirely in the opposite direction that the evidence of hostility exists so I think it is absolutely right that to talk about the need to stop the mutual hostility as if we were Bosnians fighting Serbs is a complete nonsense. The Government will not support the hon Member's amendment because the Government will not be prepared to do anything other than defeat the original motion. And certainly if we wanted to bring a motion to this House relating to the policy to which we were prepared to commit the Government it would not be phrased in this way and we would have different language and we would not be talking about a process in which Gibraltar represents itself with its own voice without explaining what that process meant and the Opposition Member knows how I feel about some processes. So although I certainly agree that his amendment is a much better reflection of reality than the impression created by the original motion, we are not prepared as a Government to go down this route on the basis of amending something that really is putting a completely different version on the situation from the one that there is reflected in this amendment and that in fact if we were talking about their continued hostility we would want to do more than simply note it and put exactly what we think of that hostility in any motion in this

House. So we are voting against this amendment and therefore we will also be voting against the original motion to which I do not intend to speak because our views on the contributions of the hon Member that moved the original motion in this House whether it is question time or moving motions or participating in debates on Bills is on the record, well-known and has been repeated more than once. I will just have a few words to say on the original motion before we vote against it once the amendment has been defeated

HON P R CARUANA:

Mr Speaker, I see no point in answering that, there is really nothing to reply to. The Chief Minister's decision not to support my amendment is more tactical than anything else. I think what he is saying is that it is a brand new motion and if it is a brand new motion it rather be in his language and not in mine. Fine, these are four points on which I thought we could agree by way of modifying the sentiments expressed in the mover's original motion. He does not want to have any track with that because of who the original mover is, he knows that that is not a position which we endorse in this House but I take note of what it is. There is really no point in us replying, so I will not reply further.

MR SPEAKER:

You will have your opportunity of course to express your views when you vote on the original motion.

Question put on the amendment to the motion. The House voted:

For the Ayes:

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon H Corby
The Hon P Cumming
The Hon F Vasquez

For the Noes: The Hon J L Baldachino
 The Hon J Bossano
 The Hon M A Feetham
 The Hon Miss M I Montegriffo
 The Hon R Mor
 The Hon J L Moss
 The Hon J C Perez
 The Hon J E Pilcher
 The Hon Miss K M Dawson
 The Hon B Traynor

The Hon M Ramagge was absent from the Chamber.

The amendment was defeated.

HON CHIEF MINISTER:

Mr Speaker, we are voting against this motion. Let me just say that since the motion refers to a peace process, perhaps I can draw the attention of the House that the war over Gibraltar ended on the 13th July 1973 and that what was signed in Utrecht is called a Treaty of Peace and Friendship and all that happened is that having had a peace process in 1713 and having signed a peace treaty which provided for peace and friendship, what has been singularly absent since 1713 was precisely the peace and the friendship that was promised. I do not see why we should be expecting that peace and friendship would be any more honoured in future than it has in the past to judge by the actions of our neighbours because actions speak louder than words. We will of course be voting against the motion.

HON P CUMMING:

Mr Speaker, perhaps I should have said just a brief word about the amendment. I voted in favour of the amendment because I feel that something is better than nothing. I do not think that the amendment suggested would solve any of the major problems that Gibraltar faces quickly enough. It is possible that by dialogue

new situations may suggest themselves and evolve an evolutionary approach but in my view it would take too long to solve the problems that will come about in the next few years. Nonetheless, I felt that something was better than nothing and therefore this amendment would have been better than nothing. It is a curious thing. I am going to be very, very brief. I would just like to take up one point and it is the point that the Leader of the Opposition has made in saying that of course not being a lawyer sometimes my phraseology is not quite and therefore imprecise and of course the Chief Minister has said that there is a serious misconception to say mutual hostility referring to Gibraltar and Spain as though we were Bosnians and Serbs. Of course it links the two ideas in my mind perfectly. The question of the use of language. Now we all come coloured by our backgrounds to this House, some by trade union background or legal backgrounds; I come with one of nursing and of teaching of nursing and I have had to prepare several projects for students on the subject of hostility and this is just to agree with the point that the Leader of the Opposition has made that there are many slight differences in language which may mean different things to different people because of course in nursing, in looking after the sick there are frequent occasions where hostility shows its face. To me hostility is the same whether it is in an angry relative complaining about the care given to their loved one or whether it is the hostility which we see on our television night after night between the Bosnians and the Serbs. The beast is of exactly the same nature but it may have different signs and symptoms in different circumstances that, obviously, I grant, thank God there is no cannonading of our shops, of our schools or anything like that. If Gibraltar was in different circumstances that hostility could be fanned to grow to produce exactly the same situation as in Bosnia and Serbia if we let it, because the seed produces the same fruit. Slightly different manifestations according to the circumstances and therefore obviously to some it may seem inappropriate to say there is mutual hostility between Britain and Spain looking at it from a legalistic point of view but looking at it from a psychological point of view, hostility is hostility wherever you find it and it is exactly the same. It seems to me that this is

exactly what we have, mutual hostility. I talked previously about polarisation; the matter getting out of hand and it seems to me, Mr Speaker, that if we face the fact that there is mutual hostility, if we identify the problem as mutual hostility we might then get on to a solution to that problem which would be dialogue and confidence building measures. Thank you, Mr Speaker.

Question put on the motion. The House voted.

For the Ayes: The Hon P Cumming

For the Noes: The Hon J L Baldachino
 The Hon J Bossano
 The Hon Lt-Col E M Britto
 The Hon P R Caruana
 The Hon H Corby
 The Hon M A Feetham
 The Hon Miss M I Montegriffo
 The Hon R Mor
 The Hon J L Moss
 The Hon J C Perez
 The Hon J E Pilcher
 The Hon F Vasquez
 The Hon Miss K M Dawson
 The Hon B Traynor

The Hon M Ramagge was absent from the Chamber.

The motion was defeated.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that this House do now adjourn sine die.

MR SPEAKER:

Since we are coming to the season of goodwill and friendship, I would like to wish all the hon Members a merry Christmas and a happy new year. I say this because perhaps this is the last meeting before the end of the year. I am glad to see that at the end of this meeting there seems to be a lot of goodwill in the House.

Question put. Agreed to.

The adjournment of the House was taken at 8.30 pm on Monday 18th December 1995.