
THE House of Assembly Debates

(OFFICIAL REPORT)

FIRST SESSION 1991 – 96

HOUSE OF ASSEMBLY

Tuesday, June 23, 1992

Pursuant to the adjournment, the House of Assembly met at **12.20 p.m.**

PRESENT

His Honour L. A. **WEEKES**, G.C.M., J.P., (Speaker)

His Honour T. C. **ESTWICK**, **B.Sc., LL.B.**, (Deputy Speaker)

Rt. Hon. L. E. **SANDIFORD**, B.A., M.A., (Econ.), **J.P.**, (Prime Minister, Minister of Finance and Economic Affairs and Minister for the Civil Service)

Mr. H. **deB. FORDE**, Q.C., M.A., **LL.B.**, (Leader of the Opposition)

Hon. P. M. **GREAVES**, Q.C., B.A., (Deputy Prime Minister, Minister of Public Works, Communications and Transportation and Leader of the House)

Hon. M. A. **KING**, Q.C., **LL.B.**, (Attorney General and Minister of Foreign Affairs)

Hon. N. K. **SIMMONS**, (Minister of Justice and Public Safety)

Mr. H. A. **BLACKMAN**, **B.Sc.**, (Econ.)

Mr. **O. S. ARTHUR**, **M.Sc.**, (Econ.)

Mr. D. A. C. **SIMMONS**, Q.C., **LL.M.**

Hon. C. V. **WALKER**, (Minister of Education)

Mr. L. L. **BRATHWAITE**, J.P., (Chairman of Committees)

Hon. E. E. **GREAVES**, G.C.M., B.A., **Ed.M.**, (Minister of Housing and Lands)

Hon. W. W. **HALL**, G.C.M., H.B.M., (Minister of Tourism and Sports)

Mr. R. L. **MORRIS**, B.A., Cert. Ed.

Hon. D. J. H. **THOMPSON**, **LL.B.**, (Hons.) (Minister of State, Ministry of Finance and Economic Affairs)

Hon. H. B. St. **JOHN**, Q.C., **LL.B.**

Mr. L. R. **TULL**, Q.C., M.A.

Mr. **DeL. O. BRADSHAW**

Dr. R. L. **CHELtenham**, Q.C., M.A., **M.Sc.**, (Econ.)

Mr. J. **O. TUDOR**

Mr. D. W. **BOWEN**, (Minister of Community Development and Culture)

Mr. G. W. **PAYNE**

Prayers were led by Rev. Father Ivan Harewood.

Mr. SPEAKER: The House is in session.

MINUTES

Mr. SPEAKER: The Minutes of Tuesday, June 16, 1992.

Hon. P. M. **GREAVES**: Mr. Speaker, I am moving, Sir, that the Minutes of the meeting held in this Honourable Chamber on Tuesday, June 16, 1992 be taken as read, as I understand they have been circulated, and that they be confirmed.

Hon. M. A. **KING**: I beg to second that.

Mr. SPEAKER: If there are no other observations let those Minutes stand confirmed.

PAPERS

Rt. Hon. L. E. **SANDIFORD**: Mr. Speaker, I am commanded to lay the following:—

1. The National Insurance and Social Security (Convention on Social Security between the Government of Barbados and the Government of the United Kingdom of Great Britain and Northern Ireland) Order, 1992.

2. The Duties, Taxes and Other Payments (Exemption) (No. 3) Order, 1992.

3. The Rate of Interest (Exemption) Order, 1992.

SUSPENSION OF STANDING ORDERS

Hon. P. M. GREAVES: Mr. Speaker, at this point I am moving that Standing Orders Nos. **6,16, 18, 20, 42(5), 43 and 44** be suspended for the remainder of this sitting.

Hon. M. A. KING: I beg to second that.

The question was put and resolved in the affirmative without division.

GOVERNMENT BUSINESS

Mr. SPEAKER: Government Business is the order of the day. Order No. 5.

RETIRING ALLOWANCES (LEGISLATIVE SERVICE) (AMENDMENT) BILL, 1992

Rt. Hon. L. E. **SANDIFORD**: Mr. Speaker, as the explanatory Memorandum to the Retiring Allowances (Legislative Service) (Amendment) Bill 1992 states, it seeks to amend the Retiring Allowances (Legislative Service) Act, Cap. 12A in order to provide that a legislator who has been refunded his pension contributions under section **9(1)** because he is not entitled to a pension, and who again becomes a legislator, may pay the amount refunded to the Accountant General. The legislator's past service will be considered in due course in determining his length of service as a legislator for pension purposes. **A** consequential amendment has been made to section **9(3)**. The Bill would also amend the Schedule to the Act to include the office of President of the Senate.

Mr. Speaker, the Retiring Allowances (Legislative Service) Act Cap. 12A is being amended to include the President of the Senate in the Schedule of Specified Legislative Offices, and to restore the right to a retiring allowance based on previous service where a legislator who has been refunded his contributions subsequently becomes a legislator.

Section **9(1)** of the Act permits a person who has made contributions but who, on ceasing to be a legislator, is not eligible for a retiring **allowance** to be refunded an amount equal to the total amount of the contributions made by him with interest **thereon** at 4% per **annum**. Having been so refunded that person loses his eligibility for a retiring allowance in relation to his service before the **date** of the refund. In this regard, section **9(3)** states as follows:—

"Where a refund has been made to any person or a gratuity paid under this section, no other award may

be made under this Act to or in respect of that person in relation to the service of that person as a legislator before the **date** of the refund."

In effect, therefore, it would be necessary for a person who has been refunded his contributions to build afresh a qualification for retiring allowance in the event that he subsequently becomes a legislator. This provision is considered to be in need of revision since in other circumstances the Act permits former legislative service to be taken into account, for example, section **5(2)** and (7). In addition, in the Public Service, public officers are permitted generally to aggregate their former service.

What is being proposed, Sir, is to amend section 9 of the Act so that, for the purpose of determining the length of service of a legislator to whom section 9 (1) applies, provision may be **made** for his former legislative service to be taken into account upon his repayment of the funds refunded to him by the Accountant General subject to the payment of interest on those funds at 6% per annum.

As far as the office of the President of the Senate is concerned, the Act provides for payment of retiring allowances at the age of 50 to legislators who by virtue of their qualifying service and payment of contributions under the Act, are entitled to such an allowance at the end of their legislative service.

"Legislator" is defined by section 2 of the Act as being an elected member or a non-elected member who holds a specified legislative office.

"Specified legislative office" is defined also in section 2 as "any of the offices specified in the Schedule or any office prescribed as such by the Minister responsible for Finance."

12.30 p.m.

The current list is made up as follows:

Minister

Parliamentary Secretary

Speaker

Deputy Speaker

Chairman of Committees

Leader of the Opposition

Other legislative offices with designated leadership functions have been specified in the Schedule but no such provision has ever been made in respect of the President

of the Senate. In recognition of the role of the President of the Senate in the legislative process, the Schedule to the Act is being amended to prescribe that office as a specified legislative office for the purposes of the Act. The amended provision would take effect, retroactively from the date of the original provision of salary for the post, under the Retiring Allowances (Legislative Service) Act. That date is April 1, 1978.

Under Section 41A of Cap. 12A contributions are payable at the rate of 5% of basic salary in respect of service dating from March 1, 1969. Any new beneficiaries under the amended Act would be required to pay contributions for relevant periods of legislative service dating from April 1, 1978. The minimum qualifying service under section 5 is an aggregate of 10 years or two full parliamentary terms amounting to 8 years or more whichever is less.

Mr. Speaker, I do hope that on this particular matter there can be unanimity that the office of President of the Senate should be included as one of the specified legislative offices for purposes of this Act.

It is very customary, unfortunately so, Sir, that when we seek to discuss matters relating to legislative, political and, indeed, other kinds of service in this country that there is a tendency to look beyond the principles of the measure which is before us and to concentrate on the person. I hope that we can rise above that frailty, that we can rise above the temptation to which we fall prey so often, not to look at the good that people do but to look at means and opportunities for tearing people down. We will never build the great society in this country if that negative attitude continues to permeate political, social and economic life in this country. Sometimes, Sir, I believe that it is better that, if one cannot find anything positive to say, one should desist from inventing the negative, the unhelpful and the denigratory. I think our public debate needs to take these factors into account and to give all persons in this community their due on the basis of a frank assessment.

Happily, Sir, in this particular case the holder of the office of President of the Senate is a man bowed down with honours and with contributions of an unassailable character to the life and times in which he has lived. I do not think that anyone in this Chamber would wish to see him and his contribution and performance in any other light.

So we have, Sir, first of all the principle that the office of President of the Senate should be included among the other offices which are specified in the Act. I can find nothing wrong with that principle. It will apply to all holders of the office. This is not a provision specifically for one person or one man. Let me hasten to add that even if it were a provision for one person or one man, I could

think of no other person who would justify that kind of personal identification as the person who would be associated with this piece of legislation. I am not alone in that particular view.

The patron saint of the Opposition who, unfortunately, has joined with the other saints above himself, when the Bill to amend the Retiring Allowances (Legislative Service) Act, Cap. 12A, was being discussed in speaking on that particular Bill, I am quoting from the Hansard of 1979, page 3001, I believe the date was the 27th November, Sir. In speaking of Sir Frank Walcott and former Senator Leroy Brathwaite ...
12.40 p.m.

Aside.

Kt. Hon. L. E. SANDIFORD: .. I did say even if I can think of no person who would deserve it better, but in any case let me quote from Hansard of 1979. I have given the context already and I quote:

"For example ..." this is Right Honourable J. M. G. M. Adams speaking on a Bill to amend the Retiring Allowances (Legislative Service) Act CAP 12A and this is page 3001 --

"For example, the former Senator Leroy Brathwaite who was never an elected member of any Chamber receives a larger pension than Mr. Frank Walcott, one of the most distinguished Barbadians and a man who served as a Member of Parliament in this House and in the Senate for 32 years and who probably fought more elections than any of us will ever fight since he fought some elections when the life of the House was only 2 years."

I continue, Sir.

"This leads me to another aspect of the Bill. Mr. Walcott had broken service in the House of Assembly and his service was broken between 1966 and 1971 by the loss of his seat and by his service in the Senate."

Sir, the point I am really making here is that both on grounds of principle -- and it indeed we go beyond the principle and not talk evil about people but look at their contribution -- a former Prime Minister had those very elevating words to say about the gentleman

I would hope, Sir, that we would put polemics aside and determine this matter on the basis of the aims and objectives of this legislation and if possible, that I have encouraged Mr. Speaker with those words I beg to move that this Bill be now read a second time

Hon. L. E. SANDIFORD: I beg to second that and reserve my right to speak.

Dr. R. L. CHELTENHAM: Mr. Speaker, Sir, at the outset, I wish to indicate that we in the Opposition cannot and will not support the measures before the House as a matter of principle. I want to say further that it is a pity that the consensus which the Right Honourable Prime Minister is asking for cannot be present. He, himself, must bear some responsibility for that because on the last occasion that we were discussing salary increases I made it clear that the particular Act which we are seeking to amend today has several serious anomalies and that it is a very unseemly and undignified spectacle when we have to be divided among ourselves by talking about increase of salary and improvement of pension and all of those matters for ourselves and we cannot be agreed. I called then for a joint committee of Parliament to deal with the many anomalies that arise under the Act that we are seeking to amend today. In fact, when he was quoting from our late and learned friend, Mr. Tom Adams, Mr. Tom Adams was really referring to Frank Walcott and contrasting him with Leroy Brathwaite in the context of pointing to some of the anomalies that exist under the Act, and there are many. But the Democratic Labour Party, unfortunately, has never had a principled and manly approach to matters of this sort.

I think the Prime Minister, himself, has until recently been fairly consistent but we had the situation where, Mr. Richie Haynes, when he was a member of this Parliament and he was to be sitting on one of the committees, refused to sit and yet day after day he was concerned to know what progress was being made and whether there was anything that was likely to benefit him.

Mr. Reynold Weekes in his day had a very strong case for in excess of a $\frac{2}{3}$ pension for those who had served 5 terms and thereabouts. If a man had served in Parliament for 25 years, should he get the same pension as a man who has served for only 3 terms - 15 years? Rather than Mr. Reynold Weekes appearing before the Committee, participating in its activities, and putting his case, he was prepared to run away and yet to call every week to find out whether anything could be done to help him and people who were in his position.

So that has been the approach of the men Opposition in respect of these matters. It is about time that we really set up a bi-partisan committee to deal with these matters and straighten out a lot of the anomalies.

In a sense the case has not been helped by the confusion of principle with personality which I think was the error that was committed by the Right Honourable Prime Minister as he introduced the measure. No one is here denying the large and outstanding service that has been given to this country, both to Parliament, to trade union life and to public life generally by Sir Frank Walcott. It must be regarded as the Frank Walcott amendment. That is in fact and in truth what it is. The issue has nothing to

do with personality, the issue really has to do with principle. The first point of principle that arises is this. There is very good and substantial reason why the office of President of the Senate has never **been** a scheduled office, one that attracts retiring allowance. It already attracts a salary in excess of that of a member of Parliament, but it was always the thinking that a person who holds that office would be holding it in the evening of his days and that even if he was holding a full time job elsewhere that the demands of the job would not be such that we would need in excess of out of pockets.

Nevertheless in 1978 he was given a salary, which salary now stands at about \$3 000. In doing that, it was felt that in the event of the Governor-General not being available for his office for any reason that the President of the Senate would act from time to time as Governor-General. That is the reason why he was given a salary in excess of that of a back bench member of Parliament, but the office was never made one to attract retiring allowance. We have departed from that in all sorts of ways. The President of the Senate, in recent times, never acts as Governor-General and the head of a major and important estate is asked to leave the management of that estate and go and act as Governor-General with too much frequency in my view.

12.50 p.m.

The second thing is that the office of President does not contribute to the Pension Scheme. Parliamentarians who draw a pension at the end of their days draw a contributory pension and the office of President has never contributed to the Pension Scheme. So that now you are asking us to agree to make the office of President of the Senate a pensionable office in breach and in collision with the rules of the Pension Scheme whereby you only benefit if you contribute. That is the first point of principle.

Now it must be said too, Mr. Speaker, that the timing of this is all wrong. The public of Barbados is witnessing a situation in which we have a worsening of the unemployment situation out there and an escalation of the lay-offs. There are several households in Barbados today that used to have 3 and 4 people working and there is not a single person who is now bringing in any income. Already Sir Frank Walcott is drawing a pension from Parliament, and this is one of the anomalies of the system though there had to be a cut-off point, it is far too small. But he does draw a pension and he gets his National Insurance. He has given over 45 years of service to the Barbados Workers Union and it would have been assumed that an enlightened employee like the union that has done so much to modernize industrial relations practices in this country would have had a pension for the chief executive who has served for over 45 years. After all, it was in August 1947 that Sir Frank Walcott succeeded Mr. Hugh

Springer who retired and resigned as he was about to go off to the University to take up the job of Registrar of the then fledgling University of the West Indies.

Sir, it was a long time that Sir Frank Walcott was in the employ of the union and a long time, too, that Sir Frank had been General Secretary of the Barbados Workers Union. So that if indeed in the evening of his **days** there is need for any topping up of his income, I think that all Barbadians would have expected that, apart from his Parliamentary Pension and National Insurance Pension, it would be his employer for all of those years, the Barbados Workers Union, that would now be making contribution by way of a decent pension so **as** to ensure that in the evening of his days he is **not** suffering from penury.

Sir, the public is bound to perceive that this is the "Parliamentary Club" at work and the **boys** are seeing after one another. How can we ask people out there to endure a situation in which there is no hope for them in the foreseeable future in the short term as long as the Democratic Labour Party perhaps remains in office, of some of them getting any employment? How can we ask them to endure a situation in which there is no **income** at **all** coming into their homes but that the "club" must **see** after their own members and that we must make an arrangement whereby an office that for good and substantial reasons was never made pensionable should all of a sudden attract pension in order to help out Sir Frank Walcott in circumstances in which his employer for the last 45 years does not help him out?

Sir, I think that it would be seen **as** callous and insensitive on our part if we were to join with the Government in supporting an amendment such as the one before the House today. I took a close and active part in all of the arrangements that were made in 1978 in relation to these matters and I know of the reasoning and thinking that informed the decision not to make the office of President of the Senate a pensionable office.

Now the other Amendment may be seen as the Momson Amendment and, on grounds of principle, we have to refuse to support that too. We cannot lend it our support. Mr. Peter Morgan, after one term in the House, decided that it was not likely that he would get back into the House and so he decided to call back for his contribution. Mr. Momson called back for his too after 1976 when the upset victory on his part in 1971 was bound to be short-lived. By 1976 he thought that his career was at an end and he said that he wanted back his money too.

The point is that in life you have to make choices. Mr. St. John, the Honourable Member for Christ Church South, could have called back for his too. I could have called back for mine for that matter. You either have faith in yourself or you do not. You decide to make a choice.

You make a choice in life and you live with it. I do not think that the Right Honourable Prime Minister is accurate when he says that we are putting the parliamentarian on the same footing as a civil servant. Because we have a situation in the bureaucracy now where you can work for let us say 10 years, go out and work in the private sector, and you can come back in and do another 12 or 15 years and those years are added to the early 10 years. In the end, you would get a pension based on 22 years of service. But having left after 10 years, you never draw out your money. That is the distinction. That is the vital difference. Your money remains in so that when you come back in and do another 12 years of service to add to the early 10 years, you have 22 years of broken service but your money was never drawn out as it were. We have a situation now where a member for one reason or another, perhaps because he had no faith in himself then in terms of the future, withdrew his money and now he is asking us to make an amendment to the Act to ensure that having drawn out his money at four per cent he can now pay it back in at 6 per cent. He can now have those early years of **service**, which he has already drawn in a way, count towards his pension.

I think that in that respect, Mr. Speaker, the "Parliamentary Club", if I may so put it, is placing the interest of its members and itself beyond the interest of the public. I do not think that the public of Barbados will view us kindly for seeing after ourselves in this way and being so insensitive and callous in relation to the feelings, wishes and experience of fellow Barbadians.

Sir, I believe now there is also more than a rumour that is abroad to **the** effect that the executive of the union did actually take a decision about a year or so ago that Sir Frank Walcott was to draw for the balance of his life a **pension equal** to his last salary. If it is not so, the Union members who are in this House need to put the record straight. If that is so, it really worsens the case, but in any event it has nothing to do with whether or not the Union has lived up to its responsibilities.
1.00 p.m.

We are, in this respect, amending the law to suit 2 individuals. There is the **Morrison** amendment and there is the Walcott amendment and I do not think that we, as parliamentarians, at this point in our history ought to be seen to be promoting and **cementing** and seeing after ourselves when there are so many fellow citizens who are experiencing want and distress and have no hope of any pension in the context of what is happening in the economy.

And so, Mr. Speaker, I must indicate once again that the Opposition cannot support this measure before the House. It is a bit of "clubism" which has no place in the circumstances of the moment, when there are so many

fellow Barbadians that are without the basic necessities of life, and we are dealing with one who is entitled to a substantial pension, equal to his salary from the Union, who already has a National Insurance pension, who already has a parliamentary pension and who has made no **contribution** as President of the Senate to the pension scheme which is a contributory pension scheme.

The point about the Union would be seen by the public as **important**, and indeed he is getting a pension. As I said, rumour has it, but I think that if it is not so it would be in the interest of **all** of us that the members of the Union who are here should set the record straight. I think we need to go further and say what steps in any event would be taken by the Union to make sure that Mr. Walcott, who so richly **deserves** a pension from the Union, gets one.

There are several other techniques that can be adopted in providing for Mr. Walcott, if in truth and in fact he is in the distress which it is hinted he might be in.

Aside.

Dr. R. L. CHELTENHAM: I mean Sir Frank and I **mean** no disrespect to him in calling him Mr. Walcott, Mr. Speaker. Launch a public fund and we will contribute. Promote an endowment, if you like, and we will contribute, but you must not trample on the sensitivities of fellow Barbadians, you must not tear a principle apart in bringing in this legislation now, trying to make an office pensionable that was never intended to be pensionable. That becomes obscene and offensive and I, for my part, and we in the Opposition cannot lend this measure our support.

The question that the Bill be read a second time was put and resolved in the affirmative, the House dividing as follows:

AYES: Rt. Hon. L. E. SANDIFORD, Hon. P. M. GREAVES, Hon. M. A. KING, Hon. E. E. GREAVES, Mr. H. A. BLACKMAN, Hon. N. K. SIMMONS, Hon. W. W. HALL, Hon. C. V. WALKER, Hon. D. J. H. THOMPSON, Hon. D. W. BOWEN, Mr. L. L. BRATHWAITE, Mr. R. L. MORRIS, Mr. J. O. TUDOR, and His Honour T. C. ESTWICK – 14.

NOES: Mr. H. deB. FORDE, Mr. O. S. ARTHUR, Hon. H. B. St. JOHN, Mr. L. R. TULL, Dr. R. L. CHELTENHAM, Mr. DeL. O. BRADSHAW and Mr. G. W. PAYNE – 7.

On the motion of Rt. Hon. L. E. SANDIFORD, seconded by Hon. M. A. KING, Mr. SPEAKER left the Chair and the House went into Committee on the Bill, Mr. L. L. BRATHWAITE in the Chair.

Mr. **CHAIRMAN:** The House is in Committee.

Clauses 1 to 4 were called and passed.

Clause 5 was called.

Rt. Hon. L. E. SANDIFORD: Mr. Chairman, I beg to move that clause 5 stand part.

Hon. P. M. GREAVES: I beg to second that, Mr. Speaker.
1.10 p.m.

Dr. R. L. CHELTENHAM: Mr. Speaker, in the course of my remarks in the Second Reading I indicated that Mr. Reynold **Weekes** had not appeared before the Committee in 1978 but he had written several letters and memoranda subsequently. He did write several letters and memoranda subsequently, but my attention has just been drawn to the fact that he did appear December 4, 1978 and gave evidence. I am happy to read my correction into the records.

The question was put and resolved in the affirmative without division.

Clause 6 was called and passed.

On the motion of the Rt. Hon. L. E. Sandiford, Mr. Chairman reported the passing of one Bill in Committee and Mr. Speaker resumed the Chair and reported accordingly.

On separate motions of the Rt. Hon. L. E. Sandiford, the Bill was read a third time and passed.

ORDER NO. 2 – THE BARBADOS CONSTITUTION
(AMENDMENT) BILL, 1992

Hon. M. A. KING: Mr. Speaker, a couple of weeks ago, this Honourable House passed the Criminal Law (Arrestable Offences) Bill. In that Bill all references to felonies and misdemeanours which form part of the old Criminal Law of Barbados were removed. In view of the abolition of the distinction between felonies and misdemeanours, which was a result of the passing of the Criminal Law (Arrestable Offences) Bill, certain consequential amendments to the Barbados Constitution are required in order to delete from the Constitution all references to felonies which appear in the Constitution. Since the distinction between felonies and misdemeanours is no longer a part of the Criminal Law, and since the Constitution makes references to felonies and misdemeanours, it becomes necessary, on the passing of the Criminal Law (Arrestable Offences) Act, to amend the Constitution so that all **reference** to felonies in the Constitution be deleted.

The Bill is a short bill and in clause 2 of that Bill there is set out the requirement for amending the Constitution. The particular references in the Constitution where the word "felony" occurs are indicated, for instance, in sections 38(1), 39(3) and 45(2). Where there are references to felonies that term will be removed from the Constitution.

The Criminal Law (Arrestable Offences) Bill comes into operation on a date to be fixed by proclamation. On the passing of this Bill in the House this, too, will come into operation on a date fixed by proclamation which will be in essence the same date as the date fixed for the coming in force of the Criminal Law (Arrestable Offences) Bill.

Mr. Speaker, the amendment which is proposed by this Bill is of a very limited nature as I indicated. It deals only with the removal of the word "felony" from the Constitution. It is one of those amendments which do not require any special majority of the House for amendment. Amendment by simple majority of the House is all that is required. It is not one of the entrenched provisions of the Constitution which require special amendment.

Against that background, then, I move that this Bill to amend the Constitution be now read a second time.

Hon. P. M. GREAVES: I beg to second that, Sir, and reserve my right to speak.

Hon. H. B. St. JOHN: Mr. Speaker, this consequential amendment gives us the opportunity to elicit from the Government its general views on the need for a revision of the Barbados Constitution, having regard to the fact that it has been in existence since 1966. It was the subject of a review by the Cox Commission in 1977. So it has been in existence for a considerable period of time. It does appear to me that recently there has been an evident change in public opinion about the Westminster system.

Obviously, there are a number of features of this Constitution which were never intended to be permanent. In the light of subsequent events and subsequent experience, not only here in Barbados, but in the experience of other countries in the Commonwealth, I believe that it would be a good thing if periodically we bow, so to speak, to the demands of public opinion and have a review.

I do not want to indicate what particular areas are now the concern of public expression of dissatisfaction with the Westminster system, but I believe that this call is sufficiently vocal now that legislators as a whole should crystallise their opinions. I certainly feel that there are some areas that could be reviewed in the light of our

experience. Perhaps it should be said that in doing a review of the Constitution any review should take place against the background of a bipartisan approach and an approach which will ensure that there is as much public participation in the process as possible. I raise this, Sir, in the hope that I would elicit some response from the Government on this very important matter.
1.20 p.m.

Dr. R. L. CHELTENHAM: Mr. Speaker, I too would like to take this opportunity to widen the debate. The measure before the House is really consequential on the passage of the Criminal Law (Arrestable Offences) Bill. But narrow as that is, we have an opportunity here to speak about some wider issues in relation to the Barbados Constitution.

When the Constitution was 13 years old, the Cox Commission was set up in 1977. They reported then that the Constitution had exhibited certain weaknesses and deficiencies as early as then. They made certain recommendations for the improvement of the Constitution. You would recall too, Sir, that the Commission also was directed to arrive at a table of precedence to settle the Honours system for Barbados, which is currently in existence. A few of the amendments relating to constitutional change were put into effect but basically, the Constitution, except for the few amendments in 1974, remained the same Constitution we had in 1966 on Independence.

I agree the time has come when we need a bi-partisan commission undertaking a thorough-going review of the Constitution in the light of the experience of the last 25 years. Unlike the Honourable Member for Christ Church South who refrained from mentioning any specific areas of the Constitution where deficiencies and difficulties have arisen, I would like to point to a few areas we need to focus on in any review.

You will recall, Sir, that the Constitution is provided by way of the Schedule to the Barbados Independence Order, 1966, which was made by the Queen-in-Council at the Court of Buckingham Palace on November 22, 1966. The point there is that we need to use the language of constitutional lawyers, to repatriate the Constitution. There is no local statute on which the Constitution is founded. That is the first weakness of the Constitution. It is, perhaps, only of symbolic importance. But as an independent country we need to get our symbols right. That is the first symbol that is wrong.

Aside.

Dr. R. L. CHELTENHAM: I almost said my schoolmaster friend is making certain sotto voce

remarks but the Honourable Member for St. Michael South East often reminds me that he has been a schoolmaster but the Honourable Member for St. Michael South has never been a schoolmaster so I would have been very much in error.

Aside.

Dr. R. L. CHELTENHAM: He has never been a headmaster. Except in the Barbadian context schoolmaster may not be wrong because there is a difference between a schoolmaster and a schoolteacher. The schoolmaster was the headmaster.

The second area of difficulty, Sir, in relation to the Constitution relates to the citizenship provisions. There is no doubt there continues to be discrimination against women in the citizenship provisions. That is an area we have to address in the future.

The third area I think we can focus on has to do with section 26 of the savings clause whereby all laws which were on the statute book at Independence cannot be challenged for being in breach of the fundamental rights provision. I am advised by those who participated in the Independence talks that a very strong case was made for not including that provision. There are several countries in the Commonwealth, and in our own region, where that is not in existence.

It has turned out to be a fetter on the fundamental rights provision because there can be no doubt that a lot of the pre-Independence Acts are inconsistent with the fundamental rights provisions. The feeling is that even if that provision was put in, as indeed it was, there should have been a time limitation on it. The Government should have been given a limited period of 5 or 10 years to remove the provisions of the pre-Independence Acts that were inconsistent with the fundamental rights provisions. It should not have gone on up to the point of 25 years.

The time has come when that existing law provision needs to be removed. We should allow each challenge to be determined on the basis of merit as it comes. We should in one fell swoop remove the pre-existing law provisions which are really, in many respects, in conflict with the fundamental rights provision and constitute a fetter. That is not the situation obtaining in several of the countries of the OECS. It is not the situation obtaining in Trinidad and Tobago. I know of no good reason why we should continue to have section 26, the existing laws provision in the Constitution.

Section 24 too, Sir, also has a provision which constitutes a fetter of the fundamental rights provisions, that is, the provision that says that if there is any other adequate redress available to a citizen then you cannot

bring the case as a constitutional case. That has turned out to be an additional fetter on the fundamental rights provisions. It is my respectful submission that the time has come when that too ought to be removed.

It is significant, Sir, that in several countries, Trinidad being the most ready and, perhaps, outstanding example, that have had Constitutions very similar to our own, when they did the review a few years ago, their experience led them to remove that provision. I think the time has come when we in Barbados ought to remove that provision also.

I do not think, Sir, that any useful purpose would be served in trying to do the work of a likely constitutional commission now by addressing all the areas that ought to be looked at, and perhaps amended. But I really think the major question whether Barbados should remain a monarchy, or whether we should adopt some form of republican constitution, is a major question which ought to be addressed at this time. I know of no good reason why in 1992 Barbados should continue with the monarchical system. I do not think it is any longer in consonance with the feeling and thinking of people on these matters. That is one of the issues I think any constitutional commission would need to address. I do not think that the establishment of that commission should be long delayed. There is not a lot that is happening in Barbados on the economic front, except decline. But there are areas that do not call for the expenditure of large sums of money where we can make progress, and this is one such area.
1.30 p.m.

I am hoping that the Government at a soon date would, in consultation with the Opposition, establish a bi-partisan commission and that it would consult widely and that we could have all of these matters that I have identified and many more addressed so that we can ensure that the deficiencies which after 25 years the Constitution has exhibited can be corrected and that we can have a fundamental law that is more consistent with the thinking of the people of Barbados.

The Democratic Labour Party on the last occasion refused to **participate** in the work of the Constitution Review Commission. I think that that was very unfortunate indeed. I can give the Government the assurance that when they are minded to move ahead and establish a Constitution Commission that we in the Barbados Labour Party would be prepared, ready and anxious to play our part in making sure that the Constitution reflects the wishes of the people of Barbados in the majority and that the fetters on the fundamental rights provision are removed.

Hon. D. J. H. THOMPSON: Mr. Speaker, I wish to give my support to this particular Bill to amend the Constitution. I hope that it will meet the objectives

which the Honourable Attorney-General has indicated at the beginning of his presentation.

I wish to say, Sir, that I am a bit surprised that there is in Barbados today and also to some extent represented by one of the viewpoints that was expressed this morning, some new found view of the Barbadian Constitution which questions its validity. I am surprised that the University for example – particularly because Constitutional Law constitutes one of the first year courses – has not done a lot more to begin the process of educating the Barbadian public about what the Constitution of Barbados says.

I want to say that, while it is true that many issues may be clarified in the courts because they are difficult or hard questions that have to be resolved, by and large the problem we face in Barbados, is that many people do not know what the Constitution is about. Many of the lawyers who were trained in systems where they did not have to analyse the impact of a written Constitution do not understand what a written Constitution is and does and do not care to bother themselves about it because by the time they get into practice one does not have time for those kinds of academic exercises. Therefore, there is an absence or a void of information about what the Constitution of Barbados provides for.

I want to express my particular shock that I was listening to the radio a couple of evenings ago and heard two young lawyers trained with me almost expressing surprise that the Constitution of Barbados had a savings law clause, almost expressing surprise! In other words one of them was saying, "Imagine that we have just discovered that there is a provision in the Constitution that preserves colonial laws", as though savings law clauses were not one of the principal areas of discussion that one would have in a constitutional law course at Cave Hill.

My understanding of the savings law clauses is that they are essential because of things like public safety and security matters. That was my understanding of the rationale for savings law clauses.

Aside.

Hon. D. J. H. THOMPSON: Yes. **Precisely.** The Barbadian public is now faced with this deluge of information from people who should know better which gives the impression that the Constitution was not a mild but a major sell out of their political interests. That is true. The Constitution was a mild sell out in a way. It was a brokering of interests by persons who wanted to get rid of colonies, and negotiated a compromise with the colonies.

The celebrated work "The Politics of Constitutional Decolonisation" by Trevor Monroe exposes for all

academics, all the politicians, all persons with any intellectual ability the **fundamental** weaknesses of the Constitutions that emerged in the 1960s. They were essentially instruments to protect property classes and existing relationships in those societies. That, at that time, was desirable.

Let us start **from** the premise that, rather than going the route of having a Commission to examine the existing provisions and perhaps suggest recommendations for change, it is my belief that **as** a step preparatory to that, there should be some process of meaningful discussion, and not only by politicians, but certainly not by some of the lawyers who have not ever opened a Constitution either when they were studying, because they did not have to, or after. As I said those trained in the Westminster system, or whatever you call it, the Inns of Court system did not have that burden that one had at Cave Hill, not that those of us who went to Cave Hill discharged that burden any better than the others have. That is evidenced by the lack of information about our Constitution.

But I am saying that the process of informing and debating with the public what the Constitution of Barbados provides for, what kinds of rights it gives citizens, what interests it protects and so on should be gone through first so that we can know where we are. I think that would enlighten a lot of Barbadians to the kinds of changes that may be necessary in the Barbados Constitution.

Let us not start from the premise that people understand what the Constitution is about. Exercises such as those being put on by the Bar Association which are now going on are much too academic for that kind of analysis. I notice the Honourable Member for St. Joseph will be speaking on Thursday night, at some political presentation at the NUPW Auditorium for which they are requiring balance from this side. That is the kind of scenario that I think should be avoided. That is just my view. We would have probably to consider helping to raise those kinds of issues but let us avoid that element of partisanship and spend some time discussing what the Constitution provides for.

The Barbadian public must not fool themselves that lawyers are in any omnipotent position to indicate to them what the provisions of the Constitution relate to because lawyers have their own political biases which colour their interpretation of the provisions of a Constitution. Let us be frank about that. There is no set scenario. In fact one of the most discriminatory provisions of the Constitution is the fact that for you to practise law in Barbados you must be a member of the Bar Association, which in my view, should offend against the freedom of association...

Aside.

Hon. D. J. H. THOMPSON: ... it is in the Legal Profession Act but I just...

Aside.

Hon. D. J. H. THOMPSON: ...it does not matter that it is not in the Constitution. What I am suggesting is that it offends, in my view, provisions of the Constitution. Anyway that is a minor issue.

The general point that I am trying to make is that I feel that the discussion on the Constitution should be wide-ranging and should not be reserved for legal practitioners or people who, as I said, have merely had a first relationship with the law. I myself – and I have not had any discussion with my colleagues on this side although I suspect there may be some support for it – support the provision which would equalise the position in relation to citizenship and I myself am not supportive of the present discrimination that appears in the Constitution where the husbands of Barbadian women are not entitled to citizenship whereas the wives of Barbadian men are entitled to citizenship. That is probably one of the very last of the reforms under the Report of the National Commission on the Status of Women that is necessary to complete all of the recommendations that have been made in relation to issues affecting women in Barbados. I think a speedy examination of that particular provision is desirable.

1.40 p.m.

Regarding the question therefore of the Constitution as a whole, I am giving my support to this particular Bill. I believe in comprehensive reform. I think the reform must proceed from some kind of public awareness and discussion of what the Constitution is and what we hope the Constitution will achieve in a society like Barbados, what its relevance is to the lives of the average citizen and permit them the opportunity to say what they think is relevant about their life style and their approach to life in the 1990s moving into the twenty-first century. I would give my support to reforms that proceed from that basis and not on the basis of any high powered commission which is sitting down with its own preconceived notions about how the Constitution should affect their lives as individuals and not giving enough attention to creative and innovative reform which is suggested from all quarters of Barbados.

I think that analysis is desirable and I hope that it will not proceed merely from one or two cases which highlight provisions in the Constitution that people did not realise existed before but that it would be a discussion that proceeds on the basis that we not discuss what a Constitution should have as a safeguard to the citizens and should say about the rule of law in Barbados and equality

for all. With those few words I give my support to this Bill.

Hon. M. A. KING: Mr. Speaker, there has been no disagreement with the substance of the amending Bill as it is but Honourable Members who spoke took the opportunity to raise the wider question of constitutional amendments. The Honourable Member for St. Joseph made the point that he thought it would be appropriate to set up what he perceived to be a bi-partisan commission to consider those aspects of the constitution which need some change.

I am not going to go through in detail the points which the Honourable Member for St. Joseph made but there are just a couple of points which I would just like to comment on. Constitutions are made essentially to serve people and nations. I think, in doing amendments to Constitutions one first of all has to look to see what is the mischief which needs to be corrected if there is a mischief which is required to be corrected.

The Honourable Member for St. Joseph made a fairly wide statement that one needs to ensure that the Constitution reflects the wishes of the people for whom it is designed. I think what one would like to hear is full details of the extent to which our constitution, for instance, does not reflect the wishes of the people of Barbados. These are issues which will have to be discussed. To what extent there are provisions which create problems for the people of Barbados which need to be corrected.

The Honourable Member for St. Joseph made the point about discrimination against women and that there may be a provision in the Constitution which does need some change in that regard. That is a position which I support and we are in fact presently looking at that. Perhaps some amendment to the citizenship legislation needs to be done as well.

The Honourable Member made reference to two sections of the Constitution, Sections 24 and 26. Section 26 which was the savings clause which saved existing law which predated the Constitution and section 24 indicated that where there were other remedies available other than constitutional remedies those remedies should be used by a litigant rather than bringing constitutional motions.

I am sure the Honourable Member's concern in relation to these two issues have perhaps been triggered by recent judicial pronouncements in relation to these matters and I do not know that I am convinced that in both of these areas that the position needs any adjustment. I said I am not convinced as yet. It clearly is a matter which needs to be studied.

I don't see, for instance, how section 24 works any particular injustice on a litigant because what section 24 does is say you have already got other remedies which are provided and in respect of which you may make an application to the court and that those remedies are there and that the constitutional remedies should only be used where there are no other existing remedies available to the litigant.

Mr. Speaker, I suppose there are many occasions where litigants **unfortunately** find that they need to resort to the constitutional position because, for one reason or another, they have not taken advantage of the remedies which the legislation and jurisprudence already provides and where because of their default in taking advantage of the remedies which already exist in law, time has run against them and their opportunities to use the existing remedies is not available. Then litigants feel that the only opportunity is to fall back then on the use of the constitutional review provisions and the courts have held in a recent case which came before it that where existing remedies are available that the use of the constitutional motion procedure is not available.

As I say, these are areas which need to be looked at and I suggest that constitutional amendments in these areas need to be done only where they can be positive mischief which needs to be corrected, where the constitution works to the disadvantage of the citizens of a country and that where that **cannot** manifestly be shown that there is really no particular need to interfere with constitutional arrangements.

The issue of monarchy against republicanism, well that is a matter on which people feel strongly one way or the other. It is an area in which emotion tends to be generated. Some of us, I am sure, have our own views on it but again that is a matter which can be addressed in the fulness of time. I think that is all I need to say on this occasion. This is clearly not the occasion for a full scale debate on the Constitution. As I indicated in my opening remarks in introducing the Bill, it is of limited application and, against that background, I move that the Bill be read a second time.

1.50 p.m.

The question that the Bill be read a second time was put and resolved in the affirmative without division:

On the motion of Hon. M. A. KING, seconded by Hon. E. E. GREAVES, Mr. SPEAKER left the Chair and the House went into Committee on the Bill, Mr. L. L. BRATHWAITE in the Chair.

COMMITTEE

Mr. CHAIRMAN: The House is in Committee.

Clauses 1 – 3 inclusive were called and passed.

On the motion of Hon. M. A. KING, seconded by Hon. E. E. GREAVES, Mr. CHAIRMAN reported the passing of the Bill in Committee and Mr. SPEAKER resumed the Chair and reported accordingly.

On the separate motions of Hon. M. A. KING, seconded by Hon. P. M. GREAVES, the Bill was read a third time and passed.

ORDER NO. 8 – RESOLUTION TO APPROVE THE COMPULSORY ACQUISITION OF LAND AT CLEVEDALE ROAD, SAINT MICHAEL FOR THE CANALISATION OF AN EXISTING WATERCOURSE

Hon. E. E. GREAVES: Mr. Speaker, I do not anticipate that this will be much of a controversial matter. The Resolution seeks really to regularise a situation which took place some years ago. It had to do with the fact that in June **1985** the Ministry of Public Works, Communications and Transportation undertook canalisation works on the property of Mrs. **Etta** Springer at Clevedale, Black Rock, St. Michael in order to improve drainage in the area and the work involved canalising an existing watercourse. An area of 48 square metres of land owned by **Mrs.** Springer was used during the process and the land was never formally acquired. We are now proposing to regularise the acquisition of this parcel of land. I should probably indicate to you that when the work was done Mrs. Springer's lawyers complained to the executing Ministry that her main concern was that she should be paid compensation for trespass and compensation for the use of the land. She requested the sum of **\$2 000** in compensation in respect of the two areas.

The area of land concerned was valued by the Commissioner of Land Tax at **\$200.00**. There was some delay because legal advice was sought from the Attorney General's Department on this particular matter and following consultations with that Department and the Chief Technical Officer, Cabinet on September **1, 1988** agreed to the pay **\$2 000** to Mrs. Springer taking into account her inconvenience and Government acquired the **48** square metres of land.

Sir, some of these matters got caught up in a whole set of other things and, as a result, it was not followed through. What we are seeking to do now is to go through with the acquisition of this **48** square metres of land which, as I indicated, the Commissioner of Land Tax valued at **\$200**. I therefore propose, Mr. Speaker, to move that the House approve the acquisition of this **48** square metres of land at Clevedale, Black Rock for the purposes indicated in the Resolution.

Mr. DeL. O. BRADSHAW: Mr. Speaker, there can be no objection to the Resolution as it relates to the acquisition of a piece of land to provide a proper watercourse in the area as described. We all know that this particular area is prone to flooding and it is only reasonable that everything should be done by Government in order to alleviate the problem in the area.

As the Minister has said, work has already been done and it is just a matter of regularising and paying compensation which was requested by the vendor. But I hope that Government realises it has a responsibility, notwithstanding the fact that this Resolution has come, to go through with the requirements that are published in the relevant sections in the Press so that this can be **done**. I think that if that was **done** in the first place then there would not be any need for the Government to be involved in this.

Aside.

Mr. DeL. O. BRADSHAW: Nobody is quarrelling with that. As I said, it should be done. I **am** aware, Mr. Speaker, that from time to time Government has got to trespass and do work and then come to settle the matter. I am not quarrelling with that because we understand that. What I **am** saying is that it is a matter of time and I would have hoped that this matter could have come very early so that the interest that has accrued would have been lessened significantly, because we are aware that this is coming out of the Treasury.

The other point that I would want the Government to take into consideration is that I **am** hearing that Government is going to compensate people for the use of their land. I have come here on more than one occasion asking the Government to consider providing a proper well or drainage in order to alleviate similar flooding in 1st Avenue, Wildey.
2.00 p.m.

Mr. SPEAKER: Now, we are dealing with Clevedale, Black Rock.

Mr. DeL. O. BRADSHAW: Yes, Mr. Speaker. I am sure you will bear with me. I do not want to widen the debate.

Mr. SPEAKER: That is exactly why we have this Resolution.

Mr. DeL. O. BRADSHAW: I **am** not widening any debate, but I **have** a concern and we are dealing with compensation. There are people whose lands have been acquired or trespassed upon in a similar manner and I **am** asking if the Government is going to treat these people in

the case of 1st Avenue, Wildey in the same way as they treat the people in Black Rock.

Mr. SPEAKER: But that does not arise. There should be a general statement. If you want a specific statement, you **know** the procedure for that.

Mr. DeL. O. BRADSHAW: Yes, Mr. **Speaker**, I know the procedure very well.

Mr. SPEAKER: Let us stay with the Resolution.

Mr. DeL. O. BRADSHAW: I am **dealing with** the Resolution, but I am saying I hope there is no discrimination as far as the provision of compensation for the acquisition of land and alleviating drainage in Barbados at this particular time, because I have cases I can point **to**. There are other **areas** with similar problems and here is the Government coming to deal with a matter to alleviate problems in Black Rock and there are **areas** I have complained about and cannot have them attended **to**. I must raise my concern as far as that is concerned. Let us understand that, This is a time when rain is on us, we are going to have a lot of flooding problems throughout Barbados and I do not think it is unreasonable for me to ask **the** Government to consider looking at **the areas** I know have been flooded for years.

Mr. SPEAKER But I am just **saying** to the Honourable Member I understand the point he wants to make, but if **he** is going to get into specific areas, then he knows clearly the procedure. That is clear. The House functions in that way.

Mr. DeL. O. BRADSHAW: I thank you, Mr. Speaker. When I mentioned this matter in the past the Minister of Public Works, Communications and Transportation was not here and I thought I should seize the opportunity to let the Minister know of these problems, so I have the assurance from the Minister of Housing and Lands that he will address the problems.

Hon. E. E. GREAVES: Mr. Speaker, I just want to remind this Honourable Chamber and the Honourable Member that the lady's property was trespassed on since 1985. The Government went in without the lady's permission and canalised the area, all for the benefit of the people who live around there particularly. Nobody is really questioning that. The fact of the matter is we **are** trying to have this matter properly sorted out and the lady compensated for the trespass and inconvenience which **she** was caused by the former administration. This is something which **Vic** Johnson did on a regular basis. Everybody knows that. Once it was down in Black Rock he trespassed on people's property without rhyme or reason, without asking them, but that is **beside the** point.

Aside.

Hon. E. E. GREAVES: Well, I agree with you. He gave instructions.

Now, Sir, the point I **am** making is that we are trying to regularise this matter now. I would not want the Honourable Member to think that this is something which we are now doing.

On the other question relating to flooding, I think Honourable Members must disabuse their minds of even attempting to make the public of Barbados believe that at any time any Government will be able to resolve or solve flooding problems in Barbados or anywhere else to everybody's satisfaction. Flooding is something which no Government will be able to control to the extent that one would expect. The point I **am** making is that the United States of America, with all of its resources, cannot control flooding, so I just want the Honourable Member to understand very clearly that we have had flooding in Barbados and that we will continue to have flooding in Barbados. We will, however, from the point of view of the Government, want to give the assurance that we will do

whatever we possibly can to reduce the inconvenience which will be caused by flooding to the people of Barbados.

With those few remarks, Sir, I beg to move that this Resolution do now pass.

The question was put and resolved in the affirmative without division.

ADJOURNMENT

Hon. P. M. GREAVES: Mr. Speaker, that brings us to the end of Government Business for today. Unless Honourable Members want to return, I **am** moving that the House be adjourned until Tuesday, 7th July, 1992 at 12 o'clock noon.

Hon. E. E. GREAVES: I beg to second that.

The question was put and resolved in the affirmative without division, and Mr. SPEAKER adjourned the House accordingly.
2.09 p.m.

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