
THE House of Assembly Debates

(OFFICIAL REPORT)

FIRST SESSION 1991 – 96

HOUSE OF ASSEMBLY

Tuesday, May 12, 1992

Pursuant to the adjournment, the House of Assembly met at 12.15 p.m. o'clock.

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. W. O. FRANKLIN, A.I.C., M.I.A.S., J.P., (Minister of Trade, Industry and Commerce)

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

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

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

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. C. LeR. TROTMAN, M.A.

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

Hon. D. W. BOWEN (Minister of Community Development and Culture)

Mr. G. W. PAYNE

Mr. R. C. EASTMOND, B.A., LL.B.

Prayers were led by Rev. Father Ivan Harewood.

Mr. SPEAKER: The House is in session.

MINUTES

Hon. P. M. GREAVES: Mr. Speaker, the Minutes for the meeting held on Tuesday, April 28, 1992 have been circulated and I therefore move that they be taken as read and confirmed.

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

Mr. SPEAKER: If there are no corrections or observations, let these Minutes stand confirmed.

ANNOUNCEMENTS

Mr. SPEAKER: Message from Her Excellency the Governor-General. This message should have been brought before sometime earlier in May. Obviously, the House was not in session and therefore I am now formalising the message which reads:

"I shall be away from the Island from 7th May to 8th May, 1992 on a private visit to Trinidad & Tobago.

In those circumstances, acting in accordance with the advice of the **Prime Minister** under Section 30 of the Constitution, the Hon. Sir **Denys Williams**, GCM, has been appointed to be Governor-General during that period of my absence."

PAPERS

Rt. Hon. L. E. **SANDIFORD**: Mr. Speaker, I am commanded to lay the Annual Report of the Barbados Broadcasting Authority 1990-91.

Hon. W. O. **FRANKLIN**: Mr. Speaker, I am commanded to lay the Annual Report of the Barbados Export Promotion Corporation for the year ending March 31, 1991.

NOTICES OF QUESTIONS

Mr. SPEAKER: The Honourable Member for St. Andrew: Government's programme for construction, repair and maintenance of certain roads.

Mr. G. W. **PAYNE**: I beg to ask the Minister of Public Works, Communication and Transportation:

1. Will the Minister state what plans **Government** has for repairs to the following roads in Saint Andrew:

- (a) the Spring Vale Road which is now closed to vehicular traffic,
- (b) for resumption and completion of work on the road linking Turners Hall with **Belleplaine**,
- (c) the damaged road between Farley Hill and Greenland on the Charles **Duncan O'Neal** Highway, and
- (d) the Rock Hall Road which is a central link road into Saint **Andrew**?

2. Will the Minister please identify the roads in the constituency of Saint **Andrew** programmed by Government for construction, repair and maintenance during the current financial year?

Mr. SPEAKER: The same Honourable Member, Government's policy on provision of water supplies for the constituency of Saint **Andrew**.

Mr. G. W. **PAYNE**: To ask the Minister of Public Works, Communications and Transportation:

1. Will the Minister please state whether Government's policy on the provision of water supplies for the constituency of Saint **Andrew**

includes the installation of a new pumping station and reservoir at Apes Hill, Saint James, to relieve water problems in that area, and notably in the Orange **Hill/Apes Hill** Development?

2. Will the Minister please state whether the water main recently installed along Apes Hill aforesaid to divert water from the Castle Grant system is a permanent supply and, if it is such, whether the Minister is aware that that service has reduced water supply to areas normally serviced from Castle Grant and has also created water shortages in other parts of Saint Andrew?

Mr. SPEAKER: The same Honourable Member: Repairs promised by Government for Turners Hall Primary School.

Mr. G. W. **PAYNE**: To ask the Minister of Education:

Will the Minister state

- (a) why the repairs which have been promised by Government for Turners Hall Primary School Saint Andrew, especially for support of the structure of the building and mending of the leaking roof, have not been done, and
- (b) if Government still proposes to relocate Turners Hall Primary School to Farmers and, if that is so, when will that relocation commence and be completed?

Mr. SPEAKER: End of Notices of Questions.

FIRST READING OF BILLS

Hon. N. K. **SIMMONS**: Mr. Speaker, I beg to move that a Bill to amend the District Auctioneers Act be read a first time.

Hon. E. E. **GREAVES**: I beg to second that, Sir.

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

ORAL REPLIES TO QUESTIONS

Hon. E. E. **GREAVES**: Mr. Speaker, I beg to give notice that reply to Parliamentary Question No. 34 asked by the Honourable Member for St. **Andrew** is ready.

NOTICES OF MOTIONS FOR ADJOURNMENT OF
THE HOUSE ON MATTERS OF URGENT
PUBLIC IMPORTANCE

Hon. P. M. GREAVES: Mr. Speaker, I have a matter which I want to draw to Your Honour's attention, and, simultaneously, should be a matter of this Honourable Chamber. I believe it is well acknowledged and known that in reporting of the proceedings of this Chamber, particularly of the media, accuracy should at all times be observed. There are times when accuracy may not be observed and can create nothing but mischief.

I want to draw Your Honour's attention to the front page purported reporting of what took place in the House of Assembly on Tuesday, April 28, 1992. This was reported in *The daily "Nation"*, Wednesday April 29, 1992. There was also reference in *'The Advocate'* newspaper Thursday, April 30, 1992. In both of these publications, Sir, in the first instance it is stated in the daily *"Nation"* on page 1, in a particular paragraph referring to the Employment Levy (Amendment) Bill that fellow backbencher Johnny Tudor abstained with 14 votes in favour. This was also repeated on page 9 of *"The Advocate"* in a column headed **"Lickmout Lou"**. It stated "Guess who abstained?" It goes on to state **"Johnny Tudor."**

Sir, it can be seen from the Minutes that were confirmed today on page 4 that the "Ayes" and "Noes" were stated and among the "Ayes" appeared the name of "J.O. Tudor." There is no reference to abstention. I would like to draw to Your Honour's attention and I am submitting, in my opinion, that there has been a breach of the privilege of this House. I am bringing it to Your Honour's attention.

There are matters too as well that have been brought to Your Honour's attention previously. I think the Committee can have a meeting on all of these matters together if the Rule says this is a matter that should go to the Committee of Privileges.

Mr. SPEAKER: Clearly the Honourable Member has made out a *prima facie* case. I think this particular one should go to the Committee of Privileges for its consideration.

ORDERS OF THE DAY

SUSPENSION OF STANDING ORDERS

Hon. P. M. GREAVES: Mr. Speaker, I am moving that the following Standing Orders be suspended at this time for the remainder of this sitting. I hope the Press will get them accurately if they report. There are Standing Orders Nos. 6, 16, 18, 20, 42(5), 43 and 44 for the remainder of this sitting.

Hon. E. E. GREAVES: 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. 1.

FINANCIAL INTERMEDIARIES REGULATORY
BILL, 1992

Rt. Hon. L. E. SANDIFORD: Mr. Speaker, I rise to move the second reading of the Financial Intermediaries Regulatory Bill, 1992. Notice of this Bill was given on March 19, 1992. The Bill was read for a first time on that date also. Honourable Members would have had ample time to study the contents and the import of the Bill.

What the Bill seeks to do, Mr. Speaker, as its Objects and Reasons state is:

"This Bill seeks to make new provision for the regulation of banks, the banking and finance business of trust and finance companies and the deposit-taking business of commercial houses, in order to safeguard Barbados' sound financial system and preserve the integrity of that system."

Financial intermediaries, as is well known, refer to those organisations and entities such as commercial banks, trust companies, finance companies, merchant banks and brokerage houses which bring together the lenders and borrowers in our economy and facilitate transactions between these 2 groups in order to satisfy their mutual objectives.

Financial intermediaries receive deposits from savers and then lend some of the proceeds to borrowers. They, therefore, interpose themselves or intermediate between the ultimate borrower and the ultimate lender. In order that their role and function in the economy may be better understood, financial intermediaries are sometimes classified as bank and non-bank organisations. At other times a distinction may be made between depository and non-depository institutions.

Still another classification distinguishes between depository institutions such as commercial banks, contractual institutions such as insurance companies and pension funds, and investment institutions such as investment companies and real estate investment trusts. There is, however, much overlap and a blurring of classifications especially in recent times when financial intermediaries have been broadening their scope of

operations and one type of intermediary might encroach on the sphere of activities of another type.

Before I proceed any further, Sir, let me clarify one point. This Bill does not seek to deal with all of the intermediaries in our financial system. For example, insurance companies are financial intermediaries but they are not dealt with in this piece of regulation since they are regulated under the Insurance Act, Cap. 310. Credit unions are also not substantially dealt with in this piece of legislation since they are also dealt with in another piece of legislation and since there is still further work to be done on the nature and extent of the financial regulation of those bodies.

Beyond the definition we may give, however, to the term "financial intermediaries" and beyond the niceties of classifying the various entities into satisfactory pigeon holes is the inescapable fact that the growth and development of Barbados and its people have been inextricably linked to the mobilization of financial resources for investment within the framework of combining land, labour, capital, technology and management for overall economic purposes. At the heart of this process is the income which we as individuals in households earn from wages and salaries, rents, dividends and so on and the money which we expend on purchasing goods and services. That income and expenditure by individuals and households are then translated into the sales, purchases and other transactions of the business firms operating in Barbados. It is the demand for the goods and services of the businesses and firms which cause them to hire the labour from the individuals and households thereby providing the latter with the wages and salaries which they earn.

12.40 p.m.

There is therefore a circular flow of money from the income and expenditure of individuals and households into the sales and purchases of businesses and firms and back again. It is the financial system that facilitates that circular flow of resources by more or less efficiently taking the deposits of individuals and households, packaging them in terms of loans and other instruments to other individuals and particularly to businesses and then facilitating the **reflows** for the individuals and households. Savings, capital accumulation, **loanable** funds, investment and interest rates are all very crucial elements in that total process. The financial system therefore facilitates the relationship between savers and borrowers in our economy and provides financial intermediation between these two entities in the system. It should be noted that money and credit in narrow or broad terms moves in line with economic activity since money and credit tend to contract during recessions and to expand in times of boom.

Let me just give a few facts and figures in this regard. First of all in respect of commercial banks.

Commercial banks deposits in Barbados rose from some \$360.6 million at the end of 1975 to \$1 120.3 million at the end of 1985. By 1990 that figure had reached \$1 832.7 million falling off to \$1 761.3 million by the end of 1991. That decline in 1991 was mainly a result of significant withdrawals in demand and time deposits during the year reflecting the fall in economic activity and the impact of restrictive monetary policies. Loans and advances by commercial banks rose from \$295.2 million in 1975 to \$348.7 million in 1985 and reaching \$1 262.3 million by 1991.

Figures for other intermediaries are as follows: Public companies and private companies constituting the commercial houses in Barbados such as Barbados Shipping and Trading Co. Ltd. and others – there are, I believe, about 9 or so of them, certainly the major ones – had total deposits of \$60.03 million at December 1991.

Finance companies had total deposits of some \$40.7 million – and I am using for all of these the end of December 1991 – and trust companies had total deposits of some \$408.9 million. That gives a total of some \$2 270.93 million in deposits by the end of 1991. And so we are talking about substantial deposits in that sector and it is because, therefore, of the importance of the financial intermediaries, in the financial and economic system of Barbados and because of the risks involved in the process of intermediation, and further, Sir, because of the need to maintain the fairness, integrity, confidence and stability of the system that it is absolutely necessary that adequate supervision and regulation of the financial intermediaries should be exercised effectively and prudently.

It is also crucial that monetary policy in terms both of currency in circulation and control of monetary aggregates, in terms of the reserve requirements of the intermediaries should be exercisable through the regulatory instruments over the operations of the intermediaries.

Basically the aim of regulation in the financial system is to maintain public confidence in the operations of the financial intermediaries and in the financial instruments they deal in. Collapses such as occurred in the case of the Barbados Foundry and Trade Confirmers do highlight this only too well since such cases do not add to the store of public confidence but rather subtract from it.

What we must seek to do – and this is what this piece of legislation which we are now considering aims to do – is to **circumscribe** the risks taken at the level of the financial intermediaries. This is to be taken within the context of the role of the Central Bank as the lender of last resort. What this Bill therefore seeks to do is to regulate the entry, structure and exit of financial intermediaries within the financial system and to set a framework for supervisions, examination and consumer protection.

12.50 p.m.

The Financial Intermediaries Regulatory Bill arose out of a directive by the then Minister of Finance in 1985. I see the Honourable Member for Christ Church South smiling in acknowledgment. He is obviously very pleased that he was not able to bring this on to the Statute Book. I don't know if that is what he is smiling about. But he gave a directive in 1985 following the collapse of the Barbados Foundry Limited to put measures in place to protect depositors against collapse of commercial houses.

Indeed, Sir, as early as 1977 it was realised that the Banking Act had become inadequate for effective regulation of the financial system in Barbados. That Act merely regulated the business of commercial banks and was therefore not applicable to all financial intermediaries. Consequently in March 1977 a decision was taken by the Government of the day to repeal the existing Banking Act and replace it with a new Financial Institutions Bill to be enacted before the end of the year 1977.

In April 1977, the then Governor of the Central Bank, with the approval of the then Minister of Finance, requested the International Monetary Fund to draft a new Financial Institutions Act for Barbados.

In early 1978 a working party was set up to study the draft Financial Institutions Act, prepared by the IMF. In February 1978 the draft Act was revised by the IMF Staff Mission in accordance with the comments made by the Working Party. The draft Act was circulated for discussion on December 12, 1978 and the then Prime Minister noted that the draft Act, as drafted by the Adviser to the AG's Office "is so different in style from the IMF/ Central Bank draft that I think we must resign ourselves to having to wait another month before it is introduced into Parliament."

After this, there seems to have been much uncertainty as to what further action on the draft should be taken though much attention was focussed on updating the existing Banking Act. While work was fairly advanced on this matter, that is following the directive by the then Minister of Finance in 1985, the Central Bank became increasingly aware that there were areas in the existing Banking Act which did not adequately cover the activities of the non banks and that legislation governing commercial banks also needed to be updated. It was therefore agreed to proceed with an entire revision of the financial legislation in the form of a Financial Intermediaries Regulatory Bill or Financial Institutions Bill as it was then called.

In September 1986, a draft Green Paper was prepared and circulated for discussion among the commercial banks, trust companies, finance companies and deposit taking commercial houses, as well as other financial intermediaries. Revisions were made to the proposals and after several meetings a revised Green Paper was sent to the Minister of Finance in March 1987.

The Ministry of Finance advised that the Green Paper might be circulated for discussion and several meetings and discussions with commercial banks and other financial intermediaries followed and at the Ministry's request guidelines for drafting were sent to the Attorney General. A draft was then prepared by the office of the Attorney General. This Draft was again circulated to all commercial banks and finance companies as were several other drafts until agreement was reached. The final form of the Bill reflects this process of dialogue.

The main objectives of the Financial Intermediaries Regulatory Bill are to ensure efficiency and public confidence in financial intermediaries and to afford the depositor some protection. At the same time it is intended to encourage a high level of competition among financial intermediaries and to encourage intermediaries to regulate themselves as much as possible through observance of agreed guidelines.

The new Financial Intermediaries Regulatory Bill completely replaces the Banking Act and brings within its terms of reference the banking and investment activities of non bank financial intermediaries. The existing Banking Act was not specifically designed to cover the activities of the non bank financial intermediaries and many of the gaps in that legislation have been filled in the draft Bill, the Bill that is now before us.

This Bill, Sir, is divided into 4 parts. Part 1 is general and deals principally with licensing. Part 2 covers commercial banks. Part 3 covers finance companies and Part 4 covers the deposit taking activity of commercial houses. All financial intermediaries are required to be licensed as Part 2, Part 3, or Part 4 companies. Many of the provisions in the old Banking Act have been retained and some new areas introduced. The following sets out the main new areas covered in the draft Bill as they relate to commercial banks and trust and finance companies, that is Part 2 and Part 3 companies, and this is followed by a section describing the main stipulations in Part 4 of the Bill governing deposit taking commercial houses.

This Bill, Sir, puts in place a system of licensing which requires all companies involved in banking related activities to be licensed in order to take deposits from the public. This prevents a finance company from being set up to do business in Barbados with as few as two shares as is currently possible. Commercial banks require the prior approval of the Minister before any reconstruction or arrangement involving a locally incorporated bank. This is intended to put the Minister on notice in the event of a major change in the bank's organisation.
1.00 p.m.

Aside

Rt. Hon. L. E. SANDIFORD: PROVISION FOR APPEAL – A bank *or* non-bank may appeal revocation of a licence.

CAPITAL REQUIREMENTS

Minimal capital requirements of commercial **banks** are raised to \$2 million. This was increased in the light of inflation. Commercial banks will be expected to improve capital or reserve levels in line with the level of total assets. Where the Central Bank is dissatisfied with the adequacy of capital of domestic financial intermediaries and other **deposit-taking** entities, they will be required to make good **their** capital.

CAPITAL ASSET RATIO

An ongoing minimum ratio of capital and reserves to deposit liabilities is introduced in the Bill. This permits the Central Bank to prescribe capital asset ratios in the interest of the prudent operations of financial institutions.

RESERVE FUND

Non-banks are now required to transfer 15 per cent of profits to a reserve fund in **order** to build up a wider capital base. Commercial banks must presently transfer 25 per cent of profits to reserve.

ASSIGNED CAPITAL

The Minister may call for assigned capital in the case where new banks are setting up branches in Barbados. Existing banks are not required to assign any capital to their local operations.

DIVIDEND PAYMENTS

The new Bill makes it requisite that dividends paid must be out of realised profits or reserves and interim dividends are not permitted except out of realised **profits of** previous years. This is intended to guard against a situation where a bank or finance company makes a year end loss after having paid interim dividends on the basis of a half year's profit.

RESTRICTIONS ON BANKING ACTIVITY

In the interest of soundness and in order to reduce loan **concentration**, a limit is placed on the amount of credit extended by a **bank or** a finance company to a single customer. This limit is presently 25 per cent of the paid up total capital and reserves. In the case of foreign banks, this refers to the capital of the parent company. Locally incorporated banks will continue to comply with this provision. The Bill extends its provision to include finance companies and trust companies.

DISCLOSURE OF CONCENTRATION

All banks and finance companies will be required to disclose to the Central Bank large amounts of credit to **individual** customers, that is in excess of 20 per cent of capital. This is an attempt to monitor loan concentration. It puts the Central Bank on notice and puts the commercial banks on notice as well.

UNSECURED CREDIT TO DIRECTORS

The limit *on* unsecured credit to directors is raised from \$3 000 or 1 per cent of paid up capital and reserves to \$20 000 *or* 1 per cent of paid up capital. The limit of \$3 000 was too low in the light of inflation.

COMMERCIAL BANK INVOLVEMENT IN CORPORATE ACTIVITY

At present, the Banking Act prohibits banks from holding an aggregate value exceeding 25 per cent of paid up capital and reserves in the equity of commercial, agricultural and industrial undertakings. The new Bill provides for equity in excess of this to be held by way of a holding company.

DISCLOSURE OF FIXED ASSETS AND EQUITY INTEREST

Banks have an obligation to disclose fixed assets held for its own account.

PART III COMPANIES – CAPITAL REQUIREMENTS

The minimum requirement for a trust company setting up business in Barbados is \$500 000.

Aside.

Rt. Hon. L. E. SANDIFORD: That minimum capital requirement for a **trust** company is \$500 000.

PRESCRIBED ACTIVITIES

Part III Companies, Trust and Finance Companies may engage in any business related to banking. In view of the many activities which finance companies engage in internationally rather than list these activities, it was preferable to give the Central Bank authority to prohibit those activities in which it would not wish to see finance companies involved.

ASSIGNED CAPITAL NON-BANKS

Non-bank branches may be required to assign capital to their local activities. This applies to both new and existing branches. The notion of an assigned capital is intended to provide protection where the company setting

up business in Barbados is a branch operation of a bank whose assets are not very substantial but which for other reasons – perhaps it may be a regional bank – the Minister may not wish to refuse the licence. In such cases, the value of the branch's fixed assets may be used to meet those capital requirements.

CHECKING ACCOUNTS

Trust and Finance Companies are not permitted to offer checking accounts as this would introduce the obligation to satisfy claims on demand and would require stricter regulations.

RESERVE REQUIREMENTS

In addition, reserve requirements are a critical monetary tool for Central Banks, as I have indicated before, in controlling the money supply and the level of credit. To the extent that non-banks have become holders of significant portfolios, they cannot remain forever outside of the ambit of monetary control. The legislation seeks to give the Bank legal capacity to require trust companies and finance companies to hold reserve requirements.

1.10 p.m.

TIME IN WHICH TO COMPLY

Trust and Finance Companies are given 4 years to comply with capital requirements.

There are other issues, Sir, which are addressed in this legislation.

BANK ENGAGEMENT IN INSURANCE

Commercial banks should engage in the business of insurance only in the ordinary course of business and should not exert undue influence on prospective borrowers in respect of the purchase of insurance. As deposit takers, they are entrusted with depositors' funds and these should not be jeopardised through the additional activity of insurance risks by the commercial banks. Also, a bank should not use its offer of credit to force borrowers into purchasing insurance from a specific carrier.

REASONABLE CHARGES

In the recent past financial institutions, foreign as well as local, have shifted towards payment of fees as a means of earning income rather than sole dependence on interest rates. There will be an obligation for financial intermediaries to show that all charges are reasonable. Where the Central Bank deems them to be unreasonable, the obligation will be on the commercial banks to show that such charges are reasonable. In addition, there will be

a system of monitoring of fees and charges imposed by financial intermediaries on their clients.

INSPECTION OF BOOKS OF HOLDING COMPANIES

The Central Bank may inspect the books of a holding company where the company is in the jurisdiction of this country, since the financial standing of the holding company can affect the recourse which the bank may have to the resources of the parent.

ACTION AFTER AN INSPECTION

Currently the Central Bank depends on moral suasion to ensure that commercial banks take corrective action after a regular inspection. The existing legislation gives the Bank the authority to put a Manager in place and permits the Bank otherwise to take corrective action where such an audit has been requested by the Minister.

This Bill which is before us seeks to give to the Bank authority to take action on the strength of an audit initiated by itself.

OBLIGATIONS OF DIRECTORS AND OFFICERS

Increasingly, because of the greater emphasis placed on public responsibility, regulators are finding it necessary to identify persons in financial institutions who can be held accountable for the actions of the institution. Increasingly, such obligation is being placed on the Directors.

The Financial Intermediaries Regulatory Bill before us requires that Directors and Officers act in the interest of the institution and that they follow the directives of the Central Bank.

LOAN LOSS PROVISIONS

Because of the increasing international nature of transactions, the adequacy of loan loss provisions may very well be in need of review. This new Financial Intermediaries Regulatory Bill makes special provision for the financial intermediaries to make adequate loan loss provisions to satisfy the requirements of the Central Bank.

PUBLIC INFORMATION

All financial intermediaries which take deposits from the public will be required to publish in the local Press and to display in a prominent place on their premises copies of recent audited financial statements and statement of accounts. The rationale here is that sufficient information

should be made available so that the average investor can make a reasonable judgment about the wisdom of placing funds with any particular institution.

PUBLICATION OF INDIVIDUAL BANK DATA

The Central Bank is given the authority to publish financial **data** on commercial banks as long as information on individual customers is not disclosed.

ORDERLY EXIT

It was felt that in the same way there is an orderly entry, provision should be made for orderly exit of a bank of non-bank. The new Bill before us makes provision for both voluntary and involuntary winding up of banks and non-bank financial intermediaries.

UNCLAIMED MONIES

Provision is made for unclaimed monies to be handed over to the Central Bank after 10 years of inactivity on an account and to the Consolidated Fund after 20 years with the Central Bank. This is intended to facilitate the satisfaction of claims to inactive accounts.

CONSULTATION ON BANKING HOURS

Banks will be required to consult with the Central Bank on new banking hours and on the opening of new branches.

AUDIT

Audit responsibilities are extended to include non-banks.

REPORTING

Reporting responsibilities are also extended to include non-bank and deposit taking commercial houses.

DEPOSIT INSURANCE

Provision is made in the legislation for the Central Bank to require deposit insurance if and when this facility is made available in Barbados. I have never concealed my own position and feeling on this, that in the not too distant future there should be provisions for deposit insurance in our financial system, but provision is being made for it should agreement be reached on this particular matter.

TAKE OVER AND RUNNING OF A BANK

The Central Bank will now be empowered under this piece of legislation to take over and run a bank in the interest of financial stability or appoint a competent person to do so. Part IV of the Bill covers the deposit taking

activity of commercial houses. All public companies taking deposits from the public will require a licence to do so. A licence will only be issued to companies with a minimum capital of \$1 million.

Commercial houses may not advertise themselves as being in the business of taking deposits from the public. A lower limit of \$1 000 is placed on deposits taken from the public and this is based on the view that large depositors tend to be more sophisticated in financial acumen than small depositors and therefore may need less protection, while small depositors tend to be less financially aware.

All public companies taking deposits from the public must either –

- (a) have the deposits up to \$20 000 guaranteed by a commercial bank;
- (b) place a sum equivalent to the deposit for amounts up to \$20 000 with the Central Bank; and
- (c) purchase Government securities in a sum equivalent to the amount of deposit up to a maximum of \$20 000.

While a private company is not prevented from accepting deposits, it must state on the receipt or certificate that it is not a licensee under this Act.

The Central Bank may also place a limit on the amount of deposits commercial houses may take **from** the public relative to the company's net worth.

Sir, while this Bill cannot by itself prevent a **bank** or finance company from failing, it has tightened the prudential guidelines governing non-banks and **introduced** some level of protection for deposits with commercial houses. There is however no foolproof method of protection short of deposit insurance, and this **would**, undoubtedly, entail Government's committing additional resources to such an undertaking. We are keeping the matter under review.

1.20 p.m.

Sir, from the early stages of economic development, the expansion of the financial sector has tended to facilitate the growth of the economy. Financial institutions allow a higher level of investment out of potential savings by providing an efficient mechanism for transferring funds from economic units which supply surpluses to potential investors, **banks** and other financial institutions because their size offers insurance against default by clients and they are able to finance larger projects than individual savers. Banks can also help to overcome bottlenecks by providing a clearing house for lenders and **borrowers**. Financial intermediaries are therefore instrumental in financing Government and the private sector, and the

development process benefits from a wide range of financial institutions and instruments made available through their presence.

In Barbados, the financial system is dominated by 6 commercial banks with many branches and each branch has its own trust company. Five of these banks are foreign owned and the non-bank institutions include finance companies, insurance companies and other government financial institutions.

Sir, it is the demand for goods and services of the businesses and firms which cause them to hire the labour from the individuals and households thereby providing the latter with wages and salaries which they earn. I would wish, as I come to the end of this presentation, to indicate that the overall aim of my Government is to stabilise the economy of Barbados in these recessionary times and to reform and restructure the economy so that growth and development and the well being of individuals and families can be established on a sounder basis.

The need for reform has been recognised and talked about for many years, both for the productive sectors as well as for the social sectors, yet when the measures for reform are proposed and taken those who recognise and talk about the need for reform balk at the hurdles. The time for action is now. My Government and I have demonstrated that we have the qualities, the courage and the leadership to solve the problems facing Barbados now and over the past 20 or so years. We are working closely with the multilateral institutions in implementing a programme and strategies for recovery that are bold and imaginative and workable. They are working.

This Financial Intermediaries Regulatory Bill 1992 will stand side by side with the legislative reforms passed some months ago dealing with the offshore sector as a tribute to the reforming spirit of this Administration and as a tribute to the commitment to major transformation in our economy and society. I promise other reforms and they will also be coming because I and my Government seek to deliver what I promised. That is what we do, myself and my Government. Perhaps, it is not expected of politicians but I can do no other. In this context, let me say that one of our major goals is to enhance Barbados' position as a leading centre in this region in the area of financial and business services. I confidently expect that this piece of legislation will be part of that new thrust.

Mr. Speaker, I have set out the principles of this piece of legislation and I have done so touching on most of the areas in the Bill. I have sought to place it against the background of development going back as far as 1977. I have sought to locate the financial intermediaries firmly within our financial and economic system, both in terms of the regulation and supervision of those intermediaries as well as in the area of monetary policy. I have indicated that

we are looking forward to the further development of Barbados as it enhances its position as one of the leading centres in this region for financial and business services.

During the committee stage of this Bill, there will be a number of amendments to be made as I believe that both sides of the House will be able to contribute towards this process in committee. Certainly, on that side, they have long experience of matters of this sort, but we are bringing the matter to finalisation and that is what we are here to do. I know we have been taking about this for too long and as a legislative Chamber it is incumbent upon us now to legislate.

1.30 p.m.

I am confident, Sir, that there are other financial intermediaries not now operating in Barbados which will be willing and are poised to open business in Barbados. I am hopeful that the sooner we get this piece of legislation on the statute book that they will be ready to take the necessary steps in that regard.

I would like, Sir, finally to make this appeal that we seek to keep before ourselves and our several publics the need at all times to take the steps that are necessary to strengthen and consolidate our economy. This particular piece of legislation provides an opportunity for achieving that. It is really time we put aside all of the conflictual approaches to our legislative business and our conduct of public affairs and seek to do what the electorate has elected us to do, that is, to offer our constructive contributions towards the improvement of the laws that govern and regulate our society and seek to make the lot of our people much better.

With those words, Sir, I beg to move that this Bill be now read a second time.

Hon. P. M. GREAVES: Mr. Speaker, I am seconding the motion and reserve my right to speak. At this point I will merely state that there are a number of amendments to this Bill which I would like Honourable Members to have in their hands before they make their contributions. For this reason I am moving that further consideration of this Bill be postponed until some time later today - and I am expecting that the amendments will be in their hands within the hour - or maybe sooner than that.

I am therefore, moving that further consideration of this Bill be postponed until later in this sitting, Sir.

Mr. H. deB. FORDE: In seconding the motion, Sir, I will be very brief. I had intended, if the Leader of the House had not raised that matter, to have raised the matter under the issue of privilege because it seems to me there would have to be substantial amendments to the Bill which is really a very badly drafted Bill and contains some contradictions. We would have wanted to have contributed

on this Bill in the interest of Barbados on a non-partisan basis as we did on the Business Companies Bill in order to improve ~~the~~ financial atmosphere in which business is done in Barbados.

The Prime Minister does not have to give us any oratory remarks about being patriots and nationals because we are **patriots** and nationals. Fifty-four years ago the party I belong to set out on that basis to reform everything in Barbados. I wish to make the position clear. We would support the Bill. We ourselves have substantial suggestions to make. It may be these amendments may have some of those suggestions. It would improve the second reading of the Bill and, indeed, the final product that should come before the House.

I am not going to discuss the contents of the Bill but I would have wished anyhow that banks were not in this particular Bill. I will make that point in due course. I would want to suggest that because there is a lot happening within the Caribbean on modern legislation that this Bill itself does not take into account. We will point out **that** as the time comes.

Aside.

Mr. H. **deB. FORDE**: Sir, we will give a proper debate. If the House wishes the benefit of the expertise of which there is a considerable amount on this side for the benefit of Barbados, the Labour Party has never resiled from giving that expertise at any time to the Government either quietly or publicly. We have no intention of resiling from that.

The question that further consideration of the Bill be postponed was put and resolved in the affirmative without division.

ORDER NO 6: PUBLIC ORDER (AMENDMENT) BILL, 1992

Hon. M. A. **KING**: Mr. Speaker, this Bill which is entitled the Public Order (Amendment) Bill is designed to amend the Public Order Act which is currently on the statute book to do a number of things. It is proposed to give statutory form to a number of offences which existed and, **perhaps**, still exist at common law but about which there was some doubt as to their continued existence.

After the passage of this legislation, the position is there will be no doubt as to the existence of these offences which did exist formerly at common law but which, over the years, had fallen into disuse. These offences may be generically called group disorder offences. It must be recognised that public order and group disorder offences vary over a very wide range. They run from perhaps the less serious of those where steps are taken to preserve the peace and the preventive aspects of justice where in the old

days, for instance, magistrates had a jurisdiction over preservation of the peace and might **take** such steps as was necessary to ensure that the peace was preserved at all **times**.

We found some statutory recognition of that old power given in our current Magistrates Jurisdiction and **Procedure** legislation at sections 99 and 100 which contained the powers which magistrates have in relation **to** binding people over to keep the peace with or without sureties and to be of good behaviour towards persons who complained.

1.40 p.m.

I think those who practise law in our country would readily recognize some of the inadequacies and inefficiencies of that type of legislation and that type of power. It does serve a useful purpose but sometimes the inadequacies were demonstrated. For instance where magistrates would have bound over persons to keep the peace and be of good behaviour. Where, let us say for instance, one person would have threatened to kill another the person was brought before the court, bound over to keep the peace. Sometimes magistrates would have said, "Look we do not have enough evidence to bind over the person". The person would have threatened to kill some other person. What has been done is that a binding over took place and then the accused person went back out and carried out his threat. There are a number of cases which in fact did take place in this country where persons were bound over to keep the peace after having threatened to kill another person. When they did in fact go back out from the courts they carried out their threats and in fact did kill. One can readily recognize the inadequacy of that type of legislation as a means of preserving the peace. Those are what people popularly refer to as the "swear life" or the threats cases.

I said that public order offences range over a wide variety of offences. Some of the offences which may be used to **control** public disorder would be offences like public nuisance for instance. I have already mentioned sections 99 and 100 of the Magistrates Jurisdiction and Procedure Act. The offences of obstructing the police in the execution of duty, resisting arrest – those are also offences which are available for the control of group disorder, the Riot Act which has been made statutory in our country, various offences under the Vagrancy Act, offences under the Highways Act for instance where processions could be controlled because the highways are to be used for passage and re-passage and not for any other purposes. Any person who obstructs the highway, where groups obstruct the highway they are technically committing an offence unless otherwise authorized because the highway is for the purpose of passage and re-passage. Then there are offences in relation to trespass to property for instance where persons enter on other people's property and use threatening, insulting or abusive language where there has

been a history of that kind of legislation being available to deal with that kind of disorder.

So that passing legislation to deal with public disorder and group disorder offences is not something which is new. In relation to **the** specific offences which are being addressed by the legislation before the House the precursor to those offences were the old common law offences of unlawful assembly, rout and affray. Those were the names by which the old common law offences were defined. I will just give a brief description of those offences so that one may see the similarity in relation to the offences which we are now creating. I am reading very briefly, Mr. Speaker, from a short text which contains some essays on constitutional law by R. F. V. Houston. It is an old edition of 1960.

The point I am making is that **these** are old offences so we need the old text to deal with them. Unlawful assembly. Let me say at this point that the modernized version of the unlawful assembly is the violent disorder offence which is going to be created by this new statute. When we look at the offence of violent disorder which is being **created** we will look back to the common **law** of unlawful assembly and look at the resemblance. Unlawful assembly at page 51 of this text was defined as:

"where 3 or more persons gather together for the purpose of committing or preparing to commit a crime involving the use of violence or in order to carry out an unlawful purpose in an unlawful way in such a manner as to give firm and reasonable bystanders cause to apprehend the breach of the peace."

Anybody who fell within that description would have been guilty of the offence of unlawful assembly.

The offence of rout – these are old common law offences – is defined as:

"where persons gathered in an unlawful assembly moved towards the achievement of this unlawful object."

Any person who had participated in an unlawful assembly and moved towards the achievement of that object was guilty of the offence of rout. The common law misdemeanour of affray which is being enacted in this new **Bill** has been defined as being committed where 2 or more persons fight in a public place to the terror of the Queen's subjects. It may also be held to exist when a man arms himself with dangerous and unusual weapons in such a manner as would naturally cause terror to people. Those are the old common law offences which largely fell into disuse over the years.

But it is to be noted that in the United Kingdom in the **1950s** when there was a number of violent young men roaming the streets in London and other parts of Britain and making nuisances of themselves in public places, the offence of affray, the common law offence not the statutory offence of affray, was resurrected in the United Kingdom in order to prosecute these violent young groups who fought out their differences in public places.

In the United Kingdom the courts as far up as the highest court in the land the House of Lords did in fact judicially recognize the existence of the old common law offence of affray and in fact did extend the definition of **affray** in the United Kingdom quite considerably from what the original common law position was. Those offences in the United Kingdom, certainly the unlawful assembly, the rout, the riot and the affray were enacted in a Public Order Act and were made statutory in a Public Order Act of **1986** in the United Kingdom.

Mr. Speaker, I indicated that what the legislation is doing is giving statutory form to these offences so that section **27B** for instance enacts the offence of Affray, section **27C** enacts the offence of Violent disorder, section **27D** creates an offence of Fear of violence and section **27E** creates an offence called Harassment, alarm and distress. 1.50 p.m.

Now, all these are offences which have been taken from the United Kingdom Public Order Act and given statutory enactment in our regime.

Now the question may be asked, Mr. Speaker, what is the justification for these group disorder offences which we seek to give statutory form to?

Mr. Speaker, the theory behind the legislation is that members of groups tend to draw courage from the conduct of those with whom they associate and would tend to behave in ways which they would not normally behave if they were acting alone. So that when you have your crowd and gang around you, you feel a lot more powerful. Secondly, clearly the chances of detection or being caught and prosecuted for any offence which you commit are in the nature of things much lower if you are operating in a group than if you can lose **yourself** in a crowd which is around you.

The third rationale is that where persons who are disposed to act together violently proceed to do so the weight in numbers itself always tends to increase the chances of greater public danger. One has to recognise the fact that the actions of mobs can be far more dangerous and disastrous than when one person is acting alone doing a criminal act.

One of the ways of dealing with group disorder offences in relation to other offences which tend to

regulate the same kind of action – for instance, you may have a group participating in damaging property or in damaging persons and you may say that, well the laws in relation to damage to property or damage to persons should be available for the prosecution of those persons. I have already indicated that sometimes it is difficult when persons are acting together in that way, clearly to identify who may actually have done the act. It is easier where the group disorder offence of this kind is available to proceed with prosecution. What the law has tended to do in passing legislation of this kind is to make the penalties which are available for the group disorder offences to be somewhat less draconian than those which are available for an offence which is committed by a single person and which may be prosecuted under one of the other principal statutes like the Offences Against the Person Act, or the Malicious Damage to Property Act.

Now, once this legislation is on the statute book, Mr. Speaker, one has to recognise ~~that~~ it is not an answer to all the problems which we face because the law itself can have a fairly limited influence in the ~~control~~ of public disorder and crime generally. ~~Because~~ ~~legislation~~ is put on the Statute ~~Book~~ one should not come to the conclusion that you thereby deal effectively and for all with the problems of crime. One only has to look at, for instance, legislation like the Proceeds of Crime Act, the new Drug Abuse Control and Prevention Act, to see that the fact that those bits of legislation are ~~on~~ the Statute Book and provide severe and draconian penalties, that fact does not of itself deal with the problem of drugs in our society and the crime which emanates therefrom. So that if there are vagabonds and criminals in our society who are determined to cause disorder, if you are determined to cause disorder and there are people out there who are determined to cause disorder, the fact that you put a law on the statute book is not by itself going to deal with them. The law provides for punishment and it does provide the underpinning for the police to be able to take action.

I cannot express the position in relation to the rule of law and preservation of public order more adequately than has been expressed by a British Jurist, Lord Scarmon, in a United Kingdom White Paper. When dealing with this issue he said that "No amount of tightening the law short of draconian measures which would be quite unacceptable can guarantee the prevention of all disorder". At another place, in a paper, he wrote for the Seventh Commonwealth Law Conference in Hong Kong, a Paper entitled "The Conflict in Society – Public Order and Individual Liberty" he summed up the role of law in preserving public order this way:

"The sombre lesson of recent British history is that the balance between public order and individual liberty, though its existence is protected by an alert and attendant judiciary and an enlightened one is in its operation the business of the police. At the end of

the day, standards of police conduct and the proper use by the police of their powers mean more to society than the theoretical state of the law".

Having said that, Mr. Speaker, we must recognise that although we look seriously to the police for the necessary action to be taken in the preservation of law and order it is always still necessary to ensure that there is an appropriate **underpinning** and **understructural** framework based in the law which will give them the **support from** which their actions may be taken.

There is just one other point, Mr. Speaker, which I would like to address before I conclude the moving of this second reading and that is in relation to the concern which I hear from time to time expressed by some people that public order legislation is a threat to civil liberties. Public order legislation, if unreasonably drawn, can be a threat to civil liberties. As I said, it is only if that legislation is draconian legislation that we need to fear.

The principal civil liberties that can be assaulted by draconian public order legislation which is excessive in its intent would be of course the rights of freedom of speech and freedom from arbitrary arrest. These are principally the ones which we will be concerned with.
2.00 p.m.

Then there would be the concerns about marches, processions and things of that kind. Mr. Speaker, we have to recognise that, if there is properly rationalised and administered Public Order legislation, it can **provide** the proper and appropriate protection and safeguard to those very interests which others say are threatened by such a legislation. Indeed, I suggest that what we need to do is to look at public order legislation in the context in which we have done it. This is the suggestion that I am making in relation to the legislation which we have drawn here. We should look at this legislation as a means of enhancing the protective provisions of our Constitution in relation to the guarantee of fundamental freedoms and civil liberties.

Aside.

Hon. M. A. **KING**: Listen, if you want to give the Press a paragraph, give them one. If they do not understand what I am saying, that is their problem. If the Press want to write something sensible, they can say that this public order legislation must be seen as a means of guaranteeing and enhancing the fundamental rights and freedoms provided for in the Constitution. That is what it is designed to do. It is to preserve the freedoms which we all love and cherish so much in this country and to control group disorder and violence which is so endemic in our society.

Mr. Speaker, against that background, I think there was a suggestion that perhaps the mental element for a successful prosecution of these offences should be

legislated. We have given some consideration to that but feel for the time being that the way the Courts apply the mental element in relation to crime generally at this time is perhaps the appropriate formulation. Where one intends an action on top of his consequences of his act, then that person is **guilty** of the offence. We have considered that but we have not thought it necessary to put it in at this time.

Sir, there is an amendment which I will propose in Committee which relates to a procedure in relation to prosecution under these offences. I propose to insert an amendment that will provide that, if on indictment of a person charged with "affray" or "violent disorder", a **jury** is satisfied that the accused is guilty of a lesser offence the **jury** may convict of the lesser offence rather than discharge the accused altogether. That is an amendment which I will propose as we go into Committee on this Bill.

With those comments, Mr. Speaker, I would like to move that this Bill be now read a second time.

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

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

SUSPENSION

Hon. P. M. GREAVES: Sir, I think this is a convenient time to take a break and I am moving that the sitting be suspended until 3:05 this day.

Hon. D. J. H. THOMPSON: I beg to second that, Sir.

The question that the sitting be suspended until 3.05 p.m. this day was put and resolved in the affirmative without division and Mr. SPEAKER suspended the sitting accordingly.
2.05 p.m.

RESUMPTION

Mr. SPEAKER: This sitting is resumed.

Dr. R. L. CHELTENHAM: Mr. Speaker, as you are well aware, the Honourable Member for St. Thomas is the Opposition's shadow Attorney General and spokesman on legal affairs and matters of law and order. Unfortunately, he is currently indisposed and it has fallen to me to be the Opposition's principal spokesman on the Bill which has been introduced by the Honourable Member for Christ Church West Central, the Honourable Attorney General. Anyone listening to the low-keyed way in which this measure was introduced and the passing reference to criminal activities involving groups would not have

appreciated that this is one of a series of criminal law reform **measures** currently before the House and that there is virtually an outbreak of law and order in Barbados that has reached crisis proportions.

Aside.

Dr. R. L. CHELTENHAM: I am not sure what might have been picked up, but I am talking about the outbreak of lawlessness and increased incidents of crime and violence that have reached crisis proportions. We are witnessing, Sir, a high increase in the incidents of aggravated robbery, rapes and pick-pockets. We are witnessing, too, an increase in offences against property and in offences directed to the **terror** of the Queen's subjects. The unfortunate thing, Sir, is that these offences are mostly committed by young persons, many of whom are operating in groups or in what have become called gangs. Mr. Speaker, it is a very frightening development and, if you have the opportunity as I do to visit the Prison, you would appreciate that more than 80 per cent of an overcrowded Glendairy consists of inmates who are under 25 years old.

On the whole, Sir, a climate of fear has been created in the society and the reaction has been both vengeful and blood thirsty. There is public clamour for what I call judicial savagery and almost everyone who is calling in to the call-in programmes and speaking in public or writing on these matters seems to be calling for long sentences accompanied by beatings and hangings in appropriate cases. In fact, with the issuing of the advisory to its citizens by the American Government suggesting that Barbados is no longer a safe destination because of its present crime situation, there is no doubt, generally speaking, a feeling that the crime situation in Barbados has reached crisis proportion and that something drastic has got to be done. I may add, Mr. Speaker, the **many** convicted persons who have escaped from the Prison and continue to be at large has not helped the situation. It is against this background that Government has recently introduced a large number of measures designed to reform the criminal law.
3.10 p.m.

It is seeking **too**, Sir, to widen the scope of criminal activity in Barbados, address the issue of group or gang violence, upgrade the fines, many of which have become out of **date** because of the change in money values, and generally to stiffen penalties.

Hon. M. A. **KING:** On a point of order, Sir. I am sure the Honourable Member has inadvertently misled the House when he said that the measures before the House are designed to widen the scope of criminal activity in Barbados.

Dr. R. L. CHELTENHAM: I am not **sure** how you are interpreting that, but all I am referring to is to extend

the area of social behaviour that will now be classified as criminal. That is what in a sense we have done in the particular measure before the House. When, for example, in the past an affray had to be in public, that social activity in private is now caught by the statutory offence of affray when it passes this House. That is all I am referring to when I am saying that you are widening the area of social activity that will hereafter be classified as criminal.

The **Opposition** recognises that the first duty of Government is to maintain law and order and to ensure that Barbados remains a safe and happy place for all its citizens and for all those who as visitors reside within our shores from time to time. I do not think there can be any doubt or any divide between us with respect to that. That is the first duty of Government. We maintain further that the foundation for orderly development in this country, as indeed everywhere, is the maintenance of law and order and if, as is happening now, we do not maintain law and order we lame the climate for investment both local and foreign, we run away visitors and discourage would-be visitors. We undermine the happiness of our people and we inhibit the growth of cultural activities as people become fearful of going outside their homes after the setting of the sun.

For all of these reasons, Sir, Government must be firm and unyielding on the question of crime, and to that extent this measure will attract our support in principle. We feel, however, Mr. Speaker, that the Government's approach to criminal law reform is wrong in the sense that it is **too** piecemeal and unscientific. We feel, too, that many of the measures before this House, including the present Bill, were **too** long in coming. Because the Government refused to heed the **Opposition's** call for a wide-based commission of enquiry or commission to study the causes of deviant behaviour among our young people and gang activity in Barbados, we have today measures being introduced that only represent a very partial answer to the problem which we are experiencing.

In the end, Sir, the Bill before this House, when passed, will be a classic **case** of prescription without diagnosis. It will be a case of treating the symptoms and not addressing the root causes, a case of Parliament acting largely in vain, because there is no real connection in this Bill between the problems which the society and the young people are experiencing and the root causes. I may add that there is a widespread perception, not without good reason, in this community that this Democratic Labour Party Government has been soft on crime. There is a feeling that the Government has lost the moral authority to fight against crime because in its executive actions it has itself been a persistent law breaker.

Aside.

Dr. R. L. CHELTENHAM: The Honourable Member for St. John, who would like to be remembered, if only you would permit him, Sir, as a persistent heckler, has been shouting "rubbish" but the real truth is that the Government has a responsibility to set examples in these matters. The Government has persistently been breaking the limit with respect to the **Central** Bank advances – I would not stray off the subject, Sir, I am only dealing with law breaking – to Government. It has been allowing the Statutory Boards that fall under its supervision to take away **NIS** payments and not pay them in to the National Insurance Board and doing a lot which will classify it, and for good reason, as a law breaker. There can be no doubt that a Government that has lost its moral authority to deal with the question of crime cannot really tackle the issue effectively, and that is the position in which the Democratic Labour Party finds itself.

But no single issue is more disquieting really to the public than the failure of the Democratic Labour Party Government in the last 8 years to carry out the law with respect to hanging. That is a major problem in the society and we cannot talk about law reform unless we really deal with it. The penalty for murder is death by hanging and rightly in this society every convicted person is given the opportunity to exhaust the appeal processes by going as far as the third court, the Privy Council and also by appealing to the local Mercy Committee. If there are any mitigating circumstances such as will allow that committee to commute the sentence of death, that takes place, and over the years persons convicted of murder in circumstances of domestic dispute, those who in the course of drinking in rum shops have committed murder, the courts and the Mercy Committee have consistently been lenient towards them and in almost all circumstances their sentences have been commuted.

Right now we have 13 persons on death row. Some have long exhausted their appeals and no circumstance of mitigation can be found and yet the death penalty has not been carried out. It is a disquieting feature in the community. There has been no hanging since **October 10, 1984** when on that **day** "Mopsy" **Errol** Farrell, Neville Inniss and Noel Jordan were hanged.
3.20 p.m.

Three persons were executed, Sir, on that date. In 1981, I was then acting Attorney General in the absence of my learned friend, the Honourable Member for St. **George** South, and I signed the warrant in order to facilitate the process.

Mr. Speaker, we must make up our minds in this country whether we want to have hanging on the Statute Book as part of the penalty for murder or we do not. It seems to me, Sir, that if we maintain hanging on the Statute Book, and there are circumstances in which the appeal process has been exhausted and the Mercy

Committee can find no mitigating circumstances to commute the sentence, in those circumstances, the hanging should **take** place. We are **either** respecting the law as it stands **or** we are changing it, I call upon the Government to say where it stands on hanging and why it is that after 8 years the law has not been carried out. We have not had any hanging since October 1984.

- You should not be allowed to break and enter a man's premises, to kill **him** in the course of committing the crime, be convicted for so doing and escape the gallows. Equally, Sir, you should not be able to kill a policeman in the course of duty, be convicted for so doing and escape the gallows. There are persons on Death Row who have been convicted of murder in the clearest circumstances, not circumstances in which there is a disputed confession produced by the police. In my view, that would be a circumstance for commuting the death sentence if that is the only evidence, but I am **talking** about the clearest **circumstances** where there is **abundant** corroborative evidence pointing to deliberate and wilful killing, sometimes in circumstances in which they have entered upon a man's property and tried to rob him while he was asleep. Yet, Sir, after many years of conviction and the appeal process, including the Mercy Committee, having been exhausted, those persons remain on Death **Row**.

It seems to me, Sir, that the Government has a responsibility to indicate whether it is going to respect the law as it stands or whether it is going to change it, whether hanging is going to be part of the penalty in this country for murder or whether it is going to abandon it.

- Addressing the issue of criminal law reform, we in the Opposition feel that in this important area, especially when a wide **range** of criminal law reform measures are being brought to the House that there should first of all be a Green Paper and that a deliberate attempt should have been made to inform the public as to the nature of the changes and the thinking informing the changes. We feel, too, that the Bill before the House today and those on the **Order** Paper should have been more widely circulated and that the comments of interested bodies should have been sought and received before we go any further.

- I know, Sir, that, in some respects, we are acting in haste but the problem did not suddenly descend upon us. Some of the changes are so radical in character and so alien to our Barbadian setting that we would have welcomed more ventilation of the proposals and more feedback. **Let** me illustrate, Mr. Speaker. As has been pointed out by the learned Attorney General, the offence of affray has long been known to the common law. He did express the view that within recent years it has fallen into disuse but that is perhaps not strictly correct because in England, following the outbreak of football hooliganism, the House of **Lords**, as was pointed out by the Attorney General, really gave new life, as it were, to a whole range

of common law offences including the offence of affray. So it was not strictly true to say that it has fallen into disuse.

Hon. M. A. KING: Mr. Speaker, on a point of **order**. I said the offence has fallen into disuse but the offence of affray was revived in the **1950's** and there were a series of cases in 1957, Sharpe and others which followed them, where the House of Lords in essence extended the concept of affray. You have to be complete.

Asides.

Dr. R. L. CHELTENHAM: We are hearing mention of the 1957 case of Sharpe decided by the Queen's Bench Division of the High Court in England and of several other offences. In fact, Sir, one of the questions that will arise is why legislate if all of the activities which the measure before the House intends to deal with can be dealt with by existing statutory law and common law offences, including the offence of affray, the offence of riot, of unlawful assembly and many others. Simply put, Sir, affray is no more than a skirmish or fighting between 2 or more persons in which a stroke is offered or given and a weapon is drawn. The important thing about it is that it is a public offence to the terror of the Queen's subjects. It is so called, Sir, because literally it affrights people. It is different from assault in that while assault is of a private nature, affray belongs to the public.

My learned friend is referring to Archibold. I have not consulted one for many years. It follows that traditionally an affray cannot be committed in private or in a private residence. One of the changes contemplated by the Bill before the House - and that is what I meant when I said that some of the changes are radical in nature - is that hereafter an affray can be committed in private as well as in public. That is one of the fundamental and basic changes being brought about.

In the past, too, Sir, there had to be a real disturbance even though no violence occurred as where a man arms himself with an unusual weapon so much so that he causes people who are within sight to feel a sense of terror. This was, I think, the importance of the case of **Sharpe** to which my learned friend might have wanted to refer in his introductory remarks but only alluded to. That case in 1957 made the point that there must be a real disturbance. The necessity for a disturbance was emphasised. Violence leading to terror had to be directed to persons in **the past** but now that violence can be directed to property and constitutes the offence of affray. That is also one of the new departures in this Bill before the House.

In addition, Sir, it was always a misdemeanor, a relatively small offence as opposed to a big offence of

felony which attracted a fine for the most part and only in very unusual circumstances custodial sentence.

3.30 p.m.

Now with this Bill before the House, Sir, it will both be summary and indictable. On conviction on indictment 5 years or a fine of \$25 000 or both and on summary conviction a **term** of 2 years or a fine of \$10 000, or both. It is in that context **that** we **really look** forward to the amendments which the learned Attorney General indicated he would be bringing before the House to make it possible for a jury in considering an offence of affray, as I understand it, to bring the accused person guilty of a much lesser offence than affray. The penalties attached to these offences which were regarded for centuries as ordinary, simple, public order offences and attracted in very rare circumstances custodial sentences, were almost always a fine. All of a sudden a man can spend up to 5 years in prison for the offence of affray.

For the first time too, Sir, we have had introduced into the law the notion of reasonable firmness. Under section 27B of the Bill a person is guilty of affray if he uses or threatens unlawful violence towards another person and his conduct is such as would cause another person of reasonable firmness present at the scene to fear for the other person's safety. It is a very elastic notion which is not capable of precise definition but rather admits of much subjectivity.

Though in England in recent years, Sir, they have introduced this notion to the extent that we have copied in large measure in the Bill it is a concept that has given those who administer the law some difficulty because there could be a whole wide range of circumstances in which a tribunal may be called upon to determine whether the persons who are likely to be caused terror by certain actions were people of reasonable firmness. I would take it that all the Honourable Members in this Chamber are people of reasonable firmness but I can think of a lot who may not be, depending on your definition.

My submission, Sir, is that a careful look must be taken at the wording of the Bill when we come to committee to ensure that in our haste to address the crisis we do not go overboard. We must be careful, in particular not to **criminalise** accepted behaviour in our villages, on our **streets** and on our playing fields and as a result infringe our constitutional rights and offend longstanding notions of right and wrong in our society. The present climate of panic, revengefulness and blood-thirstiness to which I have already alluded is **quite** an unfortunate one in which to consider the measures. The legislation that results may easily be shot through and over-riddled and hedged about with excesses which, with the return to normalcy in the country, we hope will be soon, we may regret.

I turn now, Sir, to the question of **youth** violence and lawlessness and to what Government's spokesmen have now reluctantly come to recognise as gang activity. Indeed, anyone listening to the introduction of the learned Attorney General and who was a visitor to the country might not have appreciated that the Bill as it said in the explanatory note is designed to deal with group violence where there is no evidence of the group having a common **purpose**. You would not believe that there is a crisis in the country and that it is characterised in the main by criminal activity among groups.

Now, neither condemnation, Mr. Speaker, without reflection nor the call for **draconian** penalties without analysis why an appreciable number of our young people is behaving the way they do will begin to do justice to the nature and scope of the problems affecting our young people. We ought to acknowledge, as we **talk** about the young people and their problems, that not all the young people are involved in violence or group and gang activities. There are still many, or the great majority, who are in the mainstream of society, and are conducting themselves in ways that do their schools, communities and parents proud.

Among a sizeable minority, Sir, this is the **problem**. There is great cause for concern. They are showing symptoms which are manifestations and **behavioural** patterns which may be identified as follows. To begin with, Sir, there is no respect among that appreciable minority for the sanctity of human life. For the first time, to my knowledge in this country, when members of that minority to which I **am** referring tell you that they will kill you, rely on the **speed** of your feet and try to get away as fast **as** you can because they are serious about it. **There** is no respect for the sanctity of human life.

Secondly, Sir, there is no respect either for organised authority. That is why the police will continue to experience, until we address the root causes of this problem, so much difficulty in dealing with that group. That is why in spite of the savage sentences of the court they appear to be unmoved, totally indifferent and unconcerned. I **am talking** about the appreciable minority of young people who are involved in these group and **gang** activities.

The third feature about them, Sir, which is very noticeable and very frightening too is that there is no regard for the property of their fellow men, whether it be your car, or the produce of your land. It is well known in the country that members of this group will pick all of your breadfruits, for example. Were you to be on the spot on any occasion and enquire you would simply be told that the earth is the Lord's and the fullness thereof. They will then go on to clean you out of all of your breadfruits.

There is a challenge too to the Biblical dictum that "by the sweat of thy brow thou shall eat bread." Many are questioning why work. Who say, they ask, that a man has to work in order to live? That represents a very serious value divide between your generation, for example, and mine – I am not too sure it is the same generation – and these young people to whom we are referring. This sharp value divide is further reflected in their dress which is markedly different from mainstream society and from that of earlier generations.

But, Mr. Speaker, we really have to ask ourselves why that situation has arisen in our country. I think we have to recognise, if you are in touch with these young people, that many of them are in deep despair. There are many who are 20 years and beyond who have left school for 3, 4, and 5 years. I know some who have left school for 6 years who have never worked and who have no hope of working under a Democratic Labour Party Government in this country. I am only reflecting how they feel. Since they have not worked for the last 6 years I think it is reasonable that they must feel so.

Many are experiencing deprivation, scarcity and hardship on a scale that a lot of generations of young people have not seen in Barbados. Even though I would concede we were seeing the beginnings of this crime for many years, there can be no doubt that in the last 6 years the despair has deepened and the alienation has widened in this community.

3.40 p.m.

The history of the last 6 years for them has been littered with broken promises by the Government of the day – no jobs, a cut back in training, and an emasculating of the skills programme which was set up by the Barbados Labour Party. Whether the Honourable Member for St. John wants to recognize it or not, there is a major problem in this Barbadian society which, if we are not careful, and if we do not address it with speed, with compassion and with creativity will reach monstrous proportions. There can be no doubt about that. I look with some pity, My Lord, Mr. Speaker, Sir,...

Mr. SPEAKER: I hope you are not carried away by the wig.

Dr. R. L. CHELTENHAM: I look with some pity on the Honourable Member for St. John who has himself become so distanced from the young people that he does not recognize that we are talking about a really serious problem.

The young people have no serious training for available jobs or for the change in the demands of the job market and they have had no serious training for small scale entrepreneurship either. That is a major failing of the

Government of the day, Sir. There can be no doubt about that.

Put simply, it is this, that our young people have few constructive outlets for their restless energies. Unfortunately much of it goes in lawlessness and in deviant behaviour. It is because this Government has not met the challenges posed by the young people. It is because they have destroyed the programmes that were in existence that were designed to create the opportunities for them and give them outlets that we have the problem in its worsening state in this country today.

It must be conceded however, Mr. Speaker, that the problem has many implications and that no valid statement can be made on this matter without reference to the institutions that help us to transmit values in the home, the school and the church.

We cannot, in my view as well, ignore the high participation of our women in the work force and the fact that a lot of our young people rarely see their mothers who are really mothers and fathers in terms of the parental role which they carry out. The influence too which the TV has had with its diet of violence and the high expectations created by watching overseas made films like CNN, expectations which in many respects are unrelated to the capacity of our society and our economy to meet those expectations – that too has been part of the problems of our young people.

The point I make is that the problem is complex and many sided. We fool ourselves if we believe that extending the arm of the law, even into private places and classifying a wider range of social conduct as criminal and visiting convicted persons with harsher sentences is the answer.

In my respectful submission, Mr. Speaker, that is not the answer. The Government even though we will give them our support in principle on this measure, we are submitting that they are deluding themselves and the public if they believe that the answer to the problem of deviant behaviour among our young people and group and gang violence is to pass harsher laws and extend the range and the reach of the criminal law. That is not the answer. We have a social and economic problem and we have to address the problem at root. That means that we must create opportunities for our young people. We must give them constructive outlets. We must get this economy moving again. We must create jobs. We must give them the opportunity to live productive lives and to feel a sense of dignity rather than having to lime around the corners because they have nothing to do and because the programmes that have been put in place by the Barbados Labour Party Government have been emasculated.

As far as we are concerned though the law has a role to play in combatting these increased incidents of crimes

particularly crimes of violence directed against persons and against property, we submit that the role of the law is a very limited one and that the Government has the major responsibility in creating an environment in which people feel that they have a duty to work to support themselves and their families and in which there will be little time for lawlessness. And it is because that climate is not being created that the Government has to bear a large measure of the responsibility for what is happening among our young people in the society.

I am not sure, Mr. Speaker, that we are happy, on this side, with the way in which a lot of these offences have been drawn. But that is an area that more properly belongs to the Committee stage. It is at that point, Sir, that we will do our best to try to **revisé** and improve and perhaps, even in some cases, remove what we believe may not be in the public interest. The important thing is that we cannot allow this opportunity to pass without making the point that the Government has a duty to be firm on the question of law and order, that they have a responsibility to indicate to the **community** what is their position with respect to the death penalty and that they have got to be careful not to go overboard in this atmosphere of panic which is now overtaking them, bringing measures before the House and introducing harsh and **draconian** criminal law reforms which in the end may be seen as characterized by too many excesses and which will go a little way only towards addressing the root problem in the society which has got to do with the collapse of opportunities and the fact that there is no outlet for the constructive energies of our people.
3.50 p.m.

Hon. D. J. H. THOMPSON: Mr. Speaker, I wish, first of all, to start by thanking the Honourable Member for St. Joseph for giving his full support to any measures that the Government takes, particularly measures that are firm and unyielding in its effort to eradicate the scourge of crime as he describes it. Unfortunately he found himself in a very difficult position in this debate because he was caught between the views of the vengeful mob as he described them, the blood thirsty hounds and the people who are looking for all kinds of ghoulish scenes of punishment inflicted by the state and at the same time being a responsible Member of the Opposition. By his own actions, his own remarkable actions, Sir, he made it very clear, first of all, that in 1984, no sooner than the ink had dried to permit him to act as Attorney General, he was not only sending three people to the gallows but also setting the date for which they should be hanged. Yet he is not part of the vengeful mob and the crowd that looks for this ghoulish state punishment of persons who have been committed to serve time in prison. I understand the difficulties which attended the presentation that he made in this particular debate.

I thought that the Honourable Member for St. George South would have risen to have defended his honour and

integrity as a former Attorney General because the Honourable Member for St. Joseph was acting for him and he should state as he has asked the present Attorney General to state, he should now state why it is he would not let the ink dry on the order to execute the persons who apparently were only waiting for the signature of the Attorney General. It goes both ways and I don't think the Honourable Member for St. Joseph should expect any more fervour from one citizen or from another in respect to acts that relate to the question of things like the death penalty and so on.

Barbados has a death penalty and the people who are on death row, unless there is some binding reason why they should not hang or some relevant reason relating to the question of reprieve or whatever, will hang. That is the law. Whether I agree with it now or not, that is what the law presently is; Mr. Speaker, and we will honour the law.

The Honourable Member for St. Joseph talks about the state. The state will have to honour the law in respect of those who are presently condemned because they already are placed in that position. As to whether hanging is the best way to solve the myriad problems the Honourable Member for St. Joseph raised or not is a different matter and that is the point that his argument led to – that in fact, even though hanging forms part of the wide range of penalties that exist in Barbados, that perhaps we should look carefully at the whole area of reform in relation to punishment and that is a debate we can have. It does not have to be characterised by any silly posturing where people are challenging the Government to state what their policy is on hanging. The law is the policy and the process of the law has condemned them to hang and whether I feel otherwise or not due process in time will take place. That is the way it is.

If you can point to me any law in the Statute Books of Barbados that says that an Attorney General must set the date on which people must hang then you can make a case against this Government. You are probably the only Attorney General who took it upon yourself to set a date for the hanging of persons.

Dr. R. L. CHELTENHAM: I never said anything about setting the date. I was very careful.

Asides.

Hon. D. J. H. THOMPSON: Mr. Speaker, as far as I am concerned that is joke language. That is meaningless, that is like flour. It has no ... Well flour has consistency when you add water to it but that can blow in the wind. Set what process in motion? He tells us follow the law and now he tells us set some process. He can't identify it by the law which he says this Government must follow. He cannot tell me what it is that must be done for those persons to hang.

I know that the Minister of State in the Ministry of Finance is not the person to hang them and that is sufficient. That is all I have to know. It is not my responsibility to ensure that they are put to the gallows. If you can point to me, any Member in here, whose responsibility it is to hang the persons on death row, I will sit down in my seat and I will accept your submission, but this foolishness about **asking** a Government to state its position on what is in the law, simply does not make sense.

It is part of the ignorance that is going on, not only in the call-in programmes and in the public debates and in the branch meetings of certain last class political parties. I have not identified them. Those kinds of debates are for people who do not know better. I wish to make the record clear for the Press or for any other person sitting in the public gallery, that as far as I know, there is no legislation on the Statute Book, there is no provision in any law, that requires the Attorney General of Barbados to set the date for any hanging in this country. It **cannot** rest exclusively on the responsibility of the Attorney General to do so.

The Honourable Member, himself, has said there is a process and that process must be followed and can be followed in due course. So that challenge is a **challenge** that I do not think worth pursuing and should not be pursued. I am glad the Labour Party has said it will support the Government in being firm and unyielding in regard to the matter of crime.

He then goes on to say that the Government's measures are piecemeal. Here is a Government bringing volumes of new legislation relating to criminal law. Volumes in terms of sue. And in numbers too, dealing with a whole range of criminal law offences and at this stage he is now calling for a Green Paper, when the Labour **Party** gets up in here every week and says that they initiated this legislation.

The Honourable Member for St. Thomas who is not now in his seat takes credit for every single piece of legislation that comes here and says that it was on his desk. What it was doing there, I do not know, but apparently it was on his desk. Of course he succeeded the Honourable Member for St. George South and that might therefore be so. It was probably on his desk. He is calling for a Green Paper now that the legislation is before the House. If you initiated it then it was for you to have the Green Paper, the White Paper, the Blue Paper or whatever other paper forms part of the process initiated.

Aside.

Hon. D. J. H. THOMPSON: No, no. I want to know how many Bills there are, how many that the Government has brought in this particular matter. It is a credit to the hard work, ingenuity and creativity of this Administration

that so much legislation in relation to criminal law, which is so important according to the Honourable Member for St. Joseph, is now before the House. It does not make sense to moan about Government not taking measures that should be taken. You had the opportunity of 10 years to reform everything in Barbados. You could declare a man a woman by legislation if you wanted to in those 10 years and you did nothing. Now you are talking about piecemeal and everybody is saying that, if it were on my desk, it would have been finished ever since and the little time you had to act you were able to hang three people. That is the **kind** of foolishness which now constitutes a debate on crime in Barbados. All it means is that in the Labour Party **all** of them were square pegs in round holes. The Attorney General should have been Prime Minister, the Honourable Member for St. Joseph should have been Minister of Community Development and you were in the right position. They should not have elevated you any further than where you were. You are the only person that I would say was a round peg in a round hole.

4.00 p.m.

Mr. Speaker, this debate deserves a different approach from the Opposition. Where the Honourable Member started, he should have continued. He talked about us abandoning a suggestion by the Labour Party to establish a commission to study widespread crime and gang activity among the youth. One of the first acts that I took in pursuance of a manifesto pledge in 1991 was to establish a National Commission on the Negative Factors Impacting on Youth. There is an ad on television nearly everyday with background lyrics by "Lil Rick" of "How The Youth Get So". That is "Lil Rick" **from** St. John, the outstanding dub artist. People like you, the Honourable Member for St. Joseph...

Mr. SPEAKER: But certainly we do not have any "you" in here.

Hon. D. J. H. THOMPSON:...That is correct, Sir. I apologize for refemng to the Honourable Member in that way. I meant no discourtesy. I am calling on the Honourable Member to make the same representations that he is making in this Parliament in Queens Park in front of people, some of whom were selected by the Honourable Member's political party. The Leader of the Opposition selected a Member to that Commission and now today, out of touch with reality, you are accusing the Government of ignoring suggestions by the Opposition. Nothing can be too late when it comes to the young people of this country. Do not tell me too late. That does not make sense. We have brought the comprehensive reforms. We have established the Commission and we have done all necessary in relation to the issues of crime. Yet, after all of this, the Honourable Member can conclude that this Government is soft on crime and has lost its moral authority. Anecdotal! That is all that I can describe it as. The Honourable Member for St. George South often accuses him of that kind of thing.

Well, you can have factual anecdotes. There is nothing wrong with that. That cannot be taken seriously by anybody in here. Every single criticism that he has made can be rebutted by what is presently before the House and what has taken place under this Administration and the Honourable Member for St. Joseph knows that. I am shocked, appalled and aghast, Mr. Speaker, that somebody with the level of intelligence and ability and who interacts so much with the young people that he alleges that I do not interact with is unaware that there have been any efforts by this Government. The National Youth Service and Youth In Business Programme – I can list a whole set of initiatives. It is true that we are limited by funds. There is no doubt about that. He touts as the Saviour Skills Training. Skills Training is great. I have no problem with that and I support the concept of Skills Training. But the problem in Barbados is not just skills. A lot of young people do have skills. What they lack is the correct attitude to things like work, correct moral approaches to life generally, the concept of family life and those kinds of things. That is where the Barbados Youth Service is going to make the difference.

Sir, I feel that we should look at the comprehensive or holistic approach of the Barbados Youth Service to character building. You see all the lawyers in town. All of them are trained in law. They all have the skills. I do not doubt that any of them have the skills. But the difference between some of them and us in here relates to morality and a whole range of other things that come from character. Whether they succeed or not relates to their character, their approach to life and things like that. Let us be very frank. I am not pointing any fingers at anybody. I am talking about attitudes in relation to young people. There is nothing wrong with the Skills Training Programme. It is a good idea but it needs to be expanded and the expansion does not need to take place in relation to the skills. It has to take place in relation to things like character building, patriotism and a whole range of discipline features which the National Youth Service incorporates. I am hoping that we might be able to ensure that some of those features are translated over to the National Youth Service. Many of the young people have the skills but they do not know how to make the first step because they lack confidence. People do not suddenly acquire confidence after having a skill. There are many lawyers again, and I can only speak of what I know, who leave law school but simply cannot start a practice on their own because they have not been able to acquire the characteristics to give them that confidence to take risks and they may not have a godfather in some cases. Well, that is a character trait too.

Sir, let us focus on the young people. The Honourable Member for St. Joseph told us about all the problems that the young people are facing. He has not told us about some of the problems that the adults are facing. I do not normally agree with anything I hear issuing from the mouth

or pen of a certain gentleman who holds a doctorate in theology. He is on the radio sometimes. I put on the radio and I heard him yesterday. It was probably the first time in his life that he said something which I thought made sense. He said, "Show me a country in which there are wayward young people and you will also find that there are a lot of wayward adults." The Honourable Member for St. Joseph has spent a lot of time focusing on the ills of Barbadian young people. What is problematic is this and this is where the analysis must take place. What I want to know is this. Why is it that young Barbadian youth regardless whether they come from Chapman Lane, Ellerton or Gall Hill form these gangs or their criminal intents that the majority of incidents are taking place among either their own peers or friends? That is why I think the sociological study must also be done of all of these incidents of gang violence in Barbados which have taken place. These are young people interacting with their kith and kin. Some people say that it is a cultural process. Some people say that it is the drug trade and a whole range of things.

4.10 p.m.

I really cannot understand where sometimes there is an absence of a lot of those things, young people who are not watching television, who it may appear are not using drugs, living maybe in a rural area but who for no given reason would go over and be involved not in just skirmishes, normal gang skirmishes which we have all been used to, but in serious crime. Furthermore, some of them have gone so far as to stop children from other districts from passing through their districts to school and a whole range of other things.

Yes, there is need for a sociological study, and those who argue that this legislation is aimed at oppressing working class black youth, who talk about this legislation being passed by middle class men destroying the aspirations of working class black youth do not really understand that this legislation is really a means of protecting other black working class youth from themselves. That is basically what it is and that is one of the State's principal responsibilities.

The Honourable Member for St. Joseph asked why do young people have no respect for property or authority. That question could have been asked probably in the 5th century, maybe it could have been asked again in the 17th century, it could have been asked at any time in the development of a society. You are looking at it from this perspective and your parents probably asked the same question of you. Mine probably asked the same of me, but one of the features of the present problem we are experiencing in relation to young people focusses around the question of alienation in the sense that one finds, Mr. Speaker, that a lot of young people believe that what we are doing in here, what we are doing in Government Headquarters, in Marine House, in the law courts, in any of the major institutions of this country does not involve

them - (a) there is nothing in it for them and (b) whenever they are involved it is because people force them to become involved, and we are going through that process of perhaps great and cataclysmic cultural and social change that produces these kinds of things. That is one of the major problems.

I always say we have a lot of service clubs in Barbados. They go to **dinner** at the **Hilton** and they invite people like the Honourable Member for St. Joseph and me to address them. We go and address them in these curtained rooms and they eat a lovely leg of pork and this **kind** of thing. Ninety percent of those people originated in villages in Barbados where violence is taking place. They did not originate in **Wanstead** because there was no **Wanstead**. I am not criticising them, many of them, like the **Kiwanis** or whatever, raise funds by that route, but in addition to those dinners and those sterile activities I think that they need to move back into the communities where they grew up and where they can best make an impression. That is another area of great concern.

The Ministry of Community Development and Culture, recognising those problems with young people, established a television programme called Youth Rhythms, the object of which was to encourage young people to have people to speak to them on issues they thought were relevant. They produced it themselves, they interacted on those **kinds** of matters themselves, developed the programme format themselves and represented their own views about the society as a whole. That is one of the important features of the development of young people in Barbados, so I want to say that on every single front the Government has initiated programmes not only to deal with the question of crime as a whole but to deal with the problems impacting on youth or the whole development process such that it involves young people.

This legislation is only one feature of it. I have always had grave reservations about the concept of public order law. I have never been any great supporter of it. Public order law has now moved so substantially away from what it was first intended to be. It is really an incident of capitalist society, the protection of property and certain social groups. That is how public order law originally developed. It has now moved into a whole host of other things and the British have all **kinds** of new developments relating to terrorism, state security and a whole set of other things that are brought within the **ambit** of public order law and have gone really far, whereas in Barbados we had very initial or preliminary public order legislation. However, even though I may have reservations about the concept of public order law making incursions into other areas, I believe that the time is right in Barbados for legislation of this sort to protect youth from other youth principally.

I want to make one very important comment about the legislation itself. It seems that the only substantive point of law which the Honourable Member for St. Joseph made, other than giving us a brief history of "affray" and so on, probably taken wholesale from **Archbold** and adapted for these purposes, but it is not entirely true to say that it was necessary to prove that the offence of affray took place in public. Since 1966 in the case of *Button v Swain* the House of Lords took a different view. In fact, it was since that case that it was no longer necessary to prove that the offence took place in public, so this legislation is only in keeping with a development that had taken place in Britain since 1966, the problem being of course the issue of the bystander if it takes place in private. You have somewhat of a gap in the law, maybe an evidential gap, which I suppose later cases would have established. My understanding is that that was the only major point of concern about the actual legislation which the Honourable Member for St. Joseph made, that it was a new incursion of public order law into the homes of people or their private meeting places, et cetera. That has been in fact the case in Britain since 1966 and this legislation is merely in keeping with those developments that have taken place since then.

I am not saying that everything that happens there must be followed, but I think the circumstances in Barbados today are propitious and it is vital that we examine our legislation constantly over time to ensure that it meets the needs of the society. We have a whole range of criminal law legislation before us. Let us be constructive about it and not get caught up, Mr. Speaker, in the kinds of hyperbole and gymnastics, in which the Honourable Member for St. Joseph got caught up in introducing his views on this particular piece of legislation. I think we can get through them in an orderly manner, giving concern to the rights of the victim as well as the society as a whole. I am only waiting, as I have said to any honourable member, to return to where I left, that if they can point out to me that it is anybody's responsibility, because I see a lot reading through the law going on, I know what the law is, that it is mine or anybody else's responsibility in here to hang anybody or to set any **date** for hanging in this country, let me know, because if that is what the law is then there will be no question about what must be done. I want to make that point very clear, because we on this side have been taking a lot of unnecessary blame, accusations of being soft against crime, not wanting to hang people, indifference, of only waiting until **somebody** broke a Government Minister's house before showing any concern and that **kind** of foolishness. It has been perpetrated by the Opposition as well, in conjunction with people...

4.20 p.m.

Hon. H. B. St. JOHN: On a point of order, Sir. The Honourable Member has to withdraw that. The Honourable Member is accusing the Opposition. There is only one Opposition in here, Her Majesty's loyal Opposition. He

is accusing it of promoting in this community the concept that the Government is lawless. That could not be right, Sir.

Mr. SPEAKER: Does the Honourable Member want to say specifically the Opposition in Parliament?

Hon. D. J. H. THOMPSON: **Oppositional** forces, Mr. Speaker, in this country have been aiding and abetting ignorant people in perpetrating or promoting the view that this Government does not want to execute criminals who are on Death Row; that it is for the Cabinet to **decide** who is executed and other types of legal rubbish. That is circulated in the community. I can say clearly that I place part of the blame, if not all, on oppositional forces who seem to think it is but **another** joke, another load to add on the back of the Government in these difficult economic times. I want to make it clear that it is not our responsibility to fix any date for any hanging. No Minister or Member of this front bench.

If the Honourable Member for St. Joseph thinks that he had that power he might have exercised it and the men now are no longer living so they cannot even question what he did. It is already done and that is one of the great things, I suppose, he would say about it. Nobody can appeal. If you set the **date**, once the gallows swing, as they say, that is the end of the story. There is no ground for you to appeal who should have signed it whether it was the Prime Minister or the Governor General or the Attorney General or who. The point is that it is not our responsibility and we **are** not taking the blame.

I wish to give my full support to this legislation before the House.

Mr. DeL. O. BRADSHAW: Mr. Speaker, I was listening to the Honourable Member for St. John and I was hoping to hear a contribution which would rate as one of the most outstanding contributions by a young parliamentarian in this Honourable Chamber, but he has struck what I would call a low water mark. No wonder, Mr. Speaker, that the Honourable Member was relieved from his responsibility for youth, and now finds himself somewhere where he can be **overseen** by his superior. The point is that it seems clear to me now that, over the past couple of years or months, the youth's future and the guidance which they were supposed to have had was not there. I would hope that the Government realises that the youth needs leadership and something constructive needs to be done if this country is to be rid of the serious problems which confront us.

This Bill before this Honourable Chamber no doubt arose out of the **fact** that the Government has now come to realise that there was something called gangs in Barbados. It does not say much for the Government because the Opposition was telling the country and reminding the

Government that there were gangs prevailing in this country and that something needed to be done in order to control this aspect which threatened to destroy the very fabric of our society. Having denied that there was anything called gangs the Government has come up with this Bill.

I support any attempt to control lawlessness among the youth and citizens of Barbados, but I also feel that the mere passing of law is not going to be the answer to the problems in society. I hope the Government understands that it has to go another step beyond passing of laws similar to what we have today to correct the problems in society, especially among the youth. The youth are saying there is no law. They are openly saying that. We are feeling and we are seeing their behaviour. There are no jobs for them and hence, these could be but two main reasons why the youth **are** behaving in such a lawless manner.

The Government has seen in some areas the abandonment of programmes designed by the Barbados Labour Party to help build the youth and to instil in them the desire to work and to make a meaningful contribution to the development of this country. They have allowed programmes like the Skills Training Programme to lie still. No interest whatsoever. What has happened, Mr. Speaker, is that the young people are no longer interested in registering to do any programmes within the Skills Training Programme. That is very significant.

There was a time when young people were applying to the Skills Training Programme and we could not find places for them. Hence, the Government sought to obtain a World Bank **Loan** with a view to build 3 additional centres. We have one at Sayes Court. What I am saying is that something is radically wrong in this country and that is what I want the Government and all of us as leaders in this country to address. Young people not only do not want to engage in work but they do not want to engage in training programmes. Something has to be wrong. I hear the Honourable Members for the other side saying that is not true. I want them to understand that it is all right talking about developing and promoting programmes for young people and not realising that if you give them a piece of land to engage in agricultural activities that you would need some backup services. I want to remind them because I do not want anyone to say that we do not understand that that is a problem. We want to make sure that they have markets as well. Therefore, if you give them land and you do not have any markets, they cannot make any money, so the frustration begins all over.

We have to think in terms of the programmes. If you are talking about the cottage industries – basket making, ice making etc., where are the markets? There are people out there who are so frustrated. They do not have money to buy. Hence the young people as soon as they get

engaged in some sort of activity to create work the frustration sets in.

4.30 p.m.

Mr. Speaker, I have heard the Honourable Member for St. John say that the main purpose of this Bill is to protect the youth from the youth. Now, I do not think this should be the main purpose of this Bill. I am just repeating what I heard the Honourable Member say. We have to find out what is causing the youth to behave towards each other in such a manner. I thought that would have been the responsibility of the Honourable Member for St. John. He has told this Honourable Chamber that he set up something called a commission on youth. That is far different from what the Barbados Labour Party was **talking** about. We were talking about a task force or commission on crime generally.

This Bill does not deal with crime alone so the Honourable Member for St. John still does not understand what the Bill is all about. If you are talking about the youth and how they behave towards each other, you have to get in there and have some task force, analysis, commission or whatever it is to find out the reasons why they are behaving so towards each other and set about to correct those problems.

I am not satisfied that passing law will prevent those activities. I do not feel so because the youngsters nowadays walk around with knives and cutlasses hidden in their big pants. I have not seen where this Bill addresses it. It says threatening but it does not say if it is on the person to give anyone the right to search if they are suspicious of it. I am not a lawyer but I am **asking** why that provision could not be put in. I want to know because unless the weapon is in their possession there is no provision for it. I am wondering what this legislation is seeking to achieve.

I have heard the explanation given by the Honourable Member for St. John. As I said, I had to take him up on this because I heard him being critical of the Honourable Member for St. Joseph **talking** about hanging and who is responsible for hanging. I do not know who is responsible for hanging if he cannot tell me. There are people out there in society who want to know. The country wants to know who is responsible. They are blaming the Government for not **taking** the initiative. At the same time they are **hearing** the Minister responsible for Public Safety say that hanging will take place. Why is there this misleading statement?

I am beginning to wonder who is telling me the truth. I have heard the Honourable Prime Minister touch on it too but I cannot find out who is responsible for signing the document to carry out the hangings and what is the Government's real position. The Government has to tell me that. Tell the public of Barbados if you do not want to tell me. They are **asking** the Government to **carry** out this and they are hearing the Government's Minister for Public

Safety say that hangings are going to take place but none has taken place. Something has to be wrong. I am saying that even the hangings **will** not satisfy the evils. I think we need to understand what is going on and what is wrong in this society. There is something that stinks in Denmark. There is something radically wrong in the State of Denmark. We have to understand what is going on. We have to look at ourselves too as leaders in this country and see whether we are setting the right examples, if leadership is being shown by our very actions that the young people are not following us and taking the trend.

Aside.

Mr. DeL. O. BRADSHAW: Yes. We are trying to pull down the leadership of the country when it wants pulling down. I want the Honourable Prime Minister to understand that it did not start from over in the Opposition. His very team started pulling him down. We were just taking a cue.

There is this whole question of morality and leadership. You should know when you are not wanted and when the leadership is bad. I think the leadership sometimes would recognise like when Margaret Thatcher realised that she was not popular she stepped down. I think there are other people who should realise when they are not popular, and the signs and writings are there, they should step down. I think the young people are realising that anything can happen now. These are the things we must concern ourselves with.

Now, Mr. Speaker, the passing of laws is one thing, as I said before, but I would like to see some back-ups. You must complement the passing of laws. We are putting more and more laws on the statute book. It sounds pretty. Some people out there feel that passing of laws is going to arrest all of the evils but there are some complementary things. I am hearing for one that there are not enough policemen to go around. What are you passing more laws for and giving them more responsibility? Who is going to execute the law? I have heard the Commissioner on television.

I am calling on the Government to give adequate manpower because more laws are coming on. The police hands are full at the moment. Give them more manpower and more pay, if possible. Make ~~them~~ **them** happy, so that we can arrest the crime in Barbados because something has to be wrong. I know sometimes when you take away a toy from a child or something it is accustomed playing with, it gets vexed. You might have to look at those who are responsible for law enforcement whether there is not something we need to look at. I am hearing these things out there. I am only asking the Government to investigate them to see what they can do to introduce corrective measures. I myself cannot understand why all of this crime all of a

sudden and this disrespect for law and order. It does not matter what a Minister says. People are still committing crimes.

I took up a paper only this morning and what did I see? I am seeing cases adjourned until some other time. What we are seeing is choking and aggravated robbery. You know what went through my mind? Is this legislation dealing with that? We have to understand that more and more aggravated robbery is taking place. They are snatching chains and jewelry. Whenever there is a break-in it is **jewelry** or other larceny.

The Attorney General is looking. Read the paper and you will see what is going on. It is on the increase among the youth. You have a **patte**. I think you can take it from there. Try to find out why the young people are committing crimes and why they are going in that direction of aggravated robbery. That is responsible for running the tourists and causing the advisory against Barbados. Those are the things. They are saying it to their friends and we are talking about youth versus youth. I want us to see what can be done. That is the main problem today.

I will go as far as to say that the gangs versus gangs is not really on the increase today. My **ears** are very low to the ground. One and 2 years ago it was rampant in Barbados. There is a decrease in this gang **warfare** so we might be a bit too late in controlling it. We could have reduced it if these problems were addressed earlier.
4.40 p.m.

Mr. Speaker, we have to sit down and **find** out what sort of crimes the young people are getting involved in, address them, find out why they are getting involved in the crimes and introduce relevant programmes. You have the community centres shut up, the schools **are** shut up from them. No wonder they vandalize the schools. Have you ever sat down and asked yourself why they are attacking public buildings? Why are they defacing them? Have you ever sat down and asked yourselves that? Why are they so disrespectful?

Aside.

Mr. DeL. O. BRADSHAW: Yes. I saw them say "Sandi is a fool". I saw that in Bay Land. I did not write it. I know a member of the Democratic Labour Party wrote it.

Mr. Speaker, I would think that we need to look at the sort of equipment that is made available to the police to see whether we can update it. I do not think that the country will **quarrel** if additional funds are given to the police in order to help them to detect crime or to help them to arrest some of these persons involved in criminal activities. Let me tell you, the country would support you on that. They would not say you are wasting money. The

country is critical of Sherbourne, the money that is spent up there, but they would not be critical on these areas. At least you can whip back up some support. We would be glad to see this being done. Not that they are satisfied with your track record of success. But at least if you said that they would feel at least something is coming; it is heartening news. The police have been crying out for equipment to tackle some of these things. Computers. Why not address these problems? Stop **talking** about you do not have enough money to do this and do that. You have to spend some more money. Crime is escalating and any money spent on helping to prevent crime is well spent. Do you not understand the areas in which people are prepared to support the country? I am not happy with the advisory. But it is no sense my sitting down... We know that they are facts and whether somebody tells us that we have crime or not we should not have been blinded to the fact that crime existed in Barbados. Why did we have to wait until somebody told us that something is wrong in our country when we know it is so. What we should be saying is it is not so. Rather than defending and saying nobody told us. Nobody has to tell you anything. You should have known that. That is why I say that I am sure that there are people, on that side, who hear what I am hearing that there are problems out there that need to be addressed. But sometimes the Ministers and the Government treat people with contempt. They do not have time to interact with the young people. No time to listen to us. They **are** always critical. Like the Honourable Member for St. John he is always critical of the Honourable Member for St. Joseph especially. Because the Honourable Member is putting positive suggestions, but he does not understand.

People have been blaming all sorts of things for the problems in this society, breakdown of the family life. I **am** hearing a report is coming out. There is no breakdown in family life. Reports done by prominent people. Where **am** I going? I cannot get anyone to come up with concrete or positive ideas that I can follow that we can take a leaf out of or take and implement some of them. Nobody is saying that. What are we doing? When you get in here from this side and you ask **Government** to examine, the Government ignores you.

Let me say this to you I know what it is to be in Government and to have problems. I know the Government has a lot of problems. Do not think that you can gloss over them. We do not want to see them escalate. You may be sitting down because you may have certain protections, now that you are in Ministerial positions or governmental positions. But when you get out there take off those protections and you will see what is going on in society. Go in the society like in the Pine, go into **Farnum Pasture**. Go where you see people sitting down daily hopeless and you would understand. Feel for them. Go into the Ivy and you would see and feel. Go down in Haynesville. Go in Orange Hill and you will see people sitting down there. Not that the young people do not want to work but

they cannot get work. And because they are seeing a trend in society and they are following. They are saying, "Why should we work?" We have to be concerned. What are we thinking about seriously?

Mr. Speaker,...

Aside.

Mr. DeL. O. BRADSHAW: All right. Some people do not want to work because of the atmosphere, the environment and the attitude of people towards them. I am not going to work for any and every employer when I know some employers do not care about me. I think the Government has to understand what I **am** talking about. Work what? No work is out there. Stop talking foolishness and telling people there is work out there. There is no work at all. Do not fool people. Tell them things are tight and people will understand and respect you. I do not want to hear that in this Honourable Chamber any more or telling people there is work for the young people but they do not want to work. You blame the young people for everything. No wonder you have problems. You are going to have more problems if you continue with this attitude. I have a concern. My love for my country. I have children out there, I have to think about that. We cannot dismiss things.

They are engaged in aggravated robbery. They snatch chains because they **can** carry them and sell them and get them melted down and buy drugs, if you do not know. I can tell you that. I **am** not playing for the Press. You have to do that. Your illustrious father would not deal with that in that manner. He respected me. I **am** serious about this. You see that is the sort of thing that you would get from people. Mr. Speaker, the Honourable Member and I understand each other.

Mr. SPEAKER: You are comfortable.

Mr. DeL. O. BRADSHAW: Yes, Sir. But seriously these are problems. We need to be more serious. I **am** quite prepared and I am sure the Opposition is quite prepared to sit down with Government to discuss the problems because we all suffer from them too. People are calling for a National Task Force. We **can** no longer look at this in a partisan manner. We have made those mistakes.

And I say something to you. The young people are telling me they are not interested in BLP and DLP so much you know. They do not come and vote so much. They do not even come to public meetings. That is to show you the attitude. They are not going to any political meetings and that is something that we, as legislators, should really look at. Look and see. They are not interested. I am sure when you look and see what the percentage of young people voting is it stuns us when we analyze the voting pattern and the statistics. Something has got to be wrong. We have to understand what is going on. Do not dismiss the young

people. I think the young people are expecting us to get out there with them.

I will say something while I **am** on this, Mr. Speaker. Only last Saturday there was a function held at the Child Care Board and the young people were there, over 100 participants. They presented Papers. Do you know what one of the young persons told me? They said regrettably there was not a Minister or anybody from the Government present. That was the comment coming from the young people. Probably they were expecting leadership. If they have this standoffish attitude I am only telling you how it relates. My response was: How would you like politicians to invite you to come and sit down with them? They said that is what they feel should happen. Do you understand how the young people feel? If we stand off and do not go then the young people will say okay we are alienated and therefore they behave in that manner. We have to examine ourselves too you know. Do not be critical of them all the time.

We as a country have to understand that we have a problem on our hands. We have to understand that tourists not only in America but elsewhere outside of Barbados are worried about crime. They perceive that there is crime here. They are seeing the lawlessness. I have heard the Commissioner say that here tonight. You pass and see young people in the middle of the day sitting down. What is responsible for that? It never used to happen before. Not in the middle of the day. They might be pitching marbles or so. We want to know what is going on. Is it frustration? What is it? We have the problem. Not my child, maybe not the children of Members of this Honourable Chamber, but we are worried about those out there because they are creating the problems for all of us in this country.
4.50 p.m.

Mr. Speaker, this question of affray. What I **am** saying is that I **find** it hard to understand when someone, for instance, writes something which is interpreted as offensive. You just need the interpretation. I saw people with some placards during the march and some people have termed them offensive. I **am** beginning to wonder if that was not in breach of this particular Act. This is the sort of thing. I **am** beginning to wonder, you mean a placard... This is a public order act. I am beginning to wonder if you can no longer ... Any person who distributes or displays to another person any writing, sign or other visible representation, that is threatening, abusive or insulting... It is a matter of interpretation. It goes on to say, if it is interpreted. What I am saying is, I can't support this in this vague manner. I **am** not supporting this.

I have heard some Attorneys say, well all right the law is there. Let me tell you something. It is all right to talk about the law, when you get arrested and get some blows and you go up there in a cell and you bring a lawyer and you get off, let me tell you the damage is done. I

want the law that I can understand. I am a legislator and I want to understand it and I am leaving it to the Attorney General to have this explained fully to this Honourable Chamber so I can understand, not couched in a language that the layman cannot understand. He has a duty to do that.

Aside.

Mr. DeL. O. BRADSHAW: He is not the Attorney General. He is not paid to do it. He has to challenge the Attorney General and I am expecting that. As it stands here, I can't go out there because people are asking me to explain some aspects of the law. They do not go to the Honourable Member for St. John. They come to me. I am more knowledgeable.

Now, using disorderly behaviour. I don't know how you will interpret that because what I would call disorderly behaviour is if someone stands up at a public meeting and says These are things we need to know because sometimes people abuse the very laws that are passed for the benefit of this country. I know people put them and then they go around them. I have seen people go around the law and say they had the wrong section and they go for another section to achieve certain things. What I am saying is, let us come with the laws that are clear and definitive so that people can understand them and there cannot be any misrepresentation or any abuse whatsoever.

I think that what this Bill is seeking to do is to protect the rights of every individual. I can agree to that objective but, as I said, something tells me that this Bill is not right. It is not ready yet, Mr. Speaker. I thank you.

Mr. L. L. BRATHWAITE: Mr. Speaker, very briefly, I would like to make a contribution to this Bill and take it out of the very broad area that, at least two Honourable Members on the other side, have put it. I am very concerned, Sir, that there are speeches and comments made in the public domain which tend to give licence to some of the same kind of behaviour that we are abhorring on an almost daily basis and much of which we may say is brought into focus by legislation of this sort.

I would just like, Sir, to read the Objects and Reasons of the Bill:

"This Bill would amend the Public Order Act in order to

- (a) give statutory effect to the crime of "Affray" and
- (b) create new crimes of "Violent disorder", "Fear of Violence" and "Harassment, Alarm or Distress".

These offences are designed to deal with group violence where there is no evidence of the group having a common purpose."

It seems, Sir, that when we hear the number of comments whether you consider them as criticisms or valid comments as related to aspects of the law that do not allow the judicial system to function as it should, that the blame falls back on the people who make legislation to do something to bring remedy to the complaints that are being made.

Why I am concerned, Sir, is because I do not see anything in this particular bit of legislation that refers to you. That obviously does not deny that there are problems that we have in our country in which the youths are involved in crime. There are other persons involved in crime that this legislation will also deal with.

If we are concerned about the level of crime that there is in the country, and if we are concerned that legislation needs to be put on the Statute Book to deal with this crime, I do not think that the kind of contributions that I heard from the other side will help to eradicate the kind of problems that we are so forcefully talking about.

The Opposition, Sir, has made charges both in and out of Parliament that the Government has been doing nothing to cope with the crime situation that there is in the country. Yet, every time we speak of what we would call improvements to existing legislation, you hear sometimes that there are thoughts of barbaric treatment to people who have rights and all this kind of thing. One has to expect, Sir, that if people go against what is the law of the land, they know what the penalty is and if those penalties are not providing the kind of answers that are necessary in order to reduce the level of crime then other means will have to be found.

The Honourable Member for St. Michael South East said that he does not know what is the law relating to hanging people, who is to sign the instrument and what have you. I don't believe, today, that is something that should be discussed here in Parliament by a Member of this Parliament who obviously knows what the law is relating to capital punishment. Somehow, along the way, what we are finding is that because people can say and have been saying that because you are not hanging people we have the kind of crime that we are having today. Yet when you come here and try to create legislation which will help to deal with some of these problems you get the kind of criticisms that you get today.

I was a little bit confused when I heard the two Honourable Members on the other side speaking, Sir, because at one time they were saying something in favour of the legislation and another time they were

saying something out of the favour of the legislation, in that they were saying that stiffer legislation is not the answer to the problem.

5.00 p.m.

Which of us in here today can say with any truth that the real problem in this country among young people or offenders of the law has any particular genesis? If today, Sir, I brought you an instance of some of the evidence that I see in some of our young people who are going to school and who are showing us some very violent signs and traits in their actions against each other, are you saying that is because they do not have jobs? Are you saying that is because leaders in the country are misleading them? I am saying, Sir, that we have to take a very responsible attitude as leaders in this country. When I say leaders, I do not mean a leader. I mean leaders in every aspect whether you be parent, parliamentarian, political leader, religious leader or whatever form or aspect of leadership. We have to take a very serious attitude towards meeting what is needed to bring our people, not only the young people, back on track. Let us stop casting blame. Let us stop all of this complaining and recognise that we have a commitment. We have a commitment to provide some of the answers by which people can find scope for improvement.

The question was asked: What is Government's responsibility to the death penalty? Until the death penalty is abolished, Government supports the death penalty. I have said my bit on the death penalty, Sir, and I believe that it should remain and be exercised where and when necessary. There is no reason, in my view, why people should commit a crime for which they know the penalty is death and then you have a situation where you say that you must forgive because of some human right and all of that kind of nonsense, Sir. I believe that, if you can take a life knowingly and understanding that you can also suffer the penalty of death, then that is what you have opted for. There is no question in my mind whether the death penalty should remain and be exercised. If the law has set out a certain sequence which must be followed for the death penalty to be administered, then that is the system with which we will have to abide until such time as we choose to change it.

Sir, I do not obviously want to be lengthy on this. I feel that, when we are discussing matters of this sort and when this record is read, the people in the public domain must understand exactly what we are saying to them. We do not necessarily want to punish people. If you have to be punished because you have done things which you ought not to have done, we can do nothing but administer the punishment that is necessary and which the State feels will help to bring some balance to the situation.

I wish to support this Bill, Sir, because I am one of those people who believe that crime has reached the stage in this country where we must do something about it. There

have been many criticisms and sometimes very harsh. I recognise that legislation cannot be brought together and passed overnight. I believe, therefore, when time is taken to create legislation to fight the ills that we have in our society, then we should sit down and look at it as responsible people and respond in the way that the public at large can understand fully what we are doing. I thank you, Sir.

His Honour T. C. **ESTWICK**: Mr. Speaker, I rise to support the Bill that is before the House and, like my honourable friend who just sat, I will admit that the criticisms of some Members of the Opposition have been harsh and generally of a rapid fire nature. I will add that some of them have been valid criticisms because I do not believe that an exercise of this type in the interest of Barbados and social peace, respect for law and order, and providing a society in which we can live in peace and quiet and we can continue to build an economy from which we can all reap benefits can be done when there is social dislocation as a result of law-breakers, who in my opinion are very few.

Sir, before I actually get into what I have to say, let me make my position clear. I have heard, Sir, many reasons advanced as to the causes of crime. We have heard talk today from Honourable Members about alienation. We have heard talk about delinquent behaviour and what I have not heard any Honourable Member even come near to stating so far is whether or not young people over the age of 12, 14, or 20 have any choice in what they do.

Sir, I believe that I understand what alienation is. I believe that I understand what delinquent behaviour is, but I think I also understand that there comes a time in the development of every child or adolescent to grow into an adult in which that person is going to reach a stage when choice comes into play. What will I do? What will I try to become? Those will be important questions in the development of that person. What will I do to help my family will become an important question in regard to a family no matter whether it is extended or what. What will I do to help my country is again a wider question. I do not believe that any analysis of crime in Barbados can be done as to why there is the level of crime that we have here without that very little word "choice" coming into play or that concept. Is there a choice that people are exercising or refusing to exercise?

Sir, as to the whole idea of alienation, I will admit to some extent because we cannot hide our heads in the sand that the country is going through the economic throes at this point in time. This will obviously mean there will be a contraction of traditional outlets for people. There will be a contraction because there has been a cutback in resources in things like Skills Training or whatever. Does that, notwithstanding, remove from people a choice? To put it in Biblical terms, it is to be good or bad. Does that mean that

I must pursue a life of crime or does that mean that I must join A, B or C and run around and do nonsense? Do I have a choice? Do I understand right from wrong and good from bad? If I do, what is my choice? I do not want to sound, Sir, as if I am in a pulpit. But these are the simple facts that I think we should address. Is there a choice?

Sir, as I said, I know that alienation is a reality in Barbados today. It is a reality not only as a consequence of Government's unfortunate position or situation today. But it is a natural consequence of the development path that we have followed over the years. Sir, as to Barbados becoming more urbanized, I remember one Prime Minister said that he would like Barbados to be like a little New York. I think that I have mentioned that already. As the society becomes more rationalised **and** industrialised, the very invisible ingredients which held the society together, as come from grandmother and grandfathers, those invisible family ties, and the structure of the society, the village community itself weaken. The thrust towards modern day type development is an aspect of this development which breaks down those traditional values. A direct consequence of the development that we have followed is that life in itself, in terms of the community, becomes fragmented. You move to a terrace or a height, or whatever, and you do not know your neighbour. You hear his or her dog barking but that is as much contact as you will have. You may well know his car number but you may never see the fellow or the young lady in the car. What happens is that, instead of being a cohesive unit in terms of being a community, you become a group of unaffiliated people living in an area.
5.10 p.m.

I think my learned friend, the Honourable Member for St. George always says that he lives next to a village and there is a relationship. Everybody is not so fortunate. I do not think we can deny that Barbados is a society that is an extremely jealous one in many ways. I will get to that concerning why groups fight with one another. I do not think that we can get away from the fact that once you become an unaffiliated group of people living in an area, in a district, in a village, in a parish, then we are heading for problems. Once you become unaffiliated you are not going to have the trust, the faith in your fellow man, as you would have had if that had not developed. These are the unfortunate but natural consequences of the sort of development which we are now facing.

If it happens that in addition to those natural consequences, you are unfortunately without a job or you choose not to work, other things will also come into play. The concepts of alienation and delinquent behaviour and normlessness which I hope to get to sooner or later will be even more powerful in terms of how you behave. What are these things? **Powerlessness**. What does that do? If a young man or a young woman is powerless what is his or her connection with society? Certainly if you are powerless you would be master of nothing. You would be in control of

nothing. If there is normlessness, again you are like a ship without a rudder and that instability threatens any sort of stable development which a family or a society or an individual needs. If the values which you have adopted or which have been inculcated in you are not the values of society at large then there can be no consensus in terms of what society wants. If there is any degree of meaninglessness and **self-estrangement**, then there is no commitment to anything and there is no understanding of what society demands of you.

These concepts – powerlessness, value isolation, normlessness, meaninglessness, self-estrangement, all band together within gangs in Barbados today to urge them towards what is commonly deemed delinquent behaviour. Unfortunately, what we are getting from the **Opposition** even in a debate of this **type** is that the Democratic Labour **Party** Government is responsible because there are no opportunities or no outlets, which is not necessarily a direct consequence of the Government's actions today.

What many of the sociologists argue is that this delinquent behaviour is not caused because opportunities for conformity are limited or not caused because there is a lack of motivation to conform, but simply because society does not provide for the expectations of people to be satisfied.

At the end of the day, any government, especially if a government is going through a structural adjustment programme, will have to admit at the very outset that it would simply mean that, once the structural adjustment programme takes place and there is a contraction in the economy, traditional outlets where youngsters will have to go to expend their energy will be closed off. I do not think we can get away from that, but that is not the point so much. All it says is that those outlets which have been closed off must be replaced by innovation by the very things which have been spoken of by the Honourable Member for St. John when he was in the capacity of Minister of Community Development. I do not remember **all** of it now but these are the very innovations which will go towards replacing the traditional outlets which have been closed off because of problems in the economy.

When it comes to the issue of young people wanting work, I will readily admit that I have not come across any young man and woman who did not genuinely want work, but did not want work as it was handed to them or as they were exposed to it. I think young people would do any **type** of work, but let us look for instance at the sugar **industry**. Traditionally, people go to cut canes and they are herded on to the back of a tractor in 2 carts. They are taken to cane fields. They might cut burnt canes and they return home on that tractor looking like broken, decimated people. There is nothing wrong in cutting canes. The canes have

to be cut. The question is not work. The question is what degree of dignity is associated with work by people who are in authority.

It is just like on construction sites. You cannot tell people to go on a construction site and if they have calls of nature they have to run behind a rock and if they have to bathe before they get back home on a bus that there are no provisions. I **am** saying that in today's world where technology is modern, if you are asking workers to have dignity, whether it is cane cutting, rock blasting in a quarry or on a construction site, there are simple facilities which can be provided for people that would be in itself an encouragement for people to go and do the work. It is not a question of work. It is a question of the dignity which is associated with that work. It is a fact that many people will say to their children that they never want them to work as hard as they have worked. Persons would have done back-breaking work in a sugar field but when they want water they have to drink water out of a hot, little thing that is pulled by the plantation owner.

Asides.

His Honour T. C. ESTWICK: For the first time in Barbados we saw trailers on construction sites which are self contained with toilets and baths and changing rooms only when a particular type of person got into construction. I am saying there is nothing wrong in providing them in the sugar field. How would a man from the Ivy feel going to cut cane at Foursquare or Marley Vale in St. Philip...

Asides.

His Honour T. C. ESTWICK: ... if he is to go out and cut canes until he returns home on evenings. He is not going to go if when he leaves the field at 4 o'clock he cannot get a bath to put on some perfume, to change into his clothes and head back home to his family. All these aspects amount to dignifying work. The question is what is associated with the work, the level of dignity which is put into that work by the very society or the employer and the respect which that worker commands in society. I **am** not going to say that society does not have its bangers up against certain types of work but, at the end of the day, all work is necessary, no matter what it is.

The Honourable Member for St. George can look down his nose at garbage men but if they do not move his garbage he may well catch leptospirosis. All work is dignified. It is just a question of what employers, whether the Government or private entrepreneurs, attach to that work. I am not going to agree that the majority of young people in this country do not want work. They want work in which that work is dignified and there are certain provisions provided for them at that work that they would remain human beings and simply not beasts of burden.
5.20 p.m.

The question too, Sir, that has been raised by the Honourable Member for St. John – why gangs fight? We cannot examine that phenomena by merely looking at the fact that we ourselves are not involved in such activities. The fact remains that gangs, let me call them that, will have their own sense of values. They will have their own norms. The only people whom they can compete against with equivalent norms and values would be gangs. It would not be likely that a gang would want to compete with Honourable Members of the Opposition because there are different norms and values.

Aside.

His Honour T. C. ESTWICK: I am not calling them a gang, Sir. I would never do that. I am saying that obviously like will compete against like. If there is an hierarchy of things within what they consider their own society, or the way they view life, if you want to call it a parallel society, then they will fight among themselves to be king of that castle no matter how idiotic, wrong or illegal it is. It comes back to society's requirements at the end of the day to enforce law and order.

After all I have said, Sir, I want to end on this point. At the end of the day the society must establish generally accepted norms and values. If gangs, and let me call them this without fear of contradiction because I really do not care, if 12 or 13 knotty headed boys can hold this country up to ransom I would leave it. This society in spite of all I have said...

Aside.

His Honour T. C. ESTWICK: Yes. When it comes to crime, Sir, I **am** no dove. I **am** a hawk. Let me put it that way. I do not apologise for saying that. It has been said by the Honourable Member for St. Joseph the number of persons involved in this sort of anti-social idiotic activity is very small. The society must reserve the power, if that power is the death penalty, to deal with them once and for all. I make no apologies for saying that. This is my view. I have not discussed it with anybody in the Democratic Labour Party. I have been on record already as saying this. I stand in the courts every day defending people some who are on murder charges. At the end of the day when I have done my best and the law has ~~take~~ its course if the hangman is to get that person, so it shall be. It is out of my hands. I have done my best. Society must always reserve that power in itself to make sure that the generally accepted norms and values, the laws, are respected and adhered to by its members. Of course there will always be deviants and at different levels. There will even be political deviants whom we must sometimes accept and put up with. I am not again calling anybody's names or pointing to anybody but these things are facts.

Sir, as far as I **am** concerned, society must accept some responsibility. Families must accept some responsibility. Government, as far **as** I am concerned, must accept some responsibility. The Opposition must accept some responsibility. At the end of the day reasonable men and women – adolescents must accept that they too – have a choice to exercise and this choice, if these persons are to be good and law-abiding citizens, must necessarily coincide with the accepted norms and values of the entire society. If that is the case, Sir, we would have very few problems. When this is not the case we have problems. When we have problems a duly elected government following democratic principles must then come to say enough is enough. Laws must be passed to bring people back in line. I have no problem with that.

Sir, I will not get into **talk** about the police. I do not think it is necessary in this context. All I am saying is that right now as far **as** the law is concerned, there is a necessity and need in the minds of many people in this country that certain things in this society must be corrected and corrected now. If Government takes the steps to **correct** the wrongs now there should be no quarrel whatsoever and they should not just be opposing for opposing sake.

I am in full support of the Bill, Sir. Thank you.

Mr. L. R. TULL: Mr. Speaker, one of the best things that can be said for the Government in relation to this piece of legislation is at least they finally decided they should try something. There has been a long period where there has been an escalation in criminal and anti-social behaviour in this country and the Government has for reasons best known to itself turned its face against right and proper thinking in this community in relation to that kind of activity. It is **all** very well for Honourable Members on the other side as they are frequently doing in the last few weeks or months to appeal for light. This Opposition is not playing that game. We have said we are going to support the measure. We said that. Having said that we will express our reservations and the Government could like it or not.

This amendment to the Public Order Act is full of certain connotations. This Act was passed in the early 1970s to deal with a political situation. That is what the Public Order Act was passed for. Just as they say men are judged by the company they keep, legislation is judged on the principle of what is called – they say you must only speak English in here – the *ejusdem generis* rule. That means in legal drafting that things of like **kinds** are put together. Therefore, when you introduce the new measure in relation to affray in a public **order** act, you are in effect saying that this is of the same company as the political matters that were dealt with by the Public Order Act in the early 1970s.

The first point I am making is not that there is no need for dealing with lawlessness in the society nor indeed

for dealing with the purposes set out here. These offences are designed to deal with group violence where there is no evidence of groups having a common purpose. There can be no quarrel with legislation for that particular end but I had to throw in at the beginning that it seems remarkable that this piece of legislation should be put in the company of the political offences in the Public Order Act.

I am not going to go into any second reading aspect of it. When one is talking in a piece of legislation about insulting language used that may cause distress or alarm to another person, or one is talking about signs, placards and things written that may cause alarm or distress among members of the public, that is treading dangerously close to interference with rights of the people in this country. We have to be very **careful**. I have to put it in this context. I **am** not getting into the esoteric discussions I have heard all afternoon. I have heard the Honourable Member for Christ Church East deal at a level that is a little above me. I did not go to Cave Hill so I cannot deal with that kind of high level.

5.30 p.m.

Aside.

Mr. L. R. TULL: Yes, fair enough. It has been dealt with at a level which I believe, Sir, is commendable. I am not knocking them. All I am doing is admitting my own limitations **that** I cannot deal with it at that level. I am not one of the amateur social psychologists who could sit down and work out what is responsible for every piece of action in the society.

Even the Honourable Member for St. Michael North East who is a man given in his contributions in this Chamber to direct, practical, straightforward contributions somehow or other got himself caught up in this business about being a social psychologist **trying** to work out whether because your mother left you home early caused you to be a criminal or whether because she came home late. That **kind** of thing. I am not into that.

I want to caution that in dealing with legislation to address social problems that there has to be an equipoise, the scales must be balanced. The blunder bust approach to the solution of social problems is a wrong one. The same social psychologist and even practical experience of ordinary, right-thinking people will tell you that it does not work. The blunder bust approach may be a temporary palliative, get rough, lick them up, come with harsh measures. You deal with an instant problem. You may get a solution in the short term. But quite often it creates a greater social ill than the one you sought to correct. I am not playing the part of the social psychologist. I am just saying what is abundantly clear to anybody who is observant, who reads a little bit and understands the way things happen in a society.

We cannot believe in those who are blinded by emotialism in thinking, use the big stick, use the blunder bust, swing the cudgel with malice, as the Members on the other side recommend from time to time, Sir. That is not the answer to the **social** problems in this community. That is not to say that I do not agree with some kind of measure of legislation to deal with certain problems. But as I said I am a little bit nervous when we go beyond a certain limit and begging to infringe on the human rights of people in the society. I am talking about people such as the Honourable Members in here and the people they represent generally in the constituencies who are, by and large, decent, law abiding people.

Barbados has very few per capita criminals. All the problems that we have in the community fall at the door of a fairly small minority of people in this country. They are not only young people. It should be said at this part of the debate, Sir, because the debate drifted off into all the problems with the young people and so on, as if to suggest that only young people in Barbados commit crime. Some of the most serious crime in this country, according to the old conservative legislators is the crime against property because they had to protect – the Honourable Member for St. John I believe at some point alluded to that fact – that you had to protect the interest of the establishment. And property wrong was considered by many people in this country and judges and the Judiciary in Barbados for many years, as being more important **than** offences against persons. That is a lot of old conservative thinking in terms of the operation of the law and the operation of the Judiciary. You have that **kind** of situation.

But we have to be careful, Sir, that we do not go overboard on the punitive side of measures that we take to right the wrongs that are existing in Barbados at the moment. We have to look at the creation of a stable and harmonious community. None of us individually has the answers. We can bring an intelligent approach to it, based on our experience and our learning. But we do not all have the answers. And unless we are able to get in almost a national consensus by pulling all the strands of good thinking in the society together to work towards dealing with that problem and **seeking** to bring a stable society in Barbados we **can** pass as many pieces of legislation, we can use as many cats and gallows and big sticks and tamarind rods and whatever, we are not going to get the peace in this society that we want, Sir.

I want also very quickly to say that these measures smack to me of a little anti-union,...

Aside.

Mr. L. R. TULL: ... it has a kind of anti-union flavour. I hear "come on". I was part of a Government that introduced emergency powers legislation in this Chamber and at the time that the measures were introduced, in all

the discussion in the Cabinet leading up to it I was of the view that it was meant to deal with certain emergencies which the public of Barbados would like a strong Government to keep from getting out of hand. I go no further than that. But I have heard in all the years since then coming from Members of the other side the sly and sometimes not so sly suggestion that the measures were meant to muzzle the unions and that kind of thing. I do not agree with that. I was **part** of it and that was no part of the intention. Some Members may say it is because I am incredibly naive. They could tell me that. I know I was a part of it and I can say, in all honesty, that that formed no part of the discussions or the intention.

I feel that people who can conceptualize evil where there is none have to be watched. I do not like certain parts of this Bill. I know it has been taken lock, stock and barrel out of the British legislation. I do not understand it. The exact words are used in the whole Bill. There is nothing in this Public Order Act that is in any way different from what the law in England is. This is why I get back to this business of the conservatism of legislation.

A conservative Government in Britain that wanted to keep the louts – that is the word that you use in Britain. Never mind that the Honourable Member for Christ Church East would use the Barbadian equivalent of knotty head boys. Do not mind that he would use it in those terms. Neither the knotty head boys nor the word lout is my word. But the British Conservatives wanted to deal with the louts, to use their word, who would disturb the **tranquility** and the gentility of life of people of a higher level in the society in Britain. For that reason, Sir, they passed this piece of legislation. They wanted to deal with the fellows from Liverpool who came down to watch football, **Tottenham Hotspur**, who got things a little hot on the terraces and who moved through the town and the Midlands when they went up from the east end of London and damaged the seats on the trains and the buses and so on. They had to be put in their place. This particular piece of legislation without having even a bit of local condiment is taken word for word, comma for comma, **fullstop** for **fullstop** out of the British legislation that was meant to deal with a particularly English problem.

Aside.

Mr. L. R. TULL: I want to hear the words because I went through both the British Act... One or two words changed. I will tell you what has not changed. I **am** very glad to hear that, Sir. The English law repealed a number of pieces of legislation that were being replaced by their Public Order Act. The Affray and Violence Order Act and so on.

The Barbados piece of legislation – at this point it is not even a criticism because I **am** sure the Attorney-General will tell you why he has introduced

this new legislation and has specifically not repealed the common law offence of affray. But this is not only affray. He has not repealed it. I do not understand it.

There are other areas, for instance, you take the law in relation to threats, and this is a point that was made by the Honourable Member for St. Joseph in relation to widening the area of activity that is being made criminal. For instance, a simple example is that of threats. For a long time the law has been and is in the Magistrates Jurisdiction and Procedure Act that if you threaten somebody you can be brought before a magistrate on a complaint and be put on a bond to be of good behaviour, to keep the peace for a certain period. They have finished with that now, Sir.
5.40 p.m.

They have not repeated that, but now if I am to understand this law correctly, Sir, what is happening is that if you threaten a man, as the Honourable Member for St. James South would know as a Magistrate, there used to be a 'swear life' complaint. This swear life complaint – 3 years in prison and a fine of \$3 000. That is what I am talking about. I am often criticised when I say that legislation must bear some relevance to cultural reality and when you have, in Barbados, a certain level of exchange among village people, village people have a way of expressing themselves from time immemorial and then all of a sudden, Sir, you have moved away now from slapping their wrist for behaving in an antisocial way to making them criminals, liable to 3 years imprisonment. I am a little bit disturbed about that because not even the British legislation and the Honourable Attorney General is correct when he says this that some words have been changed because the British Legislation makes provision for 6 months imprisonment where the Barbados Government decides that you should give them 3 years. I don't know, Sir. I **am** a little bit concerned at how the hammer is dropping. Not that a hammer must not drop, but I am a little concerned about the way in which it is dropping.

Now I will raise a number of points in committee because we can laugh as much as we like when we get into this business about legislation in this area and the application of it we can't take it lightly. I have seen, Sir, in Barbados although the Members of the Government make light of it, I have seen laws not obeyed by people in institutions in Barbados which should obey them. I have heard the Director of Public Prosecutions only recently in addressing some prosecutors at the Regional Police Training School saying that really there should be no taking of statements from suspects in the absence of a friend or a lawyer. Of course that was the occasion for great hilarity among the investigating forces. No matter what the DPP says! They think you have to be joking.

I have heard the **Learned** Attorney General say, which is the law, that the Police have no right to stop people at night in their motorcars. If he did not say so he should

have said so but I believe he said **so**. All I have to say, Sir, is, I have told immediate members in my family how to deal with a situation where that happens because I do not know what law in Barbados allows the police to pull people over at night and ask them to get out of their cars and search them unless they have a search warrant. I don't know about it, but of course there are other people who know about these things and who will talk about them. The police thought that also was a joke.

It does not matter that the Attorney General said **so**. Nobody minds if the Attorney General says **so**. We have to be concerned about these things even when the law does not allow things that happen against the law so much **so** when we expand the authority that is given to carry out certain things.

At this point, Mr. Speaker, I make a **final** point in relation to this question of gangs. The Democratic Labour Party Government, Sir, poured **scorn** on the reasonable suggestions of persons who said that the rise of gangs in Barbados was a serious and growing social problem. The Democratic Labour Party, as I said, poured **scorn** on it and did not take action when action was required. They did not accept that. Now the horse has bolted out into the meadow they have pulled in the stable door and the Honourable Member for St. James South seems proud of that. The situation at first could have been nipped in the bud or at least there could have been an attempt to nip it in the bud because I **am** a very practical person, I accept that a Government in any country cannot solve every problem although some of them try to fool people that they can. The major criticism in relation to Government with law and order isn't that they did not try, that is what I commend them at the start and at least now they are trying something. If it does not work, at least one can say the Government **hied** something to solve the problem. My problem, Sir, is when there is a clearly identifiable problem and it is attended by inactivity on the part of the Government and this is one of the areas, the classic case of a Government burying its head in the sand and allowing a social problem to develop in this country and pretend it did not exist.

And now, Sir, I had said the comment on the **gangs** would be the last but it brings to mind yet another one. As I say, a word to the wise is enough. If the Government is prepared, as Catholics do, to beat their breast and say I have sinned before they get redemption... You can't get redemption before you first admit your sins. You have to beat your breast first and say, I was wrong before you can expect to get absolution. You take the situation, and I am hearing the Honourable Minister of Justice, pulling out his hair now over the crime in tourist sector and so on and some unsavoury advisory they have got from the United States. In that area they would not learn, Sir. They will not understand that you do not build up **credit** with the American Government.

Aside.

Mr. L. R. TULL: When the Barbados Labour Party as a Government, tried to bring some **measure** of order into the regime of sales and activity around the beaches they were ridiculed for a bunch of thoughtless people at the time. I have heard the Honourable Member for St. John, in one of his more sober moments, say that as a young man he said certain things on a political platform and he is sorry that he ever did it. I don't want to say what it is so don't prompt me but it is something that I respected when he could say I did something wrong, when I looked back I should not have done it and I would not do it again, Sir. 5.50 p.m.

The Government will not yet accept that it let the "Genie" out of the bottle when it behaved in the way that it behaved as a wild and reckless Opposition when we sought to set up the booths so that people would not step all over the tourists. When we put the police on the beach, the Honourable Member for St. Michael West, who is not here today attacked every single thing we tried to do to make sure that we did not get into the position in which we are in today. We were bitterly criticised by the Government. I remember, Sir, in 1985 the Honourable Attorney General brought a Resolution in here which was critical of the then Government on crime at a time when the level of criminal activity in Barbados was nothing compared to what it is now. When it was pointed out that there were certain problems which we admitted, this Government now, then in Opposition did not accept.

Sir, I want to say finally that the Barbados Labour Party Opposition is not going to adopt that kind of childish and irresponsible position that Government in Opposition adopted. Therefore, since the Honourable Member for St. James South is not in his seat, I repeat for the second time that we will support the legislation because we are concerned about it. As I said at the beginning, our support of the principle of the legislation does not tie our tongue. We will not have **lockjaws** after having supported the principle. We will then deal with other aspects of it, put it in its proper context and deal with particular clauses in the way in which we see it. We have no quarrel with supporting the principle of this piece of legislation, because concerning the whole area of the breakdown in law and order and the spread of crime in Barbados we are together. **The** criminals out there do not hit the houses by whether you are D or B. They do not trouble the girls passing the road according to whether you are B or D. Therefore, we are not going to deal with it in those terms.

Aside.

Mr. L. R. TULL: B, N and D. This House is made up of all three. Thank you, Sir.

Hen, N. K, SIMMONS: Sir, unfortunately, I was not **here** for the major speeches on the other side but I believe that I need to **respond to** some of the comments I have heard. I am glad to **see** that the Honourable Member for St. **George** South, in spite of whatever he has said, is supportive of this **Bill**. When I came in and I heard him, I really thought he was saying in effect that he could not support the Bill. Having said everything he did say, I **am** happy to see that in spite of its shortcomings he is supporting it.

The Honourable Member for St. Michael South East made mention of youth and undoubtedly we are having a serious problem with young people. I know that he spoke of unemployment as well but in our Ministry we are finding that we are getting requests from people, especially in the agricultural belt, to bring in a lot of people to work and we say no. In principle, we cannot have so large a section of the population unemployed and at the same time bring in people to work. About two weeks ago the people who are responsible for the cotton asked the Ministry if we would allow the prisoners to pick the **cotton** because they could not get people to pick the cotton and picking cotton is a very easy task. I have picked cotton myself and it is a very simple thing to do. But we cannot get people in Barbados to pick cotton. Sir, I am not saying that if we were to get people to pick cotton and cut canes that that would account for all of the unemployment there is in the country, but it would do a lot to help some of the families. I think a lot of us would like people to do things for us, but we have to admit that a lot of us are scared of the young people who come to work for us. We have to be frank about these things. People will tell you that they are scared to employ young people because they **are** not sure how they will behave **and treat** them. They **are** afraid of their whole mannerism, their approach to work and so on. That is a problem in itself.

Sir, I believe that all is not lost with the young people. I still think that there is a very small minority of young people who are giving trouble. We have got to understand that parents by and large must take the blame for who the young people are. They must. I still cannot understand that every time I see a young person who has committed a crime on the front page of the newspaper he is wearing designer jeans costing \$200 to \$250 a pair, shoes \$250 a pair, shirt costing around \$350, a gold chain for \$6 000 and he is not working anywhere. The parents are just not asking any questions. One has to conclude that the parents are really encouraging them in the foolishness.

Sir, we have got to devise ways and means of dealing with the situation. On the one hand, quite frankly I believe that the time has come when we must have some sort of compulsory youth service for people who I consider at risk. We can see them under the **trees** everyday multiplying daily. They are at risk. It might be a harsh measure but, if you are sick sometimes, the doctor has to operate. We

are in a situation where we have to operate. It is pointless only giving slight medication like a Phensic. We have gone beyond that point for people at risk. If we do not do something quickly, the longer we delay, the more drastic the action that will have to be taken. .

Sir, I am coming to the conclusion as well and I think most people will agree that we have to separate young offenders from old offenders. I think anybody between 16 and 25 years or thereabouts need to go into a correctional centre for a minimum of 3 years where we could really condition them to a disciplined lifestyle. But let me say this as well that it is pointless dealing with the offender alone. Somehow some form of counselling will have to go into the immediate family so that when the youngster returns back home he will go into an environment and understand what is happening. At the present moment, a lot of the youngsters **are** committing offences. They go to prison and they come out after 3 years and go back into the same environment. Even if a guy comes out feeling as though he should change, after three or four months he has the drugs around him and the same lifestyle around him. He might as well join it because he cannot beat it. Therefore, we have to deal with the family as well and values and family life will have to be taught to the family in order to assist the youngster when he comes out. Let me say this also. We **know** a lot about drugs and the time is right for us to have some **kind** of treatment centre here for a large number of people. We have to get somewhere to put them so that we can treat them. My view, and I am a layman in this area, is that it is pointless to keep them for six weeks. They have to go in for two or three years because the longer they stay off the drugs the chances are better for them. In that situation, **too**, you have to deal with the family because they need the family support. If we do not spend the money in the preventative aspect, we have to spend it somewhere else and that may be much more expensive than if we **try** to prevent. If you **try** to **cure** and coupled with the stigma, the fellow may go up there for a criminal offence and when he comes out he may feel that he has tasted it so it does not make any difference if he goes back. 6.00 p.m.

We have to look at the family structure, how to deal with teaching people how families should be properly brought up and the values in society. A lot of youngsters up there have no values. They see someone with a ring and if they want it they will take it. Hard luck for you! They do not understand that is wrong and we must understand that as well. Therefore, we have to deal with that.

I think I already mentioned in here some of the programmes which we have in prison, but I think we have to start at one end of the **spectrum** and move up. As we go up, then we have to deal with the situation. If a fellow commits a very serious offence, then the punishment should fit the crime, whatever you interpret that to mean. If he kills somebody in a situation where he should forfeit his

life, he should do that. That is the extreme end of it. Once they are in prison I think we should do everything possible to make sure that when they come back out here that they come back out to a family situation which understands what family life is all about. I think that is something which we must pay much attention to.

A lot has been said about this particular Bill. My understanding of it is that it is to deal with group violence. If you were to look at a number of **cases** before the Courts, you will see straight enough that nowadays it always seems to be 4 or 5 youngsters who appear on a charge. Once upon a time a fellow would go on his own and do something. Now it is 4 or 5, 6 or 7, 8 or 9. What is happening is that there is a lot of peer pressure. A fellow comes down the road with 4 guys. He might have money in his pocket but they say, "Let's take an old man." The fellow has \$200 in his pocket but some other fool with him says, "let's take this old man". The old man has \$5. Then all 5 end up before a court for robbery. Most of the cases you see or read about are for stealing little or nothing. Therefore, we have to put something on the Statute **Book** to deal with this problem of group violence. There is this charge of affray which was a combination of the old affray and unlawful assembly.

Nowadays, you cannot put \$100 **fine** on anybody now in a situation where \$100 note means nothing to anybody. They come with \$100 in their pockets. The fine has to reflect the age in which we are living and the penalty must let them know that it is serious business. That does not mean if the fine is \$3 000 the magistrate cannot put on \$600. If you put it at 6 months and it is a very serious offence he cannot put on a year because 6 months is the limitation. There is nothing wrong with \$3 000 or **2 years** or \$10 000 or 5 years because **he** can impose any sentence from no dollars to \$3 000 or nought to 18 months. So we have to understand that as well.

I know that the Member for St. **George** spoke of their attempts to curb the problems on the beaches as well. I have some ambivalent feelings about the operations on the beaches because I grew up on beaches in Barbados, and although I will admit a lot of foolishness happened on the beaches, sometimes I think we have to understand that a lot of those persons who are complaining about what is happening on the beaches want to **see** people off the beaches altogether for their own interests. We have **to** **introduce** measures which, on the one hand, will curtail the lawlessness which exists on the beach, but at the **same** time allow legitimate vendors to operate. I will never support any measure which will take legitimate vendors off the beaches. I grew up on the beaches and I **know** the problems of the beaches. Unless you have **had** certain experiences you take a lot for granted.

A lot of the complaints on the beaches stem from the fact that a lot of people who use the beach do not want

to see people like myself bathing near them. You can believe or disbelieve it. That is a fact. A lot of the complaints about people on the beaches is because they compete with the hoteliers. A lot of the hoteliers own the boutiques in the hotels as a sideline to what they are doing and, therefore, the people who sell on the beaches are a threat to them or to their earning money and so they do not want them there. They are selling cheaper than they could sell and possibly their merchandise is much more attractive than what they have to sell. People in Barbados have to understand that as well.

I believe that where people fall foul of the law they should be dealt with and, if youngsters on the beach are nuisances, then they should be dealt with. By the **same** token, if people are earning their money legitimately and not interfering with people's rights to enjoy the sun, sand and surf they should not be put in a position where they cannot earn for their families. I do not want people to believe that everybody should be **moved-off** the beaches. I believe, too, that if kiosks are to be **built...** This is where I criticise the Barbados Labour Party. The kiosks which were built by the Barbados Labour Party, or where they were supposed to be put, especially in St. James, were nowhere near where people were passing. Unless people pass in front of your shop, they cannot buy. I criticise that.

I believe that if the hotels believe in Barbadians, they have enough space on their own properties to give vendors a little corner on the hotel plot to sell. If they are really serious. A lot of them are not serious. I am sure that the vendors will conduct themselves in a manner which would be befitting of the station they hold. Give them a nice, little booth. At **Heywoods** there are booths. Do you know of any problems at Heywoods? On the St. James coast the booths were supposed to be surfside, far from where any hotel is. Therefore, the people objected. I objected **too**.

Another thing as well is that the booth must be so constructed as **to** be attractive. Not cow sheds like at Dover with no bathroom **facilities!** We cannot have that. People object to it, especially when they have those facilities in their own homes. You go to a cow shed and you cannot even wash your hands. You cannot go to the bathroom as there is none provided. People cannot accept that. In that **respect**, my views and those of the Opposition do not mesh.

That is only in passing. Mr. Speaker, although we have had an increase in crime I am happy to say that the statistics for April seem encouraging. I speak on this occasion of crimes against visitors and I want to go back to November when we put the Task Force into operation. In November 1991 there were 64 offences against visitors; December 1991 – 85, January 1992 – 66, February 92 – 81, March 1992 – 73 and April 1992 – 48.
6.10 p.m.

Aside.

Hon. N. K. SIMMONS: Those figures do not give a breakdown. I think I should explain that we are still very concerned about robberies against visitors which is the most serious crime because we have no murders at all against visitors in that 6 month period. Wounding of a serious nature in the 6 month period there was one in November, two in December and one in February. Rape: there was one in November, one in January and one in March.

The crime about which we are very concerned is robbery. There were 7 in November, 22 in December, 10 in January, 14 in February, 5 in March and 15 in April. This is the one that causes us a lot of concern. That is why we had to ask the police officers to work 12 hours a day for greater coverage.

I would like to say as well that what we are trying to do with the police officers is I hope that in another month or so we would be able to allow them to work their normal 8 hours as we would have put things in place to compensate for the reduction in hours by the police officers.

I would like to say as well too, Mr. Speaker, although we would hope that there is no crime at all in Barbados, we have to understand that when we look at these figures we have on average, up to 1991 – I **am** not quite sure what the figures were this year but I would guess that last year we had over 3 000 long stay visitors and over 3 000 cruise ship visitors so that 48 crimes in that context is relatively low. That is why I am saying that I **am** very concerned about the advisory. I **am** not saying that the crimes did not go up against visitors but the rate is very low. One has to wonder if there is more to it than meets the eye.

Let me tell you something, Mr. Speaker. I say this because I received a fax yesterday or some time. That **fax** was sent to all the cruise ship operators that come to Barbados. You know what that fax said? It said that the police have accepted that the helicopter was shot down. It further said that the pilot...

Aside.

Hon. N. K. SIMMONS: What I **am** saying is that they are all **untruths**. None of those matters will go before the court. They also said the pilot was shot at the back of his head. They said that the bus that was shot at...

Aside.

Hon. N. K. SIMMONS: I **am** saying that there is no truth in what was said. It is wicked. It is a deliberate act to discredit and pull down Barbados. None of those things will come out before the court. I understand what you

are saying but I think we must **know what** is happening in this country. There are people who are determined for whatever cause to pull down this country. Barbadians must come together to defend their country. Let me say this. Whether this party rules this country or that party in 5, 10 or 15 years, they still have to pick up the pieces from whatever people do. Even if they support the other party when the pieces are broken up you cannot pick them up. We have to tell them that. We have to be very careful. I thought I would read those crime statistics for you.

I would also like to say that we have seen a significant decrease in overall robberies from January of this year to April which means, and I would like to think,, that the actions taken by the police and the Commissioner of Police **are** bearing **fruit**, but **we cannot** hold up.

I want to thank you, Mr. Speaker.

Mr. H. deB. FORDE: Mr. Speaker,, I really thought that after the admirable speech made by the Honourable Member for St. Joseph and the other members on this side there would have been no need for me to intervene in this debate. I believe that the position of the Barbados Labour Party on all these issues has been very clearly stated and although we accept the principle of this Bill and of the need to strengthen certain areas of the law in **relation** to criminal offences in so far as the law **is deficient** at the moment, we must also, at the same time, issue the caution that we also must **bear** in mind that we need to preserve fundamental human rights in the country.

The approach which the Barbados Labour Party has taken on this matter is one of **firmness** and one of enforcing the law once a person has been found guilty but at the same time one of balance. That has come through very clearly in the outstanding speeches made on this side of the House. I would really hope that the speech made by the principal spokesman on our side receives the attention of the public at large and the publicity which such a speech should get at this time because it certainly offered the country a clear-sighted view of where we should go and a clear-sighted statement of the party's policy on the matter.

Now, Mr. Speaker, I really must remind this Government that it ignored the clear warnings which were given by the Barbados Labour Party to the Government about what was happening to law and order in this country. You, Mr. Speaker, would have heard from your position in this House the several statements made by the Honourable Member for St. Thomas on this subject and his clear statements on the policies which he would expect an enlightened Government to have followed. You would have read, Mr. Speaker, in the Press, the numerous occasions on which from public platforms we have articulated a policy on law and order and have done so in the context of not merely being critical of what was going wrong in the

society but offering concrete suggestions and solutions to some of those problems.

I have, before I go any further, to respond to a few things which were said by the Honourable Member for St. John.

6.20 p.m.

It is not **true** that the Barbados Labour Party did nothing about law reform. That just is not true. There was very little substantial reform taking place in Barbados between the years 1971 to 1976, very little. The records of this House and the Laws of Barbados would show that there was a tremendous surge in law **reform from** 1976 right up to 1986 so much so, Mr. Speaker, that lawyers spoke of a surfeit of law reform and said that they were having great difficulty in absorbing the tremendous changes that were taking place in law reform. My colleague and friend the Honourable Member for St. **Joseph** has used the phrase, they spoke of legislative indigestion.

Sir, let me say that the impetus for the reform of the law during our time came from a series of steps which were taken when I was Attorney-General. The files bear them out. The Honourable Members can check the words which I utter and they will find every word is **true**. We obtained assistance from the British Government **under** their Technical Assistance Programme, the gentleman who was sent to advise us was a gentleman called Mr. **Maini**. He was assigned to my Ministry for a **period of between** 2 to 3 years. In addition I sought the assistance of **Professor** Jones from the University of **Aberyswyth** in Wales to advise and do research into crime and criminal conduct. Those reports **are** still in the Ministry. I **set** about as a result of his recommendation training people to do exactly this type of research and work.

We researched as, well some of the causes of crime and the need to reform the law. The person who **headed** that committee was Mr. **Delroy** Chuck who was then **the** Senior Lecturer in Law at Cave Hill and his **specialty was** criminology. That report was made a document of **this** House. In addition to that we started to draft several of **the** laws, I am not going to go into the body of them – which the Honourable Member is now bringing before the, **House**. Later we will be giving consideration **to** the Criminal Damage Bill – I am not anticipating – the Offences Against the Person Bill and the Theft Bill, among **others**.

The Honourable Attorney-General, **the** Honourable Member for Christ Church West **Central** can **confirm** that every statement which I have made so far in this debate is correct. Indeed tremendous consultation had taken place on this legislation. People sometimes get excited and

suffer from hysteria. I **speak** not in pejorative terms. I usually speak in sane, quiet, straightforward language.

So that when I hear the Honourable Member for St. John get up in here and say that the Labour Party did nothing, it is just not true. When it came to law enforcement history will show that by 1976 the police force was virtually demoralised. Once again we set about looking at the Police Force, its structure and organization, listening to the recommendations from the officers of the force and others. You will find – the Honourable Attorney-General could compare this – that in addition to the experts from Barbados that gave advice on law and order and crime, public order and a whole host of things that we had the assistance of the British Government. There is a report that I will not go into its details because it is still a secret report but a very useful report which guided our setting about reforming the Police Force. I am still to find one new measure that has been brought before the House since 1986 in any way which deals with reform or strengthening the Police Force. The increase in numbers to 1 200 was completed by 1985 and I started the process in 1978. Immigration, court processing, purely administrative matters were all taken away from the police. We increased the number of the police from then 800 to 1 000 by the time that I had left the Cabinet, or 1 100. The other two hundred came in the second term. In addition, Sir, enforcing the Public Order and other Acts we also set about increasing police aids and the obvious tools that the police needed on their job. In addition to improving the physical conditions under which the police did their work and operated. That is history.

When you hear in a debate such as this the Honourable Member for St. John speaking so glibly, it is either because, unlike the Attorney-General he has not had access to the files, or he may be just out to make a political point that has no basis in fact at all. I thought I must put that right, Sir.

But I want to go back to the actual wording of this Bill in detail and the purpose of this Bill. Each one of us today has to react to the feeling in the community that there has been a breakdown in law and order. What pains me is that when that statement about the breakdown in law and order was made a couple of years ago from this side of the House and made by me on the public platform, the Honourable Member for St. Michael South at a DLP convocation described the statement as a lie coming from me as Leader of my Party and that I should be ashamed of it and that I should resign as leader of the Party. I have to put all this in the record if only for history sake. Either the Honourable Member for St. Michael South had no vision, he did not understand what was happening in the country or again, like the Honourable Member for St. John, his only interest is to score a political point and propagandise. I cannot, in this House, accuse him of being deliberate in the way in which he approaches such a matter. But I am

glad that tonight the Government **has** had to admit that the breakdown in law and order in Barbados has reached the stage where they must be drastic steps taken to deal with the problem.

I am glad that history has proved me right on this issue as it has proved me right on the issue of the International Monetary Fund. I am very glad about that. But I am sorry that I have had to be proven right in both cases at the expense of the public and people of Barbados. That is why when the Opposition speaks on matters **such** as these, although we will give the Government our support in principle we must have reservations sometimes about how long it takes a Government such as this to recognize when things are going wrong.

The Honourable Member for St. **James** South singled out a few areas of his concern. One was the beaches. I want to use this as an illustration of what I mean and the differences between these 2 Parties, the Barbados Labour Party and the Democratic Labour Party. We recognized in the period, I believe it was 1981–1986 that problems were occurring on our beaches among not the legitimate beach vendors but those persons who would use the opportunity to **harrass** people. It was bound up as well with the question of race. Do not let us fool ourselves about this. The easiest thing when you try to enforce the law in circumstances such as this is for someone to say that you are a white man's stooge or that you only like white people.
6.30 p.m.

Unfortunately we heard those cries coming from the Democratic Labour Party supporters. Unfortunately we saw, in this community, an approach that because the Barbados Labour Party felt that on the beaches of Barbados there had to be law and order, just as there had to be law and order on our streets and in our homes, unfortunately the Democratic Labour Party gave succour and assistance to those who misrepresent the position of the Barbados Labour Party.

Sir, I am a lover of Gabby's **calypsoes** and I like him personally but I was deeply disappointed in the philosophy represented by the calypso "Jack" and 'Dah Beach is Mine'. I believe that song sent a **wrong** message of what was being done and what were the **m ssages** at the time. Although I agree there must be poetic licence, yet what disappointed me is that the Democratic Labour Party leaders did not show the vision of distinguishing between political short term gain and the long term national interest of Barbados. When we make the point that the breakdown in public order and law and order on the beaches was because of the way in which politicians in public approached their task the Democratic Labour Party have to take a share of that.

I represent a constituency, Sir, in which a large number of my constituents **earn** their living from tourism and on the beaches. I listen to their view, black, white, brown, blue; some of them property owners, the large majority non-property owners and just workers. Their concerns were being conveyed to me by them about our failure to deal with beach harassment. I am not dealing, Sir, merely with visitors to Barbados, I **am** dealing with normal Barbadians who go on the beach and see the problems that were **occurring**. The duty of a Government is to deal with that and to deal with it promptly. We don't allow it to be to a crisis proportion and then be told we have not got enough policemen and we are not doing this and that.

I hope, now, that the **Democratic Labour** Party has learnt the lesson that there **are** certain areas of national life and national conduct in which the self-interest of the Party must stay a long way behind the national interest of **Barbados**. You see, Sir, if I was not a person who tried to suppress bitterness I would feel bitter about a lot of things that I hear said about me in public life or in relation to statements I make. I would really feel bitter.

Mr. Speaker, Sir, **sometime** in **October/November** last year I received a telephone call from a top legal adviser to a large American firm. When I say large it is one of the biggest companies in the United States and I was receiving a call from the investment **arm** of that company. If you are putting a proposition to the investment **arm** to borrow anything less than **US\$20** million do not put it, Sir, because it would not be worth the while of their staff to investigate that so I am giving you some idea. The legal adviser, a lady whom I have known for several years, informed me that the company was thinking of coming to Barbados on a convention but had received a notice **from** the State Department about the crime situation and there was great concern and could I clarify this. Sir, I took my information and I sent my dear wife to convey the information to the Tourist Board.

Mr. Speaker, if I did not believe in Barbados more passionately than I believe in my party or even myself, I would have used that information on the public platform. At the time we were holding a series of public meetings and I recall the occasion very well because I was speaking at Chapel Gap between the border of the constituency of the Honourable Member for St. Michael East and the Honourable Member for St. Michael South East, but I resisted that temptation. I got back the **fax** with a compliment slip. I have never had a word saying thank you for the information. What I understand, through the grape vine, is that it was being said in **DLP** circles that that was a hoax.

Mr. Speaker, Sir, it is only a couple of days that for the first time I revealed that information. It is symptomatic of two things. The Government cannot distinguish when the

national interest is higher than party interest, either with other people or with themselves and that is their problem. When the Opposition comes in here and says it will support the Bill in principle it probably will take them by surprise because had they been sitting this side the Government would have been **bringing** the country to its knees in similar circumstances. That is the difference. It is a very fundamental difference, Sir. I **am** not **asking** them to write back and thank us. What I **am** surprised about is that they did not investigate and take the warnings sufficiently seriously to have found themselves in a different position until they got the United States Advisory, Sir.

The emotional and ridiculous reaction of the Prime Minister when he spoke on Sunday in the constituency of the Honourable Member for Christ Church South, about he does not want stooges, is symptomatic of the Prime Minister's split personality when it comes to these matters. In one breath he would come into the House and ask us to give him support and he wants a national position on the situation. In the next breath he will make the sort of political comment that is offensive to say the least to people like myself who have spoken on the matter. I do not know why he believes he can get away with it all the time. When I speak on a matter such as this I **am** as much a patriot and as strong a nationalist as the Prime Minister could ever be, so he must understand that when he throws out these sleight of hand, these slights and what not, that he is speaking to his **friends**, not to me.

Hon. M. A. KING: The Honourable Member accuses the Honourable Member for St. Michael South of throwing out sleight of hands. Sleight of hands cannot be all right. Sleight of hand is trickery.

Mr. SPEAKER: The Honourable Member has risen on a point of order and I think ...

Mr. H. deB. FORDE: If the Honourable Member wants me to change the phrase, Sir, I have no difficulty with that, because I want to get on with the debate. I want to make my position clear. After 21 years in politics I am not going to listen to the like of the Honourable Member for St. Michael South **talking** about somebody is a stooge. I have stood up to the United States Government when I was Foreign Minister. I am not weak kneed like himself and can't make a decision about anything. He must understand that. Go and read the records of my times, standing up on the base issue, when people were objecting. All sorts of issues in this country and that is what I want to be clearly understood, Sir. He will get the cooperation of the Opposition in principle. He will get it on the national interest and he will get my personal consideration.
6.40 p.m.

But he must raise the debate sometimes. Whenever he is in his political domain, hit you with one and then come in here and say how you must lift the debate and take

a high ground. That is finished and that is part of the signals that we are sending to the community. When we send those signals to the community, the very young people that they are now passing legislation to control in the gangs do not understand why its leaders are speaking in so many tongues about the same thing. Sir, if we want to get the young people less confused, let leaders choose what are the correct national issues on which we should not be partisan and what we should really fight on. The best person to set this is the leader of the Government and I say that within the last few years he has sent the wrong signals. That is part of the problem we have with law and order in this country.

Sir, when we moved the people from Rockers Alley, we were subjected to criticisms. The Democratic Labour Party said then that we were only on the side of the white people. That is the racial foolishness which they continue to show in the public domain every time you have to act strongly in this country to deal with issues. There has been nobody more maligned about this white person notion and they say how I **am** white minded. Are we going to learn to take those things away and really deal with issues properly? I say to the Government that you can win elections but you can also go down in history as having ruined the country. I say that very clearly to the Government. I have always been clear in my mind. I have no difficulty with these issues, Sir. I **am** glad now that we are going to have firm leadership on the beaches of Barbados. Tourism is the only sector of the economy that we can move and move quickly to get us out of the morass into which we have found ourselves. We must, therefore, try to secure it.

Sir, I **am** concerned still about the level of crime and, although the Honourable Member for St. James South has spoken about a decrease in the overall level of robberies from January this year, my information is that it is still too high **as** compared with the year before and the year before that. The nature of robberies **has** changed. Sir, let me take another example of where the Government has sent the wrong signals in this community and that is why we now need legislation rushed through in this way.

Sir, I will take example on the issue of gangs. We came out and told the Government that we saw gangs evolving in Barbados. The Honourable Member for St. Thomas then made a statement about it. We were contradicted and we were told that there were no such thing as gangs in Barbados. The Honourable Member for St. James South said, **too**, there were no such thing as gangs. Mr. Speaker, if one thing is clear today, it is that the Government is now convinced that we have lawless gangs in Barbados and that gang warfare has reached the stage where the Government must bring this type of legislation which is tremendously tougher than any legislation that has ever been on the statute books dealing with affray, insulting

or abusive language in the history of this country. That much is clear.

Sir, this legislation is based on the English Administration of Justice Act which amended their Public Order Act, I believe, in **1986**. **Mrs.** Thatcher was forced to bring similar legislation when she had gangs roaming the streets and attacking people at football matches, going across Europe and **disrupting** games and there was a tremendous increase in street warfare. That is the history of the legislation. If you look at it, it is almost **verbatim** from the British Public Order Act Amendments introduced in **1986**. In fact, the judges are still grappling with some of the language, as the Honourable Member for St. Joseph said, in order to determine what some of the **language** means and how far the present provisions impact on and infringe fundamental rights. If there was a note of caution coming through from this side in the speech of the principal spokesman and the other speakers on this side, it was that a lot of this legislation is new and we really cannot **as** lawyers appreciate fully at this stage its implications **as** it may go over the limit and affect fundamental rights provisions. I think, **as** a lawyer, the Honourable Attorney General will understand that statement and share the concerns which we share about it. We are reacting and responding to an urgent situation. But I do not believe that we should shut out of our minds as legislators the need for constant review in case it is necessary to strike a **correct** balance again.

Sir, we have the gangs in Barbados and we believe on this side that we must stop the type of conduct that we have seen in the community. We must not allow the problems that are now confronting us to continue to escalate beyond recognition and we must provide the urgent solutions to them. I am going to repeat for the Government's benefit what I have said **on** the public **platforms** and in this House during the time of the election. The Labour Party is still prepared to serve and to nominate persons to serve on a non-partisan commission to study the whole criminal justice system in this country including the issue of crime. There are several reasons in our community sometimes why sentences are not being enforced promptly. There are delays in the law. Enough money at times is not being made available for the maintenance of law and order. It is only now seeping into the feeling of the **community** that law and order is as much a matter of economic development as manufacturing or industry is, because neither tourism, manufacturing nor agriculture can operate and make a contribution to **the** country unless you have stability in the streets, beaches, public places and in the homes. That is fundamental.

6.50 p.m.

There is **an** important **developmental** role for law and order and when therefore you have from time to **time** to study and reform the Police Force it is not because you want to waste time, it is because you recognise that

unless you have the enforcers of the law there you are liable not to make money at all. The **same** goes for the judiciary and the judicial process. There is no point people getting emotional as moderators to the call-in programmes and attacking some people for saying that you have to balance firmness with making sure you do not go over the border and put people at risk unnecessarily as well.

Therefore, I hope the parties can **agree** that in future when it comes to the issue of law and order we have a clear vision of where we are going to go and we also have decided to put adequate resources at the calling of the administration of the justice system of this country. I think it is important as Leader of the oldest political **party** surviving in the English speaking Caribbean, with our years of history, our legacy and our experience, to put a few things absolutely clear.

I am concerned as well about where law and order breaks down, not merely manifested itself in gang warfare and harassment of people, but where law and order breaks down in which justice is not done to people. People forget that there can be a breakdown in law and order where the system functions in an arbitrary and unjust manner as well. Frequently I have to remind them of this.

The United Kingdom, which we always cite as a precedent, is today faced with a position where the Minister of Home Affairs has referred to the Court of Appeal and to the Director of Public Prosecution for study some 800 cases of persons who had been convicted for murder and other serious criminal offences whose cases they now believe manifest nothing but a **miscarriage** of justice. In other words, the persons have been wrongly convicted. A Mrs. Ward after 18 years of being convicted for murder – there is no capital punishment in Britain so she was on life – they have now found that her conviction was wrong. The Birmingham Five and another group of people. There are 800 such cases. Therefore proper judgment and proper management of the country's justice system has not only to enforce the law in order to deal with those who break the law in their own interests and against the public interest, but it has at the same time to ensure that when the law is being enforced that those who are genuinely innocent will not suffer because of the justice system.

It is in that light that my party gives its support to this Bill, counselling the Government, however, that some of the measures are not even clear to us at the moment. It is not even clear to us in relation to some of the measures as to their full implication for the justice system. I would like to see today, and I say this to the Attorney General, and I have said it before in this House where that provision of the Constitution in which we have been maintaining existing laws, Section 26 of the Constitution... If you have an existing law even if it is **contrary** to the fundamental rights of the citizens of this country, that law is still valid. We are now in our 26th year of independence and we

should be able to pay the cost of **examining all** of our **laws** to ensure that they conform with our fundamental rights because eventually the only safe arbiter between citizen and citizen and subject and subject is a law court that is **free**, a police system that is honest and not corrupt and a system of justice that is well balanced and serves those who are offended as well as those who are accused of offending but are offenceless.

I thank you, Mr. Speaker.

Hon. M. A. KING: Mr. Speaker, a number of points have been made during the course of the debate. The Honourable Member for Christ Church West got into a lot of the politics of the debate which I do not think I want to deal with. One has to recognise that the issue of crime is not an issue which springs up overnight or which can **be** dealt with overnight.

The point has been made by the Honourable Member for St. George South that in 1985 we on this side did bring a Resolution to this House on the issue of crime because our perception was at that time that there was a serious crime problem, but one can say that what you are seeing now is the result of all that has been developing down through the years. I think that is the way we have to **look** at the whole issue of crime. It is not something which springs up overnight.

Asides.

Hon. M. A. KING: With all the comments we make about crime we have to view what is happening not only in Barbados but throughout the world as a continuum. We would be foolish to think that we in this small country can be isolated from all the development in crime which is happening the world over. Look at all the countries in the world and you will **see** dramatic escalation in crime which has taken place right down through the years. This is not to excuse what is happening in Barbados. We have to **find** a way of dealing with the problems with which we **are** confronted.

In essence the Honourable Members from the other side say that they are supporting this Bill in principle but I am understanding from the comments they **are** making that there may be some areas with which they **are** concerned. They talk about what they perceive to be uncertainties in certain **areas** of the Bill. The **excesses** of sentencing is one thing. You talk about excess of sentencing in one breath and in another you are saying that we are **going** soft on crime and not providing for serious enough sentences in areas. The sentences are discretionary and they are not mandatory. The judiciary still has a role to play in the matter to look at the issue. A maximum limit is **fixed** and within that limit the judiciary certainly has the discretion to look at all the circumstances relating to

any case and to make a decision on a sentence which is appropriate within the context of what is fixed.

When one looks at the offences, as has been stated in the Bill – Honourable Members on the other side criticised the matter saying that we copied the legislation lock, stock and barrel from the British legislation but has not that been the pattern with most of the legislation which we have used in this country? We are guilty of copying a lot of British legislation. You **are** just as guilty in copying.

Asides.

Mr. SPEAKER: I am having a little difficulty hearing the Honourable Member.
7.00 p.m.

Hon. M. A. KING: They will not put me off, Mr. Speaker. I am saying that all sides in this country **are** just as guilty of copying legislation lock, stock and barrel from other jurisdictions. Sometimes when we try to fashion legislation which is appropriate to our own jurisdiction you hear comments from the professionals. Well, you have a history of judicial decisions on particular legislative drafts and it is easy to follow the judicial decisions which have been a result of the legislative drafts which are currently in existence.

Now, arising out of the British Public Order Acts there have been certainly a number of decisions which have come through the courts right up to the House of Lords on interpreting various sections of the Public Order Act of **1986** and of **1936** which would be relevant in interpreting our existing Public Order legislation. There are a lot of cases, not one or 2. There are several cases which have been decided on the British Public Order Act of **1986** up to this date which interpret practically every section of this legislation. The comments of Honourable Members that they are not clear on the meaning of the words in relation to the legislation can only be a result of not being fully aware of the decisions which have taken place in the legislation since its passage.

There is a useful book which I have looked at, Mr. Speaker, called "Offences Against Public Order." It is a relatively recent book which is a commentary on the total background of the Act which refers to a whole lot of the cases and decisions which have been made and which makes these things, in my view, fairly clear.

I believe it was the Honourable Member for St. Michael South East who commented on this section relating to using threatening, abusive, insulting words and disorderly behaviour. I believe the Honourable Member for St. George South too did make a comment in relation to recognising the social environment in which you live, what happens and how people are inclined to behave. Let us admit that existing legislation on our statute book does

prohibit using threatening, abusive and insulting words and behaviour.

The Highways Act, Mr. Speaker, at Section 44, does contain proscription against making use of obscene or indecent language, blackguarding, swearing, even quarrelling, making use or causing to be made any disturbance or annoying noise. The point I am making is that qualitatively a lot of the offences to which reference is made and which are stated in the Act are already in one form or another legislated in existing law as it relates to individuals.

The point about this legislation I was making earlier on is that it is legislation which deals with group disorder. You are dealing with situations where groups are engaged in this kind of unlawful activity and where it might be difficult to pinpoint and identify individuals within the group who are participating in this lawless behaviour.

The other point about this legislation which I will draw to the attention of the Honourable Member for St. Michael South East about which he was concerned in relation to the Public Order legislation, it is not only the using of threatening, abusive, insulting words or behaviour which is penalised but it must be such words which are used within the hearing and sight of another who is likely to be caused alarm or distress thereby.

The proscriptions under the Highways Act do not provide for that latter part, the causing of alarm or distress. Using the words themselves are prohibited and penalised. But the public order aspect of this is the using of those words in situations where you are going to cause alarm or distress to others. That is the public order element of the legislation.

In relation to the offence of fear of violence, the same considerations apply. The distribution or display of signs or other visible representation that is threatening, abusive or insulting must be such that it is done with intent to cause another person to believe that unlawful immediate violence would be used against him or any other person, or with intent to provoke the immediate use of unlawful violence by any person, or with intent that any other is likely to believe that unlawful violence will be used or that it is likely that such violence would be provoked.

What the legislation is essentially doing is dealing with related offences which, in other areas of the law, are clearly punishable when proven to be done by one person but this is providing a legislative framework for dealing with a similar kind of problem when it is done by groups. If you are going to say that a number of the elements of the offences hereby constituted for one reason or another creates infringements in relation to the people's rights, are you going to tell me also that the existing laws as they stand on the statute book create the same problems

for people in relation to where the actions are committed by individuals?

Now, the Honourable Member for Christ Church West says that when they **talked** about crime we did not take the matter seriously and that we did not take the matter of the criminal law reform seriously until the issue of the American travel advisory. That is a lot of nonsense, Mr. Speaker. They are actually saying that this legislation was put together...

Aside.

Hon. M. A. KING: Mr. Speaker, Honourable Members who suggest that this legislation is here as a result of the American **travel** dvisory are being ridiculous. It is a ridiculous statement to suggest that it is any result of an American travel advisory.

Mr. H. **deB.** FORDE: Mr. Speaker, on a point of order, if the Honourable Member would give way. The Honourable Member should not just characterise such a statement as ridiculous because the Honourable Member is aware that the Honourable Member for St. James South said that the Americans were aware of certain steps which could be taken and, therefore, that is the basis on which there was some argument. I wonder if the Honourable Member would say as well whether there has not been another government that has issued an advisory.

Hon. M. A. KING: Mr. Speaker, I **am** not debating any advisories. I am responding to what the Honourable Member has said to show that his arguments are totally unreasonable. If you believe them, they said they had this legislation drafted since 1983-84 and that it is now being rushed through.
7.10 p.m.

These Bills, Mr. Speaker, had been laid in Parliament now for some considerable time. They are not being rushed through. We have given the Opposition and Parliament a lot of time to have these matters debated.

The Honourable Member for Christ Church West and one or two others on that side want to make an issue of this gang talk. They talked about gangs. The Honourable Members on that side talked about gangs in this country and said that we wanted to shut our eyes to that.

Aside.

Hon. M. A. KING: I may be a one man gang. I **am** not going to get into any dialectic, Mr. Speaker, about gang talk. We have a habit in this country of trying to imitate what happens in other places. We always do. In America there **are** a big lot of gangs, big, cruel criminal gangs all over the place so we feel that we must call what happens here **as** gangs too.

When I was in the United States and gave that interview and was asked about gangs, I made the statement. If you look at the whole thing you would understand that I said, look at the newspapers and that there were a lot of lawless young people running around in groups and that that is a problem which has to be dealt with.

Asides.

Hon. M. A. KING: What does it matter whether you call them gangs or not? Do you want to promote these people?

Asides.

Mr. SPEAKER: I am having difficulty in hearing the Honourable Member.

Hon. M. A. KING: You want to make these people important. Call them gangs. Make them like the big, tough people in the United States who really and **truly** terrorize, fight, beat up and "**lick**" up and mash up everything.

Asides.

Hon. M. A. KING: They are really and truly well organized. You would remember, Mr. Speaker...

Asides.

Mr. SPEAKER: I cannot hear you because it seems to me as if I am having a little....I will just ask Honourable Members to be a little bit quieter.

Hon. M. A. KING: You would remember, Mr.. Speaker, that in this country in the old days, people who worked hard in the sugar cane fields used to be called gangs. You had a plantation gang here and there. If you are saying that any group of people is a gang well then we have a whole lot of gangs all over Barbados. You have the capital gang.

If you watch **CNN** you hear there are interviews on discussion programmes with the capital gang. We like using Americanisms. We like to follow America so much that we want to use the terminology. We want to call the lawless vagabonds we have running around here doing a bunch of criminal acts, disorganized, lawless and ruthless. You want to elevate them. Hoodlums, call them that, thugs. All of those are appropriate words.

Aside.

Hon. M. A. KING: No, no, no, no. Did you not hear the Silver Hill people say that there are not any gangs out there? You did not hear the Silver Hill people say so. But you want to elevate these people and give them status and make them big. This is the **Bajan** psychology. Make

them big and powerful and call them gangs. They feel good. The truth is that they are a bunch of lawless criminals who need to be dealt with. They are not that well organized that you cannot dissipate them.

Aside.

Hon. M. A. KING: I have always said that the surest way of preventing crime is to create in the minds of criminals the certainty that they **are** going to be caught and that they are going to be punished. If we do anything in this society which gives them the impression that we are not keen on catching them or that they can get away and come back and commit crimes over and over again, if we do that in our society and the criminals do not feel that they are going to get caught and get punished they will continue to do the violent acts and the foolishness that they have been engaged in. That is how we have to deal with them. Do not promote them and build them up and call them all this fancy gang and **all** that. **Deal** with the people that we have to deal with. We have to recognize, Mr. Speaker, that we have a problem which we have to deal with. Whether it is a Democratic Labour Party Government or a Barbados Labour Party Government and there is crime, we have a serious problem which we have to deal with.

The comment has been made over there, from the other side, that we are following the Thatcher legislation. When one looks at the history ...

Aside.

Hon. M. A. KING: The Honourable Member for Christ Church West said that when one looks at the history of the legislation that this is the type of legislation which the Thatcher Government found it necessary to pass to deal with the wild gangs and the hoodlums and so forth that were running about Britain, the violent people who were smashing up trains and the football hooligans and that **kind** of thing.

From listening to the Honourable Member – I may be entirely wrong but – I began to get the impression that the Honourable Member was saying it was alright for the people to engage in lawlessness and that it was not necessary to pass legislation of this kind.

Asides.

Hon. M. A. KING: I **am** not hearing well.

Mr. H. **deB.** FORDE: On a point of explanation, Sir. The Honourable Member is obviously distorting my speech. I could never condone, under any circumstances, gangsterism, hooliganism or **hoodlumism** of any nature. I would not wait until the United States Government has issued an Advisory or indeed as the British Government, I

understand, has now issued an Advisory on the matter to deal with these issues. That is what I was saying to the Honourable Member. I was saying to the Honourable Member that the legislation comes in the context of a deteriorating situation in law and order which the Government has been very slow to recognize. Just as Mrs. Thatcher had, eventually, to deal with gang warfare.

Aside.

Mr. H. **deB.** FORDE: The British Government has issued a travel advisory similar to the United States. You might address that.

Mr. SPEAKER: That is three interruptions in one.

Aside.

Hon. M. A. KING: Mr. Speaker, what is the purpose of the reference to the Thatcher approach to dealing with the problems of crime, as she perceived them in Britain? If there is crime in Britain which has to be dealt with and has been dealt with in the way in which Mrs. Thatcher sought necessarily to deal with it that is the British business.

If we have a problem of crime in Barbados and we have difficulty of groups of young people who are engaged in lawless activity and doing lawless things and who have to be disciplined, what is wrong with passing appropriate **legislation** to deal with that kind of problem which exists. Are you saying that this type of legislation is not appropriate? What are you saying? Are you saying that we should not pass this type of legislation? That the legislation should be formulated in some other way, in some other fashion? What are you saying?

This is the type of legislation – do not let us fool ourselves in believing that you need to **reinvent** the wheel at every **point** in time and that you can be original every step of the way. You can be dissipating a lot of your energy if 'there is an appropriate model somewhere which can be used and which can be effective in the circumstances and you choose to ignore it.

7.20 p.m.

Mr. Speaker, reasonable people will understand the point I **am** making so that I would just urge Honourable Members, in looking at this legislation to remember that there is a history to the legislation. It developed out of the British Public Order Act of **1936**. There has been a considerable amount of case law in relation to the legislation since **1936**. There has been a considerable amount of case law on the legislation since **1986**. I am saying, Mr. Speaker, that in relation to practically all of the offences which currently exist in the present Bill there are corresponding offences when committed by one person. This provides for penalising activity in the group situation.

I remind Honourable Members again as I started earlier that the offence of affray which had fallen into disuse and which was revived by the British in the common law arena, not statutory, in the 1950s and which was extended considerably by the House of Lords beyond its original concept and all those extensions were subsequently embodied in the British Public Order Act of 1986. All those extensions of the common law by the House of Lords would have been just as applicable in Barbados today because if we relied on the common law of affray and remained in the common law jurisdiction, certainly our system works, and I have no doubt that our courts would be inclined to be guided by the House of Lords decisions in the extension of the offence of affray in the various ways in which it has extended.

In essence then, the offence of affray, as is embodied in this Public Order Act, is largely the common law and the departure from the common law, Mr. Speaker is in relation to the penalty which, admittedly are a bit more serious than the British counterpart. Having said that, they are not mandatory sentences, but sentences which may be applied by the courts using the discretion after looking at the appropriate circumstances.

Aside.

Hon. M. A. KING: No, the lesser offence can be ... The order in which they appear the most serious and violent disorder are then perhaps affray which is the one which is done indictably and then the lesser ones which would be harassment, **alarm**, distress and fear of violence, those carry a lesser penalty and the earlier ones can be reduced. A conviction can take place **on one** of the lesser ones in the section.

In my view, Mr. Speaker, the legislation although again the Honourable Member for St. George South **talked** in terms of the abuse which can be made of public order legislation and spoke in terms of locating this legislation in a public order Act, particularly the offence of affray, which I believe it **was** Professor Granville Williams who thought that the offence of affray is one which is, perhaps, most akin to offences against the person and one which could easily be located in the Offences against the Person Act.

The whole point is, Mr. Speaker, that these are a series of group disorder offences and it would seem rational to embody them in legislation and in a statute where they properly belong. When the original draft of this Bill was considered and there was a committee consisting of members of the Bar Association and other professionals who looked at it, when the original Bill was conceptualised the offences were embodied in the amendment to the Offences against the Person Act and when it came to me my reaction was that the offences looked all right but they should properly, in my view, fit in an amendment to the Public Order Act where they properly belong. I think we

have to get out of our psyche this idea of using emotive concerns when addressing public order issues. These offences are public disorder offences and they should properly be structured in a Public Order Act and we should not seek to dissemble them and to conceal the **true** intent and **purpose** of the legislation by locating or seeking to locate them in some other legislation. So, **as far as** I am concerned this is where they belong and this is where they should be legislated. One should not use emotive arguments which are based purely in emotion to seek to discredit the legislation and I would urge, Mr. Speaker, that the House, in an effort to show its commitment to dealing with the problems of crime in this community and sending a positive signal to the community that the **types** of group disorder which we see in this country will not be tolerated and in that context we should give our unanimous support to this Bill.

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. P. M. GREAVES, 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.

Clause 1 was called and passed.

Clause 2 was called.

Hon. H. B. St. JOHN: Mr. Chairman, Sir, Clause 2 is the interpretation section and we have great difficulty, Sir, with some of the concepts underlying this Bill. The concept of a person of reasonable **firmness** is **the** one that is far too nebulous and difficult to determine. Because in our view, Sir, there will be various views depending on who is the person having to decide on the matter **as** to what a person of reasonable firmness means.

We also have difficulty, Sir, with the concept of an affray being committed in private. It seems to us that, unless there is a connection between the affray such as the **affray** originating in a public place and then moving on to a private place, it is wrong in principle to attempt in this legislation to introduce what is in essence an attempt to invade the rights hitherto regarded **as** being sanctified by the fact that they took place in private. It is very difficult for us to agree to the concept that it is necessary to legislate with respect of an affray taking place in private.
7.30 p.m.

Sir, that is a new departure to the law relating to affray and it is not a good enough excuse for me to suggest that it is embodied in the English legislation. I am convinced in my own mind regarding the previous scheme of legislation in Barbados, whether it be the common

law or the law relating to the Highways Act which we had on our statute book from 1900, that deeply ingrained in the public's mind of Barbados is the need, necessity and acceptance that conduct which creates a feeling of fear in the mind of people should only be punishable if that conduct is such as has taken place within the public purview. The privacy of a person's home is a matter, unless there is actual physical harm done to someone, is something which to **date** has not been the subject of legislation. There is nothing in any of the examples of conduct which one wants to prevent, as outlined by the other side, that leads me to come to the conclusion that it is necessary to go as far as bringing matters which occur in private into the same category as if they happened in public. I really want to find out, Sir, what are the factual situations that have occurred which the existing law has proven to be deficient and that is a very important point. I know, Sir, of standpipe rows. I practised it in the law in Barbados in which people were convicted in the common law affray. I know of matters relating to insulting language near the highway. I know of all of those things, Sir, but to suggest that one should legislate and prescribe an offence for conduct taking place without physical contact or reasonable apprehensive physical contact in private seems to me to be unwarranted in the circumstances of what we are **trying** to prevent in this case, Sir. I would suggest that a serious look be taken at Section 27(b)(3) to bring this matter into an offence where it takes place in private.

Hon. M. A. KING: Mr. Speaker, the Honourable Member for Christ Church South raised two considerations relating to reasonable firmness and how do you deal with reasonable firmness. My suggestion is that there are a number of cases which have interpreted the issue. I suggest that you look at it in the context in which the cases throughout legal history have interpreted the reasonable man. The concept of reasonableness is not unknown and, in fact, is well known to British legal theory and to the interpretation of situations. All of us who studied law know about the references of the man on the Clapham Omnibus as being the standard by which you judge the reasonable man. So that the man in the Fairchild Street Bus Stand might be in relative terms the appropriate signification of the standard of the reasonable man. If you are looking for an interpretation or definition of reasonable firmness, you would use the firmness and courage which you would expect of that type of person. In the final analysis, it is a matter of fact which the judges who adjudicate on the case are going to have to decide anyhow and they will bring to bear their judgment of what is reasonable firmness in relation to particular persons or not. I see no great difficulty with the concept.

The other question raised by the Honourable Member for Christ Church South related to the issue of extension of the concept of affray as being an offence which may be committed in private. I think it was the Honourable Member for St. John in the course of his statement who

made the point that before the Public Order Act of 1986 the House of Lords had extended the common law interpretation of affray in the case of Button vs Swain. This was a 1966 case in the House of Lords, Appeal Case 591. This had extended the concept of affray as capable of being committed in private. Even without our legislation if we use the persuasive judgments of the House of Lords, affray in private would be in common law an offence in Barbados.

Sir, in looking at the issue rationally, one may ask the question: If you are saying that it is unlawful to threaten violence towards another person so that his conduct would cause those present at the scene to fear for another person's safety, is that the point? Where the act of one person towards another is such that persons of reasonable firmness would fear for another person's safety, are you saying that kind of conduct which should be proscribed when it takes place in public but when you are inside a private place you can terrorize a person *ad infinitum* and make others fear for that person's personal safety? Mr. Chairman, it seems to me reasonable that, if you can establish that the elements of this violent conduct is taking place whether in public or in private, it is something which should be proscribed and it should be contrary to the law. You have no right beating or threatening a person and driving fear into them whether it is done inside the privacy of the home or whether it is out on the streets. We should not legalise and legislate violence in private and I am suggesting that that in itself is sufficient justification for making affray in private places as well. I suggest the extension to private places eminently justified.

7.40 p.m.

Mr. L. R. TULL: Mr. Chairman, there are two points I want to raise, one in relation to the question of affray. If I understand 27B(1) correctly, it seems to be suggesting that the person towards whom the terror is used **need** not be present and that another person who is present.... Let me put it differently, Sir. It says: "...violence towards another person and his conduct is such as would cause another person...." Is that second another person referring to the one in line 3? In other words, if I am making a threat against A but A is not present, B is present and is affray, is that an offence? You will ponder on that.

The other one relates to the question of insulting language. I can understand the law in relation to threatening conduct. I find it difficult as part of a Public Order Act to have the abusive or the insulting part. As far as I know, the only offence in our criminal law that refers to insulting conduct is insulting conduct to a police officer in the execution of his duty. So you get these foolish things that come before the court where a police officer troubles somebody and says something to him, and he says: "You could only be an idiot" and you end up inside a court.

Aside.

Mr. L. R. TULL: Even if the Magistrate has not found you guilty, you would have been arrested, walked through town, charged, put in a police cell till the next morning. So even if you go before the court and the court says you are not guilty, you have gone through all of that already. That is the only instance I know of in our law of insulting words being a **criminal** offence. You are saying now that if you say it to a private citizen you could find yourself in the same position.

In the Second Reading speech I was making the point that there is always a danger in importing lock, stock and barrel legislation from a country like Britain. I did say that legislation must accord with certain cultural realities. People in London in those big terraced houses do not talk to people out in the **streets**. Around the villages of Barbados that is the only way you communicate. You open your window, your door and you tell people what you have to tell them. Are you saying to me now that when you get into your house and say to somebody in the village the usual things we see on the blackguard sheets, you blackguard somebody and say "you only want so and so", suddenly you are going to find yourself on a charge liable to 3 years imprisonment and a \$5 000 **fine** or some such ridiculous thing?

I will give an example of one case in Britain and show how this thing bears no reality to the situation in Barbados. There is the 1986 case in Britain of **Masterton v. Holden**, reported in the All England Reports, where two homosexual men were seen kissing and cuddling at a bus stop. A person who saw them said that conduct was insulting to him. They found the two men guilty because a third person said that conduct was insulting to him. There was this tortuous legal reasoning that the person who complained was a person of reasonable firmness and it offended his sensitivity.

We really do not want to **trivialise** this, and I am not seeking to do so, but it seems to me that this piece of legislation has gone way beyond the limits. If it is seeking only to deal with group violence, as this says, I think that the sections which deal with the question of insulting and abusive behaviour do not make sense.

The other thing I asked in Second Reading, Sir, was that since this legislation does not repeal any previous legislation, it means that you have 2 and 3 different sets of legislation dealing with the same act. A threat of physical violence in Barbados is dealt with now under the Magistrates Jurisdiction and Procedure Act and the penalty is to put the person on a bond to keep the peace and be of good behaviour. That is the maximum penalty. You have not repealed that section of the Magistrates Jurisdiction and Procedure Act, so what could in fact happen is that in one court somebody can still bring a threats case for somebody who says "I am going to chop off your head or the usual things they say out there. You could be outside in the road

and say that, you can go under the Magistrates Jurisdiction and Procedure Act and all you can do is get put on a bond to behave yourself. Another person can go, as the old people of Barbados say, and open the court under a different Act, the Public Order Act, bring it under this section of the Public Order Act and that person who now is not even outside in the road but inside a house is liable to a term of imprisonment for 5 years and \$25 000 fine. I do not understand it. If this is to be the law, it would seem to me that there are other pieces of legislation that should be repealed, but you cannot have the two co-existing. I would like an explanation of that.

7.50 p.m.

Hon. M. A. KING: Mr. Chairman, one of the questions posed by the Honourable Member for St. George South is the reason for allowing legislation which to all intents and purposes seems to contain the same elements to **co-exist** in the same body or statute law. I have made the point before, Mr. Chairman, that this Public Order Act deals and is intended to deal with and – you have to apply some reason – should be used only in the context of group disorderly activities.

If you can charge one person with using threatening language, you do not need this but what you must remember is that it is not every threatening or insulting use of language which is likely to cause alarm or distress. These Public Order offences are the ones where not only are the offensive elements there but the additional requirement that they are likely to cause **alarm** or distress. That is the public order element.

As to the question raised by the Honourable Member about insulting, there has been a body of case law which has dealt with the interpretation of the word insulting. There are a number of cases in this text which I have. They are House of Lords cases, **Brutus v. Cozens** in 1973, **Parkin v. Norman** in 1983. In this text, Offences Against Public Order, including the Public Order Act of 1986, by A.T.H. Smith cites at page 105, after referring to a number of passages the case of **Parkin v. Norman** where the defendant engaged in masturbation within sight of a plain clothes policeman in a public lavatory. Justice **McCullough** put the matter as follows:

"The act does not make it criminal to use offensive or disgusting behaviour whereby a breach of the peace is likely to be occasioned. It requires insulting behaviour. What then is an insult? We do not propose to attempt any sort of definition, particularly, after speeches on **Brutus v. Cozens**, but some considerations of the characteristics are necessary in the light of Counsel's submissions that behaviour of this type is not insulting. One cannot insult nothing. The word pre-supposes a subject and an object and in this day and age of human objects an insult is perceived by someone who feels insulted. It is

given by someone who is directing his words or behaviour to another person or persons."

It goes on and the text of the next page reads:

"It will be seen from this passage that the question whether or not conduct can be insulting may depend upon a complex mixture of objective fact and the maker's intention which the new act does not entirely manage to disentangle. A person is not now guilty of the offence unless he is at least aware that his conduct may be insulting. Even though he does not intend an insult or is not seeking to insult, he can be guilty of the offence if he is aware that his conduct is or might be insulting."

The point I need to make is that a lot of case law has already developed out of interpreting a variety of terms which are used in this legislation. What we have to do is to start restoring standards in our community. We talk about how the community and the standards which are set in the community are deteriorating rapidly and yet we want to give licence to all kinds of behaviour. Let us leave the interpretation to the Courts, the language has been considered and we need to support the structure. I am saying that all of these words have been considered on a number of occasions. They are not new and we can follow the decisions in this regard and come to a reasonable conclusion on the issues.

Hon. H. B. St. JOHN: I think the Honourable Attorney General is in real difficulty. He is unable to convince this House, at least this side, that if we leave the legislation in the present form that we are not engaged in creating bad law. It has always been a source of great difficulty, both to magistrates and to individuals, when one is charged with the existing offence in Barbados of using insulting language to a policeman.

As the Honourable Member for St. George South pointed out, as far as we are aware, the only offence which is created in Barbados with the words "insulting" being used is under the Police Act, and there has been repeated difficulty with that interpretation in the context of Barbados. Let us not fool ourselves, words in the English language can have one meaning in the United Kingdom and a completely different meaning here in Barbados. We are in great danger when we generalise this offence that we are not opening the door to persecution because we know right now that there have been repeated complaints that some police officers use that particular section as a means of harassing people. That is well known. There is no judicial decision in Barbados that the Honourable Attorney General can point to that deals with this matter satisfactorily. As a matter of fact, it is a dangerous situation. Nobody knows what it means.

Asides.

Hon. H. B. St. JOHN: If you look at that section 27E, you have a **headnote** – Harassment, alarm or distress. I am looking in vain here for an offence of harassing. This is a different thing. In Barbados people have in their minds that it is necessary to have an offence of harassing. People have a definite concept in their minds of what is harassment. What does section 27E say? This is the danger of copying the English legislation because if you had an offence of harassing a person... Every day you hear about it. People talk about harassment on beaches. The young girls **talk** about the young men harassing them. What do you have here now? I read this and it took me a long time to understand what it means. I do not see any offence of harassment being committed.

Don't go to the English books. The difficulty is that you go to the English books here to proscribe conduct which in England they do not have. In Barbados it is well known that people complain – and I am talking now about a situation which exists in the tourist industry in Barbados – all the time about harassment. They do not complain about insulting. You have not created an offence here to deal with harassment. Young ladies complain about men looking at their parts and describing them graphically, and are persistent in this conduct. I feel there should be an offence of harassment. I am not in favour of insulting because there is a different concept in this country.
8.00 p.m.

Everybody knows when you talk about harassment it is a conduct of persistence in relation to another person which just causes them annoyance. It might not amount to threatening. It is not insulting but it is a persistent conduct that is Barbadian. That is annoyance to the point where you feel you cannot bear it no more and you call that harassing. You are lying down on the beach and somebody comes next to you. You tell them you do not want to see them and they come back to the extent that you have to move. That is called harassment in Barbados. There is no **act** like that in the United Kingdom. You must not follow the United Kingdom. You must look for your own precedence in this area.

Aside.

Hon. H. B. St. JOHN: You must put that in law because a magistrate would know what that means especially when you have a lot of lady magistrates. What are we dealing with here? We have in "insulting" which is going to give us trouble and we leave out "harassment", but we have a side note calling it harassment. We have it topsy-turvy. We could have a little look at this.

Dr. R. L. CHELTENHAM: The learned Attorney General, Sir, has been at great pains to emphasise that the provisions of this Bill are really meant to deal with the situation of criminal group activity as opposed to individual criminal activity. There is nothing in the Bill that

says that. There is nothing to prevent prosecutors from using this Bill when it suits them to bring the individual before the court.

Now, as I recall, there is a provision in England where for some of the acts under roughly comparable legislation the permission of the **DPP** must first be given before there is prosecution. That relates to riot and I think another. There are 2 of them. That is protection for the individual. I am wondering whether the learned Attorney General would be prepared to accommodate an amendment whereby in some of these offences the permission of the DPP must first be sought. It seems to me there is nothing as it stands to prevent the police as part of their harassment or persecution technique from bringing individuals, as opposed to individuals involved in group activities, before the court under this Bill.

Hon. M. A. KING: The only offence in which one person may be prosecuted may be in relation to affray. Affray, violence and harassment all involve 3 or more persons. The point I keep making in relation to affray is that affray had been extended by the House of Lords to the point we now are before the Public Order Act so that at common law, if the police wish, they can charge affray and bring a person within the **same** concerns which you are expressing.

In relation to the comment made by the Honourable Member for Christ Church South about the difficulty in relation to the word "insulting", on this side we would be prepared to remove it from the text of 27E. I say that only in the context of the difficulty, perhaps, of defining the word "insulting".

Aside.

Hon. M. A. KING: There was that famous case which went even before the Appeal Court where there was a certain person who called another "stinking Tom Durant". The Appeal Court..

Aside.

Hon. M. A. KING: We look at a separate offence of harassment but in 27E the marginal note talks about harassment, alarm or distress. A word was omitted from the text. After 27E (a) and (b) it goes on "within the hearing or sight of another person who is likely to be caused harassment, alarm or distress thereby."

Aside.

Hon. M. A. KING: The word "harassment" should be in there. It has been omitted inadvertently because if you then turn over the page at the top of page 8 you see it included there.

Aside.

Hon. M. A. KING: I am saying we **need** to amend 27E, the second line after (a) and (b) "within the hearing or sight of another person who is likely to be caused harassment, alarm or distress thereby." Despite that, one still needs to look more generally at the law in relation to harassment.

Aside.

Hon. M. A. KING: But you can also insult a person. A lot of the insults on the beaches can be harassment. You can harass a person by insulting them interminably.

Mr. Chairman, I will move that the word "insulting" be deleted. That shall now read:

"A person is guilty of an offence if he

- (a) uses threatening, abusive words or behaviour, or disorderly behaviour, or
- (b) displays any writing, sign or other visible representation that is threatening or abusive, within the hearing or sight of another person who is likely to be caused harassment, **alarm** or distress thereby."

8.10 p.m.

Mr. CHAIRMAN: The question is that Clause 2, as amended, stand part. Honourable Members in favour please say...

Hon. M. A. KING: Mr. Chairman, Sir, before you finally put Clause 2, during the course of the Second Reading I indicated that there was an amendment which I wished to include. In relation to the alternative verdict I should like to move that there be inserted a new 27 (F).

Aside.

Hon. M. A. KING: It is not there. It is a new one. I am going to read it slowly:

"27(F).(1) For the purposes of the rules against charging more than one offence in the same count or information each of sections 27(B) and 27(E) creates one offence."

We want to avoid them charging more than one of the offences.

"(2) If on the trial or indictment of a person charged with affray or violent disorder the jury is satisfied that the accused is guilty of the use or threat of violence but is not guilty of the offence charged the jury may acquit him of the offence charged in

the indictment and find him guilty of an offence under section 27(D) and thereupon such accused shall be liable to be punished in the same manner **as** if he had been convicted upon an indictment for an offence under section 27(D)."

Aside.

Hon. M. A. KING: But 27(D) provides a lesser penalty, does it not?

Aside.

Hon. M. A. KING: No, no, no.

Aside.

Hon. M. A. KING: It is like convicting of a lesser offence.

Aside.

Hon. M. A. KING: No, no, no, no. This is not drafting on my feet. I had asked the Chief Parliamentary Counsel to draft this amendment for me. What I will do is pass the legislation without it then.

Aside.

Hon. M. A. KING: Yes, yes. Just a minute. Mr. Speaker just before I sit, the Honourable Member for Christ Church South did indicate that the word "insulting" appears in 27(D) on page 5 as well. I am asking that where that word "insulting" appear that the same 27(D) will now read:

"A person is guilty of an offence if he

- (a) uses towards another person threatening or abusive words or behaviour, or
- (b) distributes or displays to another person any writing, sign or other visible representation that is threatening or abusive."

Mr. CHAIRMAN: The Honourable Member for St. Joseph.

Dr. R. L. CHELTENHAM: Mr. Chairman, Sir, with respect to the new offence introduced the new section 27(G)(2), **as** I understand it it is an attempt by the learned Attorney-General to mitigate the hardship of the sentencing section.

Mr. CHAIRMAN: Is it (G)(2) or (F)?

Dr. R. L. CHELTENHAM: 27(G)(2) according to... I am grateful, Sir. The nomenclature is apparently 27(F).

The point is that if you are found not guilty of the indictable charge but the jury is satisfied nevertheless that you used threats or violence you are still sentenced **as** though you have been found guilty of the indictable. So that ~~the~~ mitigation goes to the conviction but not to the penalty because you are still faced with a sentence of 2 years or \$5 000 or both. So that it is **as** good as though you were found guilty of the indictable offence because there is no reduction of the sentencing.

The question I raise now is whether the sentencing is still not too harsh in circumstances in which you are found not guilty.

Aside.

Dr. R. L. CHELTENHAM: My learned friend says that it may be a basis for charging more fees.

Mr. CHAIRMAN: We are having a conversation between two Honourable Members.

Hon. M. A. KING: I am moving, Mr. Chairman the inclusion of a new clause 27(F). It is stated in the document which I have...

Asides.

Hon. M. A. KING: I am moving the inclusion of a new clause 27(F). The text is here. With those amendments I beg to move that Clause 2, as amended, stand part.

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

8.20 p.m.

On the motion of Hon. M. A. KING, seconded by Hon. P. M. GREAVES, Mr. CHAIRMAN reported to His Honour, Mr. Speaker, the passing of one 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 and cited as the Public Order (Amendment) Act, 1992.

MATTERS OF PRIVILEGE

Mr. L. R. TULL: On a point of privilege, Sir. Mr. Speaker, Sir, on April 30, 1992 in an issue of the Barbados Advocate there is a story with the headline "Weekes gives Tull stern warning". I will read one paragraph of the article:

"After cautioning the Barbados Labour Party representative for St. George South, Mr. Louis

Tull, several times for making asides while Members of the Democratic Labour Party were on their feet, Mr. Weekes threatened to ask Mr. Tull to leave the House."

Mr. Speaker, Sir, I have no recollection as to the details of this report, Sir. I am submitting this is a misrepresentation of what transpired within this House and I am asking that Your Honour refer this matter to the Committee of Privilege.

Mr. SPEAKER: I will refer it to the Privilege Committee.

SUSPENSION

Hon. P. M. GREAVES: Mr. Speaker, I think it is time we should move on. I am therefore moving that this sitting be suspended until 9:30 o'clock tomorrow morning.

Hon. B. M. TAITT: I beg to second that, Sir.

Mr. H. deB. FORDE: On the suspension, Sir. I would have expected that if the Government intended to suspend the House until tomorrow the Honourable Member, sometime during the course of today would have discussed with us, what was intended or give reasons why. I have not had the courtesy of that extended to this side of the House and I really do not know officially why the Government would want the House suspended until tomorrow and for what purpose.

I do not know of any matter of urgent public importance other than the British advisory to its citizens unless it is that the House wants to debate tomorrow concerning the level of crime in Barbados. I would have thought that our having dealt with the Public Order Act would be of significant contribution to that part of the matter.

Sir, the Honourable Member, has not, as Leader of the House given me any indication of what he is going to deal with.

Normally if we are going to suspend the House and go on from day to day or the next day, it is normal to give some indication that that is what is intended. The Honourable Member has not found us difficult to cooperate with him coming into the House and doing Government's matters at short notice. There is not that history of what has happened. I am really, on this matter rising to find out why we must suspend the House until tomorrow, Sir. Why can't we, in the absence of reasons being given to the Opposition, follow the normal course of events.

I know that the Government has given us today a whole series of amendments. None of us has had the opportunity to study those amendments. We may want to take advice on the amendments and if it is for that purpose

and I am assuming on the assumption that it is for that purpose I believe the Opposition would not have been given adequate time to study substantial amendments to legislation that the Government has had. Obviously we are leaving the House tonight and by the time we get to our various homes, I do not see that we will have adequate time to come in here at 9.30 tomorrow to study substantial amendments to the Financial Intermediaries Bill, if that is the urgency of the matter. I am assuming it is because I know of no other matter. If the Government wants to deal with the British advisory advising its tourists not to visit Barbados that could be dealt with in a thrice here in the House

Hon. P. M. GREAVES: Mr. Speaker, I think there are about 12, I don't have my Order Paper with me at the moment, yes, there are 11 matters, Sir, on the Order Paper for which Honourable Members, in fact this House, was summoned to deal with at this sitting. Not just one or 2 or 3. They were summoned, Sir, to deal with 11 matters. Now, Sir, we have only been able to conclude one. We commenced a second reading on one of the Bills. We have not even been able to give the oral reply to a question that the House was notified that such reply was ready earlier in the day.

Now, tomorrow, Sir, there are about 6 measures pertaining to crime on the Order Paper. We have only been able to have the services of the Attorney General for a part of tomorrow's sitting, that is, the early part of tomorrow's sitting, both in terms of the Financial Intermediaries Bill as well as any of those crime bills that we may be able to attempt. We may not be able to do some of them tomorrow. Sir, it is for that reason that we are beseeching and moving that the Sitting be an early one so that we can have the assistance of the Attorney General who has worked hard on these particular matters.

Aside.

Hon. P. M. GREAVES: Okay, that is an oversight. I can accept that. I can accept I should have spoken to him earlier. Not everything happens as it should happen. Not everything falls in place as it should fall in place, but the point is this, Sir, tomorrow will be a continuation of today. In other words if we were not at this point tonight we would have continued with the Order Paper. It is not of any matter of urgent public importance. It is only a matter of continuing to do the Order Paper.
8.30 p.m.

Mr. SPEAKER: It seems to me that Members have settled the problem because Rule 6 (9) states:

"If, during an adjournment of the House, it is represented to the Speaker by a Minister that the public interest requires that the House should meet on an earlier day than that to which the House stands adjourned, the Speaker, if he is satisfied that the

public interest does so require, may give the notice accordingly."

I think probably based on what the Leader of the House was trying to explain one would think that there must be some public interest in these matters. I would think it requires that interest. Considering one out of 11, I think it is fair to say that it does require the interest to deal with those matters from a public point of view.

I think the Honourable Member is correct as well that this speaks of the adjournment and not the suspension either. So that suspension is not even covered by the Orders of the House. It is a matter of discretion but one could use the premise on which the adjournment is based. I thank the Honourable Member for that.

*The question that this sitting be **now** suspended until 10.00 a.m. tomorrow was put and resolved in the affirmative without division and Mr. SPEAKER suspended the sitting accordingly.*
8.34 p.m.

RESUMPTION

Mr. SPEAKER: This sitting is resumed. Order No. 1.

ORDER NO. 1 – FINANCIAL INTERMEDIARIES REGULATORY BILL, 1992 (RESUMED)

Hon. H. B. St. JOHN: Mr. Speaker, it is not surprising to me that we find ourselves this morning in the position in which, on behalf of the Opposition, I must make a public protest that we are being forced to debate the Financial Intermediaries Regulatory Bill in the context of circumstances in which major amendments to the Bill were circulated only yesterday afternoon. But we know why.

We are in a position in Barbados today in which the Prime Minister and his Cabinet members no longer have any freedom to determine how, when, and what is to be brought to Parliament. The reason why we are in a hurry to deal with this Bill is because the Prime Minister is under the dictation of the international institutions to whom he is so indebted now that he has to carry out their dictates. He must have this Bill passed by the end of May. We are here debating a very serious measure in these circumstances.

Now, Sir, it is clearly obvious that the first point that must be taken in respect of this Bill is that it is being passed today at a time when there are chaotic conditions in the economy of Barbados. Indeed, so chaotic are the conditions that whatever one may think of a financial institutions bill one must always remember and understand that the Bill is not going to be stronger or better than the terms the Bill provides for and what is more important than the integrity of the operators and supervisors as provided for in the Bill.

The Central Bank of Barbados, as the principal agency to whom important functions are assigned in the context of this Bill, is the institution that one must focus upon. If that institution is totally lacking in capacity and integrity, if it is a stool pigeon of the Minister of Finance, then one cannot honestly say one can expect the provisions of the Bill will fulfil its purposes. I want to get that abundantly clear and on the record that the Bill will not be stronger than the provisions in the Bill, nor will it be stronger than the integrity and the capacity of the institution which has the function to perform in the Bill, providing the role of supervisor.

Here we are today also operating against the background in which this Bill is being brought. In our humble opinion, the provisions of the Bill are glaringly defective in that they seek to regulate financial intermediaries against the background of terms and conditions of operation of similar institutions because of the failure of the Government to include provisions dealing with the regulation of rates of interest in the Bill in which we will have comparable institutions operating on dissimilar terms and conditions.

No financial institutions bill should ignore the fact that it has been the experience in Barbados that if you have similar institutions operating in a money lending market under dissimilar terms and conditions that one is likely to have situations in which the pre-conditions for failure of those institutions which are operating in dissimilar terms and conditions prescribed by those circumstances. We say that as soon as you bring within the **ambit** of this Bill institutions such as non-banking institutions, finance companies and others and you do not at the **same** time exempt those institutions **from** the Rate of Interest Bill which you have done with respect to banks, that you are setting the foundation for failure of those institutions. That is a truism.

I want very early to draw that clear gap in the law to the attention of the Minister of Finance, not the neophytes that have just been thrust into situations in which years will have to pass before they begin to understand what is going on, nor will there be any compensation of the fact to the community that they have to pay them during the course of the time when they are learning.

Now, Sir, the basic position is that today also we must understand that we are in a situation in which the Government itself is offering rates of interest for its borrowings from the public in public advertisements in the newspaper which are in excess of the Rate of Interest Act that is permitted. The Government is now offering above 10% for borrowings and you have institutions here whom you are bringing under control and saying to them that the maximum rate these institutions can lend money to other parties is less than 10%.

Now, this contradiction in your financial markets is something that has to be addressed. We cannot get away with this. I am not surprised that this has not been dealt with because there is total confusion in the Ministry of Finance at the present moment. They are pre-occupied in the Ministry of Finance with trying to produce **figures** which are not factual so that they can fool the public of Barbados that the financial situation in Barbados is such that they are able to pass tests. They **are** interested in fiddling the books.

This week a classic example of reality has been brought home to the public of Barbados. Despite all of the passing of the tests we know that over \$20 million is owed by the Government of Barbados to such institutions as the University of the West **Indies**. If that \$20 million had been paid, all of the tests would have been exploded. This is a public statement **from** an institution that Barbados enjoyed an excellent relation with, a public statement that the **arrears** that are owed by the Government of Barbados is over \$20 million and we can still have **all** of this bragging and all of this talk.

We know also, as we predicted previously, that there are a mass of suppliers out there who have not been paid. Yet, still I can listen with my ears on the media and watch with my eyes an important official of a leading institution in Barbados which has an important role to play in this Bill standing up before the public of Barbados and misleading them by saying that the arrears are manageable and they have been reduced to negligible proportions. What contempt for the truth! That is contempt for the truth. I have absolutely no doubt that that is what the Honourable Member who seeks to interrupt me admires, emulates and desires to practice regularly. I have no doubt about that. That is what the Honourable Member aspires to.
10.15 a.m.

So that when I say that we must understand that the background in which we **are** passing this Bill is such that the Government cannot bring to bear any clear analysis, those facts illustrate what we are talking about. It is a matter of shame for this community to find itself in the position in which a leading institution upon whose integrity the proper administration of this Bill is dependent can be questioned. The facts are there. You must not allow yourself to be used as a stool pigeon of anybody. That is a very, very serious thing. Because the facts **are** there. There is no wonder that the Prime Minister called it a low level institution, not so long in here. Because we still know that the negotiations which have been going along between the International Monetary Fund, the World Bank and others with Barbados, that that institution **has** a role to play not only with respect to this.

Rt. Hon. L. E. **SANDIFORD**: On a point of order, Sir. I wish to point out that words are being put in my mouth which I have never used. I have never referred to

any institution, leading institution, as a low level institution. I would like the Honourable Member to withdraw his comments because it is completely untrue, the words that he is attributing to me.

Hon. H. B. St. JOHN: Mr. Speaker, Sir, I will await Your Honour's ruling. I am going to repeat exactly what I said.

Mr. SPEAKER: The Honourable Member has risen on a point of order and it is always my custom for the Honourable Member against whom the accusation has been made having refuted that statement, it to my mind lies within the Honourable Member who made the accusation to clarify that statement so that one can clearly get the true records as to what is the matter.

Hon. H. B. St. JOHN: Mr. Speaker, Sir, I recall that I made a document of this House and the document is the Aide **Memoir** of the World Bank visit to Barbados in 1990 and a paragraph of that document which I am asking the Clerk of the House at the Table to get for us because it is a document of the House already and a paragraph in that document stated that the Government of Barbados has reaffirmed its commitment through the Central Bank....

Mr. SPEAKER: I do not want to **interrupt** the Honourable Member but since we were dealing with the point of order, I will agree that until the document is produced that one would be allowed to make a statement to stay on the records. Therefore I would suggest to the Honourable Member to move away from discussing that matter until that matter has been made clear before the House. I am prepared to wait for the document.

Hon. H. B. St. JOHN: I am not moving away from the Central Bank in this debate. Because the Central Bank has a crucial role to play.

Mr. SPEAKER: I also want to make clear that any institution can be criticized in this Parliament but we are not dealing with that. We are dealing with the point of order where it has arisen out of the statement you made which you seek to be the truth. The Honourable Member has objected to it and therefore since you are willing to substantiate your argument certainly, I am prepared to wait until such time. In the meantime the Honourable Member can carry on until we get that particular item out of the way. But we need not discuss that particular aspect.

Hon. H. B. St. JOHN: Very well, Sir, because I am coming back to it. In the meantime I will go ahead and deal with another important point. It is a point of **principle** in relation to this Bill. It is a point that has repeatedly been made that the existing Banking Act and the provisions of financial institutions legislation do not pay sufficient attention to the experience of Barbados of the need within the terms of the Bills which regulate banks to understand

that branch banking in the context of Barbados is a matter that special provisions have to be made therefore, if we are not going to repeat our experience with BCCI.

I well recall that complaints were repeatedly made by indigenously operated and incorporated institutions in Barbados of the inherent unfairness arising from the fact that they have to publish their accounts which reflect the state of affairs of their **total** business in Barbados, whereas branch banks are allowed to publish to depositors their total worldwide operations and the public of Barbados is no wiser when they walk into a bank they see the financial statements of the worldwide state of affairs of the bank and not the particular state of affairs of the Barbados branch.

We amended the Banking Act to cure that. This Government re-amended the Act so as to introduce the position to what it was before the amendment. Every now and again you see statements published in the newspaper in Barbados of the overall operations of all of these banks that we have branches in Barbados and the public is no wiser. That is repeated here and it is no use telling me that the **Central** Bank knows about it. What is the state of affairs of a particular branch in Barbados in relation to its branch operations? The Central Bank knew about the state of affairs of BCCI Barbados' branch operations too. Must we never learn from our experience that the object of a Bill of this nature is to ensure that the public is put on the alert about the financial condition of an institution which invites them to put their money in that institution?
10.25 a.m.

If you are saying that disclosure is an essential part of the apparatus that you are introducing to ensure **that** the public can make an intelligent judgment on the capacity of the institution, its competence and its capability, then surely you must make sure that the information that is published, is published in such a form, that an intelligent judgment can be made **thereon**. I repeat, Sir, it is a defect of this Bill, for it fails to provide adequately to deal with the problems of branching. A fundamental decision has to be taken as to whether you are going to permit branching in your economy or not. Or, if you are going to take the decision that you are going to permit branching, it is your duty to ensure that the public is not going to be at a disadvantage in relation to its knowledge about the affairs of the particular branch in Barbados.

I will tell you why, Sir, the urgency is even greater today. Because the recent amendments to the Banking Act, arising out of the situation with BCCI, have gone further and they have said, very clearly, that where there is a liquidation or a threatened liquidation, that the provisions of the **law** relating to liquidation are that Barbados must be regarded as though it were a separate entity from the rest of the assets of the company.

Now you have accepted there, for liquidation **purposes**, that you must separate the assets and the liabilities. At the same time when the Bank is operating in Barbados you are denying the public, by the information that you are giving them, the full **opportunity** to make a judgment on Barbados' operations alone. That is an inconsistency that we cannot accept. The Government must look at those provisions in the Bill, make up its mind very clearly as to how, if it is going to allow branching, it is going to ensure that Barbadian depositors are not going to be deprived of an opportunity to make an intelligent judgment.

We go further, Sir, and we deal with another reality. I don't want the public to get the impression that because you have passed this Bill that there would not be bank failures in the future.

Asides.

Hon. H. B. St. JOHN: The man has no respect, not even for himself. How do you expect him to have respect for anybody else? He has no respect for the truth, himself or anybody. How do you expect him to have respect for somebody else?

Mr. SPEAKER: I have difficulty in getting Members not to interrupt another Member when he is speaking. I do not hear what they say but, at least, the sound disturbs my hearing and I do not think it is fair that an Honourable Member should be interrupted in such a way.

Hon. H. B. St. JOHN: I am not surprised, Sir, at the interruptions. I keep saying, Sir, these matters are beyond the capacity of the Honourable Member. The Honourable Member can only understand ...

Aside.

Hon. H. B. St. JOHN: They are not provocative – stupid. So that we have now, Sir, this document that was made a document of the House and I think we had better go back to this. I want to clarify this because I have a real difficulty. I do not accept, and we on this side do not accept, that in this important area, that the public should be deprived of information as to how the Government of Barbados intends to conduct itself in this **area** and I refer to page 3 of the document, paragraph 6. I am going to repeat it again: "The Barbadian authorities have **reconfirmed** their agreement indicated in the Central Bank of Barbados letter of March 8, 1990 to the World Bank on the elimination of non tariff barriers and their replacement by temporary surcharges. The Mission recommends that all **NTBs** be removed and that binding **NTBs** be replaced by temporary surcharges before presentation of the proposed project to the World Bank Board of Directors which is currently scheduled for October 1991."

I am making the point. That is not a matter of secrecy. I am making the point that the Government of Barbados led by the Honourable Member for St. Michael South was part and parcel of that commitment and expressed it through the Central Bank. I made the point previously and the Honourable Member got up in here and said that I must not get up here and commit him to positions which he had not committed himself to.

Certain remarks made by the Honourable H. B. St. JOHN were ordered to be expunged from the record by Mr. SPEAKER.

Hon. H. B. St. JOHN: I am repeating this now. The Barbadian authorities, and I am quoting verbatim: This is a document which has been made a document of the House and it is headed "Barbados proposed Export Development Project Pre-Appraisal Mission Aide Memoire", and it was sent to the Government of Barbados. At paragraph 6, it had these words: "The Barbadian authorities have reconfirmed their agreement indicated in the Central Bank of Barbados letter of March 8, 1990 to the World Bank on the elimination of non tariff barriers and their replacement by temporary surcharges."

Now, Sir, I say that the Prime Minister and Minister of Finance is fully aware and agreed to the Central Bank's letter embodying the commitment of the Government of Barbados to the World Bank to eliminate non tariff barriers. That was embodied in a letter dated March 8th. I say that fact has been concealed from the Barbadian public. You concealed the fact from the Barbadian public and I question...

10.35 a.m.

Aside.

Mr. SPEAKER: I cannot hear the Honourable Member clearly. I am not allowing other Members to speak. Just one moment. There is a bit of cross talk at this end and I cannot hear clearly. No matter who started or ended, neither Member has the right to interrupt a Member in that way. I am asking the Honourable Member to restrain himself.

Hon. H. B. St. JOHN: I am very glad that I am not in the cross talk, Sir. I am in the straight talk, not the cross talk. We must have the context in which we are dealing with it. The Prime Minister got in here yesterday and implied that the Opposition was obstructing him in his efforts. The truth of the matter is that we are operating here in a country in which the public is not being taken into its confidence. A lot of secret agreements are being reached which will have devastated consequences to financial institutions in Barbados. We know that the capacity to repay a number of the loans that are part of the assets of the commercial banks is dependent upon the viability of those enterprises. We know that and I heard the Prime

Minister yesterday reading out \$1.2 billion or \$1.3 billion in assets when we know that locked up in those assets are a lot of loans to manufacturing, agriculture and tourism. The Government is part and parcel of this policy decision and continues to conceal it. Up to now they continue to conceal the fact that they have agreed to a regime which will mean the elimination of a number of these firms. That is a fact. They are finished.

Sir, let us go ahead with other areas of the Bill. It seems to me that, while it can be said that there is a need for the improvement in the mechanisms and apparatus to control financial institutions in Barbados, we want also to point out that in addition to the problem of branch banking and in addition to the problem of a regime which permits competitors in the same money lending business to operate on dissimilar terms and conditions that there are other problems. Why is it necessary today for you to permit companies to take money on deposit from the public? If you are saying that you have a sufficient number of financial institutions in existence that can cater to the needs for finance in your country, why do you continue to permit these public companies to borrow money from the public? This is a very serious thing and I want to go further with that, Sir. We would need to monitor the capacity of these companies. I understand there are about 6 or 8 - Shipping and Trading, Goddards, Bryden's, Cave Shepherd and big dismbution companies. Their primary business is not the borrowing of money. To properly police them, the Central Bank has to do an evaluation of their total viability. You cannot separate the total affairs of that company from the money borrowing activities. We learned that with the Barbados Foundry and we know that one of the claims that was made by shareholders at that time was that they did not have sufficient financial resources to pursue their remedies which were unquestionably granted under the terms of the Company Law. I say that again is a defect in the existing law that does not take account of the experience of Barbados. Now I have absolutely no quarrel with any of these financial institutions or business houses borrowing money from the public. If they wish to borrow money, they must do like what General Motors and others had to do in the United States. They must form a separate finance company or a separate entity properly capitalised in accordance with the criteria set out in which everybody knows and the Central Banks with its specialists can monitor it in its capacity as a financial institution. I believe that the Central Bank itself will not claim to have experience in respect of the distributive trade of a sufficient in depth nature as to be able to make an overall judgment as to whether it is a viable institution or not.

Sir, the viability of some of the commercial businesses in Barbados is very often dependent upon the capacity of people in Barbados to buy and sell. This is a small country and do not let us fool ourselves. We have seen the impact of a lack of demand for products in a manufacturing country between 1984 and 1986 in

CARICOM and what effect that can have upon people who have lent money to manufacturers. I again say, Sir, we regard that as a glaring defect straight before your eyes, so on that part of the Bill we will caution and we will advise. It does not matter whether the Government takes the advice or not, our function as an Opposition in here is to point out what we see as deficiencies in the Government's policy. If you do not follow it and you walk around and say you have been invested with the power not to follow it, and the Opposition cannot dictate to you, then when you follow your own errant ways and you mash up the country as you are doing, then the Opposition's conscience is clear.
10.45 a.m.

I just want to repeat, Sir, the point we are making. If commercial houses in Barbados wish to get money from the public, they should form separate and distinct subsidiaries which would be subject to the same criteria in relation to formation, to management and to liquidation as any other financial institution. That is the point we want to get across. It has been done in other countries. Other countries have, from their experience, benefited and they have specifically regulated. The truth is that in any event they cannot be playing such a significant role. My understanding of the statistics is that it is between \$60 million and \$70 million in the totality of a deposit liability of \$2.2 billion. We are only dealing with banks and financial institutions. I hope it is not the pension funds that are being re-invested, because that is a very serious thing.

We know from our readings that the **Barlow Clowes** Enquiry in England, from the investigation in the United Kingdom on the collapse of the Maxwell empire, from Trade Confirmers in Barbados, from Central Foundry in Barbados, that the capacity of the same directorate to make decisions as trustees and as lenders and borrowers can lead to trouble. We know that can happen, that you can have a group of directors who are also trustees of pension funds within a company and that those directors in their capacity as trustees can make a decision to lend money to the company of which they are also directors. What has happened is that you have a little circle in there and there is no protection. This is a very serious thing and I really feel that once and for all we must let these companies know that the Government has come to a decision, not that they cannot become finance companies but that they cannot use the same legal institution for these multifarious purposes because of our experience. That is a policy, but of course the Government does not want to offend these people. At this stage they are out to court these people, they cannot stand the criticisms they get, so they have to court them. They are out now to allow them to continue to do what is wrong. I hope that the Government will look at that.

I want to summarise again, Sir, the defects, because we are finding them. I want to make it clear that branch banking, the Rate of Interest Act, these deposit taking

institutions, the quality and the integrity of the Central Bank are indispensable preconditions to a successful operation of this Bill.

Now, Sir, as we continue with other provisions in the Bill, we still have a conflict in our minds as to why it is that the Government has departed from some of the provisions of the previous Bills and introduced some new provisions, the necessity for which we are not clear.

This concept of an intermediary as opposed to an institution is a bit confusing, certainly to me, because the Honourable Member himself in the introduction of the Bill said that it did not purport to deal with all the intermediaries. For instance, it does not deal with insurance companies, nor does it deal with building societies. We do not have many of those, so that is only in theory, but we do have a number of credit unions in Barbados that are important institutions. I know that there has been a tremendous amount of work done already on the regulation of credit unions in Barbados. I think that everybody agrees, particularly in view of the rapid increase in the role that these institutions are playing or have played, and particularly in light of the fact that we on this side see them as playing a far greater role in the future, that they should have comparable regulations.

The Honourable Member has not told us what is the timetable in respect of that Bill. These institutions now have more assets than the deposit taking companies and it would seem to me that it is vital that all the hurdles to the introduction of the legislation in that area should be removed as a matter of urgency.

Once again I wish to draw to the attention of the Government the uncertain state of the law as to whether the Rate of Interest Act applies to these institutions. We cannot have a situation in which competitive institutions are operating under a dissimilar legal regime.
10.55 a.m.

I happen to know because I studied the subsidiary legislation. It is not a matter of surprise to me, as it is to some other people, that the Honourable Minister of Finance has been able by the stroke of a pen to exempt companies from millions of dollars in taxes. That is not a matter of surprise, Sir. As I have said, we are dealing with matters against the background in which the Minister of Finance is like a yo-yo – you can pull him there or you can pull him here. He wants to sell so they say these are our terms so he has to accept them. We know that.

Now, Sir, what we want clarified now from the Ministry of Finance in this debate is what is the Government's position in relation to the non-banks and other institutions which are lending money in Barbados and which are governed by the Rate of Interest Act. I know for a fact, because it came out of the Trade Confirmers

equiry that the Minister of Finance under the Democratic Labour Party regime subsequent to 1986 has an application from finance houses in Barbados to be exempted from the Rate of Interest Act and do you believe it, Sir, up to now no decision has been made. I know that the present Honourable Minister of Finance – all of the ills which have befallen the economy since the Democratic Labour Party presided over it cannot all be laid at his door because he had a predecessor... The Honourable Member for St. John will **try** to sort out in his mind who is more to blame. The Honourable Member has already made a confession in here but we are not Roman Catholic priests so we do not listen to the confession.

The point is that the Government has an application before it from finance **institutions** in Barbados to be treated in the same way in which banks are treated that is, to be exempted from the Rate of Interest Act and the Government will not make up its mind on that important application. I would like the Honourable Prime Minister to tell us when he intends to make up his mind in respect to that. It has to be faced. You have to face the fact that there are cases in the Law Courts before the Supreme Court of Barbados in which defendants have pleaded that they have borrowed that money but they are saying that you cannot collect it back from us because it is in breach of the Rate of Interest Act. So that is an issue you have to face.

What galls me is that when I pick up the Official Gazette and the Supplements to the Laws I see that there are some 90 or 100 institutions that have been exempted – a lot of foreign institutions of all varieties, people who lend money to the Barbados Light & Power to finance the purchase of engines, Swedish finance companies, the export development institutions of a lot of the first world countries. You should tell the World Bank some of these things, let them know that you talk about subsidies to manufacturers in these little developing countries but the World Bank should know that there are great subsidies in the form of export credits and cheaper rates of interest that are given in the developed world so that they can supply the needs of the underdeveloped world in the areas where the underdeveloped world has no productive capacity. All of them do it but we cannot do it. The Central Bank in Barbados must put 16%, 18% and **25%** interest rates directly or indirectly on our manufacturers, on our agriculturalists and on our tourist producers but the developed world can do differently. That is the kind of injustice that we have to face but the basic position, Sir, we ought not to visit our institutions with the same thing.

There can be no justification for saying that the finance companies in Barbados have to obey the Rate of Interest Act and a finance institution in a foreign country can be exempted by the same Minister of Finance when they are granting credit. That is a matter of policy, a matter of principle. You cannot escape from it in this debate. We

must have a policy decision on it. The time to face it is now. We cannot hide from this one.

Now, Sir, those are the major points in relation to this Bill that we on this side want to make, but there are other points that have to be made and as Honourable Members on this side, both in the Second Reading and in the Committee stage deal with particular parts of this Bill, they will come to light. I can say that we see the need for improving the apparatus both in the form of the content of the laws and equally importantly in the form of an improvement in the personnel who are going to supervise the day-to-day administration of this Bill. We do not wish those who have to supervise the day-to-day provisions of this Bill to be operating in a legal environment which is bedevilled by the inconsistencies in relation to the matter I have pointed out.

I urge the Government to have a second look at these matters. The Government must let the World Bank know, let the IMF and everybody know that we are in favour. There is a consensus that there is a need for a financial institutions Bill but that we are not to be hustled into producing a Bill that is inconsistent, that fails to take into account our experience.

I also want to say this. I do not believe in treating institutions in CARICOM in the same way as I treat foreign institutions. They cannot be a case for treating branches of CARICOM institutions in Barbados in the same way that you treat branches of Commonwealth or non-Commonwealth institutions. There is scope for **harmonisation** of approach among the central banks in the Caribbean. After all, it ought to be our **aim** that the major role that is now played by these foreign banks should one day be replaced by the development of strong CARICOM institutions. Don't let us fool ourselves. In the context of Barbados these are mini banks that we have, piggy-banks. I do not share the philosophy of the Democratic Labour Party in relation to these banks. I trust them. I remember very clearly a previous Minister of Finance of the Democratic Labour Party getting in this Honourable House and saying that he wanted to advise the public of Barbados not to put any money in any of these Barbadian institutions, that he does not trust them. Never has a statement revealed more about the maker thereof.

I hear the Honourable Minister of Finance saying that there are institutions out there queuing to come in waiting on this financial institutions Bill. Now, we know that there are merchant banks **from** another country in the CARICOM who are operating here and have formed a local company. I know it. I want to see a special regime created to encourage the development of genuine Caribbean owned and Caribbean financed banks. There will not be that degree of strength and viability that is necessary for the financial strength of these institutions if they are limited to operating on an island basis. I want to emphasise that,

Sir. There should be a special regime in which the Governments of CARICOM should set about, as a matter of urgency, to create an environment which would **permit** the development of genuine multi-island financed Caribbean institutions. I want to make it clear. That is our position.

11.05 a.m.

We have seen the benefits of collaboration in the insurance area. Had it not been for the Honourable Member we would have seen the benefits of collaboration in CARICARGO.

Aside.

Hon. H. B. St. JOHN: I do not mind him, Sir. They can attack me from now to Doomsday. My record is there and can be subjected to all kinds of scrutiny. However you scrutinise it, I will still land on my feet.

Now, Sir, the basic position is I again want to repeat that it is a matter for serious consideration. Do not mind how we pass these Bills. The reality of the matter is that if you look at the total business of banking in Barbados you will see, as the Honourable Minister of Finance has said, it is dominated not by indigenous institutions, not by CARICOM institutions but by foreign institutions.

I have never been one of those who was afraid of competition from abroad. As a matter of fact, if you go back in the records you will see that the Barbados Labour Party has consistently held the view that in **banking**, insurance, finance and a number of other areas there could well be freedom of movement of capital, and of persons working in those institutions. I want to **talk** about that too. The strength of your banking business will be determined not only by the amount of capital but also by the quality of the people who are going to make the day-to-day decisions in running the bank. We live in a small community.

It is a good thing for the integrity of these institutions if periodically there is a flushing out of some of the decision-makers. There should be no question of work permits hindering the development of these institutions. I look forward to the day when we can have these Caribbean finance institutions in which young people who want to make banking a career can say with safety they can join that bank because they would be able to serve right through the Caribbean. I have been around long enough to know that these communities benefit from a periodic exposure. Everybody benefits. The bankers benefit from a periodic exposure in other lands. That is a fact.

The Barbados Labour Party foresaw that this petty nationalism which was fostered so greatly by the Democratic Labour Party would lead to the consequences that we sometimes see here. We could have prevented this

idea that you are going to use a work permit to stop another person from the Caribbean coming here to work.

Aside.

Hon. H. B. St. JOHN: As Minister of Home Affairs you started it badly. We administered them liberally.

We are dealing with the question of experience now over 25 years of independence. We are grown up now. We can say to our constituents that we have firmly come to the conclusion that in this area of banking it is an area that will be beneficial to the communities for the development of these institutions if we have a regime which will allow freedom of movement of capital, **personnel** and things of that kind. I want to see sometimes some surprise inspectors coming in here as a result of a collaboration agreement between the Central Banks in the Caribbean. We must do that. Get some foreign inspectors coming in. Let us go down and inspect them and they come and inspect us. We must do that because we know things can happen in these small countries. Therefore, I hope we will have a policy statement. We are very clear on this side on what we are going to do.

Aside.

Hon. H. B. St. JOHN: We used to do it. The fact that what we did was not appreciated by the other side is no evidence that something was not done. I have already pointed out the beneficial effects of the insurance collaboration agreement and the other **areas** of collaboration. I will draw to the Honourable Members' attention that quite apart from CARICARGO I will **draw** attention to energy. There are plenty of areas in which they have been collaborating.

All I am pleading for in the context of this Bill is it is a matter of serious concern that of the \$2.2 billion in deposits in Barbados the indigenous institutions among them do not have more than \$400 000 or \$500 000 in deposits. I believe that is about 25% or 30%. I am very worried about that. I contrast that with the insurance industry in which I believe it is true to say **that** as far as those financial intermediaries are concerned a far greater proportion of the total business is actually controlled by Caribbean institutions. I am not limiting it to Barbadian institutions. I do not believe in petty nationalism. I do not believe in that insular approach that says we must reserve this only for nationals. I do not believe in it. You are lucky that somebody did not marry you.

11.15 a.m.

Mr. SPEAKER: I thought you were making reference to myself. I am sure you are not referring to me.

Hon. H. B. St. JOHN: No, Sir. I believe that the contributions I have attempted to make here have been

given in the spirit of the Barbados Labour Party's desire to help to improve the environment in which these important institutions operate within our economy.

Thank you.

Hon. D. J. H. THOMPSON: Mr. Speaker, Sir, I rise to give my support to this Bill which is before the House. Let me begin by saying that I consider the presentation of the Honourable Member for Christ Church South to be easily the most bold faced and arrogant presentation that I have ever **witnessed** in this House of Assembly, particularly, Sir, when the record does not bear out any of the assertions that he makes about his interest and his contribution to this particular area of Government's business. These comments are 14 years late in respect of him, almost to the day. On the 9th March, 1978 the then Prime Minister of Barbados wrote to him, his Deputy Prime Minister, enclosing a draft Bill for financial institutions, setting out his comments on it and asking the Honourable Member to respond. That is 14 and some years ago. And it has taken him those 14 years to respond. There is no evidence whatsoever of any comment or concern raised by him on these particular matters. Certainly not on the information that is available to me. He said the record speaks. He is not a neophyte. I accept I am one. I approach life in this way that to every task set before me I approach it essentially with an open mind. To that extent I attribute to myself the virtue of a neophyte. Not an arrogant, all knowing, all seeing or all powerful person. That is all. I attribute those characteristics to myself and he is entitled to attribute whatever he wishes to himself as a politician. But 14 years later, he jumps up in here blowing off like a kettle that has been boiling for about 20 minutes, all the steam possible about his major concerns in relation to **banking** and financial institutions in Barbados. There is no evidence anywhere, either when he was Minister of Finance or on any documents that I can put my hands on, of these concerns. Because I value his advice. So I went to the record to see where his advice was. I felt that maybe if I had checked the record and found something useful from him I could **have** assisted in that being added to this Bill. But I see nothing anywhere in any of the files in Government which suggests to me that he has made any contribution on this subject.

And today now, 14 years later, he can call me – it is true I was then a neophyte – a neophyte when this Administration in a mere **6** years consequent on instructions given by him in 1984 or 1985 whatever – I am now going to credit you with giving the instructions, not contributing anything to it – the legislation is before us.

It is probably not the former Prime Minister's fault that even though he begged the IMF to come and do a draft Bill and set up a **working** party of which the Honourable Member for Christ Church West was a member and the Honourable Member did his own draft. I can

compliment him for that. It is not the then Prime Minister's fault that whichever Minister and the Labour Party or person responsible for this could not bring it to fruition. I do not blame the Honourable Member for Christ Church South. But what I do object to is a bold faced presentation in here by anybody giving the impression that they have been carrying on their shoulders revolutionary initiatives and somebody in here was trying to stop them for 14 years when there is nothing anywhere that demonstrates that particular commitment. I will credit those who made that contribution.

In 1984 we initiated it again and the process has been a long one. The process of making legislation in Barbados is very cumbersome and we all know this. You send out a draft financial institutions Bill and invariably the deposit taking companies, as they are called, comment on only the sections that affect them. The banks comment essentially on the sections that affect them and any other peripheral matters that they think may undermine their contribution or profitability or their share of the market. That is how legislation is made in Barbados. The Attorney-General would have to tell me this and this Parliament will have to decide whether there is not a better or more progressive way of achieving the ends of modern creative legislation other than that process that we have been labouring on for a considerable time. All of these working parties – criminal law working party, working party on financial institutions, working party on harmonization of company law, working party on harmonization of bankruptcy law, regional working parties, local working parties – and the process of legislation still turns out, in many cases, to be difficult, certainly to accommodate all of the objectives,

The pace at which this is achieved is not dictated by any edict from anywhere except the objectives of the Minister and the Ministry of Finance. In 1978 the then Prime Minister said that by February 28 or 27, whenever it was he wanted the legislation brought to Parliament. There is a file here that actually minuted to the Prime Minister that the Bill was passed. There is a file here from a Director of Finance and Planning minuted to him that it was passed. So there is a whole set of confusion about this particular area. The Honourable Members in this House should be grateful that this particular piece of legislation has come to the House of Assembly at this time, after **this** long gestation period.

Mr. H. deB. FORDE: On a point of order, Sir. The Honourable Member is misleading the House on the history of what happened. For the purpose of the debate the IMF expert who was provided under their funds produced a **draft** that was totally unacceptable. As a result it was rejected by a committee consisting of independent persons like Mr. Dave Shorey, Mr. Pat **Toppin**, Mr. Ken **Hewitt**. The Honourable Member for Christ Church South contributed...

Mr. SPEAKER: I would like to be...

Mr. H. deB. FORDE: I am not going to be much longer.

Mr. SPEAKER: I am not interrupting the Honourable Member. I want to be consistent. I think I spoke to the Honourable Member for St. George South some time that I was not accepting long preambles to points of order.

Mr. H. deB. FORDE: I can only clarify where he has misrepresented. Perhaps I should have taken 5 points of order then.

Mr. SPEAKER: No. You may have taken a point of explanation or elucidation.

Mr. H. &B. FORDE: The point I am making, Sir, is that what happened with the Bill was that the urgency was offshore banking and the offshore banking and other bits of legislation were brought down to the House, taken out and passed.

Hon. D. J. H. THOMPSON: None of that makes any difference. The Honourable Member does not remember what he is talking about and I do not propose to waste my time quoting from any file. The point is nothing was done. Through all the talk about working party and all of these eminent people nothing was done. All of it rests in this file and they are closed files. He can, as far as I am concerned, photocopy everything on them and get some intellectual pleasure, later on in life, from saying he engaged in all these wonderful committees with these eminent people. I want to deal with the legislation that is before us.
11.25 a.m.

I have no criticism about that process except that it takes a long time. Whether he thinks it was wonderful or not I am not criticising it. I have nothing to do with that particular development. I was dealing with the question of the time frame. These are objectives that the Government has to meet as part of its process of restructuring the Barbadian economy and there are going to be a whole set of initiatives that, probably in the next couple of months, are going to be coming fast and furious. It does not make sense each time an initiative comes to begin your criticism of it by saying that somebody else set the agenda for you. If the agenda is to be set, as far as I am concerned, this Parliament is the only place that can set that agenda. Unless you are saying that this Parliament itself is also going to concur in other people setting an agenda for this country, I think that particular criticism could be dropped from the armoury of the Members of the Opposition. If you wish to carry out your parliamentary functions properly and you feel that the agenda Government sets is wrong, then go out in the public domain and do what you have to do to put your particular point of view. If you can slow down the process by the means that you think are necessary that is

your job as the Opposition. We are not begging for any special concessions in relation to the reforms that we have to put in place.

The Honourable Member for Christ Church South makes a criticism out front in relation to the question of the rates of interest. I did not know, myself, that rates of interest were set or regulated under the previous Banking Act. I understand the comment he is making, but to say that the Financial Intermediaries Regulatory Act should also include provisions for the regulation of rates of interest does not necessarily make sense.

Government has on its present agenda the consideration of matters that he raised. We are aware that some of the finance companies and others are competing, not on a level playing field, but on a very uneven scenario. We are aware of this but it does not mean that you have to deal with the question of rates of interest in the Financial Intermediaries Regulatory Act. This can be dealt with in other legislation. It can be dealt with according to Government's agenda in relation to the whole financial sector.

As I understand it, there are various pieces of legislation which in fact regulate rates of interest, in particular the Rates of Interest Act, and I believe there are other Regulations that deal with the question of mortgage interest rates. We are aware of this and we are reviewing the whole scenario. It does not mean that because we bring the Financial Intermediaries Regulatory Act and have not made provisions for the question of rates of interest that we are ignoring the matter or dismissing it as something that is not relevant to the particular sector of the Barbadian economy. We accept it is relevant. We accept the comments he has made and recommendations have been made from time to time on this particular point. Those are reasonable positions to take and the Government will be dealing with that matter. We do have time to deal with it and I am certain he will shortly see the results of Government's position on the question of rates of interest in Barbados.

The second point he made, and I suspect he has not read the amendments that were circulating because he makes a lot of hue and cry about the publication of audited financial statements by branch banks... Now he, as I understood it, was dealing essentially with the original Bill but if he looks at the Amendments, and I am sorry I did not rise on a point of order... If you look at the amendment to section 66 you will see that we have adjusted it to take into consideration that point. I think he knows how most Barbadians feel about it. Anybody can get a copy of the Financial Times or the London Times and read what the global statements of the banking institutions are. What we need in Barbados is to have an idea of the local operations. We accept that point and if the position previously reversed that scenario that is regrettable. We are now moving

back to the stage where we will give paramountcy to the publication of audited financial statements for the local operations. If the particular formulation is financial statements as prescribed, which would be by the Central Bank, in respect of its business in Barbados... As prescribed would mean according to the information that the Central Bank of Barbados will stipulate is necessary.

That is a simple point and I do not believe anybody should leave here with the impression that the Government has not taken into consideration that particular point in drafting this legislation, nor should they leave here with the impression that it is Government's policy to avoid giving the public of Barbados the fullest possible relevant accounting information and financial information on the branch operation of the **international** banks which have branches in Barbados and the local operations of Barbadian banks.

I hope that has clarified that particular point. If there are problems with drafting, the Honourable Member can deal with that later but I wish to be clear on that point less anybody leaves here with the wrong impression. We agree with that point.

The Honourable Member makes that point and then goes on to say that nobody should have the impression, that as a result of that legislation, there will be no **bank** failures in Barbados. I don't know what the relevance of that statement is to this entire debate. It is the statement that neophytes like me... That is the sort of statement I should make, not the Honourable Member for Christ Church South. If I said that a week after I entered the House of Assembly, Members would sit down quietly and say, well he is now getting his teeth into the matter, give him a chance. But not after all of these years of being an Honourable Member should the Honourable Member for Christ Church South state that as an **ex cathedra** exhortation issuing from his learned lungs. I don't understand this kind of thing. You could have the most complex Banking Act, Financial Intermediaries Act, or whatever and the Government as it were, the most complex, the most difficult, the most onerous, one that imposes the most regulations. In the United States, probably over regulated. I don't know how to describe it now, over regulated in some areas but obviously under regulated in others, inability to monitor the system and so on. There will be bank failures and there is no particular configuration of companies. This is a point that must be made to persons in the banking sector and perhaps in the Central Bank. There is no special configuration of companies that you can come up with that is going to avoid that. Invariably if there are problems in the branch bank there are going to be problems elsewhere. Let us be frank. Some **people** rely, and in fact the only solid thing you can rely on, very often is the name of the institution, whether it is a domestic institution or an international institution. Yes, the question of good will.

Nobody should leave here either with any impression that the Government is saying that this legislation will stop bank failures. This legislation is to facilitate better and more creative and modern monitoring of the banking system in Barbados. That is what it is about and if somebody out there is a thief or a fraud or a forger or any of the other epithets that you can apply to sophisticated white collar criminals, if that is what they are, they will find ways and means of getting around the system. Let us be frank about that. Nobody is trying to make it appear that this legislation solves all of those problems. It merely facilitates the regulatory institution, which is the Central Bank, in regulating those institutions that previously were regulated and adding some other institutions particularly some of the non-banking institutions and also what is **now** designated as deposit taking companies. That is what it is about. We now have more regulations and there are still possibilities of difficulties in any financial system. We do not believe the public should be deprived of information either. We have to be realistic about the kind of information that we can extract from banking institutions. We have to make the jurisdiction or domicile one that they will be interested in functioning. We have to ensure that in that sense our regulations do not make us uncompetitive in relation to the banks that operate here already and those that may wish to establish.

11.35 a.m.

Mr. Speaker, I want to move on to the question of deposit taking companies. Some concern was expressed by the Honourable Member for Christ Church South and this **was** one of the major motivations for the **1978** initiative of the then Prime Minister to have a draft submitted on financial institutions. It was as a result of commercial **firms** in Bridgetown who accept fixed deposits from the public. That was how it was **framed** by the then Minister of Finance. That was one of the principal issues that motivated the **1978** initiative. It is a common feature in Barbados and there is no way that one can phase it out in one fell swoop. I think that we can look at the matter objectively and I am not saying that these provisions are going to solve all of the problems or will give any indication in any overall policy. But I think it is an area that we can **look** at objectively. We can take into consideration the concerns of the Honourable Member for Christ Church South. I personally favour the concept of the establishment of the finance houses which then can be regulated under this same legislation, but there is a whole set of other configurations. It might also be possible to regulate the taking of these deposits in a different way by the preparation of special **kinds** of instruments into company instruments and so on. There are other ways to deal with it, although the present legislation is merely to regulate the scenario or **status** quo as exists in Barbados. That is the best that can be done in the present time. We have an open mind on it and I do not feel that anybody should leave here nor should the Opposition feel that it must get hot under the collar that Government has not

done anything about this area. It is not an area that can be dealt with overnight or **can** be phased out overnight. We can talk some more about it and, perhaps arising out of this particular debate, we can determine how best we are going to deal with this particular area. But I suspect that once we begin to deal with the question of rates of interests that may solve some of these transactions which have taken place informally before. That may be one of the answers that we can look at.

Sir, there are not really any other concerns that the Honourable Member for Christ Church South raised and...

Aside.

Hon. D. J. H. THOMPSON:...Certainly not on the Bill. He went raging off on a tangent about the exemption of property transfer tax for large companies. I do not know how to **describe that kind** of thing, Mr. Speaker. The Honourable Member knows that all of the agreements have buy back options. The people are basically leasing the shares. Do you mean that we must charge them transfer tax on that too? Let us be frank. That is what it boils down to. If he does not understand that, he should say so. But you cannot enter into an arrangement with companies where you **ask** them to buy shares from you but you can only hold them for 5 years. We want to offer them to the public 5 or 3 years later and also ask them to pay for transfer tax on them. I think the Honourable Member has to understand that this **kind** of legislation for the imposition of stamp duty has to have some **kind** of flexibility and he is following a bad lead. He knows that the person out there who is **talking** all of this foolishness about **tax** exemptions by Government for these large companies while poor people **are** being murdered by taxes is the former Minister of Finance, Dr. Haynes. He is a former Member of this House, **Sir**. He is issuing all **kinds** of Press releases everyday and attacking the Government for its waivers. But for years in Barbados people have been applying to the Minister of Finance for a waiver of property transfer tax on leases. If you tell a man that he has possession of your shares for 5 years on the basis that he advances some funds to you but after those 5 years they must be put back on the market, how else would you describe it? Tell me in law what other word you would use to describe that scenario? Has there been any real final vesting of that property in that other person? These are the things that happen on a daily basis. Duties are waived in respect of people from all categories of life in Barbados on a daily basis. I do not know how they add up, but the Minister of Finance uses his compassion in several instances to assist people who are involved in farming, tourist sector and a whole range of other activities. Yet, the impression is being given that the only place that waivers are being is when the Government sell shares to these big international companies. The Honourable Member for Christ Church South should not get in that. If he were the Minister of Finance, I really believe that he would have the sense to waive the transfer

tax in those circumstances. He is more practical. He has a greater knowledge than law and he said that he is a better advocate than me which is probably true. He has more sense than that, Mr. Speaker. That is the kind of criticism that concerns me from him and I think it was an unguarded moment when he felt that in making a silly political point should transcend his ability to debate this particular Bill.

Sir, we have gone through the 3 major concerns that he has, one of which is irrelevant relating to the publication of a financial statement for branch operations. Regarding the rate of interest matter, I am giving him the undertaking that it is being dealt with because it is being dealt with and has been on the agenda for sometime. So that is not a point of consideration at all. The question of the finance houses is something which we can express our views on **today** and have some discussions. If this legislation had sought to stop deposit taking by public companies in Barbados, the Honourable Member for Christ Church would have come in here with a totally different attack. He would say that this Government is merciless in its approach to the private sector and it has just gone and imposed duties and now it has taken away the only source of financing by public company. He would have hit the roof in here. I can imagine it. Now that we have put in a regime to monitor what already exists, he has suggested that it should probably be made illegal. You cannot win with the Honourable Member for Christ Church South. It is a pity. 11.45 a.m.

I hope, therefore, that other Honourable Members will give us their learned opinions on these particular matters, because they are important particularly in relation to the question of financial institutions.

This Bill cannot be perfect and no scheme can solve all of the problems in this **area**, but this is a start and, as I say, other changes will come in due course.

Thank you, Mr. Speaker.

Mr. O. S. ARTHUR: Mr. Speaker, the Honourable Member for St. John managed to **stretch** a 3-minute speech into an half hour. I therefore do not believe that there are any issues which he raised that ought to be responded to.

At the outset of my contribution, Sir, I want to say to the House how very sad I am that the substantive Minister is not now in his place. **The** Member for Christ Church South expressed his protest and I want to express my outrage at the manner in which the Minister of Finance handles substantive and very important matters. It is now becoming a pattern that important matters are brought to this House – the Government, we presume, would have gone through the process of carrying those matters to Cabinet – then at the very last moment very important changes are made either to the legislation or to the matters before the House and this Opposition is, at the very

shortest notice, asked to deal with substantive changes to the legislation or other matters before the House without the courtesy of the kind of time frame within which one would wish to examine these issues.

We saw in the Estimates this year, **Sir**, where the Government was in a position to present us with amendments well in advance of the House meeting, but the Minister waited until the very last moment and gave us virtually no time to consider and reflect on the substantive changes which were being made. In this instance we are talking about putting in place a regulatory regime to properly regulate what is now \$2.2 billion in funds that financial institutions hold in trust on behalf of the people in Barbados. It is a matter on which we must be serious.

I want to express my greatest outrage at the way in which this Minister of Finance continues to treat this House. I must presume that the initial Bill went to Cabinet and that to that extent if there were changes and amendments to be made to it, that the amendments also went to Cabinet. If those amendments went to Cabinet on Thursday of last week, and Cabinet agreed to them then, I am saying that as a matter of courtesy and that it should be mandatory that the Minister should have given us those substantive changes before yesterday, because the matter before the House is important. If it did not go to Cabinet then, Mr. Speaker, and I suspect perhaps it did not go, then I am saying that the Minister is showing complete contempt both for this House as well as for his Cabinet. Whichever option we accept in the particular matter, what is evolving in this and in other matters is that the Minister of Finance of this country in very substantive and important matters is, in my judgment, treating this House with disrespect and I think a stop has to be put to it. The Barbados Labour Party will not continue to accommodate the Government in dealing at the very last moment with high matters of state which involve serious study and our taking sensible decisions upon the basis of the clearest analysis of situations.

I am saying that the amendments with which we were confronted yesterday are substantive, as the Member for St. John had to concede. A major change has been effected in the amendments which would make commercial banks have to publish reports in Barbados about the operations of their branches in circumstances where the initial legislation did not make any such provision. We must put a stop to it. If the Minister of Finance wants to treat his Cabinet like little boys, that is the Democratic Labour Party's affair, but he must not continue to treat this House in that off-hand, casual manner. I am therefore speaking in this debate under protest, because this matter is important. We will not have the Barbados Labour Party accused of holding up the introduction of this Bill any more. It is an important piece of legislation and we want to see legislation on this particular matter on the books, but we are unhappy with the callous disrespect that the Minister of Finance continues to

show to this House. I think the House as a whole has a responsibility to itself to let him know in the strongest possible terms of our disgust with the way in which he deals with these matters.

In relation to the particular matter, we in the Barbados Labour Party are anxious for this legislation to come on the books for a number of reasons. Our financial system has evolved featuring the domination of the system by commercial banks and, to a lesser extent, insurance companies. At present there is legislation governing the operation of banks under the Banking Act and the legislation governing the operation of insurance companies, but in the process of its evolution, Sir, other financial institutions have grown in importance and our Statute Book has featured the absence of legislation that would allow for proper **regulation** of those institutions. We have seen where, from time to time, the Central Bank has been embarrassed by the absence of such legislation. In the case of the collapse of Trade Confirmers, the absence of clear regulations to treat that species of institution was glaring. In relation to the collapse of the Barbados Foundry, the absence of regulations to regulate the behaviour of deposit taking institutions was another glaring omission, and recently in the collapse of the BCCI the Banking Act itself was shown to be very defective in respect of matters such as the provisions to be followed in the winding down of operations of institutions or liquidation.

Therefore, Sir, there are substantial areas in which the legislation as existed pertaining to banks has to be improved and, more particularly, those institutions whose behaviour is not now covered by regulations have to be put under a regime that allows for the protection of depositors in the institution, for the orderly development of the financial sector as a whole and as well to allow for the proper management of those institutions as financial institutions *per se*. The urgency surrounding this legislation, therefore, has not only to do with the fact that the World Bank wants the Government to put this in place, as its *aide memoire* says, as part of its structural adjustment of Barbados, but because Barbados needs an overall regime that can provide a degree of satisfaction to depositors and investors that the depositors in institutions will not be put unduly at risk, that our financial environment can operate in accordance with sound and sober practice and that the institutions can function in a proper developmental way.

Having said that, I want to underscore a point that was made by the Honourable Member for Christ Church South. No matter what we put in this legislation the efficacy with which institutions in Barbados are regulated will depend heavily on the way in which the regulator behaves. I want to use the opportunity to say **first** of all that I am pleased with the tremendous work that was put in by certain members of the Central Bank staff in preparing a series of Green Papers which served as the

put into the preparation of those Green Papers and there are some respects in which the Green Papers themselves are stronger than legislation. I want to congratulate those persons in the Central Bank who contributed to the intellectual effort of the **Green Papers**.

11.55 a.m.

Having said that, Sir, this House would be remiss were we not to draw attention to the way in which the Central Bank in its various regulatory capacities is falling short of what is expected of it. The Central Bank is supposed to be banker to Government and it has contributed massively to Barbados' problems in the performance of that role. It is supposed to manage the external debt of Barbados and I am saying it is also contributing massively and will contribute in the future to this country's economic problems by its default in important aspects of the management of our foreign debt. I want to illustrate.

Under the External Loans Act of Barbados, the Government is authorised to raise funds on the foreign market in the form of bonds. The Japanese loan that was repaid this year was a bond. Next year, May 27, 1993, the Government of Barbados is to repay on a particular day \$80 million that was raised by the Democratic Labour Party in 1988. In the year 2015, Barbados **will** have to repay **Barclays** Bank loan of \$30 million that was raised by the Democratic Labour Party **administration**. The point I want to make is that the External Loans Act recognises that in every instance that a bond is issued and raised abroad by the Government of Barbados, the Government of Barbados must set up a sinking fund because the bond must be repaid in **1** day. You do not wait until the day comes and then you find that you do not have any funds. You set up a Sinking Fund to which you contribute monies on a half yearly basis so that when the bonds are to be redeemed there are funds there to redeem those bonds.

Mr. Speaker, Sir, it is a disgraceful situation in this country that no sinking fund was set up by the Central Bank to redeem the \$68 million Japanese loan that had to be repaid last year leading to all **kinds** of foolishness in this country where shares had to be sold off to redeem those bonds. Next year, May 27, when that \$80 million Japanese bond has to be redeemed there is no sinking fund at all in Barbados to redeem it. What is the implication? When Barbados emerges from the **IMF** programme even if it were to meet the reserve test it will find that having gone through one process of financial madness because of the deficiencies of the Central Bank it will be exposed to another set of financial madness because we will find that there will be no foreign exchange to service that bond as required by law because the Central Bank has not set up the sinking fund for the purpose.

Mr. Speaker, we have to condemn in this House those **kinds** of deficiencies in the strongest possible terms. I

believe that I would have been more satisfied that this legislation can be taken seriously if the Minister of Finance would tell us what kind of shake-up is going to take place at the Central Bank to let the Central Bank people understand that we are serious when we speak in this House about the Central Bank's deficiencies in the execution of its role as banker to Government, its deficiencies in the execution in its role of managing the external debt of this country.

In the year 2015, young children of this country will have to look back at this House **as** jokers when they will have to pay **MO** million and yet there is a law, Cap. 94D, Section 6 which says that a sinking fund must always be established whenever you raise money and borrow by a bond. I have absolutely no confidence whatsoever in the top management of the Central Bank. They are now drawing money under false pretenses. We cannot have this situation, Sir, existing in this country any more where the fair name of Barbados is being held up to disrepute in the market place not because of the **Opposition** Leader talking about the IMF programmes. The international community must know that if you are scuffling and selling shares here and there to service a bond that you have not complied with your own law.

We must not let the **Central** Bank feel that we are tolerating this nonsense any more. It must stop and I am concerned that the absence of a sinking fund to redeem the \$80 **million** that was raised in the Japanese market by the Minister of Finance will put this country into financial grief in 1993, when the IMF programme ends because we will not have the foreign exchange to service it even if it meets all the **IMF** tests. It is a simple matter that the law has not been complied with and if the Central Bank could not manage that, I have to ask the Minister of Finance to specify what changes will be made in the Central Bank in order for the Central Bank to execute these additional responsibilities that are expected of it by the widening of the scope of its operation in relation to the regulation of institutions.

Mr. Speaker, Sir, the regulation of institutions by the Central Bank is perhaps its most important function. It sits as the regulator of \$2 billion of funds that financial institutions hold in trust on behalf of the people of Barbados. I regard it **as** such an important matter that I believe that this House owes it to itself to set up a Banking and Finance Committee which will meet **as** often as necessary, to make sure that the provisions of this legislation are followed as required by law. The regulation of \$2.2 billion of funds held in an institution on behalf of the public is an important matter. We see in the **United States of America** where Mr. Greenspan has to go before the Senate and before Congress ever so often to discuss matters of monetary policy and regulation of institutions. If anything goes wrong in the regulation of institutions, if the people of Barbados cannot be satisfied that they can put

their money in institutions without **fear** of their getting it back, it is going to be the Members of this House that the people of Barbados will **look** to for solutions to their problems.

We have seen in the United States of America where taxpayers funds have been called upon in large measure to pay depositors who put money in savings and loans in the belief that they were safe. If this House is going to be in a position where we are going to have to face such a continuum of liability, I want to see us have a Banking and Finance Committee where ever so often we can meet with the bankers, meet with the Governor of the Central Bank who would not even come to this House on an important matter such as is engaged in the House today. We can satisfy ourselves as legislators that the spirit of this legislation is being complied with by the people whom we gave a responsibility to regulate on our behalf. I am saying so tangentially because I have no confidence in the Central Bank, given the manner in which it has been behaving of late, and I do not feel this House should expose itself to the passing of important legislation without somebody regulating the regulators.

Mr. Speaker, there are a number of broad classes of defects in this legislation to which the Opposition wants to draw attention. I am not going to go through each clause by clause in a Second Reading speech. That opportunity, Sir, is going to exist in Committee. I know that Government probably has access to 20 or 30 pages of amendments to legislation that might have been suggested by interest groups in Barbados which perhaps warrant our going through this legislation not in terms of parts because there are only 4 parts but clause by clause. Notwithstanding Sir, there are a number of broad categories of defects in the legislation to which I want to call attention.

The Member for Christ Church South has already drawn attention to the way in which the role of commercial banks which are branches of foreign owned banks in this legislation. I do not want to amplify the point he made. This legislation attempts like the old Banking Act to regulate the banking activities of all banks by requiring that banks in making loans cannot extend loans in excess of 25% of the capital of the banks concerned. That is always a piece of nonsense where branches of foreign banks are concerned. A branch of a foreign bank is not required to hold capital in Barbados. That limitation of 25% of the capital would obviously be 25% of the capital of the overall conglomerate of which this is a part. Clearly a foreign bank would have an advantage to a local indigenous bank because the local indigenous bank must hold capital locally. A local commercial bank, notwithstanding its deposit base, will find that it will not be able to compete for big accounts because it can only lend under current legislation and this legislation provides for loans not exceeding 25% of its capital.

12.05 p.m.

Now, the existing legislation before the **House** maintains the status of foreign commercial banks, They do not have to hold local capital but what it intends to do **is** to say that the commercial banks may require a foreign bank that has no existing business at the commencement of this Act to assign capital to its bank locally. Let me simplify what I **am** trying to say, Where the existing foreign branches are concerned, they are not required now to assign that at will, as I understand this law, The provision that is purporting to regulate their capacity to extend loans that link their loans extended to the capital that they hold is nonsense.

In relation to the new banks, Mr. Speaker, the concept of assigned capital clearly needs more work. There is obviously a point of discrimination where a locally owned bank would have to put up its capital in cash whereas a foreign bank has the liberty of saying that some of its fixed assets form part of its assigned capital. I am saying that the whole relationship of the branch banks to Barbados has clearly to be re-examined. The Green Paper promised that that whole matter would have been re-examined.

I **think** it has to be **re-examined** not only in relation to the capital adequacy, not only in relation to the question of the regulation of the banking activities because the existing regulations are non-sensical, but also the question has to be asked and raised whether in point of fact the banks' branches in Barbados have been performing the role that has been expected of them.

We encourage branch banks in the Caribbean because they ought to be a source of foreign capital. They are foreign owned. They are allowed to take out their profits in foreign exchange. They come to these countries, take deposits in local currency, they lend in local currency but they take out their profits in foreign exchange. The fact, however, is that when liquidity problems arise the value of having foreign branches is that those foreign branches should be a source of inflow of foreign exchange.

I would want **the Minister** of Finance, as we are in the process of looking at legislation which is going to enshrine the role of those foreign branches, to tell this Honourable House whether in recent times, particularly when this economy has been under crisis the foreign banks have, in fact, been bringing foreign exchange into the country when they experience liquidity difficulties **or** has it not been the case, Sir, that they have been looking at the Central Bank **as** being the lender of last resort. If they have not been bringing foreign exchange into the country but want to carry out foreign profits, then no clear role can be argued for foreign banks in this country, particularly when we are giving them this discriminatory preference relative to local banks and foreign banks of the future.

I want to summarise the point, Sir, that the set of regulations contained in the Bill pertaining to branches

maintaining a *status quo* that will allow branches of foreign banks not to have to hold local capital that makes a nonsense of the policy which says that limits on loans extended should be a percentage of the capital of the bank. If a bank is not required to hold local capital then to have that as a limitation is nonsense. That, I think, has to be reviewed in committee.

I am also of the view, Mr. Speaker, that the time has also come in dealing with bank activities when criteria other than capital of a bank should be taken into account in setting limits. Banks make loans to the public not out of the capital of their shareholders. Banks make loans to the public out of the deposits by the public in the institutions. Clearly if we are going to regulate the amount of loans that a bank can make to any one customer, while it is necessary to maintain that capital to loans ratio, it is also important to take account of the deposit base of the banking institution in determining matters such as that.

I am raising this, Mr. Speaker, particularly in support of the need to encourage growth of local and indigenous commercial banks because small banks in the past have found it difficult to handle large accounts of big businesses because the legislation as existed related loans to customers to the capital of the bank. If the bank therefore has a small amount of capital it means that it cannot handle big loans regardless of whether it has a big deposit base. I am saying that some flexibility has to be built into the legislation which would enable a bank that has a minimum amount of capital but a large amount of deposits to relate its loans to its deposit base as well.

Mr. Speaker, I said I was dealing in categories of defects. There are very important areas in this legislation where the Minister is put in a supervisory role that is best exercised by the Central Bank. I will not tire the House in the second reading speech with the details. One very glaring example of it, I think, has to do with the submission of quarterly reports, which is a Central Bank matter. We would expect that under this section, Part V, dealing with audit and inspection, that the licensee must submit monthly statements to the Minister. That is a supervisory role that must really be performed by the Central Bank and not by the Minister. In the very instance I am saying where the Minister is put not in a policy formulation role but in a supervisory or monitory role that devalues the Minister. Let us go through the legislation and remove that.

There are instances as well where the Central Bank is put in a position where the intention of the legislation would seem to make the Central Bank responsible for the day-to-day management of the institution or be able to encroach on matters that are best left to the management of the institution. Section 18 (1) is a clear case in point where the Central Bank now would be able to tell banks what reserves they must maintain for bad and doubtful debts.

That is a management function. Section 18(2) is what we should have in legislation that the Central Bank may specify guidelines in relation to bad debts. All we want the Central Bank to do is to regulate the institutions rather than manage them and in instances where, as in 18(1) the Central Bank is to manage we cannot have it. 18(2), by specifying guidelines that must be complied with, is the preferable approach.

Another broad category of defect has to do with the role this legislation assigns to Government in relation to the commercial banking system. Let me explain quickly. This legislation purports to set out a number of criteria which, if complied with, would lead to proper banking in Barbados so that banks must do this, they must do that, they must not lend more than X to specific customers and so on. And after the legislation has specified all of these various provisions that are supposed when taken together to give rise to proper banking, it comes and says that these provisions, Sir, however must not pertain in the case where a bank is dealing with the Government or a statutory institution which I think is making a nonsense of the spirit of the legislation. If good banking is to prevail in Barbados, Mr. Speaker, it must not only prevail in relation to the relationship between banks and their private sector customers but also the relationship between banks and the Government as well.

12.15 p.m.

It is clearly nonsense to have in legislation provisions which make for good banking if there is a relationship between banks and the private borrowers but such provisions are not to be followed in the case of the relationship between banks and the Government. The provision I am talking about relates to the amount of financial exposure that any one bank can have with Government. It is nonsense to say that a bank should not over expose itself by lending too much to one private sector customer but then say that such a provision should not apply in relation to the financial exposure that the same bank can have to the Government. Because as we know, Sir, a bank can be put at risk by having excessive exposure to Government and Government's statutory corporations particularly in circumstances as we have today, where Government and its statutory institutions are not paying their creditors.

Aside.

Mr. O. S. ARTHUR: Mr. Speaker, Sir, there is a number of other provisions – I am dealing only with the classes of problems – which are conflicting. The dividend policy expected of one kind of institution differs very often substantially from the dividend policy expected from another kind of institution, conflicts with what is provided for in the Companies Act and where we have that kind of conflicting policy meant to be applied to similar institutions we must take them out of the legislation. There are some

policies that make absolutely no sense. There are some policies that are completely unrealistic. For example, section 36(1) says that if at the commencement of this Act a trust company, for example through exposure, is in dire straits that no action should be taken under this Act for 4 years.

Clearly, Sir, this House cannot agree to a situation where we are saying that if tomorrow we pass this legislation and a company's financial exposure is not in compliance with what the law requires and that it is in a dire situation that four years must elapse before action is taken. That is obviously an unrealistic policy, Sir. It makes no sense.

But let me close here with one long paragraph, Mr. Speaker. This legislation is badly needed. Legislation to regulate the activities of financial institutions is badly needed particularly to cover the areas in which no legislation nor regulation exist today. I would have preferred if the banks could have been kept under a separate regime and the Financial Intermediaries legislation be made to apply to those types of institutions which presently are not governed by any regulation. The Government has seen it fit to have everything put in one. I do not think it lends to tidiness. The Government has recognized the importance of maintaining the insurance industry under a separate regime. I am saying that the banking system is important enough to also want its own separate regime and that the value of a Financial Intermediaries Bill is best realized in having it as a piece of legislation to deal with the other institutions that are not covered by the insurance industry legislation. But I want to insist that this legislation will only come alive if this House also agrees to set up a Banking and Finance Committee to make sure that what they are putting in place today to protect depositors to make for better financial operations, Sir, can be supervised by the lawmakers of this country.

I am obliged to you, Sir.

Mr. H. deB. FORDE: Mr. Speaker, Sir, the 2 Honourable Members who have spoken so far on this side of the House have emphasized the essential need for improved legislation governing non-banking financial institutions in particular. I do not believe that anyone today will disagree in the light of the failures that have occurred in Barbados in recent years with how important it is that we should have safeguards particularly for persons who deposit their funds with banking or non-banking financial institutions.

There is, at present, a limited degree of protection under the Banking Act for depositors with commercial banks. There is a limited amount of protection in various bits of legislation including the Companies Act for persons who transact business with other institutions of a non-

banking nature. But the legislation is very rudimentary. It is neither comprehensive nor is it indeed visionary.

What I regret very much about this bit of legislation is that now it comes to the House it has failed to take into account the need to harmonize all CARICOM legislation dealing with the growth of the commercial and financial market of the Caribbean. And it has failed to take into account the developments that are being planned within CARICOM for the strengthening of the indigenous banking and non banking institutions of the region.

I should let it be known that the Caribbean Law Institute, with the blessings of the CARICOM Secretariat, recently set up a committee to do a model draft Banking Act for the 13 countries of the Caribbean Community. The Organization of Eastern Caribbean States has a draft Banking Bill that is available. A distinguished Barbadian draughtsman has recently been retained to put into draft form the recommendations of that Committee, a Committee consisting of very distinguished persons, knowledgeable in the field of banking legislation.

And frankly, the Government does not seem to be in step or knowledgeable of these developments otherwise I believe the Government would not have persisted in the view expressed in the Green Paper put out by the Central Bank some time ago that there is no objection to all institutions, including banking institutions coming under the aegis of the same Bill.

Some years ago, a committee in Canada made that comment. But there has been a lot of rethinking on this matter and, Mr. Speaker, you would find that the Crowther Report in England and recent reports in other Commonwealth jurisdictions have made the point that some financial institutions like banking and insurance need their own regulation. I believe that this Bill is defective and considerably defective to the extent that it seeks to place all of these diverse institutions and activities under the aegis of one Bill. It is particularly defective in the manner in which it has sought to update the Banking Act by placing the general provisions relating to the control of commercial banking activity under Part I or Part II of this legislation.

I do not know what has inspired the Government's obstinacy to proceed over yesterday and today with this legislation, other than the new machoism of the Prime Minister who seems, after having slept for so many years and done so little, to be now intent on proving to someone that reports do not stay on his desk for too long. This legislation would have benefitted from the considered experience and expertise of several other persons in the community, including the experience and expertise from this side of the House, if we had gone to a select committee and had looked at reforming and reframing this legislation.

12.25 p.m.

I would like to seriously suggest to the Government, Sir, that it gets hold of the modern legislation, both in Canada and the United Kingdom – the United Kingdom's Bill is only a few years old – dealing with banking institutions and also get hold of the draft Bill of the OECS and the shortly to be drafted Bill from the Caribbean Law Institute and within a few months or years, at the latest, come back and remove the provisions dealing with banking from this bit of legislation.

It is short sighted, Sir. To give you an example, Sir, we cannot deal with the winding up of trust companies, merchant banks, deposit taking institutions, in the same way that we have to deal with the winding up provisions governing a commercial bank. We cannot. What the Government has purported to do in this Bill for instance, in relation to that particular measure, is to take provisions from the Offshore legislation, almost all of it, and thrown it into this Bill and says that must apply to winding up willy nilly of all companies, regardless of what happens. The result is going to be certain confusion.

The Honourable Member for Christ Church South and myself have been advising recently in relation to what is the biggest cross border insolvency of a banking institution, the BCCI. The myriad problems that have come from the 60 jurisdictions in which that Bank operates have really posed difficulties for the commercial, financial, accounting and legal brains throughout the world. But one thing is certain, and that is that existing legislation and existing treaty arrangements have not adequately dealt with the problems that can occur from bank failures.

The failure of a commercial bank whose activities extend world-wide or even regionally is of a different nature from the failure of a trust company that may be taking a small number of deposits as compared with a bank and operating within a limited jurisdiction beside doing normal trust work. The approach, whether during the existence of that institution or the final winding up of that institution, the approach to its regulation and control is now considerably different in many details and in many ways than it is to a commercial banking institution. I believe that the Central Bank is wrong if it has advised the Minister to proceed along the path of putting all of these provisions in one Bill.

Mr. Speaker, that is probably an appropriate place in my speech for me to speak about the history of the legislation and to correct the misrepresentations read into the record by the Honourable Member for St. John. I don't think it was deliberate. I think that really it was due to the fact that he is new to this thing and has not had the opportunity to understand the files properly and he is probably swiping. Therefore I would say his is not deliberate, but when the Prime Minister merely cites it and looks over here as though he is castigating the Labour Party for not bringing particular legislation to excuse his

own delay, that is a different type of error and this idea of 14 years is a lot of nonsense. For one thing, Sir, the Labour Party was not in office for 14 years since 1976. That is a patent inexactitude.

Hon. D. J. H. THOMPSON: On a point of order. I am speaking with respect to the Honourable Member for Christ Church South who I said 14 years later is now saying something. I did not say the Labour Party was in office for 14 years and God forbid it if they ever were.

Mr. H. deB. FORDE: Sir, that is not going to put me off from correcting the Honourable Member. The Honourable Member does not understand numbers. He avoids numbers and he likes to swipe and makes generalisations that sound smart but when it comes to telling the facts as they are and representing what is true, that is a different story.

In 1978, Sir, the then Prime Minister and the Barbados Labour Party Government was most anxious to develop the offshore sector and financial services in this country and the assistance of an expert provided by funds from the IMF was sought. The expert misunderstood his brief and he confused several concepts and thoughts and produced a Financial Institutions Bill that was totally unacceptable to the conditions of Barbados and the Caribbean and the Government's policy and which was severely criticised by the financial institutions of Barbados and those persons who served the financial institutions, particularly the accounting profession. As a result, the Ministry of Finance, briefed the Ministry of the Attorney General, the Honourable Member can look back on it, Sir, to redraft the Bill and we did a series of things. We had some meetings with people from the private sector and, Sir, I have called the names of the three gentlemen who gave their assistance, they are all accountants, Mr. Ken Hewitt, Mr. David Shorey, and Mr. Patrick Toppin, gave very valuable assistance at that time. They, like us, were not satisfied with the Bill.

Members of the Central Bank attended that meeting, too. Members of the Ministry of Finance, and contrary to what the Honourable Member would have this House and the public believe, the now Honourable Member for Christ Church South who was then Deputy Prime Minister sat down with myself and Mr. Lewis Hunte and others and gave valuable advice in order to draft the legislation. Eventually what we decided on, and history will prove it, was that since the most urgent part of the legislation required was the Offshore Banking Act, that we would proceed to deal with the Offshore Banking Act and updating other parts of the offshore sector legislation as a matter of urgency and later refer to the Committees to study the other financial intermediaries.

The Offshore Banking Act was passed in this House in 1979 and it is 1979–26 and it was amended on at least

4 occasions during the Labour Party's tenure in office thereafter. Your Honour will find as well, to prove the truth of what I **am** saying, that other legislation like Exempt Insurance and other types of legislation were also put in their separate Acts and brought down to the House in separate bits of legislation. The Honourable Member is misleading the House and the public to suggest that the Labour Party did nothing in this area. The truth is that the Democratic Labour Party having passed an International Business Companies Act back in 1967, I think it was, had left it there and nothing had been done. It was important that we should go ahead with the financial institutions in this way and we prioritised what we had to do in terms of immediacy and, in fact, we were so successful that today were it not for the financial service sector bringing foreign exchange into Barbados **and** lending the Government to rescue the Prime Minister we would have not passed the IMF test. Rather than any stricture of the Labour Party for 14 years and all that sort of foolishness, they should hang their heads in shame in recognising that, when we started off again in 1985 and we advised that we should set up a committee to deal with the other aspects of the Bill, it has taken this Government from 1986 to 1992 to bring down legislation. They say that they are now in a hurry and they have produced bad legislation and confused concepts which are going to pose problems for the very financial institutions that they are seeking to serve. That is the whole point.

12.35 p.m.

Sir, what **are** they trying to hide behind? They are out of step with what is happening in the Caribbean in relation to the regulation and control of banks and the protection of depositors. They are not up to date with recent developments in the Commonwealth. At the same time, they have garbled their concepts and thoughts in the legislation and some of the drafting leaves a lot to be desired. For instance, they are now **seeking** for the first time to make a change to do an amendment in Committee to recognise that companies in Barbados since 1982 no longer have issued and paid up capital. They stated capital. That was elementary. There **are** provisions of this Bill in relation to the payment of dividends that conflict with provisions of the Companies Act as to how dividends are going to be paid by the very companies which they are seeking to regulate and there is no coordinating provision between the 2 Acts in the legislation.

Sir, I get the impression that the Prime Minister did not understand the brief that had been written for him by the officials and he got up here and read his speech without appreciation of the concepts that lie behind the regulation of non-banking institutions. If he had to talk as I have to talk very often sometimes without a note in my hand, he would be at **great** difficulty in the Ministry of Finance. That goes for the Budget Speech as it goes so much for a contribution on a Bill such **as** this nature, Sir. I really have to make the point very often in here. When you hear us

give the criticisms that have been given in here today by Honourable Members, they are valid criticisms.

Sir, I **am** concerned about the confusion and I am going to highlight a few of the areas of confusion. In my view, the Bill should have separated the trust and deposit-taking institutions and some of the other intermediaries completely away from banking. That is the first point. The Bill seeks to repeat under various headings provisions that are similar in the Banking Act to trust companies and others that are not relevant. The Bill shows the confusion within the Government's mind as to what bodies will be permitted to take deposits. Both Honourable **Members** on this side have spoken about whether or not commercial houses will be allowed to take deposits without having a licence under the Act and without setting up a finance house. The Honourable Member seems to shake his head. When we get into Committee, I will show him a provision. I think it is Section 40 that in one breath says:

"Subject to Parts **II** and **III** and Section 39, no person shall carry on the business of taking deposits without a licence issued under this Part."

But a little later in Section 41 (3) it says:

"Where a company that is not a licensee takes deposits from the public, it shall state **on** the receipt of ce cate, as the case may be, the fact that it is not a licensee under this Act"

Sir, this is obvious that is a contradiction. When this legislation has to be interpreted by the Court, what is going to be the interpretation of the legislation? I go a bit further and I make this point, Sir. If there is one thing that will discourage the growth of this sector of the financial business, it is confusion and uncertainty in the state of the law. The Government has to accept that this is a bad draft of confused **thinking**. The Prime Minister cannot come in here and boast about **taking** action. I cited that as one example of the confusion that exists in the minds of the Government. It is a very serious matter.

The second confusion relates to the fact that it seems to make a distinction. There is nothing dealing now with private persons having a limited partnership. Let me give him another example, Sir. A limited partnership, as known under the laws of the United States, France or even under our own limited Partnership Act, can indulge in a similar business, can hold deposits as large as any licensee would now under deposit taking regulation and find itself exempt from this because the legislation is not covered by it. **Sir**, the point is that the Honourable Member ought to know that in the offshore sector, for instance, one of the fastest growing **areas** is for those limited **partnerships** to be registered to do this sort of business offshore. That is why I say that the Government is not with it. It is not out

there. It does not know what is happening out there in the market place.

Sir, the third point I want to make relates to categories of persons. Section 39 says:

"This Part shall not apply to the taking of any deposit by

(c) a company that is not a public company."

Sir, it applies only to public companies and this is really nonsense. I did not find the definition of a public company in this Bill. Therefore, I went to the Companies Act to find out what is a public company. A public company is, of course, one that makes some offering to the public by way of debenture or otherwise in terms of the definition of the Companies Act and in terms of Section 44 (3) of the Companies Act. But, Sir, I believe a majority of the deposit taking institutions in Barbados are not public companies. The public companies that are listed on our local stock exchange, what we call the Securities Exchange, are probably just Cave Shepherd, Bryden's and B.S.&T., but what about the other companies and commercial houses that are taking deposits? What are we being told? That they are not regulated? Is it only companies that have now made a public offering to the public to subscribe to their shares? The advice which will be given in future, including the foreign companies coming in here, is not to make themselves public companies, just pay as private companies and escape the whole rigours of the legislation. Let us be serious, Sir. The Bill needs to be studied.
12.45 p.m.

Hon. D. J. H. THOMPSON: The Honourable Member has perhaps expressed it in specific instances that do not capture the policy. This legislation does not seek to regulate other than the public companies. The section which he pointed out is really a section designed to warn a person who takes the risk of depositing funds in a private company, that that company is not regulated by this Bill. If the Honourable Member is suggesting therefore that private companies should also be regulated by this legislation, that is a different matter but that was not the intention. I can say that up front, because it is not the intention.

Mr. H. deB. FORDE: Sir, the Honourable Member has only made my smctures of the Government more rigorous, because the Honourable Member must be aware that there has been a failure of these institutions throughout the Caribbean and elsewhere that are not public companies. The Honourable Member must be aware then that the policy of his Government is defective in this respect, and that is what I am saying.

Sir, the confusion moves from there to when Government now is dealing with its own statutory banking institution, the Barbados National Bank. The Honourable

Member has asked *sotto voce* if I have finished with the point. Yes, I have moved off that point because I do not need repetition. The country now seems to want me to repeat all the time my strictures of this Government. I do not want to repeat, Sir, but every word I say about them is being proved by degrees and occasionally I have to say it myself. It bores me to say it, it happens so often. I have moved from that point to the way in which we deal with the Government's bank, the Barbados National Bank.

If there is a bank that wants controlling, it is the Barbados National Bank. It wants controlling, not by a Minister of Finance, but by the proper regulatory authorities and it should not be given any longer any exemptions in the nature being given. We gave it exemptions when we were setting it up originally. It has been operating for a long time. The nature of the exemptions being given here is to encourage financial infelicities and to continue the foolishness that has been happening between the National Bank and companies in which the Government has an interest.

Now, Sir, what the Government is doing is exempting institutions, principally the National Bank, from some of the controls that are considered necessary for other institutions. What is going to happen is that we are going to encourage the CARSICOT situation. The Honourable Member for St. Michael North wants to know what is that. It is the banking practice where they have lent to an institution what is now close to \$10 million and they do not have the assets to repay. There is only one group of persons who suffer from that, it is the depositors, and if under the existing legislation Government has to guarantee the deposits, then it is the public which includes some of those very depositors.

It is all right to have these provisions for other people, but there is another law for the Government's institutions. I say this is absolutely and totally unacceptable in today's commercial world. I will ask when we get into Committee that that provision be seriously scrutinised and looked at. There are two such provisions.

Sir, I am against the provisions of clause 119(2) which says: "This Act, save where the Barbados National Bank Act otherwise provides, applies to the Barbados National Bank as it applies to any other bank." I am saying that those provisions must be removed. The Barbados National Bank Act must now be amended in such a way that it comes fully under the control of the relevant legislation and is subjected to the same financial regulation as any other bank in Barbados. It is offering to the public, it must have the recognised standards of financial rectitude that are to be found in all the reports of the bank for international settlements, those standards that have been set for commercial enterprises all over the world, and the nonsense that has been happening in that bank, putting at risk people's deposits in that way, should really stop

now. That is why we find it difficult to give this legislation, the principle of which is desirable, a free pass through this House without the sort of strictures that must come from anybody who is enlightened in this area of financial business.

I would strongly suggest to the Government that if it wishes the legislation to be improved, it will take the steps which it took when we assisted the Government in improving the international business companies legislation. If the Government wants proper legislation and assistance from us that would benefit the people of Barbados and improve the atmosphere in which financial intermediaries and non-banking institutions **operate** then the Government would allow this Bill to have the sort of exchange which the International Business Companies Act had. The Opposition played a constructive role. We were prepared to sit down and we sat down with even the Government's institutions but that Bill was then handled by the Honourable Member for St. **Philip** South who saw the necessity to use ability and expertise wherever it is. Instead of dealing with the Bill, not in the Prime Minister's style of just rushing something through the House to say that he has his hands on the till, his style was to get the best for Barbados in a genuine way and not merely...

12.55 p.m.

Asides.

Mr. H. **deB. FORDE**: Now, Sir, I will give you from the depositors' point of view a provision that cannot be beneficial to a depositor. Section **41**:

(1) "A licensee shall not

(b) accept deposits of a sum less than \$1000".

Subsection (2) says this:

"A licensee may not be required to repay any deposit within a period of less than 7 days from the **date** on which the deposit was taken by the company."

Now, let me assume that we had BCCI here that was taking money and I go in and put my client's account on it 2 days ago and I am informed and obtain information from the Bank of England or elsewhere that BCCI is going to fail worldwide, I would want in those circumstances to remove my money. The Honourable Member for St. **George** North is saying banks give you restrictions. Not on all deposits, Sir. It depends on the nature of the deposit. The Honourable Member should know that. I would say that that **provis'ion** is unnecessary. That is the type of provision that you leave to go into a contract between the licensee and the depositor, particularly since it is against the depositor who is the weaker of the 2 parties in this transaction. That is over-regulation and is totally

unnecessary and no modern thinking legislation puts in the Statute Book regulation of this nature because it harnesses the depositor's ability to protect himself.

Rt. Hon. L. E. SANDIFORD: Mr. Speaker, I will reply quite briefly to this debate and I would like to make it clear again, Sir, that while the process and mechanism of debate and discussion in Parliament is to arrive at a final decision on the matters that come before us within the framework of the various devices that have been instituted in this Honourable House that those provisions set the times how matters should be introduced into the House, the First Reading and the Second Reading. The Standing Orders also provide for the Committee stage when Members on either side can make their proposed amendments.

Asides.

Rt. Hon. L. E. SANDIFORD: Mr. Speaker, we have the Committee stage and any member who wishes to be constructive or destructive within the framework of the Standing Orders of this House has an opportunity in the Committee stage to say this particular clause is defective and we propose this amendment. Within certain limits that is how the House has made provision for discussion.

In respect of this particular Bill, the Bill was introduced in this House, as I indicated, earlier in March. I do not understand how members of the Opposition could be **claiming** that we are rushing something through the House. The Committee stage is for the purpose of discussing amendments and the Government can make amendments and Opposition members can make amendments. That is what a committee stage is all about. It certainly is not for Second Reading speeches. I am sure that you do not permit Second Reading speeches to be made during Committee stage. I am fo ed in that view, Sir, because indeed you are not at that time a member of the committee.

There is ample opportunity for the Opposition to play its role in amending or improving the legislation by making their amendments or proposals during the committee stage. One thing is sure, Sir, we do not believe that we can find perfection on this matter or on any other piece of legislation. Times change and we are in dynamic situations and what we are seeking to do is to put a piece of legislation on the Statute Book and if in the process of time it is discovered or recognised or it becomes apparent that changes or amendments are necessary or desirable then we are prepared to come and amend the legislation.

Sir, we are not like others who seek and wait for perfection and then and certainly in respect of this matter we have been waiting all the time. We are dealing with an opposition that blows hot and cold. Very hot and very cold. Whatever stand the Government comes with they come

with the opposite stand. Now, I heard one matter raised about deposit taking commercial houses. I am not sure what the position of the Opposition is on that. Are they saying that those commercial houses should not be permitted to take in deposits? I am hearing questions raised. It is the policy of the Barbados Labour Party that commercial houses should be discontinued and should not be permitted to take in deposits from the public. I am sure that if we had come with that provision in this Bill you would hear how the Democratic Labour Party Government is bringing to an end traditional practices in the commercial sector of this country.

Mr. H. deB. FORDE: The Opposition has made it clear that there is a need to encourage indigenous companies and persons to get into the financial sphere. What it has said is that because of the nature of the operation they should have a separate financial structure. The Honourable Member may try to misrepresent the Opposition position but it is absolutely clear.
1.05 p.m.

Mr. SPEAKER: Order, please.

Rt. Hon. L. E. SANDIFORD: What we are saying here, Sir, is that we are permitting existing practices in that particular regard to continue and when we have come to a determination after discussions and consultations on that matter we will come with our position. As the situation stands, we are not going to be pushed into positions that the Opposition never took when it was the Government. For the period from 1976 to 1986 they never did anything or took any steps in that particular direction that could operate in this country. Now they want to be holier than thou. I now understand why we are talking about parliamentary ethics. I now understand the position. That is very ethical. When you were the Government you never did anything at all about it but now you are very righteous in this position that this Government should take the position. I think the public can see through that kind of posturing.

Mr. Speaker, this particular piece of legislation makes changes in the financial system of Barbados. I do not understand how the Honourable Member for St. Peter might even think of saying that we do not believe in change. We are making serious and fundamental changes in the operations of the financial intermediaries within the financial system of Barbados. The experience of the legislation will determine and dictate the kinds of changes and amendments which may have to be made to the regime down through the years. I do not wish to go into the number of times we have had to change legislation introduced. You yourselves as members of the Opposition have had to introduce changes in your legislation and to other legislation as well. That is what will be followed in this case.

I hope the Opposition will recognise that there is an opportunity now to make the kinds of amendments, if they wish to help to improve the Bill. It is assumed this is the approach. We are going into committee. We can work together in order to improve the legislation. There is no point taking up these antagonistic positions. We can deal with those matters in committee.

I will accept the advice of the Honourable Member for St. Joseph any time on these matters. He is a distinguished legal practitioner, so long as he is not talking about agriculture or something like that. We are quite willing to follow the examples if it is on points of law he is talking about.

Mr. Speaker, I really do not think we need to go into all of these matters that have been raised. They have been around for a long time. As I said, there comes a time when the talking has to stop and we have to take the action. That time is now. I have already moved that this Bill be read a second time. I think we can proceed to the committee stage.

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

SUSPENSION OF SITTING

Hon. P. M. GREAVES: Mr. Speaker, I now move that the sitting be suspended for lunch until 2.15 p.m. today.

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

The question that the sitting be suspended until 2.15 p.m. was put and resolved in the affirmative without division and Mr. SPEAKER suspended the sitting accordingly.
1.12 p.m.

ON RESUMPTION

Mr. SPEAKER: The sitting is resumed.

On the motion of Rt. Hon. L. E. SANDIFORD, seconded by Hon. P. M. 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.

Clause 1 was called and passed.

Clause 2 was called.

Rt. Hon. L. E. SANDIFORD: Mr. Chairman, I beg to move that Clause 2 stand part.

Hon. P. M. GREAVES: I beg to second that, Sir.

Mr. H. deB. FORDE: Mr. Chairman, Sir, there are a few criticisms that must be made of the definition section. Throughout the various parts of the Act we find various definitions that were better removed from those sections and brought under the composite definition section particularly in some cases as they have a wider import than that that is under their own section.

The second point I wish to make, Sir, is that the definition of banking business appears to me to be too limited and that we should examine a better definition which is to be found in various legislation throughout the Commonwealth and it seems to me as well, Sir, that there are other definitions within the body of the Act, other words within the body of the Act itself that should be properly defined, up front. You will find both in the Canadian and the British and other legislation that that form has been followed.

Under the term "foreign bank", "foreign bank" is defined under this clause as meaning a bank incorporated outside Barbados. If the Government is **looking** towards encouraging other banking institutions **from** outside of Barbados to do business in Barbados then it must recognize that they are formed not only as bodies corporate but they are formed under various types of legislation for instance limited partnerships, *société anonyme* I think it is called in France and that therefore the definition here should really be much wider than it is.

Likewise, Sir, the same comment that I have made in relation to the narrowness of the definition applies to a licensee. A licensee under the Act means only a company licensed under Parts II, III or IV. But particularly outside of Barbados several of the bodies which carry on the business of trust company, merchant banking, et cetera are not necessarily incorporated as companies. I have cited a situation in Europe but the same applies in parts of the United States. In some of the states of the United States some of these bodies are incorporated otherwise.

Also "Barbados bank" means a bank incorporated in Barbados;" and I wonder whether incorporation here is by statute. What is the statutory body defined as in these types of circumstances. I think that we should really **relook** at the definition section in its entirety having regard to the points that I have made.

Hon. P. M. GREAVES: I must admit you do not look at definitions by themselves. You only look at definitions as they apply in various other parts of the Act. **Looking** at it by itself, quite frankly, does not really answer the problems or the questions or the issues as raised by the

Honourable Member for Christ Church West. You have to be able to refer it in its own context where it is shown in the Act, not only in this particular clause. I think the Honourable Member understands what I am saying. Unless we **can see** it as it is and is referred to as we go further along well then it is going to be difficult really and truly to deal with it in the way in which **I...Although** the Honourable Member has not suggested how it should be dealt with, except perhaps that we should widen certain definitions. Yet it is not easy to respond in a more positive way than this.

Mr. CHAIRMAN: We should put the question.

Hon. P. M. GREAVES: We could do that, Sir.

The question that Clause 2 stand part was put and resolved in the affirmative without division.

Clause 3 was called and passed.

Clause 4 was called.

Rt. Hon. L. E. SANDIFORD: Mr. Chairman, I beg to move that Clause 4 stand **part**.

Hon. P. M. GREAVES: I beg to second that, Sir.

Mr. CHAIRMAN: The Honourable Member **for** Christ Church West.

Mr. H. deB. FORDE: Mr. Chairman, Sir, the comment which I made concerning the company or body corporate applies likewise here particularly to clause 4(2) which says **that**:

"No licence may be issued under this Part to any person other than a body corporate."

The simple point I am making is that there are several banks, particularly merchant banks which are formed that are not necessarily bodies corporate because they are established under legislation like limited partnerships **or** different named institutions. Certainly if one is **looking** to encourage merchant banks from outside of Barbados then it is important – or commercial banks for instance...

Aside.

Mr. H. deB. FORDE: The Honourable Member is asking why can they not incorporate under this Act. Part II is limited not merely to bodies that are incorporated here in Barbados but they embrace foreign banks which may be interested in re-registering in Barbados to operate in Barbados. **I am** not sure what would be the drafting of the words. But I do recall there is other legislation that probably takes that into account that would make provision to allow such bodies to operate.

I am **sorry** I have not got a copy of the Canadian Banking Act here but...

Aside.

Mr. H. **deB.** FORDE: Quite a lot **in** the United States. You would **find** an incorporated Act there and in France. This Part **II** deals with commercial banks. I am **talking** about commercial banks as well. They are not all companies or bodies corporate.

The question that Clause 4 stand part was put and resolved in the affirmative without division.

Clause 5 was called.

Rt. Hon. L. E. SANDIFORD: I beg to move that Clause 5 stand part.

Hon. D. J. H. THOMPSON: I beg to second that, Sir.

Mr. H. **deB.** FORDE: Mr. Chairman, Sir, on Clause 5 too I have again as a lawyer difficulty. Clause 4(2) says:

"No licence may be issued under this part to any person other than a body corporate."

Clause 5(1) says:

"A company which wishes to carry on banking business in Barbados shall apply to the Minister in such form as the Minister may approve and

(a) submit" *et cetera*.

The contention that I have here is that a body corporate includes a company but is not limited to a company and that therefore if one wishes only body corporates to carry on business then one should either define what a body corporate is in the definition section and say:

"A body corporate includes",

maybe this is the way to deal with both 4(2) and 4(1):

"a company, a limited partnership or any similar institution."

That is a body corporate. And then Clause 5(1) could be redrafted to say:

"body corporate which wishes to carry on banking business in Barbados" *et cetera*.

There are some precedents that one could find. Unfortunately we are dealing in the Committee in an open Committee of the House rather than a select committee

where we would have had the benefit of the **draftsman** and time to consult precedents. That is the difficulty we are going to have when making amendments here. Then they may submit a copy of its articles, bylaws, or other **Instrument**. I suppose that other instruments may include its charter. Submit, in the case of a foreign bank, a copy of its latest audited financial statements. I suppose in that case it is not restricted and provide such other documents, etc. 2.30 p.m.

An application for subclause (2) says:

"An application for a licence and all documents submitted pursuant to this Part in support of the application shall be signed by the directors of the company making the application".

I am suggesting that is a bit too wide, Sir. I am not sure if the Offshore legislation does not require them to be signed by a responsible officer or by someone acting as an agent for them, because if all the directors of a bank that has 23, 30, 40 directors as happens in some banks – I am not sure how much **Barclays** has overseas – the requirement is just a bit too stringent. I think what is really wanted there is to say that there is somebody in authority with the power to act on behalf or by affidavit of these persons which will bind them in the future and that it is not necessary to draft the legislation in this form.

The question that Clause 5 stand part was put and resolved in the affirmative without division.

Hon. H. B. St. JOHN: Sir, just on that last point. Clause 5(2).

Mr. CHAIRMAN: I may have to recommit it.

Hon. H. B. St. JOHN: No, they will deal with it. It says directors and it means all directors.

Clause 6 as amended was called.

Rt. Hon. L. E. SANDIFORD: Mr. Chairman, I beg to move that Clause 6 as amended, stand part.

Hon. P. M. GREAVES: I beg to second that.

Mr. H. **deB.** FORDE: I think I will take up my comment under 7.

The question that Clause 6 as amended stand part was put and resolved in the affirmative without division.

Rt. Hon. L. E. SANDIFORD: I beg to move that Clause 7 stand part.

Hon. P. M. GREAVES: I beg to second that, Sir.

Mr. H. deB. FORDE: Mr. Chairman, Sir, although I am conceding that the public interest is a **ground** for refusing most licences, it seems to me that having regard to the Administrative Justice Act, it is not satisfactory for us, under clause 7(2) to say that where the Minister states that the refusal is in the public interest he need not state any other ground. That is part of the old legislation that one has seen before the introduction of the Administrative Justice Act. The public interest is too wide a situation.

If the fear of the Government is that it is refusing on the basis of security or information of a really confidential nature, given towards security, the way in which this problem is now **dealt** with, in modern drafting and legislation, is to ensure that there is a right of appeal and that the reasons are disclosed at least to a Judge in Chambers and subject to the necessary restraint. It seems to me that if the public interest is served then it would be open to the parties, on the appeal that is given for a refusal, for the Minister to give his detailed reasons to the Judge, subject to all of the control that one would find in a hearing in Chambers under those circumstances. I would respectfully suggest again that one can find updated methods of drafting for dealing with this sort of problem.

The question that Clause 7 stand part was put and resolved in the affirmative without division.

Rt. Hon. L. E. SANDIFORD: I beg to move that Clause 8 stand part.

Hon. P. M. GREAVES: I beg to second that, Sir.

Hon. H. B. St. JOHN: Mr. Chairman, Sir, the requirements for a foreign bank, in my submission, should also include the submission of evidence that it has been registered as an external company in Barbados, because the definition says that it has to be incorporated outside of Barbados.

The companies law in Barbados, today, state that all bodies that are incorporated outside of Barbados, before they can carry on business in Barbados, should be registered as an external company in Barbados and the opening of an office in Barbados is, under the Companies Act, deemed to be carrying on business.

Now the Companies Act sets out a lot of sanctions in relation to companies which are external companies and have not been registered. Some have **bedeviled** the courts because theoretically you are not supposed to hold property in Barbados or anything like that. If you really want to tie it up properly you must harmonise the requirements of the Banking Act with the Companies Act and demand, as part of the evidence, not only that you have an office here, but that you have **carried** out the requisite registrations in the Companies Act so that if you want to sue them you can go and sue the Secretary and all of that. You say it has to be incorporated outside and the essence of incorporation

means that you have to be an incorporated body. The definition of "external company" is a body that is incorporated abroad and is **carrying** on business in Barbados. Section 3.

If you are a different kind of entity other than a company then you have to comply with the corresponding entity in Barbados. If it is a limited partnership you have to register here, too. So you have to make sure that the entity that you are going to licence, as a foreign bank, whatever it is, although here you say it must be an incorporated body, presumably if you amend that you would widen it. You would have to harmonise it, certainly in the case of a company by bringing before the Minister, evidence that it is incorporated in Barbados, otherwise it is going to suffer from disabilities.

"External company" - It says, the definition of an external company, section 324 of Cap. 308 means any incorporated or unincorporated body formed under the laws of a country other than Barbados, and it says: "undertaking" means in relation to an external company, any business or undertaking carried on by the external company.

An external company is carrying on an undertaking in Barbados if

- (a) it holds title to land,
- (b) maintains an office.

So therefore you will see that once you are incorporated or unincorporated abroad, you come here and you maintain an office, that you have to be registered in Barbados as an external company under the Companies Act and the reason for that is quite clear, that you want to be able to have information with respect to the external companies.

What I am suggesting is that, as part of the requirements of registration, you must make sure that at the time it goes to the Ministry of Finance that you know that the company has complied with the Companies Act. It has **all** kinds of difficulties that have arisen in there. Because the Registrar takes the view that, if you do not register, she can do nothing. You have to tie it up. They can do it. The **draftsmen** will know how to do that. Yes, that is an additional requirement.

2.40 p.m.

The question that Clause 8 stand part was put and resolved in the affirmative without division.

Clause 9 was called and passed.

Clause 10 was called.

Hon. D. J. H. THOMPSON: I beg to move that Clause 10 stand part.

Hon. P. M. GREAVES: I second that, Sir.

Mr. O. S. ARTHUR: Mr. Chairman, in Clause 10 there is a provision that a licence will not be issued in the event that a person holds more than 20 per cent of the capital of the licensee. In our view, the limitation and ownership of the individuals in banks rest on very dubious foundations. We cannot see any practical reason why there should be a limitation on an individual's right to own shares in a bank. We want to see this particular clause amended. We would think that this limitation on an individual's right to hold shares in a bank, without doing violence to the purposes sought by this, could be removed.

Hon. D. J. H. THOMPSON: I think that may be a valid point but, of course, it is subject to the approval of the Minister. Assuming that is a desirable policy, one would think that the Minister would support those kinds of developments. Of course, one realises that there are ways to get around these things. Let us not fool ourselves. I do not think whether it is in or out is something that should detain us either way.

Hon. H. B. St. JOHN: Suppose the bank comes on the Stock Exchange in Barbados and you have a take-over bid. Are you going to hold it up pending the application and proof? It is a limitation given the context of Barbados in which you are talking about capital requirements of \$1 million or \$2 million where you are bound to have subsidiaries. To form a bank, it will have to be a subsidiary of something else or an original company. Even with take-over bids, 20 per cent is a low percentage. They say 30 per cent before you trigger the mechanism of disclosure and that kind of thing. So that 20 per cent is a small percentage in relation to that to have an inhibition on it. That is the motivation for us raising the point.

Mr. H. deB. FORDE: Sir, I would just like to look at what has been happening in the thinking of Caribbean persons on this type of legislation. A lot of it came originally in our Banking Act and it was inspired by two considerations. One was the strong feeling of nationalism and the second was the fear that a large corporate entity like, for instance, BS&T might buy over a bank and get access to it to the exclusion of anyone else. This matter came up forcibly in a series of cases recently in Trinidad and Tobago when there was a take-over bid under the Securities and Exchange Act and Mergers Act and it actually led to litigation. You will recall that Barclays PLC, Barclays International Limited at the time, converted into the Republic Bank of Trinidad and Tobago and then divested itself of most of its share holdings and eventually it sold its share holdings to a local company in Trinidad and Tobago. Because it constituted more than 30 per cent of the share holding, it was subject to a good deal of wrangling in the Law Courts. This has happened recently in relation to other commercial undertakings in Trinidad

and Tobago like Geddes Grant, CLICO and some other cases.

Sir, I think that safeguards can be put in another way. It is a little unfortunate that we are now still talking in terms of limiting a person to not more than 20 per cent of the capital of the licensee. That is an extremely low percentage. In some correspondence that I saw a couple of years ago by some Central Bank Governors in the other territories, they were making it clear that they were rethinking the whole philosophy and purpose behind such a limitation. There are other ways as well for putting restrictions on domination by a corporate entity which might be the holding company. I respectfully suggest that Government should look at the policy. It is not the wording of the draft that is being criticised, but the Government should look at the policy behind Section 10(b) for some future amendment. Perhaps the Government will benefit from the current thinking which may be reflected in the drafts coming out of the East Caribbean and the whole Caribbean reform body on banking.

The question that Clause 10 stand part was put and resolved in the affirmative without division.

Clause 11 was called.

Rt. Hon. L. E. SANDIFORD: Mr. Chairman, I beg to move that Clause 11 stand part.

Hon. P. M. GREAVES: I beg to second that, Sir.

Mr. H. deB. FORDE: Mr. Chairman, I think that Clause 11 (1)(c) is a bit wide. To put it as a condition that if you commit any breach of the regulation at all is a ground for revocation, I think is a little bit wide although I concede that there is a discretion vested in the Minister. I would have thought that one would only have the right to revoke where there was really some substantial breach. In any event, getting around the difficulty what I would suggest to the Government is that there should be a provision that before the Minister revokes a licence particularly if he is revoking for a breach of a minor regulation that the party concerned should be given a certain amount of time to put right the failure.
2.50 p.m.

Asides.

Mr. H. deB. FORDE: There are 2 different sets of circumstances. You are revoking and you say show me cause but before you even get to the stage of considering the rectification procedure. There is a lot of precedence in other parts of other legislation and I am sure the draughtsmen agree now as when this goes to the Upper House should not find it too difficult to find an appropriate precedent in either the Companies Act or Regulations or maybe some of the offshore sector legislation.

Hon. D. J. H. THOMPSON: I do not necessarily agree with that suggestion, Mr. Chairman, because I would assume that most of the factors that would contribute to a decision by a Minister to revoke the licence would be based on advice from the Central Bank or from the monitoring agency or entity and therefore one would think that the Central Bank itself would seek under its other powers in this legislation and others to have those kinds of things rectified. The question of revoking a licence would obviously arise where the person fails to comply and one would assume after being asked to rectify any of the matters that arise under Clause 11(1). I do not think that there is any need for the Minister to be involved in a further regulatory function before he revokes the licence. That is something that the Central Bank or the monitoring agency should deal with and make the appropriate advice to the Minister at the end of that process if not complied with.

The question that Clause 11 stand part was put and resolved in the affirmative without division.

Clause 12 as amended was called and passed.

Clause 13 as amended was called.

Hon. H. B. St. JOHN: Clause 13 illustrates the difficulty that was drawn to the attention of the committee with respect to the definition of a foreign bank because whereas in the definition section we restrict foreign banks to be a body which is incorporated outside Barbados and Clause 13(1) talks about the alteration of its articles or instruments which relate to its incorporation or organisation. So you contemplate that a foreign bank can not only be incorporated but organised and you do not carry that concept in the definition section. That is why we say something is wrong in the definition section.

"Where any alteration is made in the articles of association of a foreign bank that is a licensee or in any other instrument under which it is incorporated.."

and this is where you introduce the concept "or organised" and when you go to a definition of a foreign bank you say a foreign bank is one that is incorporated. So there is a disharmony between what you are talking about because you contemplate there that you can either be incorporated or organised and when you come to a definition you say only an incorporated body.

Again clause 13(2) you show a difference in concepts where you have a change that the documents have to be verified by affidavit or declaration sworn to or, as the case may be, by a senior officer of the licensee. When you come to the original thing you want all the directors. Again there is a disharmony.

Asides.

Hon. H. B. ST. JOHN: I would have thought that, at least, was the minimum you would have to put in because the civil law concept of France, which you see in the advertisements, is of a body organised under the laws. That is the civil law concept abroad. So whatever concept you have you have to be consistent right through and that is a glaring illustration of the narrowness of the definition. You have to make that harmonise otherwise it will not work.

Mr. H. deB. FORDE: To underscore the point a bit more, I would suggest that in drafting it would be useful to look at what was done under the Companies Act. When you talk about the body corporate it includes a company within the meaning of Section 2(1) or other body corporate wherever or however incorporated other than a corporation sole.

Corporate instruments, if you use those sort of terms, includes any statute, letters patent, memorandum of association, articles of association, memorandum of incorporation, certificate of continuance, bye-laws, regulations or other instrument by which a body corporate is incorporated or continued and it governs or regulates the affairs of a body corporate.

Some banks are incorporated by charter and letters patent and various other forms. When you get a definition of articles of association they are wide enough to embrace the whole type of charter documents that one sees in such bodies. Articles mean, unless qualified, Section 2(1)(ii):

"any statute, letters patent, memorandum of association, certificate of incorporation or other corporate instrument evidencing the existence of a body corporate continued as a company under this Act."

So that the basis of the definitions that are known in other parts of the law are already within our own legislation and can be adapted appropriately in this legislation. You will have consistency of drafting and approach. I would really like to suggest that.

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

Clause 14 was called.

Mr. H. deB. FORDE: I would like to suggest that if the Government is looking at amending this legislation that the modern Canadian Banking Act has wide terms of disqualification and criteria for disqualifying persons allowing them to cease to hold office for various things that we may want to consider. I will try and photocopy those provisions of the Act and pass it on to the drafting section of the Ministry of the Attorney General. I think it would be much more updated than ours is. I suspect that

this one is from a provision of the Offshore Banking Act or maybe the existing legislation but as I said before the committees in other jurisdictions have given thought to these matters – the Crowther Report and the other reports have looked at conditions of disqualification other than merely making an arrangement with a creditor convicted of an offence involving fraud or dishonesty or becoming bankrupt. I really believe that we could learn from those provisions in those jurisdictions. For instance, a person who may well be *non compos mentis* might cease to be a director, if the whole board of directors go mad suddenly, they should be able to do something with them. They have dealt with different persons with other forms of disqualifications.

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

Clause 15 as amended was called.

3.00 p.m.

Mr. H. deB. FORDE: Mr. Chairman, one of the fundamental objections that I really have to this provision for capital requirements is the size of the capital required. We are here talking about a bank. We are not even talking about a trust company or a deposit-taking institution.

The existing Banking Act has a capital requirement of \$2 million. It was \$500 000 and it was updated. A capital formation of \$2 million for a bank will really, in this day and age, probably help you to buy computers, some office furniture and I am not sure it would buy much more than that. Frankly, I believe if people are going into the formation of a bank, as distinct from a finance company, or some other lesser institution like a trust company, that the capital requirement should be much more realistic. It is too small. That is what I would respectfully like to suggest that we have a look at that and the Minister has the policy matter to decide.

The Honourable Member for St. George North has said quietly \$10 million. I think that is a bit more realistic in this day and age.

Aside.

Mr. H. deB. FORDE: I would say, at least, BDS \$5 million per bank. We have had bank failures in Barbados before of local banks which were undercapitalised from day one. That was the stage where we were encouraging the penny banks. History now will show that a \$2 million requirement is a low requirement. I believe that if people cannot raise a reasonable amount of capital to start a bank they must creep before they walk. Go into a finance company, have the experience of the finance company, and then as you develop you graduate into the banking institution. In the meantime you are getting the expertise to do the sort of thing, because

remember there are all sorts of reserve requirements. I regret they may eventually find that people have little stated capital and they really just operate as a fly by night operation. I am also worried too that you may get some foreign corporations coming in with this sort of limited background.

Mr. O. S. ARTHUR: Mr. Chairman, I think in relation to this particular clause, it is not just a question of drawing a number out of the hat since the amendment before the House will allow the Minister to vary the amount by order. Clearly the Government must have in mind a policy that this particular number is intended to embody. If the Government's intention is to allow for relative ease in the formation of banks in Barbados by the non traditional entities, or to allow entities that are not now banks to become banks by having a relatively low capital requirement, I think Government should say so.

I do not think we should spend too much time on the number since the amendment before the House is now to allow the Minister to vary the amount by order. It would help us in committee if the Minister has a policy in mind that he wants this whole set of provisions to manifest perhaps we could hear from Government what that policy is.

Hon. H. B. St. JOHN: Sir, at clause 15 (b) it says "capital in an amount of not less than \$2 million has been subscribed and paid up in cash." All the amendments that have been circulated have deleted the concept of paid up capital. If you will notice page 2 of the document that has been circulated you will see clause 17 deletes the words "issued and paid up" and substitutes the word "stated." Clause 20 deletes "paid-up capital" and substitutes the word "stated." That is the scheme of the Company law we have that capital can only be what is paid up. I do not know whether in the amendments there was any special reason for having a stated capital of at least \$2 million and a capital in the amount of not less than \$2 million has been subscribed and paid up in cash. That seems to be an inconsistency to me because everywhere else you have taken it out and you go back to the fundamental Company law concept of a stated capital. That means capital that actually is in the company. You had better check why they have consistently in the amendments moved away from the concept of paid-up capital and they have still left it in clause 15 while in all the other clauses they have removed it.

Under the Company Laws at the present moment no shares can be issued except for payment of cash or the equivalent of cash. That allows you, if you want to start a bank or anything you can contribute a building and a cash value is put on it and that is the equivalent of...

Aside.

Hon. H. B. St. JOHN: Yes, but the amendment does not deal with that, not on my pages. I do not see it. There is an amendment to clause 15. That is all it says. The next one has it **so** I do not understand what happened there. You keep it in 15, you remove it in 17 and in 20. You go right through and remove the concept. Check it. Obviously 2 different people had a look at this. You had better have a look at that because it is inconsistent. In the next 2 clauses you say you would delete it. It cannot be right.

Mr. H. **deB. FORDE**: Mr. Chairman, the other additional point I want to make on that is some foreign entities that operate as banks do not have a stated capital **so** that there should really be a specific provision to deal with those types of entities. I think you would probably need some accounting advice on this one.

The question that clause 15, as amended, stand part of the Bill was put and resolved in the affirmative without division.

Clause 16 was called and passed.

Clause 17, as amended, was called.

3.10 p.m.

Rt. Hon. L. E. **SANDIFORD**: Mr. Chairman, in moving Clause 17, as amended, I wish to propose a further amendment. I would like to move an amendment. It would therefore read, the clause would now read:

"The fair market value of the fixed assets"
This is **17(6)**:

"of the bank in Barbados may".

I am **sorry**, Sir. I beg to move that Clause 17, as amended, stand part.

Mr. CHAIRMAN: The question is that clause 17...

Mr. H. **deB. FORDE**: Mr. Chairman, Sir, I am a little bit concerned again with drafting structure. I would consider that when you say that a licensee may only pay an interim dividend out of profits of previous years or out of the reserves of previous years that really you are not dealing as the note to this section says with a reserve fund requirement as such, that although it talks about speaking out of reserves you are really now dealing with a dividend distribution situation or dividend distribution policy. What I consider confusing again to the legislation is the way it is **structured** in that a requirement like that should really go in a little bit later in the section. I think it is section 17, dealing with dividends distribution policy. I cannot anticipate. I have another such comment when I come a little bit later to a later section.

But it seems to me that there is a bit of confusion here and probably several people, functionaries may have been dealing with this draft and redistributing concepts. I would respectfully like to suggest that in any redraft of the sections that that particular section should be moved. The same goes to subsection 3 which should really better become a part of section 19 and maybe it could be subsection 2 of section 19 a little later on, dividends distribution policy.

Subsection 17(5), (6) and (7), although it deals with the percentage of assigned capital of a foreign bank that the Central Bank may require it to set up. It seems to me that that too is much more relevant not to a financial obligation as such, that it may be more relevant to an early section and the section that I would seem, to think it is relevant to is probably section 15. You would recall a little bit earlier, Sir, I stated that there had to be specific sections dealing with the capital requirements of foreign banks that may not have a stated capital structure. Once again I **find** the concepts here overlapping and a little bit difficult to deal with.

I am also a little bit concerned about foreign branches. I am not sure that we have in our minds as a matter of policy settled how we are going to treat the foreign branch. I suppose subsections (5), (6) and (7) will now allow a certain assigned capital to be stated. But do we not require a little bit more from foreign branches. I would have wished to have heard the Government's policy more widely explained on this part of the Act. But unfortunately we have not had any explanation and it is not possible in the Committee stage to go into any deep thinking of this on this point.

Let me just say, Sir, that a few years ago in the Caribbean, in the wake of nationalism the feeling of most countries other than Barbados was that all banks should localize. I believe that Jamaica, Guyana and Trinidad have now come to reverse that policy and that concept and recognize that small countries such as ours cut ourselves off from substantial capital inflows if we are rigid in asking for total incorporation and localization within our jurisdictions. It is true that the localization of the insurance companies has **assisted** in the process of capital formation **and** regionalization. But even they are suffering in terms of the reinsurance markets.

What I would rather like us to do, Sir, is perhaps to rethink our policy completely on this and consult, within the CARICOM region, as to how we can encourage indigenous banks to regionalize and then internationalize. There is no reason why the Barbados **National Bank** should not be expanding its corporate structure and cross fertilizing its share ownership - although it has not got shares in the classic sense - with indigenous banks in Jamaica, Trinidad or elsewhere therefore giving the

Caribbean an entry into world capital markets in the banking sense.

We tried, for instance, to have the Barbados National Bank operating in the United Kingdom to collect deposits. We still have our nationals' craving for the presence of our own local banking institutions in countries where those nationals are residing. It seems to me that we can only do this by cross fertilization and by encouraging a wider regional spread. I would have hoped that the Government would have been a little bit more open on the policy. It has given consideration to its policy in this field, Sir.

The question that Clause 17, as amended, stand part was put and resolved in the affirmative without division.

Clause 18 was called.

Rt. Hon. L. E. SANDIFORD: Mr. Chairman, I beg to move that Clause 18 stand part.

Hon. P. M. GREAVES: I beg to second that, Sir.

3.20 p.m.

Mr. H. deB. FORDE: Mr. Chairman, Sir, I don't want to have a dialogue of one because then the debate loses its interest and obviously we could sit down and ask the Government to consult us in another form, Sir. But let me say on section 18 that I believe that section 18(1) shows the Central Bank now getting into the day to day management functions of a company. I think the Central Bank is mistaken if it believes that this is the sort of role that it must perform in a supervisory function.

The Central Bank too has some supervisory and maybe a day to day supervisory function to perform but certainly never management functions of banks or any other institutions. Where under subsection (2) it is asked to specify guidelines, I think that the Central Bank should specify the guidelines and the criteria in relation to bad and doubtful debts.

There is a vast difference between specifying a guideline for a bad and doubtful debt and a Central Bank specifying the reserves which you may hold. The bad and doubtful debts are not going to affect the Government's monitoring or fiscal policy in that sense. It really is a function of management and once we show that the institution is being properly run otherwise then you have to take that judgment of whether a debt is bad or doubtful. In any proper accounting procedures you would expect a company to provide in its financial statements for bad and doubtful debts. The level at which those debts may be taken may vary for a whole host of conditions and circumstances. I would respectfully suggest that 18(1) properly redrafted should really form part of 18(2) and it should not appear as it does here, as though the Central Bank is getting into day to day management functions.

Hon. D. J. H. THOMPSON: Mr. Chairman, the Honourable Member should be aware, as I understand it, or as I have been advised, that this is in fact what the Central Bank presently does. This is my information. Sir, this only really codifies what obtains presently. That is my understanding so that it is really academic whether we have legislation that says it may specify guidelines or whether we have legislation which would commit the Central Bank to actually function in lieu of or in process of elaboration with management for allocating the reserves for bad and doubtful debts.

I don't think that if this is what is obtaining now and it is advantageous that there is any reason why we should object to greater scrutiny by the Central Bank. I don't think this is a major point that would cause any grave concern to the banks operating in Barbados.

Mr. H. deB. FORDE: I think, Sir, with respect, that the Honourable Minister has missed the point. It is not whether it is done now. If it is a bad practice and it is being done now it should be discontinued. We are in the process of encouraging people to go into this area and when foreign legal advisers and accounting advisers look at your legislation and how it is structured these are matters on which advice is given in an adverse way. If you are over regulated in areas where you should not be over regulated and under regulated in areas where you should be more regulated you are not going to be an attractive area for people for financial intermediaries and otherwise to come. One has to therefore strike the balance and understand what is going on. That is why, a little bit earlier, in the second reading on this legislation I referred to the various publications that have come out of the Bank of International Settlements and other jurisdictions, dealing with the financial requirements for banks in terms of capital structure, reserves, guidelines as to the type of policy that they should follow in reporting loans, overdue debts, writing off bad debts, the level of bad debts that they should keep and what not. There is a good deal of literature on this in which, not only the views of the Opposition, but the views ...

Aside.

Mr. H. deB. FORDE: I am not reading from any brief, Sir. If the Honourable Member wants my notes he can have them. There is a tremendous amount of information on this point. The Honourable Member must recognise that I have had the privilege of advising over the last 30 years, several banking and financial institutions and have had by way of my profession, as well as by way of my general interest in this aspect of affairs, to advert to these matters to be able to react positively to them. It is from that wealth and accumulation of knowledge gleaned practically as well as academically on which I speak on these matters. Giving the benefit of advice that I think has been tested, not by me, but even by other experts in the

field. I think that is borne out by the Honourable Member for St. Peter and the other members who have gone through this type of legislation.

Mr. O. S. ARTHUR: Mr. Chairman, this clause 18 is a clause which reflects the input of more than one person on this particular drafting exercise because, in relation to the same matter, Clause 18 is putting the Central Bank in the centre of two different functions. It is really saying that the Central Bank shall specify guidelines which we agree with, pertaining to the provision that banks should make relating to bad debts and at the same time, Sir, it is also saying that the Central Bank shall specify the amounts that the banks must hold.

The position is this, that we in so far as we want the Central Bank to be a regulatory institution rather than an institution that manages the affairs of these banks, it is enough that the Central Bank should specify the guidelines and should thereafter concern itself with ensuring that the guidelines are complied with but we cannot see the justification, Sir, for having the Central Bank state the actual amount. The Central Bank, Sir, if it is to regulate should specify the guidelines and ensure that the guidelines are complied with. I really do not believe that 18(1) is necessary once we have 18(2). In point of fact, Sir, there is a conflict of principle enshrined in having both 18(1) and 18(2) in a section having to do with the Central Bank's governance of the manner in which provision for bad debts is handled.

I think the Government must make up its mind as to what it wants the Central Bank to do. Our view is that the Central Bank should specify the guidelines, set the criteria, and ensure that the criteria are met. The business of the exact amount, Sir, is a day to day management function of the Central Bank. That is a matter of arithmetic which will flow, in any event, from whether the guidelines are being met. Let the Central Bank stick with the setting of the criteria and monitoring the criteria, Sir. There is therefore in our view, a conflict of principle here and we are suggesting that the conflict can be resolved by taking out section 18(1) and leaving in 18(2) because 18(2), in our view, specifies the guidelines.

Hon. D. J. H. THOMPSON: Mr. Chairman, perhaps I could put the minds of the two Honourable Members – I only came in when the Honourable Member for Christ Church West was speaking – at ease. We have had the benefit of the same advice that Members of the Opposition have had. I know the memo has been sent to them because I was quite content to say, yes it can go. You have had the benefit of the same memo from the Institute that I had and I know how they feel about this matter. You have a copy of the thing that was sent to me, the original of which is in my possession. I know how the Institute feels. I know how you feel and I think there may very well be a valid overall principle but I think we are basically splitting hairs on the

point. I don't think this is something that should detain us. If the Central Bank indicates that this is an important part of their functions right now, and an important part of the functions that they wish to have and if it is necessary for the integrity of the financial system in their view, I think we would have to err on the side of the advice of the Central Bank on this particular point.

If Members of the Opposition feel there should be broad outlines or that this particular matter is going to stop new banks or stop investment in Barbados, well I think you should make a better case for that.
3.30 p.m.

Aside.

Hon. D. J. H. THOMPSON: Thank you for saying that. The Honourable Member for Christ Church South has answered the point. Therefore, I will say nothing more.

The question that Clause 18 stand part was put and resolved in the affirmative without division.

Clause 19 was called.

Rt. Hon. L. E. SANDIFORD: Mr. Chairman, I beg to move that Clause 19 stand part.

Hon. P. M. GREAVES: I beg to second that, Sir.

Mr. H. deB. FORDE: Mr. Chairman, it says that a licensee shall not declare or pay dividend on its shares until its capitalised expenditure including preliminary expenses, organisation expenses, share selling commission, brokerage losses incurred that are not represented by tangible assets are paid. I really want to know why formation fees are in a section dealing with dividend policy at this time. I really want to know. A lot of the things that are in here really have to do with formation fees, preliminary expenses and what not in a dividend policy. I cannot understand it. Sir, it may be that my knowledge is limited. But I would think that if you want to limit the payment of dividends to ensure that depositors are not put at risk and that you can meet your liabilities, then you need the type of clause that clearly says that you cannot pay dividends if you are unable to pay your liabilities and if you cannot pay dividends when all of your assets are sold or realised where you find your aggregate or bigger liabilities are more than what you are paying out. Those are well known accounting standard policies throughout the world that put a limitation on the payment of dividends. I really do not see the necessity for the other general terms. It may be that whoever is advising the Government has a different concept than we have. Certainly, I can say to the Government, when I was dealing with drafting the Offshore Banking Act, that was the type of provision and the type of advice that I got at the time. I have had no other advice since then, Sir. I make the comment, Sir.

The question that Clause 19 stand part was put and resolved in the affirmative without division.

Clause 20 as amended was called.

Rt. Hon. L. E. SANDIFORD: Mr. Chairman, I beg to move that Clause 20 as amended stand part.

Hon. P. M. GREAVES: I second that, Sir.

Mr. H. deB. FORDE: The amendment of Clause 20, Subsection (1) has improved what was a very bad draft and to some extent Clause (d) is reflecting now what I think is in existing legislation a little bit more carefully. Clause 20, Subsection (2) has been amended to make better sense than the original draft, but I am concerned about Clause 20, Sub-clause (3). This concern was also mirrored in the speeches made in the second reading by my friends, the Honourable Members for St. Peter and Christ Church South.

Sub-clause (3) says:

"The provisions of subsection (1)(a) shall not apply to

- (a) any financial exposure to the Government, to a statutory **corporation** or where the transaction is guaranteed by the Government;
- (b) transactions to the extent to which they are covered by a form of guarantee acceptable to the Minister on the advice of the Central Bank;
- (c) transactions where there is a cash deposit with the licensee reducing the net indebtedness of the person or group below the 25 per cent limit.
- (d) transactions where there is the security of a first mortgage on property and the loan value ratio is 50 per cent or less of the value of the property mortgaged."

I have great difficulty with some of these provisions. Sir, I recall very well where at International Sea Foods loans were made at various banks in Barbados and luckily then it was not the National Bank. We had guarantees that were acceptable to the Minister and this House. When those guarantees were really called, they were not worth very much. In any event, I do not see why we should ease the position in order to encourage bad banking practice and bad financial practice. If there is a loan to a statutory body or indeed to anybody because Government is a major shareholder, that does not mean that the financial exposure of the bank is not greater, Sir. There does not have to be a guarantee given by the Government. You can find that a bank is failing and it is exposed to a statutory corporation which is also a total failure which has no proper capital

assets and the assets of which when realised cannot meet the expenses including repayment to the particular bank.

Sir, I believe that if the Government wishes a transitional provision to deal with special problems occurring in the Barbados National Bank that it would be better to put in the transitional section of this Bill special provisions dealing with the problem confronting the statutory corporations like CARICARGO, corporations in which Government is a major shareholder like CARSICOT which have outstanding loans to the Bank that would hardly be recovered, and also to govern the special situation of the plantations and companies owning agricultural lands which are heavily indebted to the Barbados National Bank. Those should be dealt with in a separate section and allow a transitional period for the Barbados National Bank to deal with that situation. My biggest fear is that if the Government writes this type of provision in the legislation, the Honourable Members on the other side and perhaps only the Honourable Members for Christ Church West, Christ Church East, St. John and St. Peter will be in the House at that time and nobody will think of doing this until another scandal takes place. I am taking the words of Honourable Members which tell me, Sir, that it takes a long process to bring legislation in here. The Honourable Member for St. Michael South and myself have been in here for 21 continuous years and I am told about 14 of those 21 continuous years passed before a bit of legislation came here. That is why I say do not put a bad practice in the law. Single out and deal with the special situation and have an exemption for a period of time for the particular circumstances that you want to exempt. If you allow new banks and others to be formed, we are compounding the bad situation where banks, in this case the National Bank, were totally exposed. Its capital base is considerably at risk in a situation where it has over lent to entities that have no reasonable opportunity of repaying including some Government statutory corporations. It is only because the public is the banker at last resort and you have put on some more taxes that we could really allow that situation to continue.

I feel very strongly about this provision, Sir, and I think we have an admirable opportunity if we are setting standards for financial institutions to show that we are dealing with these problems up front and not hiding them, letting people know in the future that it is a policy of the people of Barbados represented through its Government that this is the standard we are going to expect even for ourselves and we are going to deal with the circumstances which have occurred without allotting blame in a special set of transitional provisions and put a limit on the time when there must be full compliance with the other standards that are applicable to financial institutions. I find this section a very difficult one to go for. Really, very difficult to let it get through the Parliament without registering my no vote.

3.40 p.m.

Mr. O. S. ARTHUR: Mr. Chairman, Sir, this section 20 introduces many of the provisions that are contained in the old Banking Act and earlier in my second reading presentation I had raised the question as to whether it was not feasible as well to devise criteria other than those contained in the old Banking Act to govern or to provide the placing of **restrictions** on banking activity.

Mr. Chairman, I **speak** in reference particularly to the provision that limits the amount of loans that can be granted to any one customer to 25% of the capital of the bank. That obviously, Sir, is a provision that is intended to provide security in the area of insolvency but less so in the area of management efficiency of the bank. In many respects, Sir, a bank does not really provide loans out of its capital. It provides loans out of deposits of the public. We have had a practical difficulty in Barbados where many of the smaller banks have in point of fact had difficulty holding on to the business of large companies because of this limitation. The question therefore I **am** asking is whether in the light of experience it is not possible to define other criteria which give the Minister the flexibility or the Central Bank where **warranted** by circumstances to have the **limitations** not only devised as a relationship between the loan to a customer and the capital of the bank but a limit on the loans to the customer and the **deposit** base of the bank itself which would allow us to deal with the question of financial exposure as well as with questions of liquidity as well.

I would like to see a bit more innovation brought to bear in this section to take account of the fact that loans are in point of fact made from deposits and that you can have problems arising because of consumers getting too large loans given not only the capital structure of the bank but also the deposit **structure** of the bank and that we **want** to manage that as well and that we also want to have situations where banks can have \$2 million in deposits. A bank that has \$2 million in deposits obviously in stated capital would be by reason of this legislation not be able to provide a loan in excess of 1/4th of \$2 million - \$500 000 and that bears no relationship whatsoever to its deposit base.

I am not going to tell the Government what form of words but I would like to ask if it is the experience of other jurisdictions where the deposit base of banks are taken into account and we find restrictions in this particular area and if we cannot build more flexibility particularly for the indigenous banks which do not have the worldwide capital of the large foreign banks where if circumstances warrant that the deposit base of the bank can be taken into account in determining the restrictions that can be placed on the loans to be granted to customers.

That, if I may assure the Honourable Member for St. John, is not contained in any documents admitted to the Barbados Labour Party.

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

Clauses 21 and 22 as amended were called and passed.

On the motion of Hon. P. M. GREAVES seconded by Hon. D. J. H. THOMPSON, Mr. CHAIRMAN reported progress to Mr. SPEAKER who resumed the Chair and reported accordingly,

SUSPENSION

Hon. P. M. GREAVES: Mr. Speaker, I move that this sitting be suspended for 20 minutes.

Hon. D. J. H. THOMPSON: I beg to second that.

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

RESUMPTION

Mr. SPEAKER: This sitting is resumed. When the suspension was taken the House was in Committee. To that it shall revert.

COMMITTEE (RESUMED)

Mr. SPEAKER left the Chair and Mr. CHAIRMAN took the Chair.

Mr. CHAIRMAN: The committee is resumed.

Part III, clauses 23 - 37, as amended, was called and passed.

Part IV, clauses 38 - 52, as amended, was called and passed.

Part V, clauses 53 - 62, as amended was called.

Hon. P. M. GREAVES: Mr. Chairman, I beg to move that Part V, as amended, stand part.

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

Mr. H. deB. FORDE: Mr. Chairman, I am going to make a general point in this Bill. It comes up a little later as well. In my view there is clearly the policy need to make the disclosure and other financial information requirements of the Companies Act applicable to these companies. That has not been done. I regret to say, Sir, that there probably will be a lesser standard maintained as a result by the companies.

Hon. H. B. St. JOHN: At clause 58, Sir, there may be a conflict. I do not know. It appears to me that clause 58 where it says "Where, in the case of a licensee that is a foreign bank, the Minister is satisfied that a report upon the financial statements of the licensee has been duly made by an auditor in accordance with the law of the country in which the licensee is incorporated or organised" – you note the concept again – "and a copy of such report together with the report of the directors of such licensee is submitted to the Minister, he may by notice in writing exempt any such licensee from the requirements of section 57", the Minister is here being empowered to exempt the requirements of section 57. That foreign **bank** would have been registered **as** an external company.

One of the protections to the public in giving credit to an external company is that the minimum requirements of the Companies Act in relation to financial disclosure is satisfied. Now, if you are exempting a foreign bank from section 57 you will see that under that section a bank has to publish its accounts and file them in accordance with the Companies Act, so you are really giving him an exemption which will even remove that last vestige of information to the public. By exempting him by section 57 you are also exempting him from having to comply with the Companies Act. It is an important point.

Under section 58 where you have a foreign bank, a big bank like Barclays, either one of the big ones, and you are satisfied they have appointed an auditor in accordance with their law, no problem. But you are saying that the Minister of Finance may exempt such a company from the requirements of section 57. One of the requirements of section 57 is that you have to file your accounts with the Companies Registry. If you exempt him from the whole of section 57 you are saying that he is exempted from filing his accounts with the Companies Registry. I do not think it should be the whole thing. I *can* understand your saying that you could exempt them from certain parts of section 57 but not section 57 (3), because every licensee which is a company, its auditor should comply with the Companies Act with respect to the audit of the company's accounts. You understand what I mean?

Aside.

Hon. H. B. St. JOHN: That is the point I am making. You can exempt him from everything else but at least the requirement of filing should be there. You cannot do that on your feet here.

Aside.

Hon. H. B. St. JOHN: No, No. Not the global account. Whatever accounts he has to keep, all we want to ensure is that the minimum requirements of the Companies Act with respect to filing documents in the Companies Registry is satisfied. That is all because section 57 deals

with a number of things. I do not mind if you exempt him from all the rest but that minimum requirement of filing the documents. It is good that creditors know because people come, they rent or lease, and incur credit. You would have to check it.

Aside.

Hon. H. B. St. JOHN: I am only interested in the requirement with respect to filing the accounts there. That is **all**. It is wide. They should be able to deal with that.

Aside.

Hon. H. B. St. JOHN: If you agree in principle you can pass it and recommit it because it is a simple formulation, save and except. That is all it is. He is going to put it in.

Hon. D. J. H. THOMPSON: Mr. Chairman, if under the amended version of section 56 one is not required to publish in Barbados the global financial statements but only the branch's financial statements, I cannot see that section 58 applies now at all under this legislation. In other words, there is no requirement now for the publication in Barbados of an audited financial statement from the head office, if you want to call it that, or the overseas branch. There is only a requirement under the amended section 56 which I pointed out in the second reading, to publish audited financial statements in respect of the local operation.

If you look **at** the amendment you would **see** "copies of its financial statements, as maybe prescribed, in respect of its business in Barbados and the full and correct names of all persons who are directors for the time being of the licensee". What this really does, and we probably should have spotted this earlier, would totally remove the need for clause 58 because we **are** not requiring the global operations of the bank to be published in Barbados.

Hon. H. B. St. JOHN: Whatever the requirement is, what I want to make **sure** is that whatever has to be sent to the Ministry of Finance, once it is a company and it has to audit in accordance with the requirements of the Banking Act, that it should have to file like any other licensee with the Companies Registry what the other licensees have to file. That is **all**.

I *can see* now that it is amended that you may want to restrict the exemption not only to that amount of the accounts **as** required by section 56. In other words, you would say what they have to file in the section, but again, there has to be harmony between the amended section and that section. That cannot be done, certainly not on the Floor of the House because you have to think it up. You will have to get the draughtsman to work on that because there will now be a disharmony.

The question that Part V stand part of the Bill was put and resolved in the affirmative without division.
4.45 p.m.

Part VI, clauses 63 to 93, was called.

Hon. P. M. **GREAVES**: Mr. Chairman, I beg to move that **Part VI** stand part, Sir.

Hon. H. **deB. FORDE**: Mr. Chairman, Sir, I have grave difficulties with this **part** of the Act. It concerns the winding up of licensees under the Act whether they be banks, trust companies, merchant banks or deposit taking institutions.

Section 63(1) says that such institutions cannot be wound up voluntarily without the prior approval of the Central Bank. I do not understand the reason why the Central Bank wants to have a say in the voluntary winding up of a deposit taking institution *per se*. The conditions which would lead to such voluntary winding up are not such as would excite the Central Bank. **As** a matter of policy I would say that that is **the** wrong policy to extend the managerial and supervisory functions of the Central Bank in such a **wide** manner and that it is totally unnecessary. Again when I look, Sir, at the provisions of section 73. I am concerned **that** the Central Bank still sees its role in a winding up of all of these diverse institutions to be that as custodian responsible to the court in supervising the winding up and reorganization.

You will **recall that** in this very House last year when the Government brought amendments to the Offshore Banking Act we pointed out that the Central Bank can well find itself in a position of conflict between its regulatory role and its other role now **as** a custodian when it comes to the winding up of such institutions.

Aside.

Mr. H. **deB. FORDE**: Pardon?

Aside.

Mr. H. **deB. FORDE**: Section 73. **As** a matter of fact, Sir, with some of these institutions the Central Bank may be in diverse number of roles. It may be in the role of the regulatory authority. It may be in **the** role of a borrower. It may be in **the** role of a lender. When it wears these different hats it has of necessity very heavy duties both legally, fiduciary and otherwise. We made that point forcibly and the legislation was changed. All of the events that have occurred have satisfied me that this House acted properly in making that change.

Let me be the first to concede that there is a role for the Central Bank when it looks like a bank is going to fail. It may be that it may be able in a reorganization to play a

role of hiring people to **carry** on the banking business for a while for a period of time, as has happened in the Workers' Bank in Trinidad and Tobago and as has happened in another bank in Jamaica. But I would suggest respectfully to this Committee that the amendment which came in, the Offshore Banking legislation should be adopted and there should be a discretion given to the court to make that final determination **as** to whether the circumstances call for the Central Bank to be the custodian.

A little later in this section as well there are certain functions to be performed in a voluntary winding up in which the custodianship should cease and what is necessary is the appointment of a liquidator. I would strongly suggest that we look at a later section that I have a note of, I think it is section 81, when we come to deal with section 81.

Section 90 is the section which says that in a compulsory winding up there are certain categories of expenses and of **debts** that will take priority over all other categories of expenses and debts. The section provides for:

"expenses incurred by the custodian"

"the wages and salaries of officers and employees with the licensee that accrued during the 3 months immediately preceding the seizure"

"all taxes and dues owing to the Government of **Barbados**;" "**the** fees and assessment owing to the Central Bank;"

"the savings and time deposits in amounts not exceeding \$5000"

"sixthly, the other deposits".

Sir, this section is basically out of thinking with every progressive country all over the world in relation to how you distribute claims, you distribute the assets among claimants on a winding up. It is no longer enlightened policy for all Government taxes due and owing to have priority. A distinction is made between those funds that may have been collected by the institution or the person in a position of trust, for instance, Social Security funds - NIS funds in which a trust character has been imposed on those funds. And whether one looks at the legislation in the United Kingdom, in Australia, in Canada, New Zealand or elsewhere and even in the United States, you will note that that distinction is made in the relevant legislation. The basis on which that distinction is made is that the Government is as much a debtor, is as much in the business of dealing with these people than anybody else. And that if a loss occurs the Government should not be put in the position that it is grabbing all and there is nothing for the depositor. Let us assume that there is nothing at all for the depositor to take, in those circumstances.

I would respectfully suggest that the Government considers its policy on this matter. There is a committee again set up in the Caribbean which is in the **process** of formulating final proposals for draft legislation on this matter. One of the findings of the Committee up to date is that the legislation in Barbados and in the other **territories** is extremely regressive in this respect.

The other point I wish to make very strongly on it, Sir, is that this part of the Bill before the Committee does not look in any great detail on the reorganization of businesses and the need to save businesses when they get into difficulties. Once again I would let the Government know that the current thinking is really not to go to compulsory winding up in all events, but to have an intermediate stage where you try to save the business as is done in the **bankruptcy** code of the United States and indeed as has been recommended by the Committee in Canada which reported a couple of years ago. The Bill out of that Committee was recently before the Canadian Parliament and may have become or should become law shortly. And also, as under the English Insolvency Act of 1886 a Bill which was implemented after the Cork Committee had reported.

I want to say, Sir, that whilst I have argued for a separate Banking Act and I agree that under banking legislation ~~per se~~ there should be separate provisions outside of the normal Companies Act dealing with winding up of solvent or insolvent companies. I also think very strongly that deposit taking institutions and some of these other intermediaries should be subjected to the **normal** laws of bankruptcy and insolvency. I would wish to see an updated Bankruptcy **and/or** Insolvency Act brought before Parliament within the next few months on this matter.

I have to take the opportunity under this section as well to make a political point which I must make. I saw a column in a newspaper which said that the Labour Party wasted **years** and that one Henry Forde did not set about dealing with the bankruptcy and other legislation, Sir. Let me point out to the writer of the column ...the writer of the column obviously knows very little about Bankruptcy Law, Insolvency Law or Corporate Law because the modern Companies Act that is on the Statute Book came about because of the impetus which I showed in reforming the law. There has never been **so** much reform legislation as during the time that I was Attorney General. Never, never, never in the history of Barbados in its **350** years. That is a historical fact now. There has never been so much reform legislation as during my time. Never happened. The Honourable Member can shout as much as he likes, he will find out how much constitutional legislation he has passed, but never has there been in the history of this country, as much reform and visionary legislation as was passed during the Labour Party period and particularly during the period of my attorney generalship.

4.55 p.m.

I am going a little bit further, Sir, and I am going to make this point that one of the recommendations coming out of my period was for a committee for the reform of the law of bankruptcy and winding up to be set up. That committee was set up and the incoming Government never, ever allowed the committee to function. The Honourable Member for St. Lucy would know what I am speaking about. The Committee never met once during that time but I assure the Honourable Member that this legislation would not be **so** archaic had that committee functioned and I will tell the Honourable Member now that only a week ago I was in St. Lucia giving the benefit of my years of experience to the committee that has been set up for the Caribbean.

Aside.

Mr. H. **deB.** FORDE: No, Sir, I don't get involved in ...

Asides.

Mr. **CHAIRMAN**: Just let us get back in focus, please.

Mr. H. **deB.** FORDE: Anyhow, Sir, that is enough for me to say on that, Sir. I would also want to point out that in section **93** of this Bill, there is a provision that when all the assets of a licensee being wound up has been distributed or dealt with as required by this Act the custodian should render an audited statement to the court. It is not normal in any bankruptcy for that statement to be audited at that **time** because it is under control, it is an expense that is unnecessary, that you are putting the assets to. That is not a normal requirement. There are other things that ought to be audited that I have referred to before and provisions dealing with financial disclosure and financial information of the Companies Act should be made compulsory but I think that is an unnecessary provision for an audited statement at that time.

Hon. H. B. St. JOHN: Mr. Chairman, Sir, I am a little **worried** here, Sir, that not so long ago we had a very long debate in Parliament in respect of the stipulations as are contained in section 73. At that time it was pointed out that of all the institutions that were improper to carry out the functions of custodian would be the Central Bank and we pointed out the reasons why. The Central Bank, of course, can do investigations. Of course the Central Bank can make petitions on behalf of depositors to the **court** for compulsory winding up. Once you are a petitioner, as you are under section 70, our submission was then, that it would be improper for you then to be appointed the liquidator and that you should leave the appointment of the liquidator in the banking institution to the normal discretion of the court. The court appoints the liquidator.

Now there is absolutely no doubt about it at all that there are glaring conflicts of interest that will arise if the **Central Bank** is going to be the liquidator. People have to deposit money with the Central Bank. The Central Bank deals with the commercial banks. In the case of foreign banks the Central Bank deals with the Head Office without the knowledge of the commercial banks here and you get all kinds of arguments about set offs and things like that. Sir, it is a very dangerous thing. I can tell you that the facts are that you will run into a lot of difficulty. That is the experience of Barbados. Do not ignore it. We just amended our law to take out these provisions that came before this House and this House, in this session, pronounced upon it already and it was agreed that it was a bad thing and now we are coming back again to reintroduce it. Very dangerous, Sir. It is exceedingly dangerous. I can show the other side some facts that will boggle their minds in relation to this. These are realities. There are a lot of dealings going along anti I say it is bad. We can't agree to that. We really would have to vote against this part of the Act, Sir, because of section 73. I do not know why we do not go back to the provisions of the law that we just recently amended.

Asides.

Hon. H. B. St. JOHN: I agree. Yes, all of them have been made. All of those have been made. That is the existing law. The existing law is that. You will find that recently some matters have been dealt with which clarified the situation.

Sir, the basic point is, the Central Bank may be a claimant in the same litigation, and the Central Bank, very often may be a creditor. They are bound to have problems because these banks have to deposit money with the Central Bank to satisfy the reserves requirements. If they go under, the Central Bank then becomes a debtor to the custodian. Is a man going to be debtor to himself? The Central Bank may borrow money from the Head Office abroad, which in fact they do. It happens all the time. When you want to puff up your reserves you go and borrow from a bank's head office, you don't want to route it through here, you want it to be routed through outside. That is a well known technique of Ministers of **Finance**. Ministers of Finance do that and Central Banks accommodate. The Bank of England, I am sure, periodically does it, so what are you worried about, when they want to support the Pound, when there is a run on the Pound. The Federal Reserve Bank likewise, I am sure somebody does it.

The basic position is, Sir, that you cannot be on the one hand the administrator of it and at the same time be a creditor. Don't put the Central Bank in that embarrassing position. Let them be the initiatory body for winding up or for the investigations. I have no problem with that.

Now, Sir, I also want to point out that because of the way how Part **VI** is worded, Section 63, I am now moving from that part of the liquidation to dealing with the question of section 63 which is so wide that I have great difficulty in determining, at the present moment, whether a deposit taking institution, in respect of its deposit taking business can be liquidated voluntarily without going to the Central Bank. I do not know. I have not given it sufficient study but it is very doubtful to me, Sir. But if I am a company that carries on the business both of deposit-taking and general business as we have in Barbados and I want to liquidate voluntarily, well I am not caught by Section 63 because Section 63 (1) says:

"Except with the prior written approval of the Central Bank no licensee licensed under this Act may be wound-up voluntarily."

You see "licensee" is defined for Part V as:

"A company licensed under Part II, III, or IV as the case may be."

Part IV is a deposit-taking company. I am a little worried about that. What we are trying to do here is now to regulate the deposit-taking business. Since we have not segregated it from the other general business, we are going to run into the problem that the provisions of this Act which relates to licensees are by implication going to apply it. The expressed words are going to cover the totality of that and I do not think that is what was intended. This is one of the difficulties which we have envisaged with this matter. This is another point of principle that has to be covered because I think it is too wide and we will find ourselves in a position in which a company...

5.05 p.m.

Aside.

Hon. H. B. St. JOHN: I do not know what is going to deal with that. But you have all kind of problems in relation to priorities. Licensee under Part IV is a special kind of hybrid. I am not so worried about Part II or Part III because they are financial companies. The primary business of those things is dealing in activity which normally one would regard as being financial intermediaries. Where you have this hybrid body like a company which is a commercial company operating in a wide area in Barbados, but incidentally taking deposits, because it was more profitable for them to get it that way than to go to the banks, they are caught now under Part **VI** because they are a licensee under the Act. So that they cannot wind up voluntarily and all the other provisions apply to them, both to their deposit-taking activities and non-deposit activities. Is that the intention? I do not think that is correct.

Aside.

Hen, H. B. St. JOHN: Sir, it is a logical consequence. We thought this through already and our conclusion was that the time had come in Barbados, and I make it very clear, that if these companies wish to **carry** on this business which is akin to banking they have to form a separate company. We have no **quarrel** with that. We have told them that long ago and that is what it should be, because otherwise you are going to create a great disharmony. They are doing financial business anyhow because they are lending money to the public to buy their goods on hire purchase. You are competing with the hire purchase companies. That is what they are doing. They are getting these deposits and all of them are telling you about buying even shoes on credit and they are lending you the money. They are going into financial activities. I do not mind if they have a finance company as separate and distinct as a subsidiary and then we can deal with it clearly. As I keep saying, Sir, the motor car companies like General Motors and all of them have finance companies that do this credit work but it is a separate and distinct entity from the general manufacturing activities. This is an important point so let us deal with it. Otherwise, with the whole of Part VI, we are going to run into trouble. There are a number of reasons why we cannot support Part VI on great points of principle. We cannot support Part VI in its present form for a variety of reasons. You had better look at it.

Hon. D. J. H. THOMPSON: I would like to clarify a couple of points, Mr. Chairman. The Honourable Member for Christ Church West raised the question of the appointment of the Central Bank as custodian which is mandatory in this Bill. Are you saying that the Central Bank should not be appointed custodian in no circumstances relating to the winding up of a bank or financial institution, or are you saying that it should be given a discretion as in all legislation to appoint the Central Bank custodian or another entity or person?

Aside.

Hon. D. J. H. THOMPSON: Make them eligible. That is what you are suggesting. Relating to the point of priorities, we have had a long debate on this and I think this reflects what the Government's final position is on this matter or how it has been refined overtime.

Aside.

Hon. D. J. H. THOMPSON: Precisely. That is what the Government has stated as its policy and we will wait on the outcome of that particular matter.

We have dealt with the point relating to the finance companies which does not relate to Part VI. Part VI relates exclusively to winding up, except to the extent that the Honourable Member has raised a concern about what essentially relates to 2 types of activities undertaken by one public company, for example, if that company is involved

in normal commercial activities and also **taking** deposits. As long **as** the custom continues, the most **that** this legislation seeks to do is to monitor that portfolio that relates to the **taking** of deposits. That is all this legislation really seeks to do. Now it is true that you will have a great anomaly were there a question of winding up and I really do not think that the greatest creativity **that** resides in here or outside could produce a solution to that. Therefore, **as** the Honourable Member has suggested, the Government has said that it has an open mind on the question of the deposit-taking companies and we will review this matter. All that this legislation seeks to do is to give the Central Bank power to monitor and regulate an existing practice. In due course, we will have to go further and determine whether this practice should continue or whether, as has been suggested, a view where more people are sympathetic that these public companies should establish finance corporations or other kinds of intermediaries to deal with the question of the taking of deposits from members of the public. That is basically it.

5.15 p.m.

Mr. H. deB. FORDE: I am going back to section 90, Sir, but I remain very concerned about even the phraseology of section 90(2) about the general assets. If the general assets mean the assets excluding floating charges, then I would probably not pursue the matter in the way in which I have pursued it previously. That is what I want to say. If it means the assets available for the payment of general creditors as well as people who hold notes or debentures, then I have great difficulties with this.

I do not know that there is any definition of general assets to be found in this section of the Bill. I realise that in some legislation in the United Kingdom and elsewhere the term "general assets" is described to mean funds available for the payment of general creditors as well as note holders. I have not seen any definition here.

Now, Sir, the existing offshore banking legislation, which is applied to all banks, only a year or so ago allowed priority out of only floating charges and the other assets but not fixed charges, not mortgages. I think the House has to be clear as to what assets are now going to be made available for the priority claims being listed here by the Government. I remain very concerned about this section of the Bill.

The other point which I want to underscore again to make the point that we have already, less than a year ago or just over a year ago, argued the position of the Central Bank as a custodian. It was accepted by this House. Am I being told that we are now reversing ourselves in less than a year? The Banking Act will be repealed. Section 125 will repeal the Act. We **took** the provisions into the Banking Act from the Offshore Act. I will correct myself. The Banking Act is now to be repealed and we were satisfied less than a year ago that the arguments which were being

advanced, again by the Opposition, were valid arguments and I want to know why we are looking to take those arguments. I suggest that the Government is blowing hot and cold.

Mr. CHAIRMAN. The question is that Part **VI** stand part. I think the AYES have it.

A Division was called for.

The bell was rung.

Hon. D. J. H. THOMPSON: Mr. Chairman, we have to recommit Part VI. I should like to move that Part **VI** be recommitted.

Hon. P. M. GREAVES: I beg to second that.

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

Hon. D. J. H. THOMPSON: In that regard, Sir, I beg to move that **clause 73** be amended by inserting after the words "the **Central Bank**" the words "or other suitable person". I believe on that basis we can forge ahead with Part **VI**.

Hon. P. M. GREAVES: I beg to second that.

The question that Part VI as amended stand part was put and resolved in the affirmative without division.

Part VII – Clauses 94 to 96 – was called and passed.

Part VIII – Clauses 97 to 102 – was called.

Hon. P. M. GREAVES: I beg to move, Mr. Chairman, that Part **VIII** stand part.

Hon. D. J. H. THOMPSON: I beg to second that.

Mr. H. **deB. FORDE**: Mr. Chairman, once again this is another part of the legislation I think we should early look at bringing up to date with the current thinking on how abandoned property is treated. I **am** not going to go into **any** more detail because this virtually takes the abandoned property provisions of the Offshore Banking Act and some of the existing Banking Act and repeats them, but it is in need of fresh thinking. I hope that before the Session ends we will get an opportunity to go back at the banking legislation.

The question that Part VIII stand part was put and resolved in the affirmative without division.

Part IX as amended – Clauses 103 to 126 – was called.

Hon. P. M. GREAVES: Mr. Chairman, I move that Part IX as amended stand part.

Hon. D. J. H. THOMPSON: I beg to second that.

Mr. H. **deB. FORDE**: Mr. Chairman, I believe that Clause **107** can be improved by asking that the Minister publish in the Gazette in each year not only the name of the company but the type of business which the company is authorised **or** licensed to carry on, **as** well **as** any restrictions. It would, in those circumstances, be adequate warning to the public.

Clause 120 which is being amended to read: "Subject to Section **57(3)**...." I am again contending that we should not exempt these institutions from the provisions of Sections **147** to **167** of the Companies Act. Sections **147-167** of the Companies Act deal with financial disclosure and a lot of thought has been put into those sections. I believe particularly trust companies and a whole range of companies need the type of provisions contained in the section of the Act. I am very concerned about that as well. I am also concerned about section 123. It has given draughtsmen down through the ages a lot of concern. Section **123** says:
5.25 p.m.

"The Minister may by order make further adaptations and modifications to the Companies Act as appear to him to be necessary **or** expedient having regard to the provisions of this Act."

In other words if the Minister wants to become the sole lawmaker. He is not even subject to his new lawmaking. Any form of legislation. It was the sort of clause that Henry **VIII** used and gave him the power to behead his wife and do all sorts of things, an absolute ruler. It is the sign of **the** absolute ruler and the Minister is now wanting to alter the Companies legislation by order. Even regulations are usually subject to some form of control of the Parliament of Barbados. I take exceptional objection to any Minister of Government having that power in this modern Barbados and particularly to this Minister having that power at this time. I would seriously suggest that this must be subject to affirmative resolution. Any amendment – I do not mind. He can bring it down just for the affirmative resolution and we will debate it at one go but it must be subject to affirmative legislation. The Minister must not be given absolute power. He has governed too badly to be allowed these sorts of powers. He will only get us into further problems with the finances and I **am** against this. This is worse than the emergency powers legislation. I see the Honourable Member is laughing because he knew I was waiting to catch him. I am surprised that it has escaped his notice and that he not even brought down an amendment on this matter. The point is you cannot allow this to happen in modern Barbados. I seriously suggest that that be amended, Sir.

Hon. H. B. St. JOHN: I think that Section 120 as amended is in conflict with the provisions of section 57 because in Section 56 of the Act you seek to make the requirements of the Companies Act relating to financial disclosure to apply to the licensee.

Asides.

Hon. H. B. St. JOHN: Let us deal with it this way. Section 147 to Section 167 are the provisions in the Companies Act which deal with financial disclosure but what is equally important is that there are provisions in Section 153 to Section 164 dealing specifically with the rights of auditors and the provisions of our Companies Act entrenched rights of auditors. The auditor is seen by virtue of those provisions as performing an essential role on behalf of the shareholders and you cannot easily remove them without going through a special procedure.

Section 57 prior to its amendment sought to make sure that in respect of a Barbadian's licensee the provisions of the Companies Act apply to an auditor. Therefore, if you are now telling me that by the new amendment you are going to say except insofar as it relates to Section 57 I want to know which of the provisions of the Companies Act you are going to say is incorporated in this law by virtue of Section 57. There are large categories of matters dealt with in Section 57. It seems to me that you are going to throw difficulties of interpretation here. Why do you wish to exempt it? I do not understand it. Let us start off with the assumptions under this Act...

Hon. D. J. H. THOMPSON: As I understand it, Mr. Chairman, this matter I had raised previously because I understood the kind of concerns that would arise relating to disclosure. These provisions in Sections 147 to 167 as modified will form part of the regulations that would be made under this Financial Intermediaries Regulatory Act and would be in pursuance to a power which as you would see is in the amended version of Section 105:

"The Minister may make regulations

- (a) generally for giving effect to the provisions of this Act; and
- (b) prescribing anything that is authorised or required by this Act to be prescribed."

The regulation therefore will supply the details relating to disclosure and the kind of information that would be submitted pursuant to the section relating to disclosure. So there is really no intention to totally obliterate the requirements for disclosure under Sections 147 to 167. If the Honourable Member wants to deal with something else I will sit back down and let you do that.

Hon. H. B. St. JOHN: In terms of the new amendments that Section 120 is to be amended by inserting the words "without affecting section 57(3)". Now Section 57(3) relates specifically

"Every licensee which is a company, and its auditors, shall comply with the Companies Act with respect to the audit of a company's account."

That only relates to those parts of the duties of an auditor which are in relation to carrying out his audit which are prescribed by the Companies Act. In addition to that, the point I am making is that the Companies Act has other provisions which define the relationship between the directors and the auditor, between the powers of the directors in relation to the auditor so that they are wider in scope than the provisions set out in Section 57(3).

Asides.

Hon. H. B. St. JOHN: This is not regulation. What we are doing here is that we have a Banking Act and it is predicated upon the fact that you have to be a company first and then you become a bank. You have to comply both with the company regulations and with the banking regulations. Now where there are provisions in relation to companies which are applicable to every company the provisions in relation to the functions and duties of the auditor and its relationship between the auditor and the appointor, namely, the directors or shareholders are set out in this section of the Companies Act. It is our submission on this side that we must be sure that we do not exempt banking companies from those beneficial provisions in the Companies Act which were designed to ensure 2 things. One was to enshrine the independence of the auditor, and, secondly, you set out minimal levels of professional standards for the auditor in the carrying out of his audit. It seems to me that what you are saying is that all the provisions in the Companies Act that apply to the auditor, except in relation to those sections that deal with the professional standard of the audit are removed. I do not think that is it.

5.35 p.m.

Aside.

Hon. H. B. St. JOHN: The licensee has to be a company first. That is the point.

Hon. D. J. H. THOMPSON: To follow your argument, what happens is that there would in a sense be double disclosure because as a company it would be required to provide comparative financial statements and comply with sections 147-167. It would have to do so under the Banking Act as licensee. You predicated your remarks on that. In fact, you actually clarified my understanding of it. If I were to follow your argument to its logical conclusion it would mean that as a company it

would have to comply with Division G, sections **147-167** and then as a licensee under the Financial Intermediaries Regulatory Act it would again have to carry out that process. What, therefore, will happen in lieu of that is those matters that the licensee is required to do as licensee under the Financial Intermediaries Regulatory Act will be set out in regulations. There is nothing that excludes the relevance of the Companies Act to the companies which are licensees. You clarified that for me.

Hon. H. B. St. JOHN: I am *sorry* that I did not do a good job. The point is, as I understand it, every licensee which is a company and its auditor shall comply with the Companies Act with respect to the audit of a company's account. That part of the Companies Act which sets out the minimum prescription..

Aside.

Hon. H. B. St. JOHN. Just one minute. The only prescription in the Companies Act which section **57(3)** deals with is the duty of the auditor in carrying out the audit. It does not *deal* with the other provisions in the Companies Act which deal with the right of the auditor with respect to the directors and its independence as a watchdog on behalf of the shareholders.

Aside.

Hon. H. B. St. JOHN: The point is that you have deleted all of the other provisions. Let us go through this very carefully. As I understand it, sections **147-167** of the Companies Act do not apply to the licensee. That is amended. In other words, a licensee that is a company does not have to comply with the provisions of sections **147-167**. Now, that is being amended. What the amendment says is "without affecting section **57(3)**". In other words, all of the prescriptions contained in sections **147-167**, except in *so* far as section **57(3)** prescribes prescriptions within that section, they will continue not to apply. It is simple. Section **57(3)** only deals with one point. It deals with the duty of the auditor in relation to its audit.

Hon. D. J. H. THOMPSON: Let us start from the beginning. If a company is incorporated as a company it has obligations under the Companies Act. The fact that the company is a licensee it has additional obligations as licensee. The Honourable Member says *qua* licensee. The fact that you say that as licensee it is not obliged under this Act..

Aside.

Hon. D. J. H. THOMPSON: That is the only interpretation you can give to it. Sections **147-167** of the Companies Act do not apply to licensee as licensees. Those are sections that relate, as I said already in Division D, to things like disclosure, comparative financial statements and

so on. If it were otherwise it would *mean* that as a licensee and as a company you would have to do **2** separate and distinct things. Is it not true that a company as a company can be a licensee and *as* a company *can* do other things *as* well? You have to separate the role of the company as licensee from the role of the company as company. *All* this legislation is saying is that these do not apply to the company as licensee.

You *can* take another example of a company that is involved in **2** separate and distinct kinds of activities one which has a regulatory framework and one which does not. When it is acting in that capacity which has a separate regulatory framework it is required to do certain things. I cannot understand this could be a problem. I thought the Honourable Member in his introduction had explained it for me and I put my finger on it and then he skillfully lifted it off. He *clarified* it and it is self-explanatory. If he spends a little more time on it, it would clarify that particular issue.

Mr. H. deB. FORDE: Sir, he is really weak on statutory interpretation. He is not interpreting the section and I will put it in concrete terms so that the Honourable Member will reconsider his view. Let us assume that a bank had a statement of financial affairs ready. This section says that sections **147-167** of the Companies Act do not apply to the licensee bank, that is, the bank, the licensee. That is all it says, to the bank the licensee, one and the same person. The Honourable Member is saying because the financial statement is now a financial statement under this provision, then it only complies with section **57**. But it is a company *so* it then has to comply under the Companies Act with sections **147-167**. That would be a total nonsense of interpretation. That is why I have reduced the Honourable Member's argument as *ad absurdum*.
5.45 p.m.

The application here is not to that part of its business carried on under the provisions of this Act. That is not what it says because you would...My *learned* friend's interpretation - I have to call him my *learned friend* - will not have to import into section **120** the additional words. He must acknowledge that that is not the interpretation. The purpose of section **120** is to exempt the company from the provisions of sections **147** to **167** in respect of its financial statement.

Let me put up the argument that the Honourable Member should seek to advance. It is that the Central Bank is satisfied that the requirements that it has placed in here on auditing is all that is required. What we are saying is that the Central Bank is wrong in this regard. That is really the argument. Because we say that not only what is in here is required, that you really require them to comply with the other provisions. So that the duties of auditors and their relationship with directors are not in any way undermined.

I know that a lot of the banks would not want an auditor. The argument they put up before in this House was that it was too expensive and that they – these are the foreign banks – have already been audited overseas, so they do not need any audit over here.

The argument that we have always advanced is that in respect of their Barbados business they ought to not only be inspected by the Central Bank but they should also have auditing functions carried out in relation to that and that the relationship between the auditors and the directors should be as stated in the Companies Act particularly in relation to the business of Barbados. As a matter of fact, let me tell you, that BCCI in my view needed that type of procedure in relation to its Barbados business. This problem has crept into our legislation because a former Minister of Finance who is not now in this House was persuaded by that argument and he reversed the amendment which had been brought in by the Honourable Member for Christ Church South when he was Minister of Finance to make the banks recognize that even if they are a branch they must comply in relation to their local business. The Central Bank has said, we inspect them and that is not enough.

I am not satisfied...

Aside.

Mr. H. deB. FORDE: Yes, but I am going further. They need outside auditors too. I am not satisfied that the Central Bank inspection is the same thing as a proper audit and is the same thing as the protection given by sections 147 to 167 of the Companies Act. I am not satisfied about that, Sir. That is one of the reasons why I have raised section 120 for the consideration of the Committee.

Rt. Hon. L. E. SANDIFORD: Mr. Chairman, Sir, the shades of King Henry VIII have been invoked and the Leader of the Opposition has apparently said that I have returned incarnate as that King who had a little local difficulty with Catherine of Aregon, I believe it was and wanted a new number appear on the scene, Anne Boleyn I believe.

But I want to make it absolutely clear that I am advised that similar provisions can be found in other pieces of legislation. But I am persuaded that an amendment can be made here in order to safeguard the undoubted right and privilege of Parliament ultimately to be responsible for all legislation.

Sir, we are fully committed to the full sovereignty of this Honourable Chamber and I would therefore like to propose an amendment and it is that what is now clause 123 should become 123(1) and there should be a new section (2), clause 123(2) should be inserted and that this should read:

"An order made under subsection (1) is subject to affirmative resolution."

I am sorry, Sir, that I have to draft on my feet.

The question that Part IX, as amended, stand part was put and resolved in the affirmative without division.

Hon. P. M. GREAVES: Mr. Chairman, during the recess we looked again at certain parts of the Act we had previously passed in this Committee. I should like to recommit some of these Parts. I beg to move that Parts II and V be recommitted, Sir.

Hon. D. J. H. THOMPSON: Can we recommit Part V first, Sir.

Mr. CHAIRMAN: Yes.

Hon. D. J. H. THOMPSON: Clause 58. This clause with regard to the question raised by the Honourable Member for Christ Church South and on further discussion I was correct in suggesting that this clause should be deleted. It is no longer relevant because the legislation requires the branch operations to publish audited financial statements and not the global operations. So there would be no need for any exemptions for foreign banks in respect of auditing functions that had been carried out overseas.

I beg to move that Clause 58 be deleted from there and that the consequential renumbering should take place in respect not only of the clauses but the cross references affected by the renumbering.

Hon. P. M. GREAVES: I beg to second that, Sir.

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

Hon. D. J. H. THOMPSON: In respect of Clause 2 we would delete

Hon. P. M. GREAVES: First of all, Sir, we have to recommit Part I and Part II.

Mr. CHAIRMAN: If there is no objection Parts I and II are recommitted.

Hon. D. J. H. THOMPSON: The definition of "foreign bank" should be as follows:
5.55 p.m.

"foreign bank" means a bank incorporated or organised outside Barbados and registered as an external company in Barbados".

I beg to move that Part I as amended stand part.

Hon. P. M. GREAVES: I beg to second that, Sir.

The question that Part I as amended stand part was put and resolved in the affirmative without division.

Hon. D. J. H. THOMPSON: Part XI, Clause 4(2), delete the word "corporate" at the end and substitute there for "incorporated under the Companies Act or incorporated or organised outside Barbados and registered as an external company under the Companies Act".

Clause 4(2) would read: "No licence may be issued under this Part to any person other than a body incorporated under the Companies Act or incorporated or organised outside Barbados and registered as an external company under the Companies Act".

Clause 5(2): Insert in the penultimate line immediately after the word "by", the words "one or more of".

Clause 15(1): Delete "(a), and (b)". Clause 15 would read as follows:

"A licence may not be issued under this Part to a bank unless the stated capital of the bank is at least \$2 000 000."

Clause 17(6): Insert immediately after the words "in Barbados" in the second line the following words:

"as determined by a competent person appointed by the Central Bank for the purpose".

Clause 17(6) would now read as follows:

"The fair market value of the fixed assets of the Bank in Barbados as determined by a competent person appointed by the Central Bank for the purpose may form part of the assigned capital for the purposes of subsection (S)."

Finally Clause 19. This is a whole new clause so you will delete what is there.

"19. A licensee shall not declare or pay a dividend on its shares if there are reasonable grounds for believing that

- (a) the company is unable or would after the payment be unable to pay its liabilities as they become due, or
- (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes."

That concludes it.

The question that Part XI, as amended, stand part was put and resolved in the affirmative without division.

On the motion of the Rt. Hon. L. E. SANDIFORD, seconded by Hon. P. M. GREAVES, Mr. CHAIRMAN reported to His Honour, Mr. SPEAKER, the passing of the Bill in Committee and Mr. SPEAKER resumed the Chair and reported accordingly.
6.05 p.m.

On separate motions of Rt. Hon. L. E. SANDIFORD, seconded by Hon. P. M. GREAVES, the Bill was read a third time and passed and the title read and agreed to.

QUESTION TIME

Mr. SPEAKER: Question No. 34 by the Honourable Member for St. Andrew.

Mr. G. W. PAYNE: Mr. Speaker, Question No. 34. To ask the Minister of Housing and Lands:

- "(1) Is the Minister aware that land recently acquired by Government for housing purposes at Shorey Village in the parish of Saint Andrew abutting and bounding on the St. Andrew Parish Church was recently subjected to severe flooding after the recent heavy rainfall?
- (2) Is the Minister aware that the said land is flooded even after periods of moderate rainfall?
- (3) Is the Minister aware that the said land is unfit for housing purposes?
- (4) Will the Minister please state whether it is the intention of the Government to abandon this acquisition and, if so, what alternative site will replace same?"

Hon. E. E. GREAVES: Mr. Speaker, in reply to Question No. 34 is as follows:

"After unusual heavy rainfall, there are incidents of flooding on the land in question. However, the water percolates rapidly and the problem can be remedied by the provision of adequate drainage works. The land is suitable for the public purpose of acquisition, that is housing development. Some 85 house spots will be accommodated **thereon**. The Crown **has** no intention of abandoning the acquisition of this parcel of land."

Mr. G. W. PAYNE: Will the Minister please state whether the drainage works will be done before the actual plotting out of lots?

Hon. E. E. GREAVES: The drainage works will be done before any relocation takes place.

Mr. G. W. PAYNE: Will the Minister please state how soon it is expected that the sale of these lots will get on the way?

Hon. E. E. GREAVES: Mr. Speaker, I am in no position to state to the Honourable Member how soon this will be done. But I want to give him the assurance that as soon as it is financially possible this will be done.

Mr. G. W. PAYNE: Will the Minister please state whether persons have been identified at this particular point in time for the house lots?

Hon. E. E. GREAVES: Mr. Speaker, there are a number of persons in the area described in St. Andrew and indeed the Scotland District who have been identified for relocation. This is just one of the areas which we have identified for location purposes but there are some other areas. Even at this stage, the Ministry is still seeking to identify suitable areas of land in St. Andrew and St. Joseph for relocation purposes.

As far as the question of whether we have identified the people who would go on these 85 spots is concerned, I am in no position to indicate whether or not the National Housing Corporation or the Ministry of Housing and Lands have identified the people who will be going. But I want to give the Honourable Member the assurance that the people in the Scotland District area who are affected will be the people who will benefit from this relocation. In short, if the concern of the Honourable Member is whether people from St. Michael, St. George or even St. Lucy for that matter will have access to these lots, I want to give the Honourable Member the assurance that, as long as I am Minister responsible for Housing and Lands, I will make sure that the people who are entitled to benefit from this relocation will benefit.

Mr. SPEAKER: End of Question Time.

ORDER NO. 11 – RESOLUTION TO APPROVE THE
VESTING IN THE NATIONAL HOUSING COR-
PORATION OF LAND AT PILGRIM PLACE
B, CHRIST CHURCH MAINLY FOR
HOUSING PURPOSES

Hon. E. E. GREAVES: Mr. Speaker, I believe there is a history relating to the vesting of this piece of land in the National Housing Corporation. Indeed, the file will reveal that the Right Honourable Prime Minister sometime ago in 1988 drew this to the attention of the then Minister of Housing and Lands. It has taken this long to reach this point where we are seeking to vest this area of land at Pilgrim Place B, which I am told is obliquely opposite the Flash Inn Bar approaching from Bridgetown. It is situated on the right hand side of the road. This 2 342 square metres lie approximately a quarter of a mile from Crown lands at Parish Land. The old St. Bartholomew School was

situated on this land. Now it is proposed to vest this area of land in the National Housing Corporation and I am told that it is possible that we could realise about 5 house spots in that particular area.

When this matter was being discussed, the Right Honourable Prime Minister raised the question, which other Honourable Members have raised now, of the spreading evergreen tree. He did express the concern that, if the provision of house spots would destroy this historic tree, he certainly would not be in favour of that. I think this is the general feeling of the House and certainly the Government would want to make the commitment that any development that takes place here would not see the destruction of this particular tree.

Sir, I think Honourable Members must also recognise that there is legislation in place in Barbados which makes it illegal to destroy trees just willy-nilly. An application would have to be made to the Town Planning Department before any such notable trees can be destroyed. I just want to make the point that we certainly would not be seeking to destroy that particular tree. Therefore, whatever development takes place in investing the land the National Housing Corporation, a number of the house spots will be sold and the tree will be preserved. I think this will satisfy Honourable Members.

With those remarks therefore, Sir, I beg to move that this Resolution which seeks to vest the area of 2 342 square metres of land in the National Housing Corporation do now pass.
6.15 p.m.

Hon. H. B. St. JOHN: Mr. Speaker, this area of land is well known to me. I believe when I first came to this House in 1966 I agitated for the resiting of the St. Bartholomew's Boys' School which is situated in this area. Eventually that school was relocated and a new school built near to Parish Land.

This land has a great landmark on it, a magnificent evergreen tree. It is really a small area of land and it would really be spoilt, in my opinion, if you talk of subdividing it into individual house spots. It may well be possible though to have a terraced development, provided the Government would also acquire or use part of Fairy Valley's land, to which this is contiguous, in order to get a larger area. I hope that nothing is done to interfere with the tree because it is a great shaded area which many people, young and old, use for constructive purposes. Taxi men use the two refreshment bars, one on either side of the road. There is the Flash 'N and there is the rival to the Flash 'N, but that has had a long history. I believe it has as much political history attached to it as to political parties in Barbados, excluding of course the new intrusions.

Whatever is done, I hope that this tree will be preserved as an area of recreation, but I really feel we should not be talking in terms of subdividing. Terrace development, yes, with some additional land, well set back in, so you have an imposing entrance and the people there will be very proud of it, because they love that **tree**. Some boys years ago tried to carry on activities under that **tree** and the people in the area ran them out. It is definitely not a **liming** area, because they have very clear perceptions of that tree. I believe that **all** sides will be very happy if a proper development takes place there.

The question that the Resolution do now pass was put and resolved in the affirmative without division.

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Hon. P. M. GREAVES: Mr. Speaker, we have been here for quite a while, for many hours. I am moving now that this sitting be adjourned until Tuesday, the 26th **day** of May, 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.
6.20 p.m.

2. Whether Government's policy on the provision of water supplies for the constituency of St. **Andrew** includes the installation of a new pumping station and reservoir at Apes Hill, St. **James**.
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