
THE House of Assembly Debates

(OFFICIAL REPORT)

FIRST SESSION 1994 – 99

HOUSE OF ASSEMBLY

Tuesday, 10th December, 1996

Pursuant to the adjournment, the House of Assembly met at 11.20 **a.m.** o'clock on Tuesday, December 10, 1996.

PRESENT

His Honour I. A. **ROETT**, B.A., Dip. Ed. (Speaker)

His Honour R. D. **MARSHALL**, (Deputy Speaker)

Rt. Hon. L. E. **SANDIFORD**, B.A., M.A., (Econ.),

J.P.

Mr. B. M. **TAITT**, B.A. (Hons.), M.P.A., LL.B. (Hons.)

Hon. D. A. C. **SIMMONS**, Q.C., LL.M. (Attorney General and Minister of Home Affairs)

Mr. D. J. H. **THOMPSON**, LL.B. (Hons.) (Leader of the Opposition)

Hon. Sir **HAROLD** St. **JOHN**, Q.C., LL.B.

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

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

Hon. Miss B. A. **MILLER** (Deputy Prime Minister, Minister of Foreign Affairs, Tourism and International Transport) (Leader of the House)

Mr. **J. O. TUDOR**, J.P.

Hon. G. W. **PAYNE** (Minister of Public Works, Transport and Housing)

Hon. R. C. **EASTMOND**, J.P., B.A. (Hons.), Dip. Ed., LL.B. (Hons.), L.E.C. (Minister of Agriculture and Rural Development)

Mr. D. **CARTER**

Mr. G. A. **CLARKE**, B.Sc., Dip. Ed. (Parliamentary Secretary, Ministry of Public Works, Transport and Housing)

Mr. J. M. **EDGHILL**

Mr. F. J. **STUART**, B.A. LL.M.

Mr. W. C. C. **CALLENDER**, J.P., B.A., Dip. Ed., B.Sc. (Chairman of Committees)

Mr. H. F. **LASHLEY**

Hon. R. St. C. **TOPPIN**, LL.B. (Minister of State in the Ministry of Foreign Affairs, Tourism and International Transport)

Mr. D. St. E. **KELLMAN**

Prayers were led by Rev. Canon Zvan Harewood.

Mr. SPEAKER: This House is now in session. The Minutes of Tuesday, 26th November, 1996.

MINUTES

Hon. Miss B. A. **MILLER**: Mr. Speaker, Sir, I beg to move that the Minutes of proceedings of the Honourable the House of Assembly for its meeting of Tuesday, 26th day of November, 1996, which Minutes have been circulated be taken as read.

Hon. D. A. C. **SIMMONS**: I beg to second that, Sir.

Mr. SPEAKER: If there are no corrections or observations then let those Minutes stand **confirmed**.

ANNOUNCEMENTS BY HIS HONOUR THE SPEAKER

Mr. SPEAKER: I am to announce that I have received a letter dated **10th** December, 1996 from the Cabinet Secretary to the Clerk of Parliament, it reads as follows:

"I am to inform you that on December **5th**, 1996 His Excellency the Governor-General received from the Returning Officer for the constituency of St. Michael North West, the Writ which had been issued for a by-election in that constituency certifying the election, poll held on 4th December, 1996 of Mr. Clyde Athelbert Mascoll to serve as a Member of the House of Assembly for the said constituency of St. Michael North West.

The Oath of Allegiance required by Section 59 of the Constitution and Section 62 of the Representation of the People Act, Cap. 12 was taken by Mr. Mascoll on 9th December, 1996 before His Excellency the Governor-General.

Yours faithfully,

AVERIL GOLLOP
Cabinet Secretary".

I am to inform this Honourable House that the said Member for the Constituency of St. Michael North West has signed the declaration of qualification. I now invite the Honourable Member for St. Michael North West to take his seat.

The Honourable Member for St. Michael North West, escorted by the Honourable Member for St. John and the Honourable Member for St. Philip South entered the Chamber and took his seat.

Mr. SPEAKER: Clyde Athelbert Mascoll, it is my pleasant and honourable duty to welcome you to this Honourable Chamber. As I note your contribution I hope you will conduct your affairs in the highest traditions of Parliament within the existing rules of this House. May your term of office during this period be a satisfactory one.

Mr. C. A. MASCOLL: Mr. Speaker, I wish to express my thanks for your welcoming words and look forward to serving well in this August Chamber.

PAPERS

Hon. Miss B. A. MILLER: Mr. Speaker, Sir, I beg to lay: The Road Traffic (Road **Tax**, Registration Fee and Permits) (Amendment) Order, 1996.

I further beg to lay the Annual Report and Audited Financial Statements of the Insurance Corporation of Barbados for the year, 1995; and The Report on the Audit of the Accounts of the Severance Payments Scheme for the years ended 31st December, 1992, 31st December, 1993 and 31st December, 1994.

Hon. G. W. PAYNE: Mr. Speaker, I beg to lay the Road Traffic (Amendment) Regulations, 1996.

SUSPENSION OF STANDING ORDERS

Hon. Miss B. A. MILLER: Mr. Speaker, I beg to move that Standing Orders Nos. 6, 16, 18, 20, 42(5), 43 and 44 be suspended for the remainder of this day's sitting.

Hon. D. A. C. SIMMONS: I beg to second that.

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

ORDER NO. 3 – BAIL BILL, 1996

Hon. D. A. C. SIMMONS: If it pleases you, Mr. Speaker, I am pleased to move the second reading of the Bail Bill, 1996 which is one of two pieces of legislation relating in part to procedures in the Magistrates Courts and we intend to do it today, Sir.

Mr. Speaker, in the Barbados Labour Party's Manifesto for the 1991 General Elections the party then committed itself to introducing a new Magistrates Court Act and a new Bail Act. We did not have the opportunity of course between 1991 and 1994. Consequent upon the change of Government in 1994 we have now had the opportunity to realise the commitments that were made as far back as 1991. Perhaps I ought to say at the outset, Mr. Speaker, that because the two bills before us today, the Bail Bill and the Magistrates Court Bill, overlap at **points**, I would counsel Honourable Members, in the interest of time, and with a view to the avoidance of repetition to make as many comments as they wish to make on the **first** piece of legislation and restrict themselves to specific matters for the Magistrates Court Bill when that comes rather than our repeating ourselves on both bills.

11.30 a.m.

Mr. Speaker, the origin of bail is rooted in the antiquity of the common law and the right to bail stems from a fundamental principle of justice, 'indeed a fundamental principle of common law, that every person is presumed innocent until proven guilty. Bail is especially important because it affects the liberty of the individual. That presumption of innocence to which I referred is in fact preserved in the Constitution in Section 18 (2). But I suppose that I could quote Lord **Hailsham** where he said that in fact, "bail is the only example in peace time where a man can be kept in confinement for an appreciable period of time without a proper sentence following on conviction after a proper trial." To that extent, that is the sole exception to the **Magna Charta**.

In England, the Bill of Rights protects the English subject from excessive bail and of course the Habeas Corpus Act in England protects him from unlawful confinement.

Aside.

Hon. D. A. C. SIMMONS: A decision **as** to whether to grant bail or not involves balancing a number of considerations – the liberty of the individual who **has** not been found guilty of the offence to which he is charged against the need to ensure that he should be brought to trial, and the need to ensure that the public is protected. To that extent, there are competing claims by the individual and against that the public interest.

Honourable Members who are members of the legal profession will be aware that refusal of bail to an innocent person or a person who is subsequently transpired who is proven not guilty is a quite undeserved hardship, in that the accused person is forced to remain in custody and in Barbados and that means in Glendairy Prison until his trial is completed. Refusal of bail operates to make it more difficult for a defense to be prepared. There are the problems of having to get permission to go to the prison and sit with the prisoner. It would be a lot easier if the man **was** on bail and he could come to your chambers and you take the statements and prepare the proof of evidence. So it can render the preparation of the defense a more difficult exercise. Of course, all of us can appreciate that a refusal of bail is disruptive of family life and indeed, I have known in my years of practice that it has caused persons to lose their employment when you deny them bail and send them to prison. The employer does not know and the chap does not report to work for the next couple of days and they hear that he is in prison, and he then loses his job.

Now the Constitution of Barbados provides, Mr. Speaker, a right to bail in circumstances where the accused is not **tried** within a reasonable time. That is Section 13 (3) of the Constitution. Of course, we appreciate that if a person is unlawfully arrested or detained he may be entitled to compensation either at common law or under the Constitution. So I mentioned the Constitution because the Bail Bill must be read subject to the overriding provisions of the Constitution which relate to it at the various points that I have indicated in Sections 18 and 13.

Now the present situation in Barbados is that under the Magistrates Jurisdiction and Procedure Act, **Cap. 116**, a court may remand a person in custody or on bail and with or without sureties. You will find that in Section 23. Section 27 is the other one which deals with the discretion, refusal for treason or murder. Murder and treason, of course, are notailable by a Magistrate but for other serious offences the Magistrate has a discretion to grant bail under what the Honourable Member for St. Philip South was saying to me under Section 27(2) of the Constitution.

Sir, for what are commonly called misdemeanours or the less serious offences, a Magistrate must grant bail unless there is sworn evidence that the accused intends or is likely to leave Barbados or evade trial or unless he has previously been convicted of what the law refers to as a felony. When I was first in practice, that provision was not honoured because sworn evidence was never given and some of us kept up the pressure on magistrates in the **1970's** to ensure that if an objection was being taken to bail that the police had to go on the witness stand and give sworn evidence that the person was likely to abscond from Barbados or evade trial. That gave us an opportunity then

to cross-examine the police to test the sincerity of the evidence. I am dealing with the present law in the Magistrates Court.

Now in the High Court, of course, bail is grantable under the inherent jurisdiction of the court on the basis of principles developed through the common law. But Members should also be familiar with Section 24 of the Criminal Procedure Act, **Cap. 127** which gives the judge the power to release the prisoner on bail. So you can get bail in the Magistrates Court and you can get bail in the High Court. There is a third opportunity for bail and that is at the level of the police. The police has the power to grant bail where a person has been arrested without a warrant and very often particularly on weekends people who are picked up for little disturbances or minor assaults and so on can be and often are granted bail by the police officer. But the officer must be of a certain rank. Officers of the rank of Sergeant and above – Sergeants, Inspectors, Assistant Superintendents, Superintendents and so on – can grant bail with or without a surety, and if it will be impractical to bring the accused before the court within 24 hours. That is in Section 67 of the Magistrates Jurisdiction and Procedure Act.

11.40 a.m.

Why do we need a Bail Bill in **1996**? Some time ago in another debate here the Honourable Member for St. Michael South Central made a strong plea for this legislation and we told him then that it was coming. In fact, the draft legislation was sent to the Opposition parties late in 1994 and on January **6** last year the Honourable Member for St. Michael South Central replied to us to say that he had no substantial comments to make in respect of the Bail Bill and the Magistrates Courts Bill, but both Bills – and Honourable Members see the size of the Magistrates Courts Bill – have had a long gestation period, deliberately so. We had to consult the police, we consulted the Opposition parties – are there still two or is there only one?

Aside.

Hon. D. A. C. SIMMONS: At that time I consulted two. I am hearing about **kih** and kin now as a result of the events in St. Michael North West, but we will not get into those historical episodes, Sir. We consulted the Judges, the Judicial Council, and they set up a committee under Mr. Justice King, which looked at the Bills in detail and made a number of recommendations. The officers in the Ministry, the Law Revision Officer and the Chairman of the Law Reform Committee met with the Judicial Council – I had better say Mr. Justice King's Committee of the Judicial Council – and we have been able to refine both pieces of legislation, we think to the satisfaction of everybody. When I come to the Magistrates Courts Bill there are three or four little amendments I picked up over the weekend which will be circulated later on this morning.

But it is because bail has been granted or refused on a very arbitrary and discretionary basis in the past, a basis that has been bereft of legislative support, except for the few sections that I mentioned which appear in a desultory form in various bits and pieces of legislation, it is because we wish to remove...

Aside.

Hon. D. A. C. SIMMONS: No, I said except for those little bits and pieces in the Criminal Procedure Act, Section 27 of the Magistrates Jurisdiction and Procedure Act, that we thought the time had come, following what has been happening in the Commonwealth, where your right to bail and the principles upon which bail should be granted ought to be set out in a readily accessible form in legislation. We thought that the time had come for us in Barbados to remove much of the arbitrariness that presently exists and what we have done therefore is to endeavour to present to Parliament a Bill which makes important changes in the principles which govern the decision whether to grant or refuse bail by clearly and carefully prescribing grounds for withholding bail, so that the legislation in fact is aimed at strengthening individual liberty and providing that that liberty should only be interrupted on the clearest possible basis. I will deal with the details of the Bill in due course.

I have heard from magistrates who welcome the Bill and they feel that it will remove much of the arbitrariness. They feel that as the law presently stands there is difficulty in harmonising practice in relation to bail. One magistrate in one jurisdiction might grant bail for a particular type of offence, a magistrate in another jurisdiction quite unaware of what the first magistrate has done may refuse bail, so it is better that we set out the bases upon which bail ought to be granted.

Sir, the Bill creates a qualified right to bail and provides a procedure to ensure that the question of bail is fully considered in accordance with appropriate criteria. The Government believes that this Bill ought to allow for more informed and rational bail decisions and eliminate variations in policy relating to bail.

We have also included provisions which aim at standardising the procedure for hearing and recording bail applications. Obviously one considered many pieces of legislation, but I think it is fair to say that the English Bail Act of 1976 and the more recent legislation in Trinidad which to a large extent follows the English Act, subject to the necessary adaptations imposed by constitutional requirements, those two have been the main precedents in the drafting of this legislation.

If I can deal broadly, Sir, with the various Parts of the Bill, Part I deals with the right to bail and makes a specific statement that conditions attaching to bail shall be

reasonable. That is in recognition of the Bill of Rights in England in 1688 that said that bail should not be excessive. Clause 5 of the Bill sets out the circumstances under which bail may be denied. For example, if the court is satisfied that there **are** substantial grounds for believing that an accused if released on bail – and I will give three examples from the Bill – would fail to surrender to custody, would commit an offence or would interfere with witnesses. The Honourable Members would carefully note that at the moment magistrates cannot deny you bail applying objective criteria. A magistrate cannot deny you bail because he believes that you will interfere with witnesses. I mean for a misdemeanour where section 27(2) comes into play. It is not one of the considerations. It is only if you are likely to abscond.

11.50 a.m.

What we are doing here is, as it were codifying some of the common law principles that exist in other jurisdictions and putting them in the law. So, provided he has satisfied that there **are** substantial grounds to believe that you will interfere with witnesses or commit an offence, he can refuse.

Sir, in order to assist the court in exercising this discretion clause 5(2) prescribes the factors which the court must pay regard to in determining whether it will or will not grant you bail. I think this is important. The court must consider the nature and seriousness of the offence, the character, antecedents, associations and community ties of the defendant. The defendant's record as respects the fulfilment of his obligations under previous grants of bail. If a person has been granted bail and has been in the habit of breaching the conditions, that is one of the matters that the magistrate can consider.

The strength of the evidence of his having committed the offence or having defaulted and the length of time a defendant will spend in custody if the court were to exercise the power conferred on him. So that in coming to a decision as to whether to grant bail the magistrate must give due consideration and weight to these five matters specified in clause 5(2). He cannot just refuse to give you bail because you **turn** up in a pair of jeans and a tee shirt or he doesn't like your hair style. He has to bring his decision within these 5 principles.

Mr. Speaker, police bail which I mentioned earlier is dealt with in clause 6 but we have changed the letter. As it presently stands, it is Sergeant and we say that a police officer not below the rank of Inspector or a police officer in charge of a police station. A Station Sergeant on a weekend would have the right to grant bail for the same reasons as present practice allows.

So much for the general overview of Part I. Part **II** of the Bill deals with the procedure for bail. Where bail is granted or refused a record of the decision must be made in the prescribed form. When the rules come early next year the prescribed form will be there. A copy must be given to the defendant if he requests.

Mr. Speaker, I think students of administrative law should welcome this procedure. Again, what we **are seeking** to remove from decision making is arbitrary conduct. **We are** saying that if a magistrate is going to refuse bail he must set out the reasons why. The accused person has a right to know. When I speak here Sir, in this capacity on this legislation the provisions of the Interpretation Act apply and where I say he, it can mean she or it can mean "person" in the contemporary jargon.

I think that it is important Sir, that a person ought to know why his application was turned down so that it will now be the law that the magistrate must on a form in the nature of a certificate say why he has refused bail if the defendant requests. Similarly, in clause 8, if the magistrate imposes conditions he must give reasons and in any event, if bail is not granted we don't leave it any longer to the accused or his lawyer to pursue his right to the High Court. The magistrate must tell him that he has a right to appeal his magisterial decision to the High Court.

That really is the effect of sections 7 to 9 of the Act. Of course, at the level of the High Court which is provided for in Clause 11, the High Court has ample power as the High Court to vary the bail or even vary the conditions that have been attached to the bail.

Part III of the Bill deals with the conditions of bail. For example, in Clause **12(3)** a court may require any person applying for bail to do one of four things.

- "(a) provide as a condition for bail before his release, a surety to secure his surrender to custody;
- (b) surrender his passport to the court;
- (c) inform the court if he intends to leave the jurisdiction;
- (d) report to any police station at specified times."

Practitioners in this **Honourable** House will know that from time to time magistrates impose some of these conditions routinely. What we are doing now is putting it on a statutory basis.

A very important aspect of bail, Sir, relates to the question of sureties. There is a lot of common law on the matter of sureties whether you should pay deposits, what

happens if you stand as surety, whether you should pay a deposit. That was settled. We used to do it in Barbados at one point where magistrates used to require you as a surety actually to pay the money into court. I challenged that, Sir, I don't remember the name of the case now. It was years ago. The **case** which helped me in that was a case called **Ex parte** Harrow Justices and ever since then, sometime in the late **70s**, magistrates no longer have the power to require a surety to pay money into court.

All you do as a surety is to sign a recognizance up to whatever amount the magistrate has prescribed and you sign the document. You don't have to carry in the language of the people your land papers, your house papers, your conveyances. You don't have to deposit \$1000 if the surety is \$1000. You sign, holding yourself liable that if there is a breach, then you forfeit what you sign for. You do not have to pay money or put up your papers.

So we have now set out all of that in the part of the Act dealing with sureties but we have said that before a magistrate will accept a person as a surety he has to consider his suitability for the surety.
12.00 noon

In Section 14 it says:—

"The courts have regard amongst other things..."

This is not limited. This is inclusive to:

- "(a) the surety's financial resources,
- (b) the surety's character and any previous convictions of the surety, and
- (c) the surety's proximity, whether in point of kinship, place of residence or otherwise to the defendant."

Aside.

Hon. D. A. C. SIMMONS: I suppose we can say it is the practice that the magistrate usually calls the surety and, as it were, interview them, ask these questions and so on but it is not always done and certainly for years it was not done. I have been out of practice now for the last 2 years and 2 months, Sir, so I am not too sure what is happening down in town but there was a time when you had professional bailers. There were one or two names that you could call and you go and get Mr. "B," — he is now overseas — or Mr. "G." He would turn up and sign for you and the magistrate would accept it. Of course, in the background, some money passed between the professional bailor and the accused family.

Aside.

Hon. D. A. C. SIMMONS: You still have on your mind the bag you were walking about with last Wednesday.

Mr. SPEAKER: Please, let us proceed orderly.

Hon. D. A. C. SIMMONS: This is part of the practice of Parliament.

Mr. Speaker, I would think in the last 6 – 8 years the courts have become quite tough with sureties who do not ensure the attendance in court of the accused. You have cases where a person acts as surety and between signing the recognizance and the matter for trial, the accused absconds. Now, the courts in the last few years have become very hard on sureties who – I want to use neutral language – find themselves in the position that the person they have bailed has absconded. The courts have been forfeiting the sureties. Some have been quite substantial. I believe there is even one pending now where the surety was for \$10 000.

You can apply for relief. If you go and sign bail for somebody today and he takes off and goes to the States or wherever tomorrow, the case comes up in February and you do not present him to the court, your bail can be forfeited. I do not think people appreciate how important this matter of bail and the concomitance of suretyship is.

When you stand bail for somebody, first of all you are warranting to the court that this person will turn up on the adjourned date to answer his charge. You are also warranting to the court that you have the responsibility to ensure his presence in court on the next date. It is therefore very important that people who undertake the responsibility of suretyship understand the implications. If you do not ensure the attendance of the man in court on the appropriate occasion your bond is liable to be forfeited. So it is essential that a person who undertakes to be a surety keeps in constant contact with the accused and tries to know that person's movement. That is all I can say to the general public who agrees to become sureties. Keep your man constantly in view. As soon as you know that he is gone I think we should try and get to the magistrate and apply for relief from the whole or part of the surety but there is no guarantee that the magistrate will do it. It is a very serious responsibility. It all relates to the administration of justice and the due process that must be gone through if the administration of justice is to be efficacious in any country, not only Barbados.

Somebody was asking about Mathieson? The latest word on Mathieson from the British authorities is that Mathieson is in Germany. When last heard of about two months ago, his alleged family, the lady and a couple of children that were in Brixton with him, were still in London but he, according to Detective Inspector Hewitt,

was in Germany. Now we have no extradition relations with Germany so there is no way we can get him back from **Germany**. As Honourable Members recall when I gave the House the information earlier this year that he had absconded, the British were then saying that he was still in England and they were looking for him. The good thing is that the warrant, of course, is still valid so **anytime** he re-enters Britain and they can get word of it, they can pick him up and bring him back but that is the position with him. Sir, clause 15 deals with, as I said, forfeiture of the surety in whole or in part, and the burden is on the insured to satisfy the court that he should not forfeit the whole sum. That is a very heavy burden. The case is called, **ex parte**, the word, I believe, **Heward** which deals with it, and all I can say is that, perhaps, if you **find** the magistrate in a good mood a morning you might get off some, but the trend has not been to forgive any of the amount.

12.10 p.m.

Part 4 of the Bill, Sir, deals with a collection of miscellaneous matters. Technically, and I use that word advisedly, having regard to the culture which exists in Barbados, technically, indemnification or agreeing to indemnify a surety is an offence. I think that at common law it has also been an offence but the ingenuity of man has been such as to circumvent the technical structures of the law. We have put it in, Sir, because it is an offence. That is clause 16.

Clause 17 deals with a person who absconds, and it just sets out the various powers which the magistrate has in respect of a person absconding from bail. Under clause 18, if you have been released from bail and you do not surrender to the court on the date and time appointed, a warrant may **be** issued for your arrest. These are all the consequences of jumping bail, Sir.

I think that it is important for members also to consider clause 18 (3) where a person who has been released from bail and should surrender to the court for judgement may be arrested by a police officer without warrant in 4 cases:

- (1) if the police officer has reasonable grounds for believing that the person is not likely to surrender to custody;
- (2) if he has reasonable grounds for believing that the person (a) is likely to break any of the conditions attached to his bail or (b) has in fact broken any of them;
- (3) where the person was released on bail with a surety, if a surety notifies the police in writing that the person is unlikely to surrender to custody and for that reason the surety wishes to be relieved of his obligations as a surety;

- (4) if new evidence justifying a further arrest has come to light since his release.

I draw this clause to the attention of Honourable Members because it seems to me that if counsel for the surety who finds himself in the position that the accused has absconded or is planning to abscond can show that the surety wrote the police at an early date to say, look, I am a surety for this man, I suspect that he is trying to leave the country, my basis for that suspicion is as follows, I want this noted and recorded, keep a copy. I think if the person leaves, and you go to the magistrate on a hearing as to whether your surety should be forfeited or not, the letter might have weight with the magistrate to show that you took steps early to alert the police of the likelihood of absconding. It may be something that the magistrate can look on favourably to **determine** whether to forfeit all of the surety or not. Sir, clause 18 (3) (c), I think, can be useful in practice to persons who may be due money but dishonours a case.

Sir, that provision, clause 18 (3) was deliberately crafted to take account of a decision of the Chief Justice, the Honourable Sir Denys Williams, Sir, in a case called *Lynch v. Attorney General* in 1991, where he held that the police did not have any power to arrest an accused whose surety believed he would abscond. He held that the magistrate had no power to issue a warrant because the accused was not in custody of the magistrate, but in the custody of the surety to submit, according to legal reasoning.

Asides.

Hon. D. A. C. SIMMONS: We think that clause 18 (3) ameliorates the effect of *Lynch v. Attorney General*, Sir.

Finally, Mr. Speaker, clause 19 gives a limited right of appeal to the prosecution. It is limited to the Magistrates Courts and the offence must be one which is punishable by a term of imprisonment of 5 years or more. In that limited situation the prosecution will have a right of appeal against a grant of bail. We try still, as far as the law will allow, to pay overriding regard to the overriding liberty of the individual. So that even in that circumstance we say that the matter must be dealt within 5 days so that the accused person is not denied his freedom for an unreasonably long **time**. That only applies where the prosecution, as I say, has that limited right of appeal. Mr. Speaker, I believe this Bill will make an important contribution to the criminal law and practice of Barbados. A Bail Bill had been **knocking** around since the **1980s**, and it never seemed that we had the political will to bring it to the point of enactment. I am pleased on behalf of the Government to move this Bill today in the hope that it will enlarge the freedom of the

individual under the Constitution, and that it will remove from the practice on bail what I have said before, **Sir**, is the potentiality for arbitrary, even whimsical or capricious decision making, and that in future all Barbadians will **know** the basis upon which bail will be granted or refused. If you **are** not satisfied, you **are** entitled to have the magistrate state the reasons why he refused bail.

I think that, more and more, administrative law has shown us that the courts **are** calling for the decision makers to give reasons for their decisions, accountability, and in this regard, Sir, this Bill, we think is in tune with contemporary legal thought, contemporary legal practice. I am therefore pleased to move the second reading, and I move that this Bill be now read a second time.

Mr. G. A. **CLARKE**: I beg to second that, Sir.

Asides.

Mr. B. M. **TAITT**: Mr. Speaker, Sir, I believe that it would be fair to say that the Members of the House on this side will welcome this Bill as much as the Government because, as the Minister said as he introduced this legislation, it has been a long time in coming. As the **Attorney General** ended, he said that he hopes that this Bill would enlarge the freedom of the individual under the Constitution and that it would finally remove any tendency to arbitrary and capricious decision making. In that all will now know or all will be deemed to know the reasons why bail has been refused, more so than why it has been given.
12.20 p.m.

Mr. Speaker, it is not, I believe, fully understood in the broad body politic that the granting of bail is a fundamental entitlement. I think that in societies like ours where those persons who are likely to be seeking bail are predominantly from the under classes, the poor black people of Barbados in this instance because those are the ones who **are** invariably **seeking** bail, and because the preponderance of public information over the centuries we have been in existence has been toward a **down-pressing** of people in the under classes, the tendency has been even among those persons who fall victim or who ought to be the beneficiaries of bail, they have come to believe that in **seeking** bail they were in fact begging for something which was not theirs.

The truth is, Sir, that I believe as early as 1848 when magistrates were reluctant to do what they were supposed to do and found all **kinds** of reasons not to give bail that the Lord Chancellor of the day brought the Bill which in essence gave magistrates total jurisdiction, total discretion in a sense absolute discretion in the question of the granting of bail.

Now, Mr. Speaker, what tended to happen in the next 150 years or so was that the police in the various jurisdictions came to be the major source of information for magistrates who did not wish over time to do their duty, that is to address the issues and fearlessly to make decisions for the persons concerned as opposed to against the persons concerned. They came to rely on information that was given to them by the authority whose responsibility it was to keep law and order.

Now, Mr. Speaker, I am speaking on this particular issue primarily in my capacity as a person who has spent a fairly long time examining administrative law at the level of the imparter of knowledge. Many people regard this as part of the criminal law without recognising that bail is essentially a matter between the individual and the state. I have always given young would-be lawyers advice, certainly Barbadians, that in the modern Barbados it is desirable that every individual who proposes to become a lawyer that he or she should make it a point to study administrative law if nothing else because an understanding of the position of an individual in a state, especially with a written constitution.

Mr. Speaker, in a situation where the state is the paramount power and that power is deemed to be written down in something called the constitution it behoves every single person who would defend the rights of individuals to examine not only the law of the constitution but the law of the administration of justice because it is only then that you can impart to ordinary citizens their right in these circumstances to fight the state, to insist that the state does not exercise arbitrary power. That is what democracy is all about, the insistence on the part of the citizens that the rights of all are protected. That is a very difficult thing in societies that have evolved from slavery.

It is a very difficult thing for people to veritably believe that they have rights against the state. They believe that authority has been handed down from time immemorial and that when authority is properly phrased that that authority must necessarily be right. I do not think it is unfair to say, Sir, that over the years many persons who have functioned in the capacity of magistrates in the Caribbean have come to accept that as a truism without reference to its source and as a result we have had magistrates in the Caribbean who have sought to refuse persons their legitimate right, that is to say, bail from custody in the prisons when the citizens rights were clear.

Now, Mr. Speaker, the reason for bail is to prevent almost anyone who is charged with an offence from going into custody, (1) unnecessarily, and (2) it is to allow a person who is charged with an offence, adequate and sufficient time and circumstance to prepare his defence. It should be obvious to almost anyone that a person who is in custody has less chance of preparing his or her case than a person who is not in custody and so to the extent that it

is possible, it ought to be the norm that bail is the order of the day rather than failure to receive bail.

Very often in the course of the history of our own courts in Barbados many a person has been refused bail on no other ground than that he or she did not have the benefit of a lawyer. Mr. Speaker, it used to be fatal for a person to appear in the law courts in Barbados charged with a reasonably serious crime and expect to get bail. I do not think that is casting any aspersions on any individual who has sat on the Bench but the historical record shows that it is near fatal in regard to bail for any one to appear in the courts without legal representation, charged with a reasonably serious offence, with the expectation of bail. What that means, Mr. Speaker, is that economic consideration and economic conditions are major factors in determining who shall have justice and who shall not. It means that a person who finds himself in a position where he or she cannot raise the necessary fees to engage professional legal counsel is in danger of having less justice than a person who can do so.

12.30 p.m.

In some ways that is a truism. It is true not only in Barbados. It is true everywhere. If one is familiar with jurisprudence in the United States, one is familiar with the fact that the United States Supreme Court very early in its existence made it possible for ordinary prisoners to appeal directly to the United States Supreme Court after they have been sentenced and after they have been imprisoned about any particular case in language that was non-legal in such a way as to allow the court from time to time to review certain cases. And many of the landmark cases in jurisprudence in the United States and by extension in the English speaking world have been the result of review by the United States Supreme Court of cases that were submitted by ordinary or what they call "jail house lawyers".

Now, Mr. Speaker, one of the benefits which will come from this piece of legislation is that those lawyers at Glendairy, those people who assist from Glendairy, will now have something to work with because up until now, Sir, all they had was Section 27 of the Magistrates Jurisdiction and Procedure. Section 27 is 3 short paragraphs which sets out the framework within which bail is given in Barbados. Even the best trained lawyers could not on the basis of Section 27 explain to anybody what is the basis of the granting or non-granting of bail in Barbados.

Section 27, Sir, says:

- "(1) a person charged with any treason shall not be admitted to bail except by Order of a Judge;
- (2) where a person is charged with any felony other than murder, the Magistrates may, if he thinks fit, admit him to bail;

- (3) if a person charged with any offence other than those mentioned in Subsections (1) and (2), the Magistrate shall admit him to bail."

So far no problem, Sir, and then comes the hook.

"Unless there is evidence sworn before the Magistrate that the accused person either intends or is likely to leave Barbados or by any other means evade trial."

And here we go again, Sir:

"and unless such person has previously been convicted of a felony."

First of all, Sir, it is very easy when you **are** an academic lawyer to criticize those who have to practise everyday. But I will make bold to say, Sir, that if an objective examination of bail applications over the last 50 years in Barbados could be done and it would make a great paper, it would be interesting to see how many lawyers applied using the criteria that is set out here, beside the Attorney General, and how many magistrates in the face of that application did not listen to the police officer to find out what the real position is. It would be interesting to examine that because, Mr. Speaker, although the law in Barbados says there is a presumption of innocence in Barbados, there is a presumption of guilt once you have been arrested and the lawyers have to spend the majority of their **time** proving that the person is not guilty. It is remarkable. That is not what the law is supposed to say or do. But the majority of time depending on the social background of the prisoner and depending on the economic position of the prisoner, the lawyers spend a substantial amount of time seeking to prove as they would have had to do in a French Court that this person who is guilty according to the arrest is really innocent. **Our** law does not say that. If it is a little complicated, I can explain. I have seen, Sir, in the newspapers in this country, and I am not indicting them, articles written about persons who have been arrested. The articles **are** written in such a way that there can be no doubt whatsoever that the person is guilty. It is only 2 years later when the trial comes up and that **person** is acquitted that that poor individual and all of the family connected therewith begin to resume normal life. It is a serious problem for a small country and in countries like ours where the judges even at the highest level in the early days were ignorant of the law...

Aside.

Mr. B. M. TAITT: Oh, yes! In the early days when judges were appointed in Barbados from England, they were not appointed on the basis of any knowledge of the law. They were appointed on the basis of patronage – yes, in the early days. We talk about our traditions and I think that one of the things that is missing in this country is that

those who **are** scholars and who have had the opportunity have not been writing enough. Those scholars are guilty of not writing enough so that the ordinary people in this country can understand the origins of our legal system and the origins of our sociological system. Now if this is not reported properly from the House, Sir, it will suggest that I have attacked somebody. But I **am** not attacking anybody. I am attacking intellectual dyslexia which allows people to have visions of themselves and others which **are** incorrect. As a result, a lot of injustices **are** passed in this country without people realizing that injustice is passed.

Mr. Speaker, this is an important piece of legislation not because of how it is framed but because of what it can allow to happen in the next century. As we go into the 21st century, those young lawyers who **are** going to be practising in our courts need to fight the cases and I expect the Attorney General not long from now whether it is on that side or this side to bring proper legislation to allow for proper representation of the indigent in cases. Because proper representation can only happen if funding is available for proper lawyers to represent in some serious matter. You know what I **am** talking about. I am not talking about this Attorney General. This is something which has been going on for some time. Legal aid, Sir, must become genuine and real. Legal aid must allow those who **are** going to defend the indigent to also make a living. Because if you have a person who is a Q.C. or a person who has been practising law for a long time, there is no point in trying to force them or tell them that they must go and represent somebody who is in danger of going to prison or even a simple question of bail appearing before the High Court to discuss bail.

Mr. Speaker, Your Honour will know because you **are** a representative of ordinary people, of the number of people who are picked up on a Friday for an offence which is a domestic offence. Two people get into a quarrel and somebody gives someone a cuff in the eye. One reports to the police and the police picks up a person on a Friday. Unless that family knows exactly what to do, that person is going to sleep in the cells until Monday morning.

Aside.

Mr. B. M. TAITT: Well, if they get a lawyer. You have to get a lawyer. If you don't have a lawyer or a sympathetic sergeant or a parliamentarian who knows something about it, prison for the weekend.
12.40 p.m.

Aside.

Mr. B. M. TAITT: The Leader of the House is reminding me *sotto voce* that counsel is not far from the action if they know what to do, but I have no knowledge,

as they will tell me from time to time, of these particular matters so I cannot speak of them with any authority. But, quite seriously, the argument for our changing our justice system so that people from the under class can believe genuinely that the scales of justice have a balance with a blindfolded person in order for the system to work. Many of the problems which we have in other aspects of our system, many of the sociological problems which manifest themselves in violence in different **forms** spring from the fact that the people in the under classes genuinely do not believe that justice is available, and that justice which is not available has to do, for example, with bail.

Now, Sir, the chances are that if any Honourable Member in here goes down the road and gets into a small scrape and is arrested he will get bail. Most of us are known and we will get bail. The chances are that any of our immediate family will get bail if for no other reason that somebody will see them down in the courts and say: "Wait, wait, that is so-and-so son? I am going in here and hold a brief." But let it be one of the people that come from St. Michael South, St. Michael West, St. Michael North West, **Danesbury** or **Fairfield**, Licorish Village or New Orleans, and of course St. Michael Central, the only way they are going to see bail is if one of the lawyers who happen to be around at that time get a signal that this would be all right. Mr. Speaker, that is not how it should be. Hopefully this legislation will drive magistrates – and the magistrates we have now are superior to magistrates of 50 years ago, there is no question that we **are** seeing a higher quality of magistrate, and I think it has to do with the quality of learning which is happening out of the institutions we have. I feel very good about that, Sir, that we **are** getting a higher quality of magistrate, certainly in Barbados. We still have some people in the other islands who ought not to be judging cattle, but they are still on the Bench. That is a fact, Mr. Speaker. In this House of Assembly at my age I have to speak what I think and we still have one or two magistrates in the Caribbean – maybe one or two Judges – who really ought not to be sitting on the Bench, but the magistrate should be the one who absorbs this legislation because it codifies what is supposed to be. They should absorb this legislation and in the cases where even the lawyers are not doing as well as they should in applications for bail, the magistrates should take the lead. It is my contention that a person is entitled to bail at **first**. That is the principle on which you begin. If you begin with that principle, then it is the Magistrate's responsibility to ensure that bail is granted and that the administrative system would be a lot purer if in fact we remove half the people who go up on remand if we can find ways and means of stopping so many people from going on remand.

Mr. Speaker, do you know what is one of the worst things that ever happened in this country? A man went up to Glendairy on remand and died violently. Do you have any idea what that means to this society? Did you ever see

any major editorials about it, Sir? I am not casting any blame, but as an individual you should feel something about that. Mr. Speaker, lest there be any confusion, that happens in England too and in the United States it is par for the course. You get arrested and before long you **are** dead, but the point is that for us in this society, as we come toward the 21st century, these are the **kinds** of issues that we have to examine in their entirety if we **are** going to change the pattern of the under class divisions which we have in this country. We **first** have to accept that we have them. Mr. Speaker, you and I would know about them because we encounter them on a daily basis. There **are** other people in leadership positions, outside of politics, who do not seem to understand that these people exist and that they are part of us. They **are** not of another planet, they **are** not even of another country, and therefore when we insist that we have proper bail arrangements, all we **are** doing is securing ourselves, all we are doing is making sure that the arrangements for the system **are** fair. **This** piece of legislation falls into that category.

The Minister said it was a long time coming and he said properly so and we have no quarrel with that. The details of this legislation do not warrant any examination to speak of, because they **are** everyday things, but what they do is provide the framework within which all and sundry must operate, or should operate. No lawyer now has any excuse for allowing a client to sleep in Prison unnecessarily. No magistrate has any excuse for sending someone to Glendairy for three weeks or one week or whatever because the lawyer did not do what he or she was supposed to do, and none of us, least of all those whose responsibility it is to examine these things, should rest comfortably if we hear of anyone who has been sent on remand because of reasons other than those outlined in this legislation.

Mr. Speaker, I recall very vividly a situation in my own constituency where a man who had never got into trouble at all in his life was defending himself in his own home one Saturday **afternoon**, and I **recall** very well that after he came back from **Glendairy** where he went for a week on remand his personality changed, he became a shadow of himself and, as part of my responsibility as a Member of Parliament, eventually I accompanied his remains to **Westbury** Cemetery. It was not long after, and there is nothing that will convince me that he did not die as a result of his having to go to prison for a week for something which he did not initiate and which, in my humble opinion, he could have received bail by a police constable, furthermore a magistrate.

Mr. Speaker, going into custody, losing one's freedom, must be the harshest thing that can happen to a person who can think. Going to prison is taken for granted by those of us who walk the face of the earth comfortably every day.
12.50 p.m.

I recall, Mr. Speaker, you must forgive me because this is not going to come up again and I am not going to keep Honourable Members beyond lunch time, but I recall, Sir, working with the former Attorney General, Maurice King, on a case where – when I say working with, Mr. Speaker, you know I did the research and he did the court work – this man was charged for stabbing a woman. There were 47 stabs. It was the **Pondside Murder**.

When the late Director of Public Prosecutions suggested and I agreed that diminished responsibility was the order of day and the judge accepted diminished responsibility and directed the jury to deliberate formally and bring back a verdict of guilty by reason of diminished responsibility. They deliberated for 20 minutes and they said subsequently that they had come down to hang him. The judge directed them. He had to send for them. They were deliberating.

What I am speaking about is not that, although that frightened me, Sir. The man, when Maurice went down to the cellars and told him the verdict he said: "You mean they are going to lock the thing and I **am** not going to get out at all?" The pain of being incarcerated as it were forever frightened him beyond measure.

Mr. Speaker, the cells where he had to go – you know when they say bring up the prisoner in our country it is like bringing him out of the bowels of the earth. Sometimes I cannot believe that we are functioning in a civilised society. My colleagues will tell you that the position I am taking now is the position I have taken...

Hon. D. A. C. SIMMONS: I just want to invite the Honourable Member to visit the cells in Central. To visit, not to stay. Just to go and see the work that has been done at the Central Police Station, the new cells. We will get to the cellars under the High Court in due time but go and see those cells. You will be impressed with the attempt to be reasonable.

Mr. B. M. TAITT: Mr. Speaker, I am grateful to the Attorney General and that he has indicated that the cells have been refurbished. I wish to tell him that in this regard I accept his word. I have no interest in even visiting to see. I accept his word on this. The point is, however, that for many years we have allowed ourselves to consider people who would need to apply for bail as somebody else, others not of us and it is only we, who have to deal with people on a daily basis, who see poverty in its real form, who understand that these things which we are doing that we have to do them for real people.

So, Sir, there are one or two little questions which one would want to raise but one would do that in Committee. I just wanted to reiterate a point which I made earlier that I expect that as a result of having this

legislation that the magistrates themselves will take the lead. They will now be required to give information in writing as I understand it as to why they have made certain decisions. I take it that the police will now recognise and it will be easier for the police. The police will no longer have to **carry** the burden **which** in essence was a burden on the police of having to ensure that a person does not get bail. No one will have to swear to anything that he or she does not really wish to swear to and presumably therefore, the justice system would have taken a step towards improvement.

Mr. Speaker, in those circumstances, it would have been very difficult for us who had participated in examining the reform of bail and magistrates not to support this legislation. We hope, however, that this is only the tip of the iceberg. There is a whole area connected with the granting of bail which has just been examined in the United Kingdom. It has to do with what happens to a person when he or she is arrested. There has been an enquiry carried out by a distinguished judge in the United Kingdom. He has published his report. I believe that report is available to the Attorney General and to others. They made some recommendations, some I don't agree with but that is not the issue and I do not intend to discuss it here.

It is important that legislation which we have now on the books be activated to allow, for example, for a recording of confessions, for recording of investigations so that the prisoner and the police can be protected. Very often it is assumed that when one takes a position like this, one is taking a position that is detrimental to the police but if a recording shows that the police sergeant in charge of the investigation has acted in a proper manner then no aspersions can be cast on his character when the trial comes. No aspersions can be cast on the character of any police officer if in fact records for which both sides are speaking is one that is pellucid, transparent.

Mr. Speaker, that is related to this because when you are applying for bail it is still within the discretion of the magistrate to come to a conclusion and the conclusion, while objective criteria have been fashioned in the legislation we all know in reviewing objective criteria if 3 or 4 persons are of a similar mind that it can appear to be an objective review but in fact the matter would have been decided long ago.

I hope that this legislation will go some way towards bringing the balance, giving those who do not now have a full chance an opportunity to feel that when you go before the magistrates' courts in Barbados or when they are arrested that an inspector and I notice that an inspector or an officer in charge of a station will now have to be the one... This is in keeping with what is happening. I believe that officers in charge of a station and inspectors on

the basis of this will feel able to give more bail, will be more disposed to give bail than they were in the past. I am hoping so, but even if they **are** not, we would like to feel that magistrates armed with this material will feel able to make what I choose to call better decisions.

Mr. Speaker, let me end by saying this. Sometimes when you feel bound to examine something that is sacrosanct people become offended. They think that you **are** assaulting them. Fortunately for me, my position with magistrates in Barbados, the ones that I know, is that they understand the position I take is one of helping to move the system forward. Even if they did not understand, I would still feel duty bound to discuss this matter in the context in which I have discussed it because it is important to the vast majority of people in this country. It is a matter which impinges on the lives of a vast majority of ordinary people in this country and to the extent that they cannot be here to speak in this vein, I have a responsibility to speak for them.

1.00 p.m.

Recent events helped me to crystallize in my **mind** the constant need for Honourable Members to be advocates for the underprivileged. To the extent that we represent constituencies that are made up largely of the underprivileged, when this kind of legislation comes before this House, we are going to have to re-examine not only the legislation but ourselves in relation to how much we have been taking for granted in the past. It is in that context, Sir, that I am pleased to say that we on this side will be supporting this legislation.

I am **grateful** to you, Mr. Speaker.

SUSPENSION OF SITTING

Hon. Miss B. A. MILLER: Mr. Speaker, I beg to move that this sitting be suspended until 2.00 o'clock this afternoon.

Hon. D. A. C. SIMMONS: I beg to second that.

The question that the sitting be suspended until 2.00 o'clock in the afternoon was put and was resolved in the affirmative without division and Mr. SPEAKER suspended the sitting accordingly.

1.02 p.m.

RESUMPTION

On resumption Mr. DEPUTY SPEAKER took the Chair.

Mr. DEPUTY SPEAKER: This sitting is resumed. At the suspension we were under Government Business, to that we will now revert.

Mr. L. R. TULL: Mr. Deputy Speaker, one thing one learns very early in the training for law is that the law must be certain. Those of us who have gone through that have always had it instilled in us that you must have certainty in the law and all vagueness should be removed. The practice in respect of bail in this country for many years has been one that was characterised by vagueness. It was very difficult for an attorney to be able to advise his client as to what to expect when he goes before the court for bail and that is a very unsatisfactory situation. A professional must be able to advise his client with some measure of certainty what will be the likely result of certain action.

Those of us who have been engaged in this business have been involved in a guessing game and quite often you are asked to advise a client in these matters and you have to hedge. If this particular Bill will make it easier for professionals to advise their clients in these matters then it is greatly to be welcomed.

I do think, however, although I applaud the effort to get the Bill before the House, that there are still some areas of vagueness that **are** left in respect of bail and this particular Bill has codified the vagueness. In short, there **are** wide areas of discretion that are left to the magistrates and judges and to leave it to them as this Bill says, to use words like what is reasonable, satisfying, what is practicable and look at the antecedents and character of people and this kind of thing, as I often say in this House, Sir, many men, many minds. Many of us will look at the same set of circumstances but come to different conclusions.

The Attorney General said this is modelled on the United Kingdom Bail Act and Trinidad. There is one thing about using UK models and, that is, we have two very different countries. A person who is granted bail in the United Kingdom can travel hundreds of miles in the same country and hide among **50** or **60** million people. People who are granted bail in Barbados, **166** square miles and over **250 000** people, unlike Trinidad, Jamaica, Dominica, you name them, you cannot go over the hills and hide. You could do that easily in Dominica but you cannot do that in Barbados. So that our situation is quintessentially different from that in the United Kingdom or indeed Dominica, to use that as an example, or even Jamaica, Sir.

It is true that this question of bail is important as it relates to the liberty of citizens in this country. Therefore, we have to look at it against the background of what has been obtaining up to the present.

We have had over the years, Mr. Deputy Speaker, a situation where people who are taken before the court with criminal charges **are** routinely denied bail by the prosecutor getting up and saying much of what is in this Bill, that he fears that if the accused man is given bail he will not return to court, that this is a serious offence, that he has

had previous convictions, that he may interfere with a witness if he is given bail. They trot out the same routine things on every occasion. It is almost like the catechism. It is a prosecutor's catechism. You learn it by heart and you say it over and over again, and without what would be required under the Magistrates Jurisdiction and Procedure Act, without the magistrate requiring the police officer or any police officer for that matter, not the prosecutor, to go on the witness stand and give evidence on oath about the things that he has heard in a statement to the court. That was not happening. I have not seen that happen half a dozen times in all the years that I have been in the law courts. So, a police officer can say anything he likes.

2.20 p.m.

Asides.

Mr. L. R. TULL: I will give you a classic example, Sir. When persons are charged with offences against a person, wounding and grievous bodily harm as it used to be, and...

Asides.

Mr. L. R. TULL: ... Mr. Deputy Speaker, Sir, the victim is in the hospital. The prosecutor comes in and tells the court, "I am objecting to bail because the victim is still in hospital in a serious condition," and when you push it the prosecutor has not even been in contact with the hospital, but he says that routinely.

Now if he was required to go and give evidence on oath, he would then be subject to **cross-examination** by the attorney for the defence who could say, "Well, when did you contact the hospital? Who did you speak to?" So we have had a situation where the rights of the citizen have been trampled by this cavalier approach to the question of bail, and therefore any attempt to tighten that area is greatly to be welcomed. As I said, Sir, I have my doubts, Sir. I have my doubts whether this Bill will significantly alter the present **practice**.

We have a situation, Sir, in respect of bail, where I said bail is routinely denied to persons. We know in this country that, we hear the complaints from the Attorney General, members of the Bar, the public, the long time it takes between a charge and appearance in the court on the first occasion.

There are some people in Barbados today, Mr. Deputy Speaker, who were charged with criminal offences as long as 4 years ago and have not yet had a trial. I do not see any provision except the **provision** of reasonableness, so that a person was charged 4 years ago - languishing in prison, through no fault of his - the time it takes to be

tried, because of the system. After languishing in prison for a number of years, with the denial of bail, subsequently the man is either released because usually when a case takes so long to come on, it goes by the board. Some evidence is missing. Some witness has died, somebody has gone overseas, they **are** not bothering with the case, and after a long period of time it is discontinued. The person who has been incarcerated or remanded without bail loses again.

We also have a situation, Mr. Deputy Speaker, where persons found guilty at assizes **are** remanded without bail and wait 2 to 3 years before the appeal matter is heard. Then when the appeal is heard, within half of an hour, the appeal judges say there is a lot of merit to the appeal, they uphold the appeal, the people are released but they would have spent 2 or 3 years in prison remanded without bail.

I would have liked to see this Bill deal with that kind of problem with greater particularity. We have a system, Mr. Deputy Speaker, where the amount of the bail, the quantum of the recognizance has not been addressed. I will give another example.

The **learned** Attorney General early today made reference to the Matthieson case. The Government of Barbados sought the surrender of **Matthieson** in Barbados from the United Kingdom Government under extradition proceedings. The magistrate's court in London...

Asides.

Mr. L. R. TULL: Bow Street in London gave him bail in the sum of about **£10 000**. At the same time a Barbadian national was sought for surrender by the United States **government**, extradition proceedings in the same way, and a local magistrate at the same time that Matthieson had to put up less than **£10 000** less than **\$15 000**, a local magistrate required a Barbadian national in Barbados to find surety of one million dollars.

Asides.

Mr. L. R. TULL: These things have to be dealt with. I know that there are going to be regulations and all **kinds** of things, but really and truly, Sir, as welcomed as the Bail Bill is, I feel that there are some areas which we will have to look at far more carefully.

The question of size of bail is done in a very whimsical manner. You can go from court "A" in Bridgetown to court "B" and you can see a magistrate in court "A" give bail in a surety of \$2 000. For the identical offence in the next door court a magistrate asks for a surety of **\$10 000**. I really think that we have to bring some more particularity in helping us to know what to expect, and also make it easier for attorneys to be able to advise their clients as what would be the possible outcome of certain things.

The question, Sir, of paying money down for bail. The Attorney General quite rightly said when you are granted bail in the law courts that you do not have to put up money, you do not have to put up title deeds or share certificates. You only have to put your signature. The only trouble with that, Sir, is if you do not get somebody to sign the bail within an hour or two, you will have gone up to Glendairy. When you are remanded to Glendairy, to come out of Glendairy because you had no one to sign the bail down in the court, you must produce the money in cash.

Sir, if the magistrate gives you bail for one million dollars and you do not have your people to run together and get persons to sign for one million dollars at the court, when the court rises in an hour and you do not have anybody to sign it, it is Glendairy. When you get to Glendairy you are required to produce one million dollars in cash at Glendairy. Those are some of the things that I suggest that we need to look at.

Now, if I felt, Mr. Deputy Speaker, as if I am pointing out only the weaknesses, I want, Mr. Deputy Speaker, the reason for this is that although I heard the Honourable Member for St. Michael South Central, a physician of note, was given a copy of the draft Bill to look at, he wrote back and said that there was nothing wrong with it, as if he would know the difference.

I was not given a copy because if this is a censure of the front bench, let it be one. The back bench is quite often treated like outside children, and therefore I...

Asides.

Mr. L. R. TULL: Many of the observations that I am making now, I would have been glad to have suggested, not that I want any say in the **final** decision or what Cabinet will say, but I would have been able to slip some of these things in.

I also want, Mr. Deputy Speaker, to raise the question of the persons who are acceptable to the courts as bailors.

Asides.

Mr. L. R. TULL: In section 14, and I will deal with this in Committee too, but I might as well while I am here mention that one of the factors that a court should take into regard in relation to the surety, is the proximity of the surety to the person who is seeking bail. As I said, whether in point of kinship, residence or otherwise.

What it means this point of kinship? Is that a point in favour or a point in gifts? You tell a magistrate that in taking into consideration certain matters in relation to bailors you should look at the kinship of the surety to the defendant. What are you looking at?

Asides.

2.30 p.m.

Does this make you a more reliable person to be a surety because you are family, or does it make you a less reliable person? Now the reason why I mention this, Sir, is because I have seen it operate both ways in the law courts. Sometimes a judicial officer will say I do not want you to sign any bail because you are the mother of the defendant and you would come and sign anything now he is in problems. On other occasions I have heard other judicial officers say, who better to sign bail than a family member who is close to the person and therefore in a better position to exercise control and get him before the court than a stranger. All these have left areas of vagueness that I would have hoped would have been resolved.

I want to make one other point, Sir, because there is no need to drag it on. And as I have said I will make one or two other small points and be specific when we go into Committee in this matter and this relates to the question of the issuing of the reasons for a denial of bail by a magistrate which the Bill says should be given to the defendant. It says that the police may enter an oral notice of appeal against the decision to grant bail but that within an hour the police must put in a written appeal against the magistrate's decision.

Now, let us look at this. Let us look at the practical way in which these things are done. The prosecutor is the man in charge of the case, usually a police sergeant and he has a number of cases within the court where he is working set down for that day. At 10 o'clock in the **morning** somebody applies for bail, the magistrate grants it, the police officer says, well, I am appealing against this – oral notice of appeal and this Bill says, that within one hour you must have written notice of appeal so by 11.00 o'clock the written appeal must be in. But this police prosecutor is continuing to work in that same court on several other matters until one o'clock or two o'clock so he has no time in that hour to go and prepare this written notice and submit it. I think something is wrong. I believe that the 5 days for the hearing of the appeal are reasonable in the circumstances. What I **am** not so sure is reasonable is why the position of the police should be considered more important than that of magistrate. The magistrate says, I **am** giving you bail. The police says, I am appealing against that. The law says, well let us go along with the police, keep the man in custody until an appeal is heard, not to do what the magistrate says and if it is changed then do what the other side wants.

A magistrate in his court has a prosecutor who takes a position different from his. The sergeant of police takes the position that is different from the magistrate and this Bill says that until the appeal is heard the position of

the prosecutor must prevail rather than the position of the magistrate. I do not understand this. I say this all against the background because those are the few points I really wanted to make to this. I am saying if I may repeat myself that the Bill does not ensure us that there will be any uniformity in the application of the principles by the various judicial officers. It does not make it clear enough. They do not even know what they have to do. In other words there is still an exceedingly wide area of discretion and let me just say, Sir, for the record, that my experience tells me that many a magistrate has used the power of bail as a punishment. People are presumed innocent and quite often I say the application of bail is used in such a way as to punish the person who appears before the court before **one** single bit of evidence is taken in that court. I see that all the time. You **try** to reason these things out and you cannot get them even. It is an arbitrariness that this Bill is seeking to address that is rampant but I do not believe that despite the best intentions and some important inclusions in this Bill that it will succeed in getting a number of judicial officers out of the existing mind set. The Honourable Member for St. Michael West seemed almost reluctant, he seemed frightened to talk about poor black people.

Aside.

Mr. E. R. **TULL**: Well if I am a two-bit politician, the poor black people are the ones who get mauled by the system. I see it every day and I really think that this Bill, with all the best intentions in the world, will not go far enough in correcting the problems that make bail a weapon of punishment rather than a qualified way of ensuring the rights of innocent people who go before the courts.

Mr. Deputy Speaker, we deal with these things in a very casual way. We do not have any remand facilities in Barbados. Look at the last assizes, the assizes finished yesterday or today and you will see that quite a number of persons who appeared before the assizes for a variety of offences were acquitted, found not guilty. A number of these people were in Glendairy for 18 months to 2 years and it took 18 months to 2 years to hear that they were not guilty by their peers. But they are remanded in a facility that is brutish for human living. There are some who feel that if you are guilty of something and you are convicted that you can live in any conditions. Mr. Deputy Speaker, Sir, I do not share that view. There is a minimum below which no human being, whether you are guilty of a criminal offence or not, there is a minimum below which you should not be asked to live. Barbados in this part of the 20th century is sufficiently advanced and sophisticated, educated, not to put up with that kind of thing. But let us not deal now with the guilty one, let us deal with the innocent one. Is it really fair, Sir, that someone who under our law is presumed to be innocent should be made to undergo the kind of living that you have to live in Glendairy on remand then to hear ...

Aside,

Mr. L. R. **TULL**: Mr. Deputy Speaker, I could be all the two-bit politician in all the world, whether it is 2 or 3 bit, I will continue to raise these issues that affect ordinary Barbadians who for too long have had to put up with all the cruel injustices in this society. I do not worry about that part. I am saying, since there is no remand home where people who are presumed innocent can stay until their trial, I do not want anyone to come to the conclusion that I am saying that people should not be remanded. A lot of people should be remanded. I have a good idea whom they are and what they do and they should be remanded. I have a good idea who should be locked up and locked up for long but that is not the class of person I am concerned about and I say this in the absence of a suitable remand facility that only in extreme circumstances should persons be remanded pending trial.

2.40 p.m.

All of this law has been operating for hundreds of years from the common law through statute law. We have had a position where the only persons who **are** not entitled to bail are persons who are charged for murder and treason. That is the law. That is here in our Act, Sir – treason and murder. But everybody else is entitled to bail. That is the position from which we start and then the qualifications set in. But if we see the large number of people who are remanded on a continual **and** daily basis, it is clear that the fundamental position as stated in the Constitution of Barbados is not being observed in practice.

Finally, Mr. Speaker, I want to urge the Government **to take** another look at this question of allowing a prosecutor to state in court their objection for bail for whatever is on the prosecutor's mind. This bail I understand in some instances is that the police or prosecution would have to give evidence for the objection, but in most cases "no". I want to see these people who get into court and glibly spout off why people should be remanded in custody to be put on a witness stand to be cross-examined as to what they say so that the Magistrate or judicial officer would be in a better position to determine in an objective way, totally unbiased way, whether the matter standing before him meets the criteria that obviously are intended to operate when the Government through the Attorney General has brought this particular Bill before Parliament. I am grateful to you, Sir.

Mr. D. J. H. **THOMPSON**: Mr. Deputy Speaker, I will be very short. I did not hear the full introduction by the Honourable Member for St. **Thomas** but one of the original drafts of this Bill I believe had been in circulation for some time, so I am familiar with both the Bail and Magistrates Court Bills. Perhaps the essence of the contribution that I want to make this afternoon hovers

around those two pieces of legislation. But I want to appeal to the Honourable Attorney General based on my previous supplications in here, particularly having regard to what I saw happening in the magistrates' courts in relation to criminal matters in Barbados and what I feel generally about the administration of justice and the concept of justice for all, everyone standing equally before the law, that the Government speed up the process of extending the categories of offence for which legal aid is being made available to Barbadians.

I do not believe that it can be said that all Barbadians stand equally before the law when there is such a limited category of civil and criminal matters for which legal aid is available to the citizens. I believe that we have always adopted that stance. I was very pleased to hear others recently speaking about it and I would like to recommend to the Government and to the Minister of Finance that adequate provision be made in next year's Estimates to substantially expand the Legal Aid Service in Barbados and to offer a much wider and more comprehensive Legal Aid Scheme. I think that this is a very important component in the search for social justice in Barbados. Based on the persons who are most disadvantaged particularly at the early stages of bail and appearing before a magistrate where they have elected for the matter to be heard there rather than in the High Court, it is incumbent on us to look at this area very seriously and I appeal to the Attorney General on that point.

The second point relates to the increasing jurisdiction of magistrates and the fact that under several pieces of legislation in recent times which gave magistrates increased power. I do not remember which piece of legislation it was but you had the Drug legislation and maybe the VAT and the question of appointment of magistrates and the independence of the judiciary is very, very important. It is of major concern that you could have somebody acting, as a magistrate in some area of the Attorney General's Office or another one of those Legal Affairs Departments who then has to revert to a substantive post in a contentious matter dealing with another attorney. There is a lot of discomfort even in relation to magistrates who are appointed who have to interact with persons who will have some say eventually when they are to be elevated or not to be elevated onto the Higher Bench. I think that the question of the independence of magistrates where Government is committed to increasing their jurisdiction as it obviously is and as we were with various pieces of legislation is something that needs to be looked at. The method of appointment of magistrates needs to be considered so as to show up their independence from the political directorate as much as possible and to ensure litigants feel comfortable about appearing before them and also that actual justice is granted to them.

I have not looked at the provisions of the Bail legislation to find out whether there is a requirement for reasons to be given where bail is denied. But if that is so, I am very happy to hear that. Those reasons can form the basis for a review of that decision which is very, very important. Likewise, I believe that the Government should consider – and there is nothing against it now. It is just not done – that legislation should require for reasons to be given for sentencing as well so that you can build up the knowledge, practice, conventions and precedents in relation to sentencing based on reasons given by judicial officers. I think that at all stages there must be a strong commitment by judicial officers and persons acting in quasi-judicial capacities to give reasons.

2.50 p.m.

That brings me to the point of even Ministers and Government officials. It is very difficult, even with the existence of the Administrative Justice Act, to get reasons out of public officials for refusal of all kinds of things. What happens is, which tells me a story about how the civil service runs its business, if you ask a Permanent Secretary or the Minister, who obviously is acting on advice, for reasons for his decision, they then refer the file to the AG's Office so that reasons would be legally written up as if the reasons for the decision are some legalistic thing that must be written out in some special language. If you have a valid reason for your decision and it is not informed by irrelevant consideration, you have not acted outside of your powers and so on, I assume that all Ministers act on the basis of fairness and therefore their reasons written on the file should be sufficient for a decision. What a Permanent Secretary recommends to them as the reason for refusing or granting an application should be the basis for given reasons, and it shocks me that whenever one asks for reasons under the Administrative Justice Act from statutory corporations, Ministers or other officials empowered to exercise a discretion, the file is then referred to the Attorney General's Office for a legal officer to write the reasons for the decision.

I hope the Attorney General avoids it, because I think it is wrong. Public officers need, in advising Ministers, to bring impartial, sensible and prudent thoughts to bear on the advice which they give and that advice should be so strong and well and cogently argued that that alone, unless it is under the Offshore Banking Act or those pieces of legislation in which public policy conditions do not require reason, those reasons should be sufficient, and invariably there are sufficient. But then the litigant has to wait six months until one of the legal officers can get around to dealing with the matter and that cannot be reasonable time for giving reasons in any circumstances. My concern is that a reason needs to be given and form part of the record in relation to denial of bail and in relation to sentencing. I think that is very important and would be a very useful development, and I am glad to hear that the Government is interested in pursuing it.

On a previous occasion I had cause to comment on the conduct of magistrates in relation to remanding a person to the Psychiatric Hospital simply because they did not respond, and particularly where they were unrepresented. I do not know if there **are** any such occurrences in recent times, but I do know that having examined the issue there were flaws in the legislation under which magistrates were purporting to act in doing so.

Aside.

Mr. D. J. H. THOMPSON: The Mental Health Act. There is on the Statute Book an unproclaimed Mental Health Act.

Aside.

Mr. D. J. H. THOMPSON: The new one has been proclaimed. Once that has been proclaimed that makes the procedure a lot easier, but I must say that for a long time – and you still do see it sometimes – there is a very cavalier attitude displayed in adjudicating matters of that sort and a large number of people go on remand, and this is going to be a big problem for policy makers and administrators, who should not be sent on remand with no valid or apparent reason for them being sent on remand, except that the police just get up and object. In Britain where the political directorate has intervened by way of direct advice to the Judiciary, the Home Secretary receives a very bitter rebuff, as the Honourable Member for St. Thomas may know. We do not have to do it that way, we have to provide the legislation, this is a useful opportunity to do so, and then build up a core of decisions in the courts which can be respected as the basis on which citizens' rights will not be infringed or that they expect if they pursue a course of conduct that this is the natural consequence of that course of conduct.

The Democratic Labour Party therefore is very supportive of any attempts to improve the administration of justice, particularly in the lower and middle tiers of the judicial system. I understand only from the call-in programmes that the Honourable Attorney General was alleged to be locking horns with me about where the delays really exist in the judicial system.

Hon. D. A. C. SIMMONS: On a point of order, Sir. I have not been on any call-in programmes recently, the last time was to follow the Honourable Member when he commented on the Caribbean Supreme Court. The same night I went on and clarified a few things. Since then I have made no statement. I do not lock horns with anybody, I do not intend to lock horns with anybody. I have no horns, nor do I give horns. I do not know where my friend got that information from, Sir.

Mr. D. J. H. THOMPSON: I am saying other callers on the call-in programme interpreted us as having locked horns. There was one quite interesting exchange between a former Court of Appeal Judge and a caller and the former Court of Appeal Judge pointed out that he was very happy with the quality of the Judiciary and that as far as he is concerned the Chief Justice is a "**workaholic**", but it seems as though the caller did not hear "**workaholic**" and he burst out into a fit of laughter.

The essence of the point I am making is that the delays **are** much earlier in the system and the Honourable Member for St. Thomas would not be as frustrated if lower down in the system attention was paid to speed and getting the matters processed. That to me is where the delays **are** occurring, in the lower end and to some extent the middle, and that whatever frustrations are now being experienced in the judicial system occur at that level and whatever attempts the Government therefore makes rather than going off on a tangent and seeking to impose systems with which we agree, but for the wrong reasons, it should instead pay attention to those initial steps that need to be taken.

The Honourable Member for St. Thomas is now probably about to celebrate his silver jubilee in terms of the number of promises he has implemented. He should be at promise 25 by now, so he has already celebrated his silver jubilee promise and therefore I applaud some of the improvements in the physical conditions in the courts. I am glad he has been able to garner for that area of public expenditure the funds necessary to instal the air conditioners and some of the other qualitative improvements, and I believe that with those qualitative improvements he can justifiably make greater demands on the system to produce more in a shorter time and to dispense justice with a level of comfort that would not cause a magistrate to feel that he has to get through the day's business in an hour and ride roughshod over the rights of people because it is a hot morning, or the court is full, or it is a call day, or he is in a bad mood. Attention does need to be paid to the conditions under which magistrates function, and if you note the difference between working a day in Oistins Court or Holetown, as distinct from having to work in any of the courts here in District "A", the mood people **are** in, the way justice is dispensed, I believe that should propel us to ensuring that support is given to improvement in the physical conditions under which the Judiciary at all levels has to function.
3.00 p.m.

I think those **are** the main points: to increase the legal aid programme in Barbados substantially; give resources to it; that in relation to the increasing jurisdiction of magistrates, the independence of magistrates needs to be looked at because they are now dealing with matters which previously only high court judges could deal with yet they do not have that level of independence in terms of their

appointments; that in relation to sentencing and denial of bail that it is critical that reasons be given by **judicial** officers for their decision so that we can improve the overall quality of justice.

I believe that if attention is paid to these matters, we will be on the right road and we have no problem in supporting this legislation which is brought before the House today. Thank you, Mr. Deputy Speaker.

Hon. R. St. C. **TOPPIN**: Mr. Deputy Speaker, I am not going to be long since I think that a large number of very important points have been made already. What this Bill does is really to codify and place in one document before us a number of rules and customs and practices that were floating around out there, and to the extent that it does that it is an important Bill.

Clearly what is being contemplated is that in the implementation of the measures contained in this Bill there would be the prevalence of good sense and fairness and good old-fashioned common sense. There are a number of clauses **in** the Bill that really would need a sense of fairness if there **are** really to be of the worth that they are intended to be. I refer to clause 5 and clause 7.

The Member for St. George South referred to some of the aspects of these clauses but if I may just mention one. Clause 5 says:

"Where a defendant is accused or convicted of an offence that is punishable with imprisonment, the court may refuse an application for bail **if**:

(A) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail, whether subject to conditions or not would ... commit an offence."

Now I have had a couple years experience Mr. Deputy Speaker around the magistrates' courts and I have seen day in and day out prosecutors just get up and say at the time when I was practising if granted bail there is a likelihood of a recurrence of the offence. They were already without even a shred of evidence being led, presuming guilt on the part of the accused, and they would just arbitrarily object on the basis of if granted bail there would be a recurrence of the offence.

If that has now codified that, and really if we are to advance beyond where we were all along, there will still be a need for the prevalence of good sense and a sense of fairness by the prosecutors who by and large – and I have made the point before in this Chamber and I really don't want to repeat it today but I think that the prosecutors really must exercise greater discretion in favour and in fairness to accused persons.

There is also the clause in the Bill which states at clause 7 that where bail is withheld from a defendant the court has to make a record and give the particulars and so on. There is of course the usual provision dealing with the right to appeal against a decision to withhold bail but again, unless these provisions **are** interpreted sensibly by the magistrates, it will mean that in fact a man will end up being remanded and when all this paper work is being done and comes out at the end of the day freed on bail, eventually in fact he would have already served some time in prison while all this paper work is being done.

I make those points, Mr. Deputy Speaker, because I feel very strongly about the issue of bail. I do not believe that bail is something that should be lightly withheld from an accused person. I believe strongly in the presumption of innocence and I find that in the context of the Barbadian society there **are** far too many odds that are stacked up against an accused person and I am going to list a few.

You have, for example, the way in which the Press behaves when an accused person is charged with an offence.

Asides.

Mr. DEPUTY SPEAKER: Let the Honourable Member continue.

Hon. R. St. C. **TOPPIN**: More often than not, Mr. Deputy Speaker, you see an accused person charged with an offence and you look not even to a middle page in a newspaper but the very front or back page, which are both front pages, and you see pages of accused people splashed all across the newspapers. Not only that, you see their names as well, fully exposed before the nation, in circumstances where even the name of the victim is not revealed. I am not saying that there **are** not cases when you should not withhold the name of the victim but you have a situation where the name of an accused and his picture **are** splashed all across a newspaper in a society where even if you get off you are already stained by the mere fact that you have been charged. Even if you **are** acquitted. These are things that bother me.

I want to see an evening out of the odds that **are** stacked against accused people in Barbados. It is unwise. It is unfair to the society and to accused people in some cases to remand them into custody. You have situations where people who are really not criminally minded go before a court and they are remanded. They immediately feel a sense of resentment towards the **establishment** and towards authority after that happens. They go to prison and to compound the problem they are then exposed to some seasoned and hardened criminals and they immediately afterwards become some of the worst criminals that you could possibly imagine.

Sometimes **it is** also unfair to the accused person from another point of view and I want to give you an example of a case in which I was involved some years ago. I remember a lady came to me. Her man friend who used to beat her quite often – it is not something that I condone – but I suggested to her to go to the police and let them prosecute. For some reason she didn't want to do that. She wanted a lawyer to do it for her. I never liked prosecuting and never will. I did it. I prosecuted the man on her behalf. The man did not have even a lawyer in the case. During the case I was as fair as any person on the other side could be to the man. I even gave **him** some **escape** routes to get out but he had no lawyer and he didn't know how to utilise them and he ended up being convicted and I prosecuted so that he would be convicted.

All the lady wanted was for the magistrate to warn the man to leave her alone. That is all she went through the process to get – a warning from the magistrate to tell him to leave her alone. When the case was finished, the magistrate asked the lady what she wanted him to do with the **man**. She was timid to say anything at all in court and she came forward very slowly and the magistrate said about 3 times "What do you want me to do with this man?" She couldn't seem to get the words out and I could not tell the magistrate as it would be out of place for me but before she could get the words out the magistrate said: "Remanded for a week. I will give you until next **week**!"

The man had never prior to that occasion ever fallen foul of the law at all in anything. He went to prison for that week and during the course of that week because of the trauma of that experience the man suffered a nervous breakdown. It was then that another lawyer got involved and took instructions from the **remandee** and came back to court the next week and the magistrate gave the man a total fine after spending a week in prison and suffering a nervous breakdown.

So, Mr. Deputy Speaker, I believe that the denial of bail is something that should be a last **resort**. There **are** some who and I have heard members even in this Honourable House saying that up at Glendairy is a hotel and I have heard some criticising the practice where inmates are able to do some studying and get a school **certificate** and they are saying it is not a university and all that; but prison is no hotel and it is no university. Prison is a cruel, hard place where you come out with a stain on your character. I have never known anybody at all to check into a hotel and come out with a conviction. I have never heard anybody enter a **university** and on graduating was given a certificate that had on "Ex Con." So prison is no hotel and prison is no university. It is a cruel and merciless place.

I believe, Mr. Deputy Speaker that another point has to be made before I conclude. It is all well and good to talk about the need for severe punishment and let me say that I don't believe that a wrongdoer should go unpunished. I believe that wrongdoers should be punished. I believe that, but I believe that there is a need and a very urgent need at that, for some very serious investigation to be taking place in this country to find out why it is that people are behaving the way they behave. This is a problem that has been plaguing society for years and we continue to repeat the call for punishment but there is a need to investigate and get to the root cause of the problems in society. If we do not do that, all that will happen is that you will find that Glendairy is going to get more and more overcrowded and you **are** going to find that today you are going to execute one person and tomorrow you **are** going to find someone else in death row.

I am just saying that until the investigations take place you **are** going to find that all that is going to happen is that today one person is going to come out of prison and tomorrow somebody else is going to go to prison. Some investigation is going on I understand but it relates primarily to investigation of inmates. You have to go further than that. I **think** you have to investigate areas out there that **are** known to be crime areas and really find the causes and the concerns and the complaints of the large numbers of people out there who will end up in the system if steps are not taken to deal with and address their problems.

While I fully support this Bill today and commend the Attorney General for the good work I believe that it is a step in the right direction and I look forward to other steps that I have just mentioned being also taken.

Mr. W. C. C. CALLENDER: Mr. Deputy Speaker, I wish to be very brief on this matter. I am very concerned **about** the overpopulation of the prison. I am equally concerned about people who are made to experience prison who would **normally** be peaceful citizens. I believe that we have reached a stage in Barbados where we need to look and we are indeed looking at non-custodial sentencing.

I **think** by extension we need to look at reducing incidents of people being jailed pending a trial. The mood of the country at this time is one which recommends that we look at getting people transformed in a way that they can make a meaningful contribution to society and not having ourselves in a position where people are forced into a prison that is overcrowded, a prison in which people learn a criminal way of life.

From school **days** you would know that children get to learn from one another. Equally so, people who go to prison get inducted into the ways of hardened criminals or they are likely to be. It is not an environment in which

the ordinary peaceful citizen should **find** himself so any Bill that comes to Parliament should seek to minimise a situation which would see a man being placed in prison before he can be proven guilty. We are still under a system where we believe that a man is innocent until he is proven guilty. The fact is that most people who are tried are usually found innocent.

Sir, by extension, I would like to see a situation where people who are unemployed are not forced to spend time in prison because they cannot pay things like child support. I was just travelling through my area last week and I met a gentleman whom I **missed** for a little while and he told me that he was in prison. He didn't have a job and he couldn't pay this money. He had to go to prison for 3 months. One can expect that with unemployment you will have situations like these **recurring**. I know that we are **working** on it but I believe we need to exercise a little more speed in reaching a situation where people will not be going to prison for these **kinds** of offences.

I believe that we should reach a stage where we can get these people employed. If they cannot pay, they can be employed in some activity and they can be paid some kind of honorarium which can go towards these kinds of debts, especially debts in a situation where the person has tried to get a job and has been unable to get a job.

Sir, in situations like these which can bring about a lot of disquiet in a community it is a situation which can give us a sense of hopelessness. I join other members who believe that the time has come for us to look at the total reform of all of these laws that impact on our society. The days for just placing people in an overcrowded prison, people who have not committed very serious offences should be over by now. I would hope that in the near future we would see coming to Parliament the kinds of laws which would address in a creative way the problems that we face in this society. The answer does not lie in prison. The answer lies in our educational institutions. The answer lies in harnessing our resources at community level and in getting people involved in community activities to help uplift the community. I do not believe that a small society should be seeking to disadvantage its people. We have limited resources and we need to utilise what we have. One of the problems we have is that people tend to look...

3.20 p.m.

Aside.

Mr. W. C. C. **CALLENDER**: Whatever you say. Once the person has gone to prison, people tend to look at them differently and it is not fair that a man should even get a day **simply** because he cannot find somebody to stand bail for him on some minor offence. It is not fair, Sir. I

believe that if we are talking about social justice, if we are **talking** that **kind** of language, if we are **looking** at the poor, if we **are** looking at the needy, if we are looking at the weak among us it is about time that we address such matters.

The Bill before us today is a step in the right direction but I believe, Sir, that in the not too distant future we will be seeing similar Bills coming which will creatively address the problems we have in this community. As we head for the 21st century, these problems need to be tackled otherwise things will get out of hand.

Thank you.

Hon. D. A. C. **SIMMONS**: Mr. Deputy Speaker, in winding up this debate let me just thank all Honourable Members who have contributed. Many have made very worthwhile and useful suggestions. If I can just deal with them quickly, Sir.

The Honourable Member for St. George South is concerned about persons who go to prison and are on remand and are there for long periods of time before the matters are heard. I am not sure that the solution lies in an application for bail. I would have thought that the proper procedure is to apply for *habeas corpus*. That is the answer to that, Sir, not bail.

He is also concerned that the Bill does not ensure uniformity. Well, I do not know how any legislation that has to be operated by men and women can ensure uniformity. The Bill can only set out the principles that should apply for the grant of bail. It is for the magistrates to develop the rules or the policies that will apply among themselves. It is just like saying, and I am really surprised about **this**, that legislation provides a penalty of \$500 000 or 10 years. There is a range. The law only gives an outer limit.

The magistrates, as I have understood them from time to time, sit down and determine the particular punishment that will apply for particular offences. Take speeding. The law says that you will be fined X dollars or imprisoned for 2 years. The magistrates determine that if you have exceeded the speed limit by 20 **kilometres**, that would **carry** a fine of X dollars. If you have exceeded the speed limit by 30 **kilometres** it will be so much, 40 **kilometres** so much, and they have the understanding among themselves so that when you **are** hit for doing 100 **kilometres** you know what to expect because the magistrates in the various districts have been applying the tariffs which they have worked out at their magisterial meetings.

Similarly in respect of bail, you cannot tell a magistrate when to grant bail, or to grant X bail today and Y refuse him tomorrow. He has a set of guidelines in the

legislation and they will determine the kinds of matters they will take into account to make the legislation work in relation to kinship and so on.

Thirdly, the Leader of the Opposition has made a call for an expansion in the categories of legal aid. As far as legal aid is concerned, Sir, I wish to assure Honourable Members that the Government is considering the question of expanding the categories of legal aid. I also wish to say **that** the amounts voted in the Estimates in the last few years for legal aid have been woefully low. In the days of 1991 to 1994, necessarily so because of the problems of structural adjustment, but as we are riding out of these days of economic depression, I expect there will be a greater contribution in the Estimates for legal aid. I cannot at this **time** say by how much but we have the experience that in the last, certainly since I have been Attorney General, two years I have had to come for supplementaries to top up the legal aid vote because we found that we owed lawyers arrears going back years. The expansion of legal aid is a **function** of the general economic health of the country. As conditions improve the profession and the public can expect not only an expansion in the categories but an increase in the amount that Government puts in.

What I will say to Honourable Members is that next year I want to start a study leading to setting up a scheme for compensating victims of violent crimes. We cannot just have \$500 000 like that. We have to analyse it, study it and see how it is working. England is the experience I know, the **Criminal** Injuries Board. I hope next year to have someone from the Ministry do a short attachment in England to see how the Criminal Injuries Board functions with a view to introducing compensation for victims of violent crime in Barbados as a State-run device. We are committed to it in the Manifesto and, as you will observe, I **am** carefully carrying out each and every commitment for **which** I have the responsibility in the Manifesto. When I leave, the slate will be clean.

3.30 p.m.

I am very happy that the Honourable Leader of the **Opposition** is in tune with contemporary thought about sentencing. He has asked for reasons for sentencing. That probably is a matter for judges. There is some resistance **among** the judiciary, not necessarily in Barbados, about giving reasons for sentencing. However, what I can tell him is that with the coming into effect of the new penal system where we will have a range of non-custodial options, and we are working towards an intermediate institution, it will be necessary to have separate legislation dealing with sentencing. In that legislation I want to follow the Canadian model of setting out the principles which should apply in respect of particular forms of punishment for sentencing. There is Canadian legislation which I have, which I have gone through and it is a project that I will refer to the

Reform Committee. It has to wait for a couple of months until I get the **report** of the Steering Committee on Penal Reform. The first report dealing with non-custodial sentencing is ready. The Registrar of the Supreme Court has had it for the last month to edit the recommendations of the Committee – fine tuning, cosmetic things and so on, but the Registrar was on leave for her vacation within the last month and I expect that by January, I will have the Steering Committee report.

Now I am anticipating them, what I am hoping to do is to prepare for the next financial year beginning April 1, to have at least the non-custodial punishment in a state where we can implement it during next financial year. We will not be able to do all next year because, ultimately, once the department of correctional service of which the Probation Department will be a part of it, Sir, it seems to me that we can, without too much difficulty, provide for an attendance centre orders, curfew orders, suspended sentences, community service orders, in the next financial year. We cannot do all together because we would choke the system. The legislation has not been properly carried out. I do not want to say that there is no basis for what is happening but I have to be careful on that. We will put some of the service orders on a proper footing.

The special adviser will be looking at remand homes, attendance centres and community service. We believe that subject to the availability of funds there are at least 2 properties, old schools, one in the north, one in St. **Philip**, the old St. **Philip** Boys' School. We looked at that...

Asides.

Hon. D. A. C. SIMMONS: If we can rehabilitate and fix remand homes, attendance centres would pose no problem. That is only the magistrate ordering a young offender to attend for **training** and disciplinary instructions at a particular place, let us say between **8.00 a.m.** and **5.00 p.m.** For that purpose we can use the existing school plant so that the magistrates in the various districts can order a chap to appear at whatever school and there he will find 2 or 3 people who would be in charge of him and who would be running a disciplined environment, at the same time catering to education. Some of these things, we are hoping to bring on stream next year. We would therefore want the legislation about sentencing to **harmonise** with the introduction of the new system, Sir.

Mr. Speaker, Sir, I indicated when I introduced the Bill that the magistrates have sent messages to me, as recently as this morning, about their support for this Bill and the Magistrates Courts Act. I think that it is but fair that the Constitution Review Commission should look at the independence of the Judiciary in total. I agree with the Honourable Leader of the Opposition that you cannot put more on the magistrates as we have done over the years

and keep them at a very depressed level in the civil establishment scheme of things. There have to be paid properly to ensure their independence and I believe that the whole judiciary needs to be looked at carefully. Strengthen their independence and perhaps the time will come, and I **am** fairly sure next year, when these matters will be taken care of.

I strongly support their pay and I make the call from this position, Sir, for the magistrates of Barbados to be paid better salaries and should be provided with better **working** conditions. I **am** making a start with the working conditions. We are trying our best at Districts "C" and "D" to improve the physical environment at those stations, almost rebuilding those stations and at the District "A" courts "B" and "C." We have done some work at Horse Hill. The magistrates there for all the years have never had a powder room, never had a mirror in the wash room. All of that is changed, Sir.

In the 3 courts in town we have put in airconditioning units. The tender for the electrical installation, I believe, has been awarded by the Tenders Committee recently, and that should be approved **anytime** now, Sir. There is some builder's work to be done in District "A" Magistrates Court to seal the court better for airconditioning. Those are small contracts and I am told that those contracts are also being prepared. I would expect that, early January, the airconditioning of those courts would take place.

That leaves the Registry. It is unfortunate that we have had a number of, I think, quite unnecessary variations in the work that is to be done in the Registry. We are going to computerise the whole of the Registry, upstairs and downstairs. There has been too much **nit-picking** about where we are going to put this door and how it is going to swing – this has been holding up work. I have given instructions that all that must cease and the latest plan of the architect must be the one we must go with. We want to make a start during the balance of this financial year. I firmly expect that we shall be able to improve the computerisation of the whole justice system within the next 6 to 8 months. I am talking about computerising the Registry, I am talking about giving every Judge a computer, I **am** talking about the Magistrates Court and I am talking about the computerisation of the Prison, some additional computers for the Police and the Immigration Department. I can see that happening within the next 6 months, probably sooner.

Asides.

Hon. D. A. C. SIMMONS: The Minister of International Transport, I think he mentioned something when I was outside about the costing of crime, Sir. Again, this country has to prepare itself for radical changes in its social development policy. We have done **remarkably** well

in the past and we have done so in the absence of any empirical data which should inform future strategy. As you know, Sir, there are studies being conducted into the whole business of the welfare agencies and the various agencies which dispense, not only the Welfare Department but the National Assistance Board trying to have a holistic policy and plan for those.

3.40 p.m.

In the area of crime, I have said for years that we have never tried scientifically to understand the causes of **crime** in Barbados. Well we set up a task force on crime prevention. The **draft** report was handed to me in here on the last occasion that we sat, a couple of weeks ago, and that report now has to go to the full task force. When they approve it, it will come to me. As I indicated then it has identified a number of matters or factors which have been predisposing to criminality in Barbados.

Now, having got that information the challenge for **this** country is now to develop strategies to address those various problems. For example, if you find that **certain** areas are prone to be criminalogenic communities, if we find that there is a high level of illiteracy among the prison population, if we find that there are weaknesses in the value systems because people do not any longer have any relationship with the Almighty and so on, there are a number of agencies, education, welfare, community development, health and so on who have to be brought together to look at what is coming out of this and to help us devise strategies to tackle these problems. All of that will come next year. In this area, I **think** next year will be a very exciting year for the social development policies in Barbados and I think it is but right and it is about time. The last two years this Government has been concerned with ensuring stability on the economic front from which there could be sustained growth.

Now, we have to transmit that economic growth meaningfully so that people can feel the growth at the social level. To tell Bajans that the country has grown 4% or 5% a man cannot relate to that unless he is going to see that **as** money in his pocket or improved amenities, social or whatever. The Government is not **unmindful** of those and having secured the stability of the economy the next phase is to develop the social fabric of this country arising from that economic stability.

Sir, the Honourable Member for Christ Church East raised the point about imprisonment for civil debt. There is very little imprisonment for civil debt and that has been so since about **1983**. It still exists. The Chief Parliamentary Counsel's Department and I discussed this matter recently because this is another manifesto commitment to abolish imprisonment for civil debt. We have to deal with this as a law reform project. There was a committee in England

that sat under Mr. Justice Payne and they made their recommendations. That would be a source that we would have to study but I look forward to legislation dealing with the abolition of civil debt imprisonment in the next two years but I am not going to promise that say within the next year. We will study it, the Law Reform Committee will then make recommendations and out of that I can come up with something.

I **am** grateful to the Honourable Member for Christ Church South who is pointing me in the direction of the Australian legislation.

Sir, I **am** a little concerned that Honourable Members did not call for the inclusion in this legislation of what is now in section 27(2). Section 27(2) requires a police officer to go and stand and give evidence if he is going to object to bail and give evidence in the two circumstances required by the Act. We do not, in this legislation, include a requirement for evidence on oath and I wonder if we should not.

In section 5, where a defendant is accused or convicted of an offence that is punishable with imprisonment, the court may refuse an application for bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail, would fail to surrender to custody, commit an offence or interfere with witnesses.

Should not we include in there, the court is satisfied on evidence on oath, on sworn evidence. If not so, I will leave it and perhaps what I will do when we bring the regulations I will include it. I think we **are** leaving it still for the prosecutor to say that he believes the person will not **surrender** to custody and to have an argument at the two tables without any solid evidential basis, perhaps we should **retain** that requirement that the person who is objecting must go on oath and swear that the person is going to interfere with witnesses for example and then counsel could cross-examine him because it is easy for people to go and say anything on oath.

I give the assurance, Sir, that I will look at this in relation to the regulations which we have to make and perhaps we would put it in the regulations but I **am** sorry no Honourable Member mentioned it. When the Honourable Member for St. George South was speaking I thought that it was something that we should look at but he did not call for it but I will look at it in relation to the regulations.

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

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

On the motion of Hon. D. A. C. SIMMONS, seconded by Hon. Miss B. A. MILLER, Mr. DEPUTY SPEAKER left the Chair and the House went into Committee on the Bill, Mr. W. C. C. CALLENDER in the Chair.
3.50 p.m.

COMMITTEE

Mr. CHAIRMAN: This Honourable Chamber is now in Committee.

Clauses 1 to 3 were called and passed.

Part 1 was called and passed.

Part 2 was called.

Mr. L. X. TULL: Under Clause 10 (b) and (c). Clause 10 (b) says that the defendant may support an application with an argument as to the fact of law that he wishes whether or not he has advanced that argument previously and there is where the court decides that the defendant is not to be granted bail. But (c) says the court at subsequent hearings need not hear any arguments as to the fact of law that has been heard previously. That looks conflicting to me. Because (b) says that the defendant may support an application with an argument whether or not he has advanced the argument previously and then (c) says that the court at subsequent hearings need not hear any other arguments as to fact of law that has been heard previously. It looks like a conflict. I am not sure that I understand exactly what the Minister is saying.

Hon. D. A. C. SIMMONS: Sir, perhaps it should have all been put in one paragraph. But (b) deals with the defendant and his right. It has always been the rule that you can apply several times to different judges for bail. You **are** not being restricted in an argument that you used before judge (a) or magistrate (b). But that is at the level of the defendant. He can put forward whatever arguments he thinks will support his case, (c) deals with the court and the court is not obliged to hear any argument that it has heard previously because it will be repetitive. So the court can say that I have heard that argument already. I have disposed of that. I was checking the Hallsbury. This is exactly how they have it in the English law and I have asked the Honourable Member to leave it for the time being. If it proves to be problematic, then we will amend it. But it is taken straight from the English legislation, Sir.

The question that Part 2 stand part was put and resolved in the affirmative without division.

Part 3, Clauses 12 to 15 were called and passed.

Part 4 was called and passed.

First Schedule was called and passed.

Second Schedule was called and passed.

On the motion of Hon. D. A. C. SZMMONS, seconded by Hon. Miss B. A. MILLER, Mr. CHAIRMAN reported the passing of one Bill in Committee and Mr. DEPUTY SPEAKER resumed the Chair and reported accordingly.

On separate motions of Hon. D. A. C. SZMMONS, seconded by Hon. Miss B. A. MILLER, the Bill was read a third time and passed and cited as the Bail Act, 1996.

ORDER NO. 2 – THE MAGISTRATES COURTS BILL, 1996

Hon. D. A. C. SIMMONS: Mr. Deputy Speaker, Sir, like the Bail Bill, this Bill was out since October 29th. It was published in the *Official Gazette* on November 11th. It had been with the political parties since last year and the Judicial Council, the magistrates and the police for a comment. What is before us today is the final distillation of all the views, recommendations and comments of those various bodies. It is a big piece of legislation with 270 clauses or sections. But we believe that it is required in Barbados in 1996.

The present Magistrates Jurisdiction and Procedure Act was passed in 1956 and after 40 years in an area that has been very dynamic, not least because of the increase in the volume of work attaching to magistrates courts, but because of the change of personnel who staff the magistrates courts. When the present legislation was passed, I was a boy at school and I remember in those days of the middle 1950's there were a number of magistrates in Barbados who were not legally trained who dispensed justice, and I cannot tell you about the quality of it, perhaps according to the fashion of the British system since we were a colony at the time where they have lay magistrates but who sit with a legally qualified clerk. Those magistrates in Barbados in the 1950's who were not legally qualified like the Harry Harpers and the Owen Smiths and so on had to advise themselves both on the facts and on the law. We have gone passed that. We now have professional **lawyers** sitting as magistrates dispensing justice according to the law in these courts. It was necessary therefore for the legislation governing the operation of magistrates courts to come as near as possible into the 21st century and reflect our **status** as an independent country.

We have used as the basis for this legislation the existing Magistrates Jurisdiction and Procedure Act and the Petty Debt Act and we have also paid regard to the English Magistrates Court Act of 1980. It will bore Honourable Members to death if I tried to go through this Bill even as I did the Bail Bill. Let me just say that the first essential

feature of this Bill is that it provides for the civil jurisdiction of magistrates in separate parts. If you compare it with the existing Bill, copies of which were circulated by the Clerk of Parliament some weeks ago for comparison purposes, you will see that the 1956 legislation does not deal with the civil jurisdiction of magistrates courts. That is left to the Magistrates Court's Rules. What we have done in this Bill is to set out in Part 9 beginning at section 146 and following the civil jurisdiction of magistrates. So that we have in this Bill criminal jurisdiction, civil jurisdiction, the procedure of what we used to call quasi-criminal cases but no longer referred to in this Bill by that nomenclature but we have the procedure for complaints and so on. So we have a composite piece of legislation now dealing with criminal, civil, complaint procedures and appeal in one Act in the future.

Aside.

Hon. D. A. C. SIMMONS: I was saying, Sir, that we set out in the Bill various types of proceeding that can be heard by a magistrate in different parts of the legislation. Now a very important feature of the Bill is in regard to the jurisdiction of the magistrates. Presently, magistrates can try civil cases up to \$2 500. When you **think** of it, that has out-lived its usefulness. In today's environment two cars can get in a collision and a couple of fenders **are** bashed, nothing too serious. By the time you look at the loss of use, the labour costs and the replacement of parts, it has gone pass \$2 500. It means therefore that that case has to go to the High Court because it is in excess of \$2 500 and that helps to clutter up the work of the High Court and causes delays. Because you might find a lot of cases for \$8 000 in the High Court. Civil matters **are** a fact but the parties cannot agree, so they want a magistrate or judge to settle to say who is right or wrong. But that takes time and now what we are doing here is extending the jurisdiction to say "any case in future up to \$10 000" where the claim is for a debt or damages up to \$10 000, the magistrates can try and dispose of it.

4.05 p.m.

I said debt, Sir. Similarly a store in town sues a person for \$3 500. That has to go into the High Court, foolishness. In future the magistrate will try that. That is why I made the point in the previous debate that we **are** increasing the jurisdiction of the magistrates. We are increasing the workload of the magistrates who still operate not under the best physical conditions. We have seriously, as a country, to agree that these people who are the work horses, as it were, of the justice system ought to be properly remunerated and provided for.

I do not mind who is going to be critical of this, Sir. I fervently believe that. This country has been lucky. We have just celebrated 30 years of independence. We have been lucky in the quality of judicial officer we have had

at both levels, magisterial and High Court Bench. Praise God it has never been alleged that any of our judicial officers have been corrupt but we must not take them for granted. Like any of us, they have the same needs and wants. We cannot put judicial officers in a position where a bank can sue a judicial officer because his salary is so poor he has defaulted on the mortgage or whatever. We should not do that. We cannot afford to do it.

Those of us who have been in practice long know of one or two embarrassing situations in the 1970s and that must not happen again. I hope when the time comes the Government will find the support of the composition on this matter because I think the judiciary should be completely above partisan politics. We should see the matter as one of principle that these officers need to be properly paid and **looked** after to ensure their independence so that there will be a substantial increase in the number of cases tried by the magistrates in future because of this increase in the civil jurisdiction. I **daresay** in the early days of VAT they have to administer some of the VAT provisions. Some of these things will be referred to them.

Sir, some of the other features of the Bill, Section 43 is an important section. It expands the list of offences that are triable either way on indictment or summarily. Clauses 47-48 set out the respective procedures where summary trial is more suitable while clause 48 sets out the procedure in respect of trial on indictment.

In clause 62 the magistrate has a discretion to impose a penalty of a lesser amount than that **specified** in the enactment. There is also a limitation on the penalty that may be imposed.

We have tried to be reasonable in respect of young children so that clause 64 provides for reduced fines to be paid by persons under 16. However, clause 71 re-enacts what is already in the law. Whipping is re-enacted for certain juveniles.

I think that Honourable Members who practise at the Bar will find that provision for compensation is better than before. There was a limit of \$50 before. The magistrate could convict a person for a criminal offence and can order him, and in addition if the person has suffered personal injuries, to pay compensation. As I said I think the level is \$50 now but we have increased that to \$5 000.

Again, a lot of things worth \$3 000 and somebody gives you a couple black eyes or something you run to the High Court with them now because it is over \$2 500, the magistrate can deal with it. He can there and then say "I find you guilty and furthermore I am going to order you to compensate that person \$4 000" and you take the load off the High Court. Those are clauses 73 and 74, Sir.

An important feature of the Bill, Sir, something that I had wanted to see for a long time, and one has the chance sometimes to inject personal pre-elections into legislation. Presently the Magistrates' Courts do not award interest. We now provide for that. In future in a civil action you can get interest on damages in the Magistrate's Court. It is but fair. Why should it be that only if you have money to go and pursue your case in the High Court that you can get interest? It is creating a class distinction between the High Court and the Magistrate's Court when perhaps the only point of difference is the value of the claim. Because it is over \$2 500 you run to the High Court and the High Court can give you interest on \$2 500 but if you are in the Magistrate's Court and your claim is \$2 000 the magistrate cannot give you any interest on it. We have cut out that. Magistrates' Courts in future will be entitled to award interest on their judgments.

In clause 104 we have provided some concession to those who have been urging for in camera hearings. In relation to domestic proceedings, husband and wife, child abuse whatever, where the magistrate is of the opinion that the evidence is of an intimate or indecent character, he may, if he thinks it necessary in the interest of the administration of justice or of public decency, direct that all persons not being members or officers of the court or attorneys-at-law be excluded from the court during the taking of that evidence.

In clause 115 we are imposing some responsibility on parents. Where a magistrate would have power to send a person to prison under clause 16 for default in paying a fine or whatever, usually a **fine**, the court can order its parent or guardian to enter into a recognisance to secure the payment of the debt and order the parent or guardian to pay whatever proportion the court feels is reasonable.

Sir, I think those are some of the main features of this new legislation. There are some amendments we have to propose. I had better mention one point on the matter of limitations. It will probably be on my desk by the time I get back there tomorrow but the Law Reform Committee has finished its work on a new Limitation of Actions Bill. That will be in the House early in the new year. We have to take it to Cabinet shortly but that one is **coming**.

Now the Limitation of Actions Bill is going to provide a period of 6 years for contract and tort basically. Subject to memory, the last draft I saw I **think** we are saying that if you were suing the Government or a statutory board, I think they were giving 3 years. The present situation is very unjust. As I said, the vast majority of people do not know that if their car gets into a collision with a Transport Works bus or a Ministry's vehicle that they must bring an action within a year otherwise the case is dead. I do not re-enforce that but the point has

been taken in several cases. When I was first Attorney General, I told the staff that if it is a case where the Crown should normally take up, we **are** wrong and it is not an inordinate delay, we should accept liability, that I am not going to take that technical point because, as I said, the vast majority of people do not know. It is just one of these things. If it is anybody else, you have 4 or 6 years according to which you will take for tort and if it is a debt – 6 years. Some people do not even get their medical reports if it is an accident completed under a year.

4.20 p.m.

Asides.

Hon. D. A. C. SIMMONS: In this Bill, the Limitation Act will apply to the bringing of actions. As it is presently drafted – Section 206 it is ambiguous and therefore I spoke to the Parliamentary Council this morning about deleting that so Section 206 is now deleted and replaced by another amendment just dealing with the question of notice.

"Notice in writing of an action or prosecution to be commenced against any person for anything done in a pursuance of and of the cause thereof should be given to the defendant at least one month before the commencement thereof."

Apart from that, the old rule about filing criminal prosecutions for minor offences within 6 months, that is preserved, but in other matters the Limitation Act will apply.

Mr. Deputy Speaker, Sir, there will also be amendments to Clauses 230. Since the Defamation Act was passed there is no longer in Barbados the distinction between libel and slander, We have abolished that and it is now an action for defamation so we do not have libel and slander anymore.

Asides.

Hon. D. A. C. SIMMONS: We cannot kill the magistrates with work so we have exempted from the jurisdiction of magistrates actions for the recovery of land, question as to the title to land, malicious prosecution, defamation and disputes about Wills and Bequeaths. The usual preserve of equity is retained for the High Court and magistrates will not do any equitable matters under this legislation.

Mr. Deputy Speaker, Sir, those are the main features of this Act...

Asides.

Hon. D. A. C. SIMMONS: The Other Side has appealed for further consideration of this Bill to be

postponed. I would take their assurances that they will help us get it through next week, which is probably the last sitting. If other members want to speak today they can speak today and it will shorten it next week. As **many** of us who wish to speak today can do so and then, certainly the Honourable Member for St. Michael South may want to speak next week and I will facilitate him.

Now with those few remarks I beg that this Bill be now read a second time.

Hon. G. W. PAYNE: I beg to second that, Sir.

Dr. R. L. CHELTENHAM: Mr. Deputy Speaker, Sir, the 2 measures which come before this House today, the Bail Act and this new Magistrates Court Bill are of major significance and it is not widely appreciated. Eighty-five out of every 100 people who come in contact with the law appear before the magistrates courts.

My first point is in putting this new and additional load on the magistrates. There has been an incremental expansion of the jurisdiction over the years. The Severance Payments Act which allow the measure of damages in circumstances of unlawful dismissal to be limitless. You can recover \$100 or \$150 000, before that there was a cap on the amount introduced by the Democratic Labour Party. All of that can be litigated before the magistrates. It is a large responsibility which they have and my first plea would be almost as simultaneous for a new package of compensation for them consistent with the new and enlarge responsibility which they have.

I know that in quite ways they have been complaining and I think justly so, because when we look at the limited area which cannot be litigated before the magistrates court – recovery of land, defamation matters, disputes about Wills and Bequeaths, malicious prosecution, it is really a very large responsibility which they have.

My second point has to do with mechanisms to be put in place for the strengthening of their independence. If you **are** asking persons to sit in judgement in these weighty matters it seems to me that they must have a feeling of independence. They are not easily reached by people who may be their bosses and who may not be happy with the way in which they have taken particular decisions. It is not only important that be done but the perception of insecurity be removed. I think the Leader of the Opposition alluded to this earlier in the day when he spoke on the Bail Bill, but I think it is a point of large significance and I hope that the learned Attorney General will consider ways and means, not only of improving the compensation package for the magistrates but also ensuring that their independence is strengthened and protected.

That brings me to a third point in relation to the magistrates and that is the fact that too many, in my view, young people in the law – those that are doing less than 5 years or barely 5 years and many of them less than 4 years, find themselves sitting in judgement in areas where experience of life, the ways of the Barbadian man and woman become important, and certainly irrelevant so far as they go to inform their judgement about who is speaking the truth and who is right and who is wrong in particular matters. I think, myself, that the minimum qualification for a magistrate these days should be 7 years at the Bar or at least 7 years after call in some **form** of active practice. You should be not less than 35 years old. I do not favour young men and women who do not have experience of which I **am** speaking sitting in judgement as magistrates. I have no doubt, Mr. Deputy Speaker, if there is an increase in the compensation package that the magistracy will in **turn** attract persons who are doing 7 years and more and will also attract people who are 35 years and beyond.

4 30 p.m.

Now the magistrate's court traditionally has been a cheap and swift way of realising justice. These days it can be 18 months and more before you get before the High Court to have a matter heard, there is so much congestion in the High Courts. So that the new Bill enlarging the jurisdiction of the magistrate is very much to be welcomed but the point has been made earlier that the physical conditions under which a lot of the magistrates operate really need improvement.

We have good courts in terms of the physical facilities at **Oistins** and at **Holetown** but the facilities, for example, at the St. Thomas District "D" Court is so bad that you cannot even get a glass of drinking water there as has been my experience on a number of occasions. I have had to **drink** water off the back of my hand on several occasions over the years at the St. Thomas Court. The conditions for the members of the public there are very poor indeed and the conditions for the court officers including the magistrates there are equally poor. So that there is a saying there are no votes in justice and that is the reason why, over the years, these conditions have persisted. I think we have to take a broader view of the administration of justice and increasingly we have got to **find** money to put right these wrongs about which I speak.

I know that it will take time but there is no reason why, for example, while we wait for a new Hall of Justice including new facilities for the Magistrate at District "A" in the Traffic and the Criminal jurisdictions, because the Civil Jurisdiction is well provided for at St. **Matthias** that we cannot aircondition the courts. That is not asking too much to ask that the criminal and traffic courts of District "A" be airconditioned as a short-term measure while we wait for new facilities.

Aside.

Dr. R. L. CHELTENHAM: No. There are no air-condition facilities. The litigants wait in the yard, leaning up against the cars for 4 and 5 hours every day. There are no benches for them. There are no shaded areas. There are no water coolers around. And while on the one hand we must not encourage them to go to court at the **same time** those who are there, quite often, through no fault of their own, we have to make sure that the conditions are consistent with civilised standards in a modern Barbados. I really hope that the Attorney General will be able to persuade the Minister of Finance to provide him with some **funds** to increase the facilities for all of us who have got to appear before these courts from time to time either as officers of the court, as members of the public, as litigants, or as witnesses.

Now, Mr. Deputy Speaker, I hear comments about a differential. I propose to ignore them at this point. In relation to the Bail Bill now the Bail Act and also this new Magistrates Court Bill, I would like to suggest to the learned Attorney General that he organise a few seminars for the benefit of the magistrates. In relation to bail they proceed on a premiss, for the most part. There are one or two exceptions as there have always been that you are not entitled to bail except the police consent and there are other exceptions. They do not proceed on the premiss that you are entitled to bail except you fall within limited categories. As a result the high court has found itself overloaded with bail applications sometimes 6, 10, 12, every Tuesday morning and sometimes on Friday dealing with matters that should have been disposed of justly before the magistrate's court. No change is going to be effected simply by introducing a new Bail Act. Unless seminars are held and their mind set is somehow transformed, altered or amended I fear that we will not see an improvement in an area which I believe is really a blot on the administration of justice at the magistrates court level. That whole question of bail is that consideration that informs the introduction of the Bail Bill.

So it is not only in relation to the new Bail Act but also in relation to the new Magistrates Court Bill which is before us that I am suggesting that a few seminars need to be organised both for the members of the Bar and for the magistrates themselves. I fear that if they are left to read it on their own that they may claim that they are so busy that they have not really got around to it which would be unfortunate indeed.

Mr. Deputy Speaker, comments have been made about the limitation period which will operate in relation to matters before the magistrate. I have already spoken in this Chamber on several occasions about the very unjust system that currently obtains whereby the Crown is in a very advantageous position **vis-a-vis** the citizen. So that if

you are damaged through the negligence in the management of a vehicle of the Crown, you the victim have got to commence proceedings within a year but if you **are** damaged through the negligence of a fellow citizen you have upwards of 6 years within which to commence litigation.

As I understand the development of the law that differential has been removed in many jurisdictions. The feeling is that the Crown should be in no more advantageous position than the citizen and I see no reason why the limitation period should **not** be the same, both in relation to the wrongs done by the Crown and its servants and wrongs done by fellow citizens to one another. So that I am for 4 years or 6 years as the case may be, both in relation to the Crown and in relation to matters involving citizen against citizen and that is a matter which I think the learned Attorney General can put right at this stage. It seems to me that no significant policy considerations **are** really involved and there is no reason why that cannot be done.

There is an area of major dissatisfaction with respect to the operation of the magistrate's court which I think needs to be aired. For many years the court process offices were under the jurisdiction of the magistrates, the people who carry out and serve the summons, the persons who hunt down those fathers who have been reluctant to support their children even in the face of maintenance orders by the courts and so on. It is now about 10 years or more that they have been removed from the magistrates jurisdiction. The magistrates no longer have authority and control over them. The result is that many people suffer greatly. It makes the magistrates power incomplete and many persons in my constituency seem to suffer more so than many other persons around Barbados particularly mothers who have gone to the trouble of putting fathers of children in court and they have got maintenance orders. Sometimes for 2 or 3 years they have not been able to collect the maintenance. The Clerks have reported that they have sent out the orders and that you hear all of the time from the officers that they have not been able to get hold or to find John Brown. Often John Brown is their neighbour who lives in the same district. They make no attempt to apprehend him but in the meanwhile a child who has to be fed from day-to-day and clothed from day-to-day is going without the maintenance. 4.40 p.m.

In my view if the magistrates are not to retain control, the service should be privatized. I really believe and I am not any ready supporter of privatization, but I believe that if we have a privatized service we would give improved efficiency. But it is by far the worst department of Government that I know of. It has remained a virtual secret. The Press find everything to write about except these areas of obvious injustice and I really think that the Court Process Office ought to be collapsed as a

Government Department and that it ought to be privatized. Failing that, Sir, it ought to be put back under the immediate direction and control of the courts.

I think, Mr. Deputy Speaker, that we need for improvement in the efficiency and the operations of the courts generally and improved court reporting system. So often decisions are given by the High Court in relation to points under the Magistrates Court Act and because the Barbados Court Reports are only up to **1982** we **are so** much behind time. We have had no Barbados Court Reports since **1982** and several useful decisions that can guide and inform the magistrates **are** not available. The result is that errors **are** repeated on a weekly **scale** by the magistrates. When you tell them but you **are** a sheet in a barn, for example, is the wrong way. There has been a leading decision on that by the Chief Justice many **years** ago and he said that I have never seen it. You really cannot blame them too much because we have had no publication on the reports of Barbados since **1982**.

If we **are** serious about the proper administration of justice, which is not a costly exercise, Miss **Velma** Newton and the Chief Justice or others will do it at little or no cost, it is just a question of making sure that modest funds **are** provided so as to bring those reports up-to-date. If it is not done, you have a situation where errors **are** repeated by magistrates week after week and often to the cost of the Treasury, because when you have to bring a matter to the High Court complaining that the escheating of a bond should be quashed, an action called certiorari, invariably that attracts costs which may **run** into \$15 000 for Senior Counsel, even though it is only a one-day matter. That is the reality. I think a lot of those expenses can be avoided if we make sure that the court reports are really brought up-to-date.

With those few comments, Mr. Deputy Speaker, I will conclude my contribution. I welcome this new Bill giving the enlarged powers to the magistrates. I maintain that we have to do something to strengthen their independence and to give them an improved compensation package, but I think we ought not to leave it here. I think the learned Attorney General ought to take steps to ensure that the public is aware of the fact that a large number of matters that now are costly to them and time consuming in trying to get justice can be brought before the magistrates. So that apart from a public relations programme which needs to be mounted I **think** too that seminars ought to be held both for the benefit of the magistrates themselves and for the benefit of members of the profession.

4.50 p.m.

Hon. Sir HAROLD St. JOHN. Mr. Deputy Speaker, Sir, I should like to make a short contribution to this debate because, like the Honourable Member who introduced

the Bill and the last Honourable Member who spoke, all of us recognise the important role that the magistrates play in the delivery of justice in Barbados, and it is not only so here but in many countries of the world, because the vast majority of cases which come before the courts to be adjudicated are done by officers at the level of magistrate.

The points that were raised with respect to an increase in their remuneration and also with respect to an improvement in their physical conditions are **matters** with which I am in wholehearted agreement. I will go 'further **and** say that as one who has had experience of all the **reforms** that have taken place over the last 30 years in respect of the magistrates, I am convinced in my mind that it would be impossible for this Bill to be administered in the spirit in which it is expected it will be administered unless there is an increase in the establishment of the magistrates.

Nearly 40 years ago when I started to practise, Barbados was divided into seven magisterial districts. There were seven magistrates and the number of cases which went before the magistrates was much smaller, and yet still it was necessary to have that number. Today, with the tremendous increase in the number of cases and the range of cases, bearing in mind the important range and settlement of **employer/employee** disputes under the Severance Payments Act, together with the additional jurisdiction that is now being granted arising from the increase in the monetary value of the amount that magistrates can adjudicate in civil matters, I believe that one really needs an additional **two** Magistrates, particularly sitting in what is known as the civil jurisdiction. It is going to be impossible for all of those cases relating to hire purchase, contractual obligations, non-payment and the reasons for non-payment, sale of goods and matters of that kind, we are really going to have to have an additional civil magistrate certainly in **St. Michael** and in the other urban areas. I will not name them, Sir, because there are some areas in the north that are competing greatly for second **place**, and second place really is in the south. Unfortunately, I cannot invite anybody to sit in the Magistrates Court in the south, because it has reached the state now where it is disgraceful, 'because they are quite liable to have the roof dropping in on them on the side and the skirting board on the front. I am promised that in this financial year it is going to be done, but it was really something we could not be proud of.

But there are one or two constructive points I want to make with respect to an improvement of this. I cannot under-emphasise the point the Honourable Member for St. Joseph has made with respect to the court process. We have a serious, serious problem in Barbados in relation to court process in the magistrates courts and the High Court. The centralisation of the court process some years ago has

not in fact worked out how those who intended it to work out and it is a real serious thing, because the machinery for ensuring that they are accountable in the broad sense – and I **am** not talking about accountability in the sense of any financial malpractice, accountable for doing their work. I do not know **if** it is the function of the Public Service Commission, but everyone who works in the courts who has anything to do with the enforcement can tell you about the difficulties people complain about in respect of the administration of that and **so** too in respect of the maintenance orders.

An important part of the jurisdiction of the magistrates relates to the ability to make orders for periodic payments for children in Barbados, and that is a very important area. I believe the jurisdiction of the magistrates has also been extended to the Family Law Act, so that unless one has swift enforcement of the orders the magistrates make, you are going to bring the process into dispute and into contempt, and I am afraid that all of us must have had constituents who complain, who have to go on welfare, something that many of them do not like. I am sure many Honourable Members have had this complaint from their constituents. I do not know about the City of Bridgetown or any place like that, but certainly in the other constituencies people abhor going on welfare, they do not like it, they feel it is *infradig*, but sometimes they are forced to do it partly because of the fact that the enforcement of the orders the magistrates make are not carried out. We cannot shut our eyes to these fundamental problems and we must do something about it. If it is the Services Commissions that are not functioning, we must say so. They are not above parliamentary criticism, but we want to **see** something done.

There are two other very important points I want to make. I firmly believe that Barbados needs a night court. There are many criminal cases that arise out of activities in Barbados along the coastline, starting from **St. Philip** running right down to St. Peter, and many offences are created by a small group of people. I want to emphasise that a census would show that there are hardly more than 12 to 15 hundred people, **if so** many, who create offences against visitors and locals alike, small petty offences, and many of them in certain areas tell you that nothing is going to happen because these people are going to go away and for the type of offences we create they **are** not going to come back to give evidence. I am not talking about rape and other serious offences where the Crown as a matter of policy had taken the decision years ago that it would pay the cost of bringing those back to Barbados to give evidence, but I **am talking** about the bag snatching, the petty theft and things of that kind, where if you had had a night court they could be arrested, charged, brought before the magistrate – of course you will have to give them some kind of opportunity to have legal representation if they do not – but we should do that. I believe it is possible that

can be done under the new amendment of Section 9. I have looked at it and it seems to me the magistrate can do it, but that is going to involve co-operation of other agencies.

Aside.

Hon. Sir **HAROLD St. JOHN**. You see, that is the problem, Sir. We cannot afford to continue in the same vein we have been going in the past, because it is proven in many, many cases that people evade justice just because of the fact that it is not swift enough. I am one of those who believe that the power of the magistrates by swift administration of the justice can have a greater preventative effect than the severity of the punishment they mete out. We must have an open mind to that.

The second area relates to the civil jurisdiction of the magistrates. I notice there has been a great increase in the level of monetary claims, the level of the amount of money the magistrates can now adjudicate, they can go up to \$10 000, but I am concerned about the very important area of landlord and tenant. This is a very important area and I believe the jurisdiction is technically vested in the magistrates under the Landlord and Tenant Act. I do not see an amendment to the Schedule to this Bill that that is going to be increased, but I want to say that for years the special procedure that you have with a first notice and a second notice has been regarded as far too cumbersome and that the old procedure we had in the Assistant Court of Appeal Act, where there was a notice, a special notice, a month or whatever the tenancy requires, plus an application to the court, a discretion of the court as to giving a reasonable time to get out of possession. The court can make an order and then suspend it for a month, two months or three months, but the point is, it was a simple procedure and we have continued with the old procedure.

The other point is that I see here that the old rule that once a person says this is a question of title, the magistrate can no longer deal with it, even though the amount involved is a rental of, say, \$100 a month, all the defence says is it is a question of title and that is the end of it. That is over. We have people who are trained as magistrates. That was so when you had lay magistrates, but today when you have professionally trained magistrates and the minimum qualification is now five, and the advocacy is that it should go to seven, surely a magistrate with the training and with that amount of experience is capable of making an adjudication on what kind of title you have to really oust the jurisdiction.

They should really take out that section. The corresponding proper thing is that in those circumstances the magistrate feels he does not want to hear it, he can refer it to the High Court immediately, so that you prevent the person from having to start in the High Court with all the attendant costs that arise. I suggest that can be a definite improvement on that.

The last point I want to raise relates to sentencing. If there is one thing that is very confusing to people it is that people can be charged with as many as 20 offences and you will hear that the magistrate gave 40 years but he will **only** serve two because they all have to be done concurrently. Many people feel that where a person is charged with an offence of a similar kind and he goes before the magistrate and is convicted of one or more offence, that the magistrate should be able not to give a multiple of the number of offence by the years but to add on an amount so that it would be regarded as a serious matter. An analysis of some of the breaking and entering in the tourist area will reveal that two or three people are responsible. Not so long ago they had a large number of break-ins from parts of Chancery Lane right down to **Maxwell**. There were two people. They had about 30 offences among themselves. One fellow bragged that he did 19 before he was caught and he got 2 years. Everybody came and asked what kind of foolishness this was and started to blame the magistrate and you have to explain to them that the magistrate can only imprison people for a certain amount of time.

5.00 p.m.

Aside.

Hon. Sir **HAROLD St. JOHN**: I do not practise in the magistrate's court now but there is obviously a little informal plea bargaining that goes along in Barbados which is part of the procedure but not part of the law. The point is that is a matter I would like to see looked into, but I commend the effort to reform and codify the law in relation to magistrates. I am glad it is in one Bill with the exception of the Landlords and Tenants jurisdiction.

I am sure that young practitioners now would be schooled or ought to be schooled in the implications of all that is in this Bill. They should learn from the very outset how to bring a case in the magistrate's court, how to conduct it and things of that kind because it is still the best foundation for people who wish to be advocates. That training they will get in the magistrate's court there is no substitute for it.

Mr. D. J. H. **THOMPSON**. Mr. Deputy Speaker, I will be very brief because I believe that the shadow Minister on this side will be given the time, I assume, to deal with the details of this Bill. He is not presently here because he had another urgent engagement and I assume that we will be postponing consideration so we will just let those who want to speak now, speak.

I want to commend the Attorney General for bringing this piece of legislation.

Aside.

Mr. D. J. H. THOMPSON: Do not take my praise too extensively. Limit it to the silver jubilee of promises and to this piece of legislation.

Anyway, the essence of the point I want to make is to repeat the comments I made about the jurisdiction of magistrates. I am not sure if I fully understood the point the Honourable Member for Christ Church South was making about district courts but I want to say that I found it interesting again that recently District "C" had to convene at St. **Matthias** because of the repairs at District "C". People from St. John and St. **Philip** found it easier to get to St. **Matthias** transport wise than they did having to go to town and come back to District "C". I have constituents living in **Edgecliff** who have to go to District "C" but who have to catch a bus to Bridgetown to come back to District "C". I have always felt that consideration should be given, there has never been any agreement on it, to centralising the magistrates courts. I believe that most people, not entirely, would be in Bridgetown. It could be centralised elsewhere but I believe that district courts in the present sense work hardship on people. It also means that you have to deploy the Court Process Department in districts, you have to deploy the resources of the prisons, you have to deploy the resources of the prosecutors, not under supervision, in different district, evidence and criminal records being moved around and a lot of this leads to, not negligence, but the loss of proper storage of evidence. There is a whole series of problems which occur. 5.05 p.m.

The Honourable Member for St. Joseph spoke about privatising the Court Process Office but I still believe that there are ways in **which** Government itself can effectively **run** those departments by trying to improve the levels of efficiency by taking sensible decisions. We do not have to have romantic notions about decentralisation. It does not mean that you are breaking down a community simply because you move the magistrate court from that community. St. George has never had a magistrate court and the community in St. George, according to the Honourable Member for St. George South, is strong and vibrant. They have neighbourhood watch now being formed and other things – street fairs at Independence time et cetera.

Asides.

Mr. D. J. H. THOMPSON: I **am** very serious. I must say though that even mothers who go to collect welfare money have to pay \$6 to leave St. John, go to town and to come back to District "D" and that **kind** of thing. It is very burdensome and I believe that attention should be paid to that. I also feel that it does split up resources which would work more efficiently if they were centralised. I **think** that having a pool of clerks and prosecutors working closer to

each other, nearer to the evidence and so on, would be much more beneficial.

Apart from that we have to determine whether it makes sense in Barbados to have the magistrates court tacked on to police stations. When the court is meeting at District "C", I could imagine that the police do not get any work done because people saunter into the office and walk around. It distracts the police from doing the things that they should be doing and, as I said when I made this submission before, my own view is that it is something that should be considered – that does not mean that District "D" police station will go. What it means is that Magistrates Courts and the Marshal Departments, which are not being properly supervised in these districts, could be centralised and could function more effectively. That is just a suggestion and recommendation that I make because of the hardship. It was drawn to my attention, recently, when a guy called me from Sargeant Street who had a matter and had to pry witnesses from Easy Hall. When I told him it was down in St. Matthias, he said that it was much easier for him before they move back to District "C", because it would mean that he had to go and get these people, give them bus fare – and for some of them it was quite cumbersome and **difficult**.

That is one suggestion that I made and I noted the comment which the Honourable Attorney General has made with respect to the earlier submissions and comments that we made on this side regarding legal aid and independence of magistrates. I agree with the comments made by the Honourable Member for St. Joseph that the conditions of service of magistrates where this jurisdiction is increasing ought to be improved significantly if litigants are going to benefit. They are people that we have to focus on, the people who have to come into contact every day, the judicial officers, with the system and who get frustrated when lawyers, through no fault of their own, where they are being entirely honest and fair, are saying that they cannot get things done because the system stinks and we cannot accommodate the flexibility or the **kind** of efficiency which one would hope. A lot is happening in other spheres, the Corporate Registry, the Immigration Department, where we are seeing some improvement in efficiency as practising attorneys...

Asides.

Mr. D. J. H. THOMPSON. I noticed it for a while but some are lapsing. That is part of the problem. I still feel that there is a lot more that could be done, a proper audit, proper understanding of the management of these operations and deployment of resources in a better way to achieve results. As an attorney or as a person functioning in the system, you cannot give a commitment that within a specified time you expect to get a result or not.

I believe that we do not have any major quarrels with this legislation but I would reserve any further comment until the Shadow Minister has the opportunity to contribute to this debate.

Hon. D. A. C. SIMMONS: Sir, at this point I would like to move that further consideration of this Bill be postponed to accommodate Members on the Other Side, Sir.

Hon. Miss B. A. MILLER: I beg to second that, Sir.

The question was put that further consideration of the Bill be postponed and agreed to without division.

ORDER NO. 7 – RE SUPPLEMENTARY ESTIMATES 1996–97 NO. 6

A resolution to approve the guarantee of the payment of a principal sum not exceeding 20 million European Currency Units and interest **thereon** in respect of a loan of the said principal sum made by the European Investment Bank, a banking institution established under the auspices of the European Community and having its head office in Luxembourg, to the Barbados Light and Power Company Limited, a company incorporated in Barbados under the Companies Act, Cap. 308, for the expansion of the power generating capacity of the Barbados Light and Power Company Limited.

Hon. Miss B. A. MILLER: Mr. Deputy Speaker, Sir, a guarantee is here being sought by the Government of Barbados for a loan of 20 million **ECUs**, we are **talking** about **BDS\$50.6** million, by the European Investment Bank to the Barbados Light and Power Company Limited to fund its expansion programme. As a lender whose resources, Sir, consist of funds borrowed on the capital market, the bank is seeking appropriate security and generally requires the guarantee of the State in which the project is located, although other **first** class guarantees may also be considered, this is bank policy.

The last Barbados Light and Power expansion occurred in 1980 and it was partially funded by a European Investment Bank loan for guarantee then from the Government of Barbados, and consisted of a principal sum equivalent to **BDS\$13** million. That expansion, Mr. Deputy Speaker, consisted of the purchase of transmission lines, substations and distribution facilities. Since then, 1980, as a result of increasing customer requirements and particularly in view of the expansion of the new technology in Barbados, the Barbados Light and Power need to acquire new generator equipment and related transmission lines. It also needs to replace a number of small generating

machines which are more than 25 years old, Sir, and which are becoming increasingly expensive to maintain – so it would be a false economy to keep running them.

The company's existing total system capacity at the end of 1995 amounted to 152.2 megawatts and a new 13.3 megawatts combustion turbines at the new **Seawell** Generating site will increase, I am advised, the total capacity to 165.5 megawatts to meet a projected peak demand of 110 megawatts in 1996. It is projected, Sir, that this demand will reach 133 megawatts by the year 2000 and 276 by the year 2050. To meet this demand, the Barbados Light and Power will be implementing a 20-year expansion project involving the installation of new generating equipment and transmission lines, and the upgrading of its distribution system. In designing the project special attention has been paid to compliance with national rules and regulations, Sir, in particular those relating to the protection of the environment and this is very **important**. This new equipment, and all of it is new, included in the project should be free of materials and substances which could have adverse effects on the environment and that would include asbestos. The total cost of the project is ECU 44.5 million, **BDS\$107.3** million and is to be financed as follows:

The Barbados Light and Power's own funds \$37.4 million, loans from commercial banks and suppliers credits **Bds\$24.54** million, and a loan of \$50.6 million from the resources of the European Investment Bank provided under the fourth ACP European Community Convention of Lome, known as Lome 4. The loan of approximately **Bds. \$50.6** million from the European Investment Bank is expected to be repaid in 24 semi-annual instalments commencing 41 months after signature of the finance contract. The rate of interest payable shall be the greater of 3% per **annum** and the average of the standard interest rate applicable at the **date of** the disbursement notice and comparable loans made by the European Investment Bank reduced by an annual interest rate of approximately 4% from the European Development Bank.

5.15 p.m.

Mr. Deputy Speaker, Sir, the Barbados Light and Power will be **benefitting** by having to pay a reduced rate of interest on its loan. The European Investment Bank has suggested that given the subsidy element of the bank's funding, coming from budgetary funds of the European Union and whilst it is the bank's intention that the subsidy **should** be of benefit to Barbados, it should be avoided as far as possible that the subsidy serves to generate profits for private promoters or introduce distortions in the market. The Barbados Light and Power will pay into a trustee account cash payments representing the value of the interest subsidy and the Ministry of Finance and Economic Affairs will instruct the trustees during the years 1997 to 2002, which would encompass

12 interest payments, to pay **50%** of the cash payments and thereafter to pay **25%** of the cash payments into a designated account of the Ministry of Finance and Economic Affairs for eligible expenditure categories as agreed between the bank and the Ministry.

The remainder of the subsidy I am advised, Sir, would be paid out of the Trustee Account to the company and would be used by the company for several purposes among which would be energy conservation. The Light and Power wants to develop programmes to inform and educate customers on energy conservation and the more efficient use of electricity in Barbados. It would also relate to power quality as more and more of the new technologies bring personal computers into homes. And at the work place the quality of power delivered to the consumer is becoming increasingly important and customers of the Barbados Light and Power, consumers like ourselves and others are looking to the Barbados Light and Power to help them to solve these power quality problems. So that educational programmes, diagnostic and mitigative measures are required to respond to the needs of customers. Those who own computers know, Mr. Deputy Speaker, Sir, how much time is spent trying to service the computer in this way.

Cooling water **outfall** at the Spring Garden power station. There has been some concern expressed that the **cooling** water **outfall** at the shoreline is affecting sand migration and the marine ecosystem. This is the finding of the coastal conservation unit. What is known as the pot down at the beach at Brighton at the **Rum** Refinery end of the beach or the Barbados Light and Power end of the beach is very good for those who are rheumatic and arthritic and who generally just love the pot and it has its devotees. But the truth is that it is working some environmental damage on the shoreline there and the marine ecosystem there.

Anybody who knows it and I grew up with it and I still know it to some extent, will recognise that all of the trees west of the Light and Power fence have disappeared and there is a lot of sand migration occurring, not only there, but even further down at Fresh Water Bay as well. So that in order to alleviate this problem modifications will have to be made to the cooling water **outfall** and it is possible that Light and Power may have to extend that **outfall** even further offshore beyond the coral reefs to avoid the damage that is being done to near shore waters and the reef itself.

Also in respect of mitigation of hurricane damage, these are all the considerations that a company such as the Light and Power has. Ordinary Barbadians may think it is just a matter of wires and poles and providing electricity at source where people want it but there are many other considerations which have serious implications for the way in which we deliver this source of energy to Barbadians.

Now, insurers have substantially withdrawn hurricane insurance capacity from the Caribbean as we all know to our great cost. We only have to look at our prohibitively expensive statements when they come to us as to what premium should become payable. As a consequence there is a need to provide for funding losses due to hurricane damage. There is also a need **to assess** buildings, plant, associated facilities and to determine how these buildings might be affected in the event of a hurricane. Measures have to be identified that will mitigate damage and enable the Light and Power to respond rapidly after the event. The company is, we are told, developing mitigation plans to implement cost effective measures.

Then I made the earlier reference to environmental concerns which have to be addressed, environmental concerns which also have to do with sub-surface oil removal. Now the Garrison Hill site, and I have a particular interest here, is much contaminated over several years with the **tank** farm and the refining operation there. Recent foundation excavations have been affected by oil residue on the water table which is near the surface of the ground. This is very important for us because where the Garrison Hill operation is sited by **definition** the water table is very high and Mobil Oil have instituted a programme to remove the sub-surface oil within their site and the Light and Power should undertake a similar procedure. Now, I have very strong feelings about this, Mr. Deputy Speaker, Sir, that when Mobil Oil takes its leave it must undertake to do a programme to return that site as far as is humanly possible to an environmental balance similar to what they found. It is important to remove the sub-surface oil and the Light and Power must do that.

5.25 p.m.

There is a lot of sludge too, Sir, removed from residual fuel oil used in the generating plant and this gets to be a problem and a means of disposal has to be found for it. There is other hazardous and industrial waste, disposal of which as a problem in Barbados has to be addressed. I am personally very pleased that the Light and Power has this high on the list of concerns which they will deal with and it is hoped that perhaps some form of incineration unit might be the way to go in respect of sludge disposal. Then there are environmental audits which have to be done. There are matters impinging on environmental management and the **tourism** product as well. The Light and Power as you must know, Sir, contributes to the tourism product and environmental development effort in many ways and it wants to go on being able to improve and to monitor better the way in which it does that. So that these, Mr. Deputy Speaker, are some of the purposes to which the remainder of the subsidy would be put.

The Ministry of Finance and Economic Affairs has identified a number of ways that the subsidy could be used to benefit Barbados in addition to what is being

proposed by the Barbados Light and Power. The Government would like to see, that part of the subsidy could be used to assist disadvantaged Barbadians to pay their electricity bills and this should be good news to every Member of this Honourable Chamber. In his or her constituency, there is always going to be persons who fall into that category. This is a function being undertaken now presently by the Welfare **Department**. But the average annual amount paid to the Barbados Light and Power for this purpose during 1991-1992 to **1995-96** was over \$190 600. There are also renewable energy projects which the Government has an interest in and for which financing has not been identified and these are many. It has been proposed that the trams at **Harrison's** Cave should be equipped with "photo voltaic energy" as a source and the estimated cost of that would be between **US\$120 000** to \$150 000. The study of the uses for "photo voltaic" technology as a whole is something which the Government would wish to promote and the estimated cost of that system would be about **US\$13 000**. Then there is the demand site management studies. This project cost is estimated at **BDS\$300 000** per year with approximately **BDS\$200 000** in the first and second year for studies and then there are alternative energy sources and wind energy studies which the Government wishes to undertake. The cost of this project is estimated at **BDS\$87 000**. Wind powered water pumping from the Barbados Water Authority small wells is very important to agriculture and other industrial uses. To date, no estimate of that cost has been determined and then there are energy conservation programmes and others.

Mr. Deputy Speaker, Sir, I would beg to move that this Resolution do now pass.

Hon. D. A. C. SIMMONS: I beg to second that, Sir.

Hon. Miss B. A. MILLER: Much as I would like to hear the maiden speech of the new Member for St. Michael North West, I am afraid at 5.30, I have to be at another place but I shall be back. I am on the Government's Business.

Mr. DEPUTY SPEAKER: The Member for St. Michael North West.

Mr. C. A. MASCOLL: Thank you, Sir. Mr. Deputy Speaker, I rise to support this Resolution with the full knowledge that this loan is an absolute need or necessity for the Barbados Light and Power. This can be gleaned from the accounts of the Barbados Light and Power of 1995 and 1996 for the first half of the year. When we look at the accounts, we can see that the long-term loans outstanding with this institution represent almost \$54 million but more importantly of the 8 long-term loans roughly 6 of them will have to be repaid in 1996 through to the year 2004. So that one can see from the accounts

that this loan is an absolute necessity for the Barbados Light and Power at this point in time. In fact, if I may be permitted to quote some of these long-term loans which I said before total \$54 million, I am quoting from the Barbados Light and Power Annual Report of 1995. There has been a recent update of the 1996 half yearly report and I wish to make it a document of the House. The **first** long-term loan is for the Commonwealth Development Corporation and this was taken in 1994 and the first repayment of principal is in 1996 this year. Similarly, the second loan, the IBRD Loan, is repayable in 1996. There is a loan from Nordic Investment Bank of almost Bds. **\$8** million. The repayment period starts in 1996. Another loan from the Commonwealth Development Corporation – the repayment starts this year as well, in 1996 and the last one is a Danish Export Finance Corporation Loan. The repayment starts in 1996. That was a loan for almost **\$8** million as well.

So one can see from the accounts of the Barbados Light and Power that there is going to be need for long-term capital and therefore this loan which we **are** addressing in today's Resolution is an absolute necessity for Barbados Light and Power.

I therefore, as I said before, have a reason to support the Resolution but I have some concern in relation to the loan. I do suspect or believe that when I look at the accounts that Barbados Light and Power should also be considering issuing some form of equity, that is in the form of shares, to the Barbadian public. This \$107 million constitutes one-third of the estimated requirements of the Barbados Light and Power for the years 1996 to 2000 and in fact in their half yearly report of 1996, and I am reading from this document which I propose to make a document of the House, it is said that forecast of customer use of electricity indicates that the company will need to invest approximately \$300 million in new generation and distribution facilities between 1996 and the year **2000**. So that we are seeing the beginning really of why a bigger project by the Barbados Light and Power. What we **are** saying here is that this is only going to constitute one-third of the overall requirement of the BL & P through 1996 to the year 2000.

More importantly, Sir, these loans are going to require foreign exchange and, since we are going to have to forego a fairly significant portion of foreign exchange to repay these loans between 1996 and the year **2000**, this loan again will constitute some ability on the part of Government and the Central **Bank** to meet those loan requirements for this year and beyond. Again, we can see that there is need to have this loan at this point in time.

The foreign exchange requirement, as we all know, is absolutely important in today's Barbados as we have demonstrated since 1991. We have been able to shore

up the reserves to record levels but we have to take into consideration the demands that will be placed on the foreign reserves of Barbados into the 21st century. So that again I wish to suggest that we do need in fact this loan if only because there is going to be a fair amount of pressure put on the foreign reserves to meet the requirements of the Barbados Light and Power. So from that standpoint and that standpoint alone, it is important to give support to this loan.

5.35 p.m.

What is also important in the conditions is that it seems as though there is a particularly low rate of interest to be paid from this loan and there is also another interesting component, that of reducing the annual interest by a subsidy of 4 percentage points from the European Development Bank.

Let me just say that that may be in accordance with the emphasis that perhaps the last administration placed on the environment and the conditions coming out of the concern for the environment, and what we are now seeing on the international level is an increasing attention being paid to matters pertaining to the environment. This is perhaps why there is that component in this loan which provides a subsidy of 4 percentage points from the European Development Bank. We must say that to a large extent we are beginning to see the economic benefits of putting emphasis on the environment in Barbados and the former Prime Minister has to be congratulated for that.

The question therefore of the interest rates which will be charged seems to constitute in this particular loan a benefit to the Barbados Light and Power because the evidence does suggest that it will have to pay a fairly reasonable interest rate on the loan. Now, there is certainly much concern around Barbados about the demand for electricity and we know that with increasing technology and the increasing emphasis on the service sectors in Barbados that there would be this demand for electricity generation. Let me however say that I am calling on the Barbados Light and Power to put greater emphasis on their concern for the environment immediately surrounding the Barbados Light and Power. I can speak immediately to the Pile Bay area which is a natural constituency for the Barbados Light and Power and from that standpoint I am going to invite the Barbados Light and Power to give considerable consideration to some form of support for that community which occupies just north of the complex.

There are many concerns in that area. It is known, and it has been said in other parts, that there are concerns in relation to the whole question of poverty and I am suggesting that there may be some pockets and in this effort in relation to the Barbados Light and Power that there can be some greater emphasis being placed on the

environment of which that area constitutes a prime focus, to my mind, for the Barbados Light and Power.

We can now however see that there should be a greater plan on the part of this institution to emphasise some other needs that we have throughout the various constituencies in Barbados and that they stand to use the funds available from the subsidy provided on this loan to effect better lighting across the country.

Certainly within rural Barbados there is need for increasing electricity. We know from our canvassing that there is need for several other electric poles and lights across constituencies in Barbados and therefore we are saying that this is going to constitute an opportunity for the Barbados Light and Power to play a greater role in the provision of electricity.

Therefore, from the standpoint of what this loan will constitute, I will say that we do in fact need to have it. It is just \$50 million but that \$50 million will be important to the foreign reserves of Barbados. We also see that there is a suppliers credit of \$24 million involved in this project which again is important. If they can pull it off then to get a suppliers credit of almost \$25 million it would be a good thing to delay the impact of the expenditure on the Barbados Light and Power. So from that standpoint again this is an important part of the project proposal being put forward.

There is also a desire on the part of the Barbados Light and Power to use some of its own funds to the tune of almost \$38 million. That again is important because we all know that there is provision within the accounts of the Barbados Light and Power to put aside a fairly substantial sum, a reserve pool, in this institution and to ask them to draw on that reserve pool at this point in time might be a very useful thing as far as the finances go.

Certainly as a corporate body they have been employing considerable amounts of individuals in our economy. They continue to perform a very useful function in terms of providing electricity. It is true that they do have the monopoly but there are other monopolies which may not necessarily be operating as efficiently and we must congratulate the Barbados Light and Power for the kind of efficiency that it has shown over the years, the accountants of the management team and the complement of staff within this organisation.

There is a base of workers in that area coming from the immediate surroundings and I have no doubt that that is testimony to the quality of workers that we get from the surrounding environment of the Barbados Light and Power and certainly it would include some of your constituents, Sir, and that, as I said, is pretty widespread because of

the overall quality of workers within the Barbados economy.. I therefore hope that in expanding and using these project funds that the Barbados Light and Power can in fact do some justice to the employment needs in Barbados and that this expansion will imply greater opportunities for jobs at this institution. That would certainly be of considerable benefit not only to the immediate constituencies but all constituencies across Barbados.

From the point of view of the emphasis that will be placed as I said in my opening remarks when we look at the statement of long-term loans and the balance sheet of the Barbados Light and Power that this is an absolute need because of the structure of the accounts which we see before us. They have reached a stage where, as I said before, the project of **1988** has now reached a point where there is new need for investment. Because it is a monopoly we get this **kind** of lump sum investment over time and this is now the time when the Barbados Light and Power seems to be **looking** towards the 21st century. What this will do in the initial phases of the investment is to reduce the average cost of operation because of the input of new technology into the provision of electricity and what we can hope for is that the reduction in the costs because of the new technology may very well translate into reduction of price of electricity in Barbados in the next **5** to 10 years.

That is certainly a hopeful position. It would assist us considerably in being able to market the service sector of Barbados. We have heard recent complaints about the overall cost of doing business in the service sector and any effort that can be made to reduce the cost of electricity would certainly translate into benefits to the service sector. From that standpoint as well it is hoped that the improved technology that will accompany this project will translate into reduced costs as well...

Asides.

Mr. DEPUTY SPEAKER: Excuse me, Honourable Members. Let the **member** continue, please! He is making his maiden speech.

Mr. C. A. MASCOLL: So from that standpoint as well I wish to suggest that we can see considerable benefit from this expansion project of the Barbados Light and Power. It, in fact, constitutes an imperative for our economy because we have adopted the strategy of emphasizing services, tourism, offshore keyboarding and other **areas** of the services sector. We also have adopted the strategy of ensuring that the services needed to provide these kinds of outputs which will, in fact, realize some reduced costs. I **am** hoping that as a result of this project that this is the beginning of that reduction of cost, as I said before, which is absolutely necessary for improving the competitiveness of the Barbadian economy especially in the

area of services. So there is another area where we can expect to see some benefit as a result of giving approval and expression to this loan before us.

5.45 p.m.

There are going to be other spinoffs. There is no doubt that the improved quality of electricity that will result will mean that small businesses especially are going to be better placed to be able to use better forms of technology especially in the area of computer technology which would immediately translate into some improved competitiveness for those small businesses as well. As we know now there are several people getting into the areas of graphic arts and graphic designs. There are people who are very much involved in tourism who are in the business of selling ancillary services who have to make connection with North America, Europe and other source countries for tourists and therefore any attempt that is made to reduce the overall efficiency and quality of that service will certainly be of benefit to the Barbados economy. Again, we expect that with this new input of expenditure from the Barbados Light and Power that we can see substantial benefit in terms of improving our competitive edge as we go into the 21st century.

I made the initial contact with the overall interest cost to suggest that it seems to be a fairly low interest rate and that, again, is going to be meaningful to us because that reduces the burden of servicing the debt over time. What, perhaps, has not been clearly stated in the Addendum is the beginning of the interest payments. It states here that the loan from the European Investment Bank is to be repaid in 24 semi-annual instalments commencing **41** months after signature. This does not say that the interest component will have to start earlier.

I am making the assumption that this clause refers to the principal which is going to start some **21** months after the signature but, certainly, there will have to be interest costs incurred before this 21-month period starts so that the Barbados Light and Power would have made provision in their forecasting for interest payments before the 21-month period is up. So that really is a housekeeping matter which I **am** certain that the staff, and the quality of staff there would have taken into consideration in going to the market for such a loan.

As I said earlier, because of the structure, when we look at the Annual Report again of the Barbados Light and Power, what we are seeing here on page 8 of this document is a division of the customer dollar into fuel which is 40¢ or 40 per cent of the customer dollar, labour, insurance and material 30%, but more importantly the loans. Six per cent of the customer dollar goes in the form of loans, **4** per cent in interest, and **3** per cent to dividends. This, perhaps, is the reason why I **am** suggesting that

there is opportunity for the Barbados Light and Power to maybe go the route of raising equity finance by issuing shares to Barbadians because it is evident from the composition of the customer dollar that there may be scope to increase the dividends paid in relation to the loans.

Since it may be apparent that the equity finance might be cheaper than the loan finance, then I **am** suggesting there may be opportunity within the next 4 to 5 years for the Barbados Light and Power to give some consideration to issuing shares. I **am** certain, Mr. Deputy Speaker, this is something which you would embrace being a man involved in the insurance sector. Therefore, there is to my mind, I repeat, an opportunity to raise some equity capital because, as I said, this project is only \$107.3 million of a projected project of \$300 million between 1996 and the year 2000 for the Barbados Light and Power Co.

Having said that, it is now really my duty to wrap up my first speech in Parliament by suggesting that we are fully supportive of this initiative. We are fully supportive of the Resolution before us. We understand the financial implications of it, We understand the absolute need to have this loan at this point in time. We understand the benefits that can be derived as a result of purchasing the necessary equipment by the Barbados Light and Power Co. Ltd. to improve the output of electricity. We understand the several spinoffs that can result within the tourism sector, the services sector, the households and the school system of Barbados, certainly at the University of the West Indies so, therefore, it is apparent that such a loan, apart from being necessary financially, may very well constitute an impetus to the way forward for Barbados because we need to improve our competitive edge in so many respects in order to take advantage of the opportunities before us in the 21st century.

I thank you, Mr. Deputy Speaker.

Mr. D. J. H. THOMPSON: Mr. Deputy Speaker, I will be very short. I should like to congratulate the Honourable Member for St. Michael North West on his presentation just now – I did not intend to speak – which brought into very sharp focus a point we need to bear in mind as a developing country.

Barbados has a privately owned power generating plant. We are one of the few countries in this hemisphere, and I think at one time we may have been the only country in Latin America and the Caribbean with a privately owned Barbados Light and Power Co. Ltd. It is a publicly listed company but it is privately owned. It is not a State Corporation. That is what I mean, in other words, a non-State-owned electrical generating facility.

Aside.

Mr. D. J. H. THOMPSON: Well, it is privately owned to the extent that the owners of it in the majority are private citizens or private sector investors and Government has a very small shareholding. That is a credit to the country and the IADB has committed substantial resources in the past few years. The Honourable Member for St. Michael South would know this because he was one of the Governors who was involved in that process. Billions of dollars have been committed in Latin America and the Caribbean to the privatisation of State-owned utility companies.

Barbados cannot benefit. Even though from the beginning we have gone the right route, our privately owned publicly listed power generating plant cannot benefit from those major concessions which the IADB is making available to countries in which State-owned public utilities inefficiently run are now benefitting. It is, therefore, as the Honourable Member was talking about the interest rate, the maturity and the features of this loan and the fact that it is only going to address a small component of the expansion of the Barbados Light and Power Company, that it brought sharply home to me that in this age, countries like Barbados get penalised for having done the right thing from the beginning. So instead of making concessionary financing available to countries like us, which have been pursuing the model that they say is now right, which we have been pursuing for the past 75 years or so, we have a privately owned Barbadian utility company having to go on the market to seek the best terms possible.

5.55 p.m.

I congratulate the Barbados Light and Power Company and I think that is a sensible move by Government to walk hand in hand with a utility company like this to achieve the goals that are necessary. The only thing that I will say is that where Government provides those kinds of guarantees, the *quid pro quo* or the condition should be that there is larger equity participation by Barbadians. In other words I would not even bother with the subsidy and how that is being applied. I think that the essence of something like this should be that Government's response should be yes we would walk hand in hand with you but we want a guarantee that you would put a tranche of shares on the market for Barbadians to participate.

I have never been keen on bonds for this kind of thing because I believe that public utilities provide the best opportunity for a good rate of return – that is what the shareholders are looking at, and Government as well as the Public Utilities Boards also guarantee them certain levels of profitability and return. So it is a most desirable kind of investment to make – we all know that. That is why people kept so much noise when the Democratic Labour Party, very regrettably, had to sell the shares in BET, which we did with great regret. But we did it because of the circumstances.

I am saying that where any occasion that presents itself to recover lost ground, and these circumstances present an opportunity for us to recover lost ground, the Government should seize on such opportunities to ensure that there is a larger shareholding by Barbadians. If anything can be done at this late stage, I would like to recommend to the Government in the same **non-**contentious way in which my friend the Honourable Member for St. Michael North West just spoke, that the Government adopt a stance – yes, we will continue to cooperate to the fullest because we believe that is the direction which Barbados Light and Power have taken is a model for the region and we have been going along with you in the process but we believe that the opportunity presents itself to widen the shareholding base.

I know that the Government took the decision recently to sell the Barbados Light and Power shares which were owned by the Crown itself to the National Insurance Fund – which is also a good investment. That again, in a sense, even though it is a vicarious or indirect way increases the shareholding of Barbadians because their National Insurance funds are being used to invest in areas in which there is a good rate of return, in which it is a vital activity which one cannot do without, and also there is no net loss to Government transferring it from the Crown to another part of Government operations for the people.

I believe that the point which the Honourable Member for St. Michael North West raised about equity and about providing the opportunity for ownership is one that we should underscore, and as I say, hopefully there can be an attempt when you are working with utilities of this sort and giving them any kind of concession to extract that in return. The purposes of the subsidy are too **airy-fairy** at this stage. I do not think that either Barbados Light and Power or the Government is able to determine how the subsidy would be applied. Therefore, to my view, knowing how these things go, based on past experience, I do not attach much importance to that, but I will attach importance to widening the shareholding base in the Barbados Light and Power Company. The company which presently owns the majority of shares, Lucadia Corporation, is one of those companies – I think that it is out of Utah or one of those states but the office is based in Washington – which has been speculating in South America using what has happened in Barbados and development in relation to Barbados Light and Power Company as an example of how these utility corporations can be run other than fully state controlled. The last 2 points I want to make relate to areas which the Honourable Member for the City spoke about where Mobil is located.

Asides.

Mr. D. H. J. THOMPSON: The last 2 points I would like to make relate to that area which the Honourable

Member for the City spoke about where Mobil is located. The Mobil agreement is a 1963 agreement. I doubt very much there is a provision in that for environmental clean up on termination. It is a very standard **form** basic agreement made in the **days** when the word conservation had not even come into its own far less the word environment. Therefore my own view is that Government needs to get its Energy **White** Paper or Green Paper published urgently, and it needs to have a phase out period for that refinery which takes into consideration if you are going to keep it open and the transfer of ownership. If you are going to keep it open with, let us say, Barbadian shareholders or some other transfer of ownership to some of the existing marketing company as well as Barbadian – whatever. If you are not going to keep it open, then you have to ensure that in the phase out period the Government is able to recover and put in a fund or somewhere a sanitised lump sum of money which can be used for that environmental clean up.

The clean up of that site is going to be exceedingly costly. I do not **think** that Government had any illusion based on the reports that have been done about what will happen when that refinery is closed. We are already running into borrowed time as the refinery has until the year 2000 but we need to **find** a pool of funds to carry out that environmental clean up in that area from now. Therefore, I would suggest that the Government get the handle on that situation I heard the Honourable Member for the City speak about very glibly, maybe through no fault of her own, but it is a serious matter which will need attention. Likewise to say the Barbados Light and Power should clean up the area.

The costs involved in these environmental clean ups are substantial. Again that may be any area in which the subsidy should be used to defer some of those costs because there is no obligation by law or otherwise by which those private companies have to do any environmental clean up. So we either have to get the laws passed now or alternatively we have to get serious attention paid before the agreement terminate to cleaning up the site. I warn again that the cost of cleaning up that area is going to be substantial. You are not dealing with a Barbadian company which is going nowhere, you are dealing with companies which can close the lock a Friday afternoon, put their executives on a plane and say thanks very much to Barbados and that is the end of that. I think you have to get to the reality of the situation. As long as you indicate that you are not going to renew the agreement, then the guys on the other side can feel comfortable by walking away from it and those are the points to which attention needs to be paid.

Thank you very much, Mr. Deputy Speaker.

SUSPENSION

Hon. D. A. C. SIMMONS: I beg to move that this House be now suspended until 6.15 p.m., Sir.

Hon. G. W. PAYNE: I beg to second that, Sir.

The question that the sitting be suspended until 6.15 p.m. was put and resolved in the affirmative without division and Mr. DEPUTY SPEAKER suspended the sitting accordingly.
6.05 p.m.

RESUMPTION

Mr. DEPUTY SPEAKER: On the suspension, Order No. 7 was the item to that it should now revert.

Rt. Hon. L. E. SANDIFORD: The first point is that that area of the Garrison constitutes one of the prime real estate assets in Barbados in one of the prime constituencies in Barbados and I have a vested interest in what takes place there because of my long-standing and continuing relationship with the people of St. Michael South in which constituency that area is located.

Let me say, Sir, that I would certainly wish that whatever issues there are to be resolved, whether they are environmental problems, developmental problems or whatever, that these will be resolved in the interest of all of the parties concerned.

Secondly, Sir, I wish to claim a privilege as the father of this House to congratulate the Member for St. Michael North West for not only joining us on the basis of the decision of the people, the owners of St. Michael North West, but also on his first day in Parliament in making a fine maiden speech. It was one that was based on the matter that was before us. It was very perceptive, Sir, and it was analytical. It was articulate and it was forward looking and he did not forget to speak on behalf of his constituents and some neighbouring constituencies as well. I merely wish, as I said as father of this House to extend a welcome to him and to congratulate him on a fine performance. Thank you, Sir, for your indulgence.

Dr. R. L. CHELTENHAM: Mr. Deputy Speaker, Sir, I should follow the example of the last Honourable Member who spoke and do so with brevity. I want to join the previous 2 speakers in congratulating the Honourable Member for St. Michael North West for his maiden speech. I think that when once he has shed the jitters which normally attend first day performance we can look forward perhaps to more competent contributions from him.

Turning to the matter at hand, Sir, I think the Government has done a wise thing in guaranteeing this

loan. I think it is for a good purpose and as it has been pointed out is very much needed at this time.

Perhaps not enough use is being made of the institutions under the LOME Convention of which the European Investment Bank is one. Certainly we have not **benefitted** in Barbados greatly from the Centre for Industrial Development or from (STABIX) or **from** other institutions **under** the LOME **Convention** and 'I am particularly happy to note that use is being made here of the European Investment Bank's facilities.

I think myself that the Government should encourage other institutions in the economy to consider using the European Investment Bank. The Light and Power has used it now for the second occasion for it is an available source of financing. It is true its rates tend to be competitive rates rather than concessionary rates but at the same time it is there and it is ideally suited for monopolies that have a guaranteed rate of return.

I believe that the Government should extract some more services, particularly in order to complete what I regard as part of the unfinished social revolution in this country from the Light and Power. I am disappointed that I see no representative from the Company here today. There are still many areas in Barbados, particularly in **rural** Barbados, and I refer to parts of Northern St. **Thomas**, parts of St. John, many parts of St. Joseph and St. **Andrew** where there are many districts that are still not properly lit.

I object very seriously, and you need to hear this, Mr. Minister of Transport and Public Works, to this system where Members of Parliament have got to go around and tell Light and Power or the Government the number on poles and thereafter you may or you may not get a result. The Government is in a position to call the shots and to tell the Light and Power to draw up, within the next 3 months, a programme for the complete electrification of Barbados and let them know what it is going to cost and the Government will decide whether they are going to finance it over 3 years or 4 years as the case may be. That would be one of the conditions of the guarantee. They can do it over 4 years or 5 years. They could even own the Light and Power but the point is, it has got to be done and there is no reason why I have got to be subjected to all sorts of harassment from the people of St. Joseph and elsewhere in Barbados saying for the last 4 years we needed a light here and we cannot get a light there and so on. The Government needs to call in the Management of Light and Power and tell them what the people of Barbados need, insist that it be done and ask for costing and determine over what time period it is going to be financed.

The second thing, and I entirely agree with this point as made by the Honourable Member for St. Michael North West, an additional tranche of shares because from time

to time **tranches** have been made available, ought to be made available to the public of Barbados at this time. I think there is need for increased equity and that should be the form in which they should go. So that the Government is in a position when once it acts as guarantor to call the shots and to dictate to the company what needs to be done. Government has great moral authority and the Minister of Public Works should take the initiative. He need not wait on the Minister of Finance. In fact the management of Light and Power should be in here now hearing these things. We should be speaking in their presence. Mr. **McConney** and his management team should be here sitting and they should hear these comments made by the people's representatives. I am distressed. I am made to go down into the remotest parts of my constituency and look up and all around and ask other people if they could help me to make out the number or **find** a number and call in to the Ministry for some Clerk to receive it and then to lose it and then to hear after **3 years** that the light has not been provided. Now that is primitive, inefficient, it is a waste of the Member of Parliament's time. There is everything wrong with it and the Government needs to take the initiative in ensuring that that system is corrected and that those pockets in Barbados which **are** ill-lit and that situation is remedied certainly by the turn of the century if not before.

Mr. D. St. E. **KELLMAN**: Mr. Deputy Speaker, unlike the previous speaker I am not going to put the blame on the Barbados Light and Power and I am going to tell you why. Two years ago I took my car and went right through St. Lucy.
6.30 p.m.

Mr. Deputy Speaker, the number is **L1234**. I went through St. Lucy and took down the numbers of the poles and submitted a letter to the Barbados Light and Power. They sent back a letter to me stating that they have surveyed the poles and the ones in orange **are** the ones which they have recommended to the Ministry of Transport and Works to be the ones for lights. The letter was copied to the Ministry of Public **Works**. I have not received a letter since two years ago from **MTW** telling me that what Light and Power said to me was wrong. So you know, Sir, I am going to blame the Minister. I have told the Minister on more than one occasion that if he has a problem with the Minister of Finance let me know and I will help to defend him. Because I feel that in this Assembly the interest of poor people should be represented and these are lights where poor people live. Wherever there is a terrace in Barbados, you do not even have to ask for a light. They know where to find a terrace. Before a house is up, the lights are up. But wherever there are poor people they cannot get lights for those poor people. So I am not going to agree with any Minister or **former Minister** who is going to come in here and try to shift the blame from Government to Light and Power. The only way I will change that is when I **see** a letter from **MTW** telling me

that they have sent on a letter to the Barbados Light and Power telling them to install the lights in St. Lucy. But I have not received that letter so I will have to stick with the Barbados Light and Power.

Regarding this loan, Sir, I have a couple of problems with it. I see that it is stated in ECU – it is a sugar term, EQ's. One is not sure when one of these currencies is going to move away, Sir. Remember, Sir, that we borrowed money in the **1980's** and I am always talking about that. I am always warning Government about this, but yet still they are not taking any lessons. I did not give them advice because the advice that I gave in 1984 is that we should not be borrowing **anymore** money from the Japanese market because the sugar industry was the first people to borrow a Japanese loan. Do you remember that, Sir? They borrowed it at a lower rate and by 1986, Sir, they were paying double. He wants to hear the history. I will tell him the history. A bank in Barbados called the CDB borrowed money from the Japanese too, but when the sugar industry wanted to borrow money from them they passed on their debt to the sugar industry, and that is no lie. There was enough evidence in the economy at the time when the Barbados Government went to borrow money from the Japanese Market to tell them that they should not have borrowed money, but the Government went ahead. I am saying today that the problems that we had in the 1980's the Barbados Labour Party must not only be the ones to be contradicted and castigated. The Caribbean Development Bank must take the blame for some of the crises that we went through in the **1980's** and 1990's. It is not only the extra-regional banks that put us in a bind. But it was the Caribbean Development Bank. If they want to challenge that, tell them that **Dennis Kellman** is prepared to defend what he said today. I am prepared to defend that. They have the evidence. If they want to come and say that the Barbados Labour Party had the evidence and did not use it, that is a different matter. But they had the evidence.

Sir, when I see a loan in EQ's, it frightens me because even though the interest rate is only 3 per cent per annum there is a possibility that the interest rate will remain the same and the basket of currencies might increase. So what we might have to pay of \$15 million in principal might end up being \$100 million dollars in principal. You know if the interest on this is \$6 million and when the principal increases the interest will rise to \$12 million. So we have to be very careful when we come and say that we have some nice loans and how low the interest rates are.

Sir, I have already warned the Prime Minister in this Assembly that he should be very careful that before he goes and signs anything that he should consult the Central Bank of this country to make sure that there is no possibility of these currencies rising. If I have

that assurance, Sir, I have no problem. But I **am** one of those people who honestly believe that we should have a separate department in the Central Bank studying things like these. Every time we go to borrow a loan there should be some expert in the Central Bank sitting down and telling us – look, this is the market that we should be borrowing on for the simple reason that 10 years from now the possibility is this or that. He is not going to be exact but he can look at the market trends and he can decide which currency we should be borrowing. If we believe that there is a possibility that we have a problem, the safest market to borrow in is in the U. S. Market. I believe the Honourable Member for Christ Church South and the Honourable Member for St. Michael South will agree with that. Because seeing that the rates are fixed, you can always plan and budget on the U. S. Market but you can never plan and budget using the Japanese Market, London Market or the **EQ's**.

Sir, I am saying that even though on paper this loan might **look** good but 5 or 6 years from now we might hear the Minister of Finance – and I will have to give him some support because I will remind him that he did not borrow it but we have to repay this loan, and I will make sure that I will give **him** as much moral support as possible. But we must guard ourselves against these things, Mr. Deputy Speaker, and we must be extremely careful about how we are prepared to just run and agree with everything that is placed in front of us. But, Mr. Deputy Speaker, in my ear I **am** hearing something telling me that in 1994 there was a tune singing in Barbados that we should not have sold the shares of these monopolies to one company. We have a golden opportunity today, Sir. In 1994 or 1992, we were asking them a favour. Today, they are asking us a favour and I am saying that they are asking us to **guarantee** this loan. We should be telling them: "Look, point one. You have to sell the people in Barbados some shares. The shares that were sold to you, we want to see them distributed across Barbados." I feel that the Government has a golden opportunity because, if they do not do this today, they cannot come back to the Barbadian public and tell them anything about 1992 or 1993 because they had the best opportunity ever. They have a better opportunity than the DLP, **NDP** or even themselves. I am saying, Mr. Deputy Speaker, that they cannot sign this loan on behalf of the Barbados Light and Power until they negotiate on behalf of the public of Barbados because there is enough evidence that they had been asking to buy shares in the Barbados Light and Power and the Telephone Company. Today, we have the opportunity to deal with the Barbados Light and Power and I am saying that before this loan is signed by the people of Barbados they must have a right to buy some shares in that company.

Let me admit something. I **am** not a believer in shares. If I had my way, I would ask for some bonds at 14 per cent. But I do not have my way. That is my leader. If he believes in shares, that is his right. So I will support

him and that is why I am calling for the Barbados Light and Power to put some shares on the market because I am supporting my leader.

6.40 p.m.

Mr. Deputy Speaker, I **am** saying that the poor people of Barbados have a right to get some bonds at 14%. If the rich ones want to buy shares, there is nothing wrong with that, but I feel that there should be a special issue of bonds for the poor people of Barbados so that they can get a **guaranteed** return on their investment. That is exactly what I was talking about a month ago when I said I could not support the security exchange because they tell you when not to pay dividends but they do not tell you when to pay.

I will never encourage any poor person in Barbados to buy shares until that system has changed, because nobody can come to the poor people of Barbados when they need capital and beg them to buy shares and then they turn up at a board meeting and say they are not issuing any dividends. I **am** saying, Mr. Deputy Speaker, that as long **as** poor people are asked to buy shares and **as** long as a government is asking poor people to buy shares they must change the law to protect the interests of the poor people. The same way they are prepared to change the law to protect the interest of the rich, the interests of the poor people must be protected and I will continue to fight on this level.

I know you do not like poor people, Sir, but you will not change me.

Aside.

Mr. D. St. E. **KELLMAN**: This debate is a bit too high for you. I would know.

Mr. DEPUTY SPEAKER: You mentioned something about not liking poor people. I wonder if you are attributing that to me.

Mr. D. St. E. **KELLMAN**: Of course not.

Mr. DEPUTY SPEAKER: Okay. Go on.

Mr. D. St. E. **KELLMAN**: You might not be poor but you still like poor people, Sir.

So you see, Mr. Deputy Speaker, we have a situation in Barbados where the history of issuing shares is clear. The history is that whenever large companies want money they come to the public and they issue their shares but the poor people never have a right to dictate the policy of those companies and you can always tell when there is a cash flow problem in those companies because they come to the poor people of Barbados. If we have the

security exchange continuing to regulate the market the way they are then you are going to get a situation where there will never be poor people willing to invest in companies.

If we want to expand the private sector, we must pass the necessary laws to make sure that poor people are prepared to remove their money from banks and put it into the equity market. Once we cannot get poor people removing their money from banks into the equity market we **must ask** why. I am telling you that poor people do not have any confidence in these companies because they see them only coming to them when they need money. When they are flourishing, they do not come. And this is bad. Just self-interest. We have to get away from that, Mr. Deputy Speaker.

When you are guaranteeing a loan it means that if you do not pay, it is your loan. It is as simple as that. This is the Government's loan. There is no guarantee that Barbados Light and Power will ever be able to repay this loan and I am saying that the mere fact that the Government is being asked to guarantee this loan tells me that the bank that is lending the money is saying that it cannot rely on the Barbados Light and Power but it can rely on the Government. So it tells me that the Government has clout. If you feel as a Government that you do not have clout, come and change position and we will show you exactly what to do.

Aside.

Mr. D. St. E. **KELLMAN**: I **am** saying, Sir, in the 90s they accused us of not giving shares to poor people and now today they have a golden opportunity to give such shares to poor people and they are removing themselves from the speeches they made in the 90s and they are now behaving as if they have never mentioned anything on behalf of poor people. I do not know, Sir, if that speech about no poor people has **gotten** to them, but I know on the Back Bench I have some support for this, because already one member has **gotten** up and spoken on behalf of poor people and he said that no one would frighten him. He cannot be referring to me because I am always speaking on their behalf.

Mr. Deputy Speaker, I am asking that the Minister of Finance, and I am very sorry that he is not here today, use the golden opportunity to negotiate with the Barbados Light and Power to make sure that they issue some shares on behalf of the people of Barbados. The same thing that they were asking for in the 90s and the shares that the people of Barbados were asking, I **am** asking that they use their offices to make sure that they get the rights to buy those shares. We are still in the 90s.

I want to remind Barbadians again that the interest rate is not the only factor to judge whether a loan is a good loan or not. I have been reminding this House, but it seems to me that you say things in here and people cannot understand when you **are** making good points. It seems to me that we are going to have to reserve our good points and issue bad points for them because it seems that is the only thing they can understand. It is very regrettable but if you had a situation where in the 80s it happened and in the 90s we are about to repeat the same error. You can only come to the conclusion that good advice is not good advice. Thank you very much.

Hon. Sir HAROLD St. JOHN. Mr. Deputy Speaker, I rise to lend support to this Resolution and to place a number of points in perspective. This is not the first occasion that Government is being called upon to guarantee a loan for Barbados Light and Power. Indeed, if one looks into the history of financing of public utilities in Barbados one will recall that successive administrations have had to guarantee loans for the Telephone Company and for the Light and Power Company.

It is a fact that the European Investment **Bank** as a policy asks a sovereign guarantee of countries which are part of the Lome Convention and which are entitled to interest rates which contain an element of subsidy. That is their policy in **return** for the interest rates which contain an element of subsidy.

In the past, when utilities came to Government for a guarantee the practice was to charge a percentage of the loan which was payable in shares to the Government for the guarantee. On this occasion, the European Investment Bank had suggested that an alternative mechanism be established in an interest equalisation fund by the opening of a trustee account and that account be used for certain purposes with the approval of the Government.

The position, therefore, is that it is not true to say that we are not as a Government ensuring that the subsidy derived from the loan at a low interest rate is not being used for social purposes. One of the things that I have to draw attention to is that I am unquestionably in support of the contention that the company has a responsibility with respect to the expansion of electricity in Barbados in those small number of areas in Barbados which have not yet become electrified. The Barbados Labour Party has a proud record in this respect. We set in the 1970s as a target that public utilities would be extended to every village that was feasible in Barbados. That was our target. I believe that target has been substantially achieved to the extent of some 95 per cent. That is one of the proud boasts of Barbados that we have water, electricity and, indeed, telephones in a very large percentage of the households in Barbados. But there are some remaining pockets and I

would surprise Honourable Members that those pockets are not confined to the countries. There are areas in the border constituency of ~~the~~ Honourable Member for Christ Church East and Christ Church South of which we have found pockets of as many as 10 to 12 houses that do not have electricity and those houses have been there for a long period of time.
6.50 p.m.

Now, I know during the course of the time I have been around politics that successive efforts have been made ~~to~~ deal with this matter. There was a Rural Electrification Fund. I believe that was established in the 1980s. In addition to that, we have had other mechanisms whereby developers of land, as part of the Town and Country Planning permission, have been required to make arrangements to ensure that electricity is put into these developed areas before they can sell the land as a condition of the permission. By that means some isolated villages, particularly in areas like St. **Philip** where you have rock stone and good land for development..

Asides.

Hon. Sir HAROLD St. JOHN: In St. Lucy too and St. **Andrew**. I would hope, Sir, that the trust account and the purposes for which it has been used is not cast in stone because I believe the Government should try and influence the use of that fund to deal with these areas which Honourable Members regard as an area of concern to them.

Now, Sir, there are a number of other matters that emerge in this debate that I would like to deal with. I heartily support the concept of the widening of share ownership and public utilities are an excellent example, particularly in the context of Barbados where they have guaranteed a rate of return of good investment, so let there be no doubt about it. The record of this party in this respect cannot bear comparison with any other party.

If you wish to have private investments by individuals, you have to give ~~tax~~ concessions in the form of an allowance for investment in public companies. It is this party that did it. It was that party that abolished it so do not let us talk about this. It is all right to talk glibly about this but the point of the matter is that in addition to the policy of encouraging more public and a wider share ownership Government has to create the inducements in the form of ~~tax~~ concessions for that to happen.

It is a fact of life, Sir, whether we like it or not, the history of investment and share ownership..

Mr. D. St. E. **KELLMAN**: Mr. Deputy Speaker, on a point of order. The Honourable Member is **misleading** the House by giving the impression that when they give these

tax incentives that companies automatically issue shares. If that were so we would not be in here arguing whether companies should be issuing more shares or not.

Hon. Sir HAROLD St. JOHN: What I am trying to say, Sir, is that if you study these matters and in countries other than Barbados in which deliberate campaigns have been **carried** out to ensure wider share ownership, a very desirable thing, you will also find that in truth and in fact institutional investors are the largest owners of shares in public companies. Those institutional investors are insurance companies with which you, Mr. Deputy Speaker, are very familiar. There are credit unions and other capital intermediaries. If they in turn are mutualised, as has been the practice that has been encouraged by this political party, then you have indirect means of widening your share ownership.

The other thing with public utilities is, Sir, that one has to take into account that public utilities are **constantly looking** for the lowest cost of capital. If it happens to be that they can get interest rates by bonds or other debt instruments and it is lower than equity capital, what they regard as a good average rate of return comparable, they will go by the debt instrument. It is because you have a Public Utility Board which tries to balance the debt equity ratios that you control that.

I want to tell the Honourable Member for St. Lucy that his suggestion that he is against share ownership and he advises poor people, as he says, that they must have bonds at 14 per cent, he is going into the laws of usury. This is a very serious thing because if he says that public utilities must have bonds and he is demanding they have bonds at 14 per cent, he is increasing the cost of electricity to the consumer because that is an exceedingly high rate at 14 per cent. It is good for the lender but very bad for the borrower so I do not think the Honourable Member has really thought out this matter very much. Sir, that is a very important point.

Another very important point that we have to take into account with public utilities like the electric company is a very important point that its greatest cost is the cost of fuel. I think it was 40 per cent the Honourable Member for St. Michael told us. It is a very important point and it is this area that I wish to speak on. It is known in the world today that there are alternative fuels which utility companies are increasingly using. It is fuel or emulsion. You get it from the Venezuelan coast. It is not even petroleum. It is a particular brand of fuel that can be used with water and a number of utilities in the world are using it.

Years ago, in the **1980s**, when it was **first** discovered the Ministry of Energy at that time wrote to the Barbados Light and Power and asked them to investigate the

possibility. They also wrote the Cement Company. They also wrote to all of them. I well remember it. At that time there were environmental constraints but today, the fact of the matter is that in the European Economic Community, in parts of Canada and indeed in other parts of the world, as is evidenced by the recent signing of an agreement between China and Venezuela where the **resource** is of this type of fuel, increasingly public utilities are using this fuel because it is cheap and priced by reference to the price of coal. Everybody knows that the price of coal, with the exception of those countries which have natural gas that they flare and can give away, is the lowest cost of fuel.

I hope that the Light and Power Co. is investigating it. Every time I see anyone from the Light and Power Co. I ask them about it. I know that the Cement Plant is going to be Using it. I know that for sure. As a matter of fact, one of the motivations...

Aside.

Hon. Sir HAROLD St. JOHN: The St. Lucy people should be very glad that we brought industry down there. You should be very glad.

Mr. D. St. E. **KELLMAN**: On a point of order, Sir. The Honourable Member for Christ **Church** South is once more misleading this House. In the early 1960s the Democratic **Labour** Party brought industry to Nesfield in St. Lucy, the Atlantic Manufacturing plant, and in the 1970s they carried out feasibility studies on a small cement plant for the northern parish of St. Lucy. We had also great plans for some hotels for the north of St. Lucy, including a small airport which was further suggested by the late Mr. **Errol** Barrow. The basic position is, Sir, that is an important point that has to be taken into consideration because of the cost of fuel. I notice also, Sir, that another important area is that there has been a deliberate attempt to diversify the site of the power station. Part of the funding would be used to pay for the new site at the Grantley **Adams** Airport. Honourable members who live in that area would notice that there has been a new development there. A power station has been built on part of the land under the control of the **IDC**.
7.00 p.m.

I look forward to the day when around the Grantley **Adams** Airport, in Barbados, we have the same thing they have around every airport in the world, that is significant, and that is that you have a free **trade** zone surrounded by security fences, a customs area and you have an export promotional zone - that will come. The Barbados Labour Party will ensure that that will come.

The electricity in that area is a welcomed development. So that all in all I must say that we have to agree that this is an important piece of our infrastructure

that we have to support and that is the position. Once you are asking these multinational banks for loans and interest rates which are below the market rate, they are going to ask for a sovereign guarantee. We have our own that we created in the Caribbean, the Caribbean Development Bank, and I know of no other institution that likes sovereign guarantees more than the Caribbean Development Bank. Check and see. They love that, they love it. They will give you a loan for anything once the Government guarantees it. That is the position. That is the habit and the culture of the multinational banks. But what the Government has to make sure of, is that when it gives the guarantee they take either, like what used to be done in the banks, a fee for the guarantee, the commercial rate they tell me is 2% on the amount loaned or, like they do in this case, they say that the interest rate subsidy has to be channeled into a fund for specific purposes.

Now, Sir, regarding the environment of Mobil and that area, I think that the argument of Mobil is no argument any longer. Mobil itself knows that refinery has no chance of economic viability. In fact they have sold out to marketing now. When people **think** that is an argument - they have gone. They have made a deliberate decision that, given the market conditions today, there is no way that it could ever be economical. Because they know that the community in Barbados is not prepared to give them a surcharge and subsidise them - that is a fact. The environmental clean up point is a very interesting one. One has to look at the old leases and one also has to look at the doctrines of waste and things of that kind. There is no doubt it is going to be costly to clean up, but one thing we know it is not quite as easy as the Honourable Member for St. John wishes. Mobil can put everybody on a plane and go but luckily for us they also have lands which they own here in Barbados. They cannot put that on the plane, they cannot put the land which they own, next to the Island Inn. Therefore a substantial part of the area, as a matter of fact, the refinery, is actually on the leased land, while their new building is on 'their lands. I do not believe that they are going to abandon that new building and go, but if they did I think that would be a nice piece of land for our new plans and exciting plans that we have in that area.

I think that the development of the realisation of the new arrangement with **respect**.

Mr. D. J. H. **THOMPSON**: On a point of order, Sir. I guarantee that the cost of cleaning up that site will be at least 4 times the value of that land even with the building on it and that is my concern. In essence if they walked away from the land that exists there the cost to the Government of Barbados would be horrendous. I **think** we have an idea from them of what the cost of cleaning up, according to international standards, would be. I understand the point you are making but I still feel that the

Government needs to be aware of this and **try** to find ways and means of locking them into some arrangement for the environmental clean up of that site.

Hon. Sir HAROLD St. JOHN: I agree that the thing has to be cleaned up and it is going to be costly. I believe that the negotiations are going along with respect to that and it would not be right for us to discuss the reflective position of the **Government** and the other things. That is equally important, Sir, so that all in all the Resolution does receive our support, Sir, and I would only finish by extending my congratulations to the Honourable Member on his maiden speech. He spoke exactly how I expected him to speak.

Asides.

Hon. Sir HAROLD St. JOHN: In between what he said, Sir, he was supportive of the policies of the Barbados Labour Party. The passion of partisan politics has not been made yet, Sir. I hope that he is not affected by where he sits – between the Honourable Member for St. Lucy and the Honourable Member for St. Michael North East, Sir.

Thank you, Sir.

Hon. Miss B. A. MILLER: Mr. Deputy Speaker, Sir, I am much obliged to Honourable Members for the support they have given to this Resolution and I beg to move that this Resolution do now pass.

The question that the Resolution do now pass was put and resolved in the affirmative without division.

ORDER NO. 6 – A RESOLUTION TO APPROVE THE LEASE UNDER SECTION 5 OF THE CROWN LANDS (**VESTING** AND DISPOSAL) ACT, CAP. 225 TO THE BARBADOS NATIONAL TRUST OF THE PARCEL OF LAND SITUATED AT GUN HILL. IN THE PARISH OF ST. GEORGE

Hon. G. W. PAYNE: Mr. Deputy Speaker, Sir, this Resolution seeks permission to lease 5 691 square metres of land at Gun Hill, St. George to the Barbados National Trust. The Crown by lease agreement dated April 1, 1981 granted the Barbados National Trust a lease at the Gun Hill Signal Station for a period of 25 **years** from April 1, 1981 at a peppercorn rent of \$5 per **annum** subject to certain terms and conditions. The area at the time of the lease comprise 35 835 square feet. Subsequent to the above decision the area was resurveyed to adjust the northern boundary so that the parcel leased to the Trust would not include a portion of the public road known as Fusilier Road.

The **resurvey** site now comprises approximately 30 424 square feet. The Trust will be granted a right of way over Fusilier Road. Adjacent to the eastern boundary of the land leased to the Trust, there is a portion of land with other buildings which are linked to the military association of this site. These are the original stone powder store, the foundation of the sentry building, the barracks and the cook house. In July 1992, the Trust was granted a licence to operate the cook house which the agency restored as a snack bar. The Trust has expressed an interest in restoring the other derelict buildings and it was agreed that they should start preparatory work. Since 1981 the Trust has landscaped the area and restored the 19th century signal station and created a tourist attraction that admit several thousand visitors per year.

It is now proposed, Mr. Deputy Speaker, in accordance with the provisions of section 5 of the Crown Lands (**Vesting** and Disposal) Act, Cap. 225 to seek the approval of Parliament to lease 5 691 square metres of land at Gun Hill to the Barbados National Trust for a period of 25 years at a nominal rent of \$100 per **annum** with reviews in the **10th** and **20th** year.

I beg to move that this Resolution do now pass.

Hon. Miss B. A. MILLER: Mr. Deputy Speaker, I am very pleased to second this Resolution. The Barbados National Trust does the most excellent work and particularly so in the area of heritage, the heritage tourism.

For those Honourable Members who have not been to the Gun Hill for a long time it is worth a visit. It is the most spectacular panorama of **Barbados**, and evening functions which are sometimes held there by the Government and I would recommend them for private functions as well. You feel as though you are on top of the world and you see almost all of Barbados but it is a very important part of the military history of Barbados which we are busy highlighting now in the Ministry of Tourism as **part** of heritage tourism. I am very supportive of this and I would like to recommend to the National Trust to **think** big. They need to have a good interpretive centre there to explain about all of the signal stations and how they work and linkages between them.

7.10 p.m.

It needs to have a much larger facility where people can buy souvenirs and handicraft and so on and so forth. It is just on too small a scale and they have everything to gain by, as I said, opening up their creativity and really creating something larger and far more attractive than what they have even now.

Landscaping is an important part of it and as I said I recommend it even to the private sector for all kinds

of functions. It is a beautiful place for receptions, cocktail parties, even small dinner parties and so on. You could even have your own caterer.

I would wish to use this opportunity, Mr. Deputy Speaker, to again offer congratulations to the Barbados National Trust for the initiative it is taking in this regard. They do a very great deal with very little and Barbadians need to give, as individuals, more and more support to the National Trust. What the National Trust is doing, is holding in trust our heritage. It is not theirs. It belongs to all of us and it is all very well and good to go up and appreciate and to like what you see and to enjoy it but we must play our part as well and sometimes I believe that in respect of these restorations and these heritage ventures that public subscription is the way to go as well. In the end this is what we are preserving for the generation to come after us and we do not, I think, thank the National Trust enough or appreciate enough of what it is doing.

Youth groups must be encouraged to go up there and help to debush and do all of what has to be done. There is a great deal more that they would like to be getting on with except that with the funds at their disposal there just is so much that they can do. I really laud very highly this continued effort at Gun Hill which is a very significant aspect of our heritage.

Mr. D. St. E. KELLMAN: Mr. Deputy Speaker, I would also like to support this lease to the National Trust but I also would like to say that the National Trust must not create the impression that they are partisan and they must not create the impression that the funds collected from the poor people of Barbados must be spent in a particular area.

Sir, I want to remind the National Trust that in St. Lucy there is an area called "The Garden" which is also pass the Judge Gap and which is also associated with the former Prime Minister of Barbados, Mr. **Errol Walton Barrow** and he has some roots there and it is of historic value to Barbados. We believe that buildings and properties like those the National Trust should also show some interest in.

Also, Sir, as we drive through Barbados we see a lot of signs talking about derelict buildings and then you look at the historical and architectural value of these buildings. Sir, if the National Trust would show the same interest that they show in certain buildings in Barbados that belong to the rich, then those buildings would not be derelict any more and the poor people of Barbados would have their buildings refurbished and there would be no need for Government to bulldoze those buildings.

I believe, Sir, it is myth to believe that the subscriptions only come from the rich and if we are in here

only to protect the rich I have no interest to be in here. That is why, Sir, my vision is clear and I am here to represent the interest of the poor people and it saddens me, Sir, whenever I see a listing in the newspapers talking about derelict buildings and I pass and I see the historic value and also the architectural value of those buildings. If the National Trust would pay some interest in these buildings that belong to poor people then, Sir, we could brag that we have a country that is caring and that we take people for whom they are and not what they are worth. So I have no problem in supporting this, Sir, but I will assure this House that if the National Trust continues on the road they are going from here in, Sir, I will find it extremely difficult to support projects funded by them. They must get back to base, Sir, and just because a property might be valued at a million dollars it does not necessarily mean that they must always be prepared to invest or put their money in it to retain that value. A house in Fairfield, Sir, of architectural value has the same interest as one in Codrington, Sir, and I believe that a house in the Garden, St. Lucy has the same value as one that might be owned by some rich man somewhere in St. John or somewhere in St. Philig. Thank you very much, Sir.

Mr. G. A. CLARKE: Mr. Deputy Speaker, I just wish to make one small intervention here. I want to say first of all, Sir, that since 1982 the National Trust has indeed provided this area of Gun Hill with beautiful landscaping and has made the area very modern indeed. The environment is really friendly today and no wonder we see that over 70 000 visitors to these shores visit Gun Hill on an annual basis. I think that it is providing a lot of foreign exchange to Barbados and surely the Trust is doing a wonderful job with the money that they receive.

The only criticism I want to say here is that many of the residents of Gun Hill sometimes ask the question why do they have to pay the National Trust to go into the surroundings, an area where they have been accustomed to all of their lives and the same thing can be said about the **Harrison's Cave** and all of the heritage sites. But I believe that when you look at Gun Hill one finds that there is a lot of land still available. I believe that there are about 20 acres of land that is owned by Government which have to be properly utilized. The Ministry of Environment through the NCC is currently utilizing a small portion of the land, but yet we find that there are still a number of lands still left idle. I know that other private sector groups have been approaching the Ministry asking for some of this land to be put into light industry to be used for handicraft and other recreational facilities. I hope that we can facilitate them. The policy of the Ministry since 1994 has been one in which we were encouraging non-profit organizations to invest and utilize Government land. The Minister must be congratulated for the policy which she has introduced where non-profit organizations only pay today a nominal

fee per year for the uses of Government land and buildings that certainly have become derelict. We want to encourage this and, for example, we have been able to give the Lawn Tennis Association a lease of land. We have given the Hockey Association a small lease and there are a number of national organizations throughout Barbados that have been given the opportunity to use land in a certain way that Government cannot utilize these facilities. So we want to congratulate the National Trust for doing a wonderful job at Gun Hill and we hope that they can do the same thing at other heritage buildings throughout this country. Thank you.

7.20 p.m.

Mr. W. C. C. CALLENDER: Mr. Deputy Speaker, I rise to support this Resolution and I am glad to see the work that is being done on a continuous basis by the Barbados National Trust. But I rise particularly, Sir, to speak of other opportunities that are available to the National Trust as well. For example, the old light houses and I want to be specific. I am speaking specifically of the South Point Light House. I am advised that a number of tourists come into the yard there and they find that that light house is a place of interest. I believe that perhaps the Barbados National Trust or some similar institution might wish to acquire that property to have it as one of the places of interest because I am reliably advised by people who work in that area that a vast amount of tourists visit that light house and would like to go in to have a good view of the surrounding areas and also to look out to the sea. I understand that the Port Authority is looking at it and I am hoping that it is something that can be done as a matter of urgency because I had a few calls stating that it should be done. It has become on its own a place of interest for visitors to Barbados.

I also note, Sir, that the private sector is getting involved in the development of these places of interest and the rum facility at **Woodburne**, also close to my constituency, is also a beautiful place which attracts tourists as well. At the same time, I am talking about the development of heritage tourism. I am talking about the **work** of the National Trust and I am therefore **conceptualizing** what is important for Barbados. Those who are listening carefully and those who understand the concept of heritage tourism would understand of which I speak. In this regard, I speak of the heritage part in Silver Sands which is dear to the heart of the Honourable Member for Christ Church South. It is also dear to my heart as well because I know the area very well. This is an area where archaeologists have been digging and they have found a lot of old skeletons there of the original people of Barbados. It is an area which is renown for...

Mr. J. O. TUDOR: On a point of order, Sir. I know the Honourable Member has a thing for skeletons. The Honourable Member is misleading the House. The part that he is referring to has nothing to do with his heart or the

Honourable Member for Christ Church South. The park at Christ Church was a concept of mine. I am a resident in that constituency and I had a hand in the creating of that park. It has nothing to do with the Barbados Labour Party whatsoever. So I do not want the Honourable Member to create an impression, as he is so skillfully able to do, that it has anything to do with his heart or the Honourable Member for Christ Church South. It was a DLP concept that really should be developed in the interest of all Barbados, but they had nothing to do with it.

Mr. DEPUTY SPEAKER: They were all of your skeletons.

Mr. W. C. C. CALLENDER: Mr. Deputy Speaker, I am glad to see that the Honourable Member for St. Michael East, a good conqueror of the Christ Church philosophy, understands what heritage tourism is about and therefore seeks to identify himself with such a good project which has not been completed and which I now stand to suggest that it should be completed and that perhaps he should address areas in St. Michael East where similar things can be done at the appropriate point in time. But I am suggesting that that area needs to be developed. It is a key area that archeologists have been working on over the years. It is an area which is renown for fishing and, in the same area the St. Christopher School which stands nearby, the students have put on the best fishing exhibition that I could ever think of when there was a competition just last year. I believe that in the same area we can have an exhibition on display which will show the old Moses and how the fishing boats have progressed since we now have the deep sea fishing boats and the whole area. We can have that **preserved** for posterity perhaps in a little display area there and then adjoining it we can have a playing facility for children, tourists and so on. This is an area that can be developed by the Barbados National Trust. I am suggesting that just as they have looked at Gun Hill and a new lease of Gun Hill, I believe that they should start looking at a new project and they might want to ask the Government to lease it to them. I do not want them to charge the good people of Silver Sands for the use. I think that they should charge the tourists who will be using our facility but not the local people. This is the only point that I am making. But I think that area needs to be developed because it is a prime area when we come to looking at Barbadian history.

Sir, I salute the efforts of the Barbados National Trust. I support the Resolution before the House and I am hoping that they will go further afield to look at those areas in Barbados which represent key signal points such as looking back at the archeology of Barbados and also significant for the development of heritage tourism in Barbados, a direction in which we really need to go if we are to get more tourists to this island. We looked at sports tourism. We also need now to look at heritage tourism and we need to spread out our efforts and deepen them. It is happening, Sir, but I am suggesting that in order for

heritage tourism to be more effective we need to look at the infrastructure. I am suggesting that these organizations such as the Barbados National Trust can do more to assist us in that direction. Thank you.

Hon. G. W. **PAYNE**: Mr. Deputy Speaker, I beg to move that this Resolution do now pass.

Hon. D. A. C. **SIMMONS**: I beg to **second** that, Sir.

The question that the Resolution do now pass was put and resolved in the affirmative without division.

ORDER NO. 8 - TO MOVE THE PASSING OF A RESOLUTION TO APPROVE THE COMPULSORY **ACQUISITION OF LAND AT ORANGE HILL, ST. JAMES FOR RECREATIONAL FACILITIES AND HOUSING DEVELOPMENT**

Hon. G. W. **PAYNE**: Mr. Deputy Speaker, this is a Resolution concerning the acquisition of 2 parcels of land at Orange Hill, St. **James** for hard court, recreational facilities, car park and housing development. One area is 5018.1 square meters and the other 10 310.8 square meters. The first parcel of land is owned by **Carrington** Estates Limited, part of Lancaster Plantation and the second one comprising 10 310.8 square meters is an area formerly owned by the Lancaster Plantation which is owned by a Mrs. Elsie Skeete. Mr. Speaker, this is a long-outstanding Resolution from the last administration, and the second on 10 310.8 square metres is an area formerly owned by Lancaster Plantation and is owned by Miss Elsie Skeete. Mr. Speaker, this is a long outstanding Resolution from the last Administration and it was, in a sense, a very untidy acquisition. The parcel of land on the northern side of the Orange Hill area was occupied by the Standard Club as a playing field. It was actually given to Standard Club by the management of the Lancaster Plantation. The Honourable Member for St. **Michael** South would be familiar with it because he was a cricketer in those days and I believe he played on this particular area. This is one of the parcels of land that is being acquired today.

7.30 p.m.

As I said, it is one which should have been acquired a long time. I think it was in 1947 when it was first given to the people of the district. In 1975, the acquisition was done at one **time** it was thought to acquire the entire area to the southern side. At that time the land was owned by Lancaster Plantation. What happened before the acquisition was completed was that Miss Elsie Skeete who lived overseas purchased the entire **parcel** of land. It was then felt by the Administration of the day that they would acquire just part of the land and leave the area to the back, known in country terms as the grass piece, to be acquired

later for housing purposes.

That area was not acquired and the untidiness of the acquisition is even seen with respect to this acquisition in the sense that it has only been discovered since we decided on tidying the entire acquisition that the area which forms part of the road was also not included in the original acquisition. So it is going to be necessary for us to come back to acquire the area where the road is. The problem with this is that the request with respect to the acquisition of the road normally comes from the Division of Public Works whereas this area is dealt with by the Division of Housing.

This other area actually forms part of the playing area and should have been included in the original acquisition. So it is not a case whereby we are doing a completely new acquisition, taking up property which is presently occupied by Miss Skeete, which she is utilising for housing purposes. It has just been only recently discovered that part of the area towards the edge of the playing field which is already being occupied by Standard Club and goes into a gully was not included in the original acquisition.

The part of the land which was a grass piece when the acquisition was done was subsequently occupied by her a number of years later. She came to the island about 5 years subsequently, after the acquisition, and she chose to build her house on the northwestern side of the playing area. She is a very eccentric lady, I must say, and she did indicate at the time that she did not want to build her house near to the road because of her problems with the neighbours. There has never been an attempt on the part of the Government to acquire the land where she occupied for residential purposes. The last Administration did make an attempt to build a road for her and she refused. Her reply was that we have to move the playing field and take it to Lancaster Plantation and it has been difficult even to get the lady to come in and accept the money which has been offered by Government.

We have passed the acquisition with respect to the **first** acquisition and there is very little that you can do in the area of convincing the lady that she should come and accept the money and at least accept the offer of building of the road. As I said, the problem with respect to the road to her house is as a result of the place where she has chosen to build her house. She still lives there and whenever there is any activity on the playing field she still on **occasions** visits the area of the playing field and she behaves as though the cricketers, the footballers, the sportsmen, have no right on this particular parcel of land.

The residents of the area are accustomed to her. It is not problematic. I think that it is extremely difficult to come to terms with this type of situation. This Resolution

the second parcel owned by Elsie Skeete to tidy up the acquisition which was already done. It is going to be necessary for us to come back for a third acquisition in the area and, as I said, we only noticed it after this was done in the area where the road is already built and where the road was during the period of the last Administration.

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

Hon. Miss B. A. MILLER: I beg to second that.

Mr. D. St. E. KELLMAN: Mr. Deputy Speaker, the facts relating to this land are that Miss Elsie Skeete of Orange Hill has requested the Ministry of Housing to find alternative land for her as stated elsewhere and which was published for the whole of Barbados.

Hon. G. W. **PAYNE**: That is totally incorrect. The lady in question has never asked the Ministry to find alternative lands for her. The member does not know of what he speaks.

Mr. D. St. E. KELLMAN: Mr. Deputy Speaker, the Honourable Member cannot say that I am totally incorrect when I read a document in Barbados which was published throughout Barbados where the lady claimed that she wants an alternative piece of land. It was also alleged in the article that the lady...

Aside.

Mr. D. St. E. KELLMAN: I never mentioned a newspaper report. If the Honourable Member for Christ Church South wants to tell us that it was in a newspaper then he is free to do that, Sir. I would never say it was in a newspaper but I might agree with him.

I am saying, Sir, the lady, in an article, said that she would like an alternative piece of land. I am saying that if the lady wants an alternative piece of land I feel that we should oblige her by giving her an alternative piece of land. If what the Minister is saying is correct and he has done everything in his power to please the lady all I would have to do is to investigate what the lady is saying and tell her that she is being unfair to the Minister and that she should not go to somebody to publish a story when she knows she doesn't want any land.

The land was acquired from the lady and we are about to acquire a second piece from her and she is saying that she didn't mind giving up the first piece but it appears that they want to take all the land. I only want those things cleared up, Sir. As the Opposition spokesman I must represent poor people and the lady is poor. I have an obligation to represent the lady. If she is saying something that is wrong, I will defend the Minister because he knows

that whenever he wants money, I am prepared to come in here and ask the Minister for some money for him to do the roads in St. Lucy. So he needs not fear me. All I want to find out from the Minister is whether what I read is correct or what he **is saying**.

I am saying if the lady is **right that** you should give her an alternative piece of land. I do not want the same thing that happened in the 1980s in Checker Hall to re-occur in 1996 at Orange Hill where poor people own land and they were not entitled to get a piece of land. I am saying that if it is happening in 1996, I will have to defend those people, and the second comprising 10 310.8 square metres is an area formerly owned by Lancaster Plantation and is owned by Miss Elsie Skeete.

7.40 p.m.

The first one, Sir, I have no problem with. I would never defend their interest because they know how to defend their interest but it is the second. I would have to defend this lady because she has taken her case to the people of Barbados and I would be failing in my duty if I did not represent her interest after reading what she said in the newspaper.

Aside.

Mr. D. St. E. KELLMAN: You told me so, Sir, I accepted the word of the Honourable Member for Christ Church South. He said it was in the newspaper and he knows I do not doubt him. I said I read it from a document but he said it was in the newspaper and I was quite prepared to go along with him.

All I am saying, Sir, that **after** something like this is published, I would be failing in my duty as the shadow Minister of Housing not to come here today and represent the interest of this lady, I feel if she wants a piece of land to plant her crops, as she claims, she should be entitled to that piece of land.

Thank you, Sir,

Mr. W. C. C. CALLENDER: Mr. Deputy Speaker, I would not be very long. I rise to speak on this Resolution because, as I hear this discussion taking place, it reminds me of what I have been saying time and time again that we need to rationalise the use of land in a way that we have opportunities for our youth, and in a way that we have opportunities for people to entertain themselves to get away from the stress of modern societies. Where we have expansive housing development, we run the threat of all this being taken up and there may not be suitable playing facilities.

As you will notice in England, Sir, there is an arrangement made that a piece of land is always **left** for people to have their recreation. I believe we need to look at that very seriously here otherwise we are going to Rave **large** communities and nowhere for people to play the traditional games of football, cricket, basketball, volleyball and those kinds of things.

While I do believe that in some cases we need to acquire this land, I always make the appeal that we do it in a way that the matter is settled amicably and not to disadvantage especially poor persons. In this regard, I would like to salute people who want to cooperate in the interest of the community. I therefore have, at this point, to allude to a situation here in Inch Marlowe where there is a family that is prepared to sell the Government its land so that the folks up there can have that playing facility preserved. I am asking the Government to move expeditiously on it so that in case other people start to intervene that the situation does not become rancorous.

Right now the people are prepared to sell. I think we are prepared to buy and I think it is only a case of our getting the administrative details worked out. I know the Minister of Sports is agreeable. I think the Minister of Public Works is agreeable. All of them are agreeable but it is a matter of getting the administrative details worked and I am hoping that it is done soon and the matter settled so that the boys and girls in the area of Silver Sands, Inch Marlowe, Ealing Park and Chancery Lane would be happy. It needs to be done at this point because if we wait until later on somebody might come and intervene and say they cannot sell the land because the value has gone up. They would start to fight. Then we would have to come into Parliament and deal with these comments of taking away people's land when they are not agreeable with it so I think we should move when the iron is hot.

I am making the point that when we have these acquisitions we have to understand that we are at the point in time where we need to preserve traditional sporting facilities otherwise we are going to find ourselves in a lot of trouble when the youth have nowhere to release stress, frustration, or whatever. You notice people are happy when they are playing games and if you want to keep our people happy we have to preserve these sporting facilities.

I applaud the Minister for bringing these things to the House but, at the same time, I want to make sure that whenever we do it we do it in such a way that the people would not be disadvantaged, especially the poor and helpless people.

Hon. G. W. PAYNE: Mr. Deputy Speaker, I would like to assure the Honourable Member for Christ Church East that the Resolution with respect to the land of which

he just spoke will be brought to the House as soon as possible. This also applies to the parcel of land at **Todds** which the Honourable Member for St. George South has been preaching about for some time.

I would just like to reiterate that the parcel of land which is being acquired is not that portion of land which is presently occupied by the lady in question. I would also like to reiterate that at the time when the land was acquired by Government the lady was not living on the land. I would also like to reiterate that the lady when she came back to Barbados, having acquired the land from the plantation before Government was able to acquire the land, chose to build her house in the far north-western corner of the land.

I would also like to reiterate the fact that Government offered to build a road to her house and she has refused. I would also like to reiterate the fact that the lady has even refused to accept the money and this straddled both administrations. This is not a matter with respect to this administration. If we were acquiring that portion of land on which her house is presently sited, I could understand the comments of the Honourable Member for St. Lucy.

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

Hon. D. A. C. SIMMONS: I beg to second that, Sir.

The question that the Resolution do now pass was put and resolved in the affirmative without division.

**ORDER NO. 9 - RESOLUTION TO APPROVE THE SALE
UNDER (VESTING AND DISPOSAL) ACT, CAP. 225,
TO CLYDE BRATHWAITE AT BLADES HILL,
ST. PHILIP**

Hon. G. W. PAYNE: Mr. Deputy Speaker, this is a sale of a bath to an adjoining owner of land at Blades Hill, St. Philip, a Mr. Clyde Brathwaite. It is a matter which has been long outstanding. Mr. Brathwaite **first** made an offer to Government way back in **1987** and the files will show that he has been repeatedly requesting progress by the Ministry since **1987** almost on a monthly basis on this particular sale. At one point the matter went out to tender during the last administration. My understanding is that he was the only person who put in a bid.

At that time Mr. Brathwaite had offered \$3 200 as the purchase price. Nothing was done and in keeping with this administration's policy which, in some respects is similar to the previous policy of the last administration of disposing of public baths in areas where the baths are not required for community purposes or other such purposes, we again decided that we would go out to tender. At the time the

market valuation of the property, as certified by the Commissioner of Valuations, was \$6 000 and Mr. Brathwaite's was bid \$7 000. In the circumstances the Tenders Committee recommended that the property be sold to Mr. **Brathwaite** and this Resolution now seeks to effect the sale to Mr. Brathwaite.

7.50 p.m.

I beg to move that this Resolution do now pass.

Hon. D. A. C. SIMMONS: I beg to second that, Sir.

The question that this Resolution do now pass was put and resolved in the affirmative without division.

ORDER NO. 10 - A RESOLUTION TO APPROVE THE LEASE UNDER SECTION 5 OF THE CROWN LANDS (VESTING AND DISPOSAL) ACT, CAP. 225 TO THE BARBADOS TABLE TENNIS ASSOCIATION OF THE PARCEL OF LAND TOGETHER WITH THE BUILDING THEREON SITUATED AT JOHN BECKLES DRIVE, CONSTITUTION ROAD IN THE PARISH OF ST. MICHAEL

Hon. G. W. PAYNE Mr. Deputy Speaker, this Resolution seeks to lease approximately 2 511 square metres of land and a single storey building **thereon** situated at John Beckles Drive, Constitution Road to the Barbados Table Tennis Association. I think that those of you who are familiar with the old property known as the Goodwill League building, would know of this building.

The Table Tennis Association previously occupied the house of one of its members, who died in fairly sudden circumstances, and after that they were allowed to use the Sir **Garfield** Sobers Auditorium at a fairly substantial rent taking into consideration the type of organisation that we are dealing with. The Minister of Sports, since he came into office, allowed them to use the Gymnasium in preparation for big tournaments free of cost. This has contributed substantially to the progress of our table tennis players, Robert **Roberts**, is a classical example.

However, it is fairly obvious that in order to improve the standard of play, it would be useful for them to have their own building. They made approaches to Government and Government has decided to rent them this property at a peppercorn rent. It is for a period of 15 years at \$100 per **annum** with an option to renew. The rent will be reviewed at intervals of 5 years. The Barbados **Table** Tennis Association will be responsible for the payment of utilities, land **tax** and other outgoings associated with the use of the premises. The Association will also be responsible for the refurbishment of the building and shall maintain the

premises in a reasonable state of repair. The Crown shall be responsible for structural work on the satisfactory completion of the refurbishment of the building by the lessee.

Mr. Deputy Speaker, I beg to move that this Resolution do now pass.

Mr. D. St. E. KELLMAN: Mr. Deputy Speaker, I will first like to ask a question because I suspect that this land might be near to the **ZR** and the **mini** bus stand. Am I right?

Asides.

Mr. D. St. E. KELLMAN: Mr. Deputy Speaker, concerning the amount of traffic that passes in this particular area, Sir, one would have thought that this location for table tennis would not be a suitable location. One would have thought, Sir, that where they were operating at the Gymnasium...

Asides.

Mr. D. St. E. KELLMAN: I am saying, Sir, that this particular location might not be the best location and the suggestion that it is a central area, Sir, is not the only factor that should be taken into consideration. If we are expecting to get somewhere with our table tennis players, Sir, we need to put them in an area where they can have a high level of concentration and this particular location, as far as I know, this building is not sound proof. So whether somebody is suggesting that it is enclosed or not, is not a valid point. I believe that we should allow them to use the Gymnasium or find some alternative location in that particular area for these young men and women and the older folk to enjoy and concentrate on their game, Sir.

Thank you very much.

Hon. G. W. PAYNE: Mr. Deputy Speaker, in the area of table tennis I would like to assume that for Barbados, the Barbados Table Tennis Association are the experts. They have chosen the site and we have no problems with that.

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

Hon. D. A. C. SIMMONS: I beg to second that, Sir.

The question that this Resolution do now pass was put and resolved in the affirmative without division.

PRIVATE MEMBERS' BUSINESS

ORDER NO. 8 – BILL TO AMEND THE
PROPERTY ACT, CAP. 236

Hon. Sir HAROLD St. JOHN: Mr. Deputy Speaker, this is a short Bill to correct a defect in the law of Property Act which has been recognised for many years as causing a considerable number of problems with the sale of land whereby a good title cannot be passed in circumstances where the vendor of the land has judgements against him in one form or another. Notwithstanding the fact that he was the owner of the legal estate in the land.

Now in a number of cases that have arisen, the Chief Justice has indicated that an analysis by him of the Property Act, Cap. 236 of the laws of Barbados section 7, that the words "whether or not" appearing there should never have been there. Our legislation relating to the amendment of the Property Act, as Honourable Members may recall, was the result of the efforts of Professor Roy Marshall, Sir Roy Marshall now, who is a very eminent legal luminary in this area. In terms the source documents for the amendment are Northern Ireland and the English Law of Property Act. In neither of their Acts do the words "whether or not" appear. So that these words crept in the draft and was passed by the legislature and it has been the cause of considerable difficulty. There are a number of titles affected by these laws.

By the deletion of the words "whether or not", those people who have obtained loans on an informal basis by the deposit of their title deeds with banks and others would still be protected, because if you are buying land, one of the first things your lawyer does, before they take a conveyance from you, is to demand the title deeds of the land. Of course, if the seller of the land cannot produce the title deeds the next thing you are asked is: Where are the title deeds? And he can only explain. If they are at the bank he has to tell and if they are lost he will have to pass the land through the court – an elaborate procedure.

People who lend money on the strength of a deposit of the title deeds would not be affected by the deletion of these words because it is only in those circumstances that the purchaser of the land be protected. If the purchaser is negligent in not demanding the title deeds, then he would have problems.

This amendment really is to bring into effect a suggestion that was made many years ago. Due to the drafting constraints I have no doubt it was not done before but the immediacy of it is that we have a large number of transactions out there that are affected and we would like

to tidy it up. It is in the public's interest that I have brought this piece of legislation.

I beg to move that it be read a second time.
8.00 p.m.

Hon. D. A. C. SIMMONS: Sir, I beg to second that. I just want to say that last month I had representations from Captain Farmer about the need to amend the Property Act pursuant to recommendations by the Honourable Chief Justice in a number of decisions that these words should be deleted from the Act. Their continued presence in the Act was working hardship. They sent me copies of the Judgments, Sir, but before we could start the draft, the Honourable Member for Christ Church South sat down in the Clerk's office and drafted this himself. I have no difficulty with it. I am very grateful to him therefore for his alacrity in getting this amending Bill before the House. If it had come through the other route we would have to go to Cabinet with a paper and all of that. To prepare the paper would have taken too long and I am therefore happy for this initiative and want to say that the Government is prepared as a matter of principle to accommodate the initiative of private Members from time to time if they have legislation that they want amended. If they want to do it themselves or have it done and submitted we would be quite happy where the legislation is merited to ensure the progress of the draft legislation.

The Government is happy to support this Private Members' Bill and I commend it to Honourable Members.

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

On the motion of Hon. Sir HAROLD St. JOHN, seconded by Hon. D. A. C. SIMMONS, Mr. DEPUTY SPEAKER left the Chair and the House went into Committee on the Bill, Mr. W. C. C. CALLENDER in the Chair.

Mr. CHAIRMAN: The House is in Committee.

Clauses 1, 2 and 3 were called and passed.

On the motion of Hon. Sir HAROLD St. JOHN, seconded by Hon. D. A. C. SIMMONS, Mr. CHAIRMAN reported the passing of one Bill in Committee to His Honour Mr. DEPUTY SPEAKER who resumed the Chair and reported accordingly.

On the separate motions of Hon. Sir HAROLD St. JOHN seconded by Hon. D. A. C. SIMMONS, the Bill was read a third time and passed and cited the Property (Amendment) Act, 1996.

ADJOURNMENT

Hon. Miss B. A. MILLER: Mr. Deputy Speaker, Sir, I beg to move that this House do now adjourn to Tuesday next, 17th day of December **1996** at **11.00** o'clock in the morning. On that occasion, Sir, it is hoped that we might be able to get through the Insurance Bill which has had a long sojourn in Select Committee and considerable debate. We **are** not expecting any extended debate since this already occurred at the Select Committee. We are hoping to do that next Tuesday and there are one or two other matters which would come down. I am proposing next Tuesday that the House would go into recess over the **Christmas** period into January **1997**.

Hon. D. A. C. SIMMONS: Mr. Deputy Speaker, I beg to second that.

Rt. Hon. L. E. SANDIFORD: Speaking on the adjournment, Sir, I think we are indeed grateful for the intimation of the matters which may be discussed at the next sitting. I hope, Sir, that among the matters which we will be able to transact before we begin the Christmas recess is the whole issue of replies to questions.

Sir, one of the functions or one of the privileges of Membership of this House of Assembly is that we have access to Ministers and one of the means of access is by way of asking questions and **replies** to questions. It is entirely unsatisfactory, Mr. Deputy Speaker, that there are questions here over two years old. I am checking this one now because you were supposed to improve the approach to parliamentary affairs.

Sir, there are two questions that are over 2 years old and there **are** other questions as well which are almost 2 years old and I think we should be seeking to improve on the administration of these matters. I would only hope, Sir, that as we try to speed up matters in the criminal process in this criminal justice system in this country to make sure that there is great efficiency, that there is also greater efficiency in dealing with the people's business. Because when any of us **ask** questions in here, it is not as individuals that we are doing this but we are representing people, Sir. I hope that urgent and speedy attention will be paid to this matter.

8.10 p.m.

Hon. G. W. PAYNE: Mr. Deputy Speaker, speaking on the adjournment with respect to the matters raised by the Honourable Member for St. Michael South. I was in this House during the term of the last administration and I asked a number of questions. As a matter of fact, I was forced to ask a number of questions because of the neglect of my constituency in St. **Andrew**. I used to get the

reply: "We will **fix** the roads when the funds are available." Then there were other questions that went off the Order Paper. Now I do not know how the Honourable Member would want me, as Minister of Public Works, to answer a question. We came into office on **September** 6th and the first meeting of the House was held in October. This is the type of question that the Honourable Member of St. Michael South brought to the House at the first sitting:

"To ask the Minister of Public Works, Transport and Housing:

1. Inasmuch as areas along the southern stretch of Clarke's Avenue, Bayville, St. Michael are densely overgrown with weeds, bush and grass, thereby creating an unsightly and potentially unhealthy environment for the residents in that vicinity, will the Minister indicate what plans are under consideration for correcting the unsatisfactory conditions?
2. Will the Minister cause a team of workers to be assigned to the site to carry out the necessary work and to remove the trash and rubbish after the areas have been cleaned?
3. How soon does the Minister intend to correct the situation referred to, bearing in mind the approach of Barbados' Independence Day and Christmas holiday season?"

Within a month of our coming into office, it meant that was an indictment on the last administration. Well, I am going to tell the Honourable Member for St. Michael South that I do not know how to answer a question like that and I would need his guidance. I am not refusing to answer the question, but I would need his guidance as to how I would answer a question like that. In a court of law, we would call this frivolous and vexatious and I am not answering any frivolous and vexatious questions. But I am prepared to sit down with you in your office when you are writing the constituents or wherever you are to be guided as to how I should answer these questions.

Aside.

Rt. Hon. L. E. SANDIFORD: What kind of **arrogance** is this? A question is asked. It is in keeping with the Standing Orders of this House and you have a responsibility to answer the question. If you **cannot** answer the question and you do not know how to do your job, it is the Prime Minister who should deal with you. Well, I do not understand this. I did not even recall that you were the Minister involved in one of the questions.

Aside.

Rt. Hon. L. E. SANDIFORD: You have not answered in over 2 years and then, when you get up to say something on it, you are saying that you want my assistance in answering the question. I think that you want 2 seminars on how a Minister should behave. I think this is what you want. You cannot reply to persons like that. Something must be wrong. I do not know who got under your skin this afternoon. It was not me.

Mr. CHAIRMAN: The Member for St. **Michael** South, you are addressing the Chair I suppose...

Rt. Hon. L. E. SANDIFORD: No one has got under your skin. You have presided over the proceedings with dignity, Sir, and control. But the Minister is really exceeding himself on this occasion.

Hon. D. A. C. SIMMONS: Mr. Deputy Speaker, let us be objective about this business of questions. In the last few weeks, Sir, the Government has brought replies steadily to questions that were on the Order Paper, I can recall, and I was not here for every sitting of the House,

but when I was here the replies have had to be tabled because in particular the Member for St. John to whom we were giving replies was not in his place at the time. It is not that the Government is refusing to answer the question. We are answering them and, as I said, I will say that since the **summer** recess there **has** been a definite attempt to answer questions on a timely basis. But Honourable Members have not been in their places and, to that extent, the cut and thrust of question time has fallen flat. It was only on one occasion I believe where we were able to do something right. Generally, we have just had to table the replies but Honourable Members will be assured that the questions will be answered.

Mr. **DEPUTY** SPEAKER: If I may say...

Aside.

*The question that the House do now adjourn until Tuesday, December 17, 1996 at 11.00 a.m. was put and resolved in the affirmative and Mr. **DEPUTY** SPEAKER adjourned the sitting accordingly.*
8.17 p.m.

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CHELTENHAM Dr. R. L. (St. Joseph)
CLARKE, **Mr.** G. A. (St. George North)
KELLMAN, Mr. D. St. E. (St. Lucy)
MASCOLL, Mr. C. A. (St. Michael North West)
MILLER, Hon. Miss B. A. (City of Bridgetown)
PAYNE, Hon. G. W. (St. Andrew)
St. JOHN, Hon. Sir Harold (Christ Church South)
SANDIFORD, Rt. Hon. L. E. (St. Michael South)
SIMMONS, Hon. D. A. C. (St. Thomas)
TAITT, Mr. B. M. (St. **Michael** West)
TOPPIN, Hon. R. St. C. (St. Michael North)
TULL, Mr. L. R. (St. George South)
THOMPSON, Mr. D. J. H. (St. John)