
THE SENATE DEBATES

(OFFICIAL REPORT)

SECOND SESSION 1976 - 81

THE SENATE

Wednesday, 8th April, 1981.

The Senate met in the Senate Chamber, Public Buildings, on Wednesday 8th April, 1981, at 2.30 p.m.

PRESENT

His Honour Senator the Honourable Sir ARNOTT CATO, M.B., Ch.B., LL.D., (President); His Honour Senator the Rev. G. ANDREW HATCH, M.A., (Deputy President); Senator the Hon. N. A. BARROW, B.A.; LL.B., (Minister of Information) (Leader of the Senate); Senator O'BRIEN TROTMAN, (Parliamentary Secretary, Prime Minister's Office); Senator Sir MENCEA COX; Senator H. F. G. ROCHEFORD, B.A.; Senator R. L. FIELD; Senator AARON TRUSS; Senator H. R. LINTON, LL.B.; Senator K. E. HINDS; Senator Miss O. A. LYNCH, B.A., Dip. Ed.; Senator C. I. E. DEANE; Senator K. R. HEWITT, B.Com., C.A.; Senator Mrs. E. M. LYNCH, B.A.; Senator J. D. S. MACKENZIE; Senator Miss M. I. St.C. BLACKMAN; Senator J. C. W. WICKHAM; Senator the Hon. D. G. BLACKMAN, (Minister of Labour and Community Services); Senator R. E. BRATHWAITE; Senator N. W. BOXILL and Senator W. O. FRANKLIN, J.P., A.I.A.S.

Prayers were read by the Rev. Dr. Lionel Crawford.

OBITUARY

SENATOR THE HON. N. A. BARROW: Mr. President, it is at this stage, Sir, it would appear appropriate for us to formally recognise the passing of the Late Dr. Eric Williams, Prime Minister of Trinidad and Tobago.

I rise on this occasion, Sir, not to make a speech because so much has been said and so much has been written over the past week concerning this great Statesman but it would be remiss of me, Sir, and indeed remiss,

I believe, of this Chamber, if we did not on the occasion of one who has been the architect of modern Trinidad and Tobago and who presided over the destiny of that country for the past 25 years, one who has distinguished himself in the field of political economy as in the field of history and who has added to the wealth. In fact, I should not say wealth because there is still some paucity among West Indian publications, but he has added significantly to the number of West Indian publications both quantitatively and qualitatively.

I believe, Sir, that there has never been a time when Dr. Williams was in something of a controversial nature. If one goes right back to his first academic statement in capitalism and slavery, if one goes through the most modest but extremely significant Negro in the Caribbean or if one comes up to the more modern Columbus to Castro, if one relates to him in the field of political activity while Chaguaramas stands out big, very little credit seems to be given this day to the fact that until the improvement of the people's movement in Trinidad and Tobago to organise a Government meant putting together a number of splinters and hoping that they would form a group, I do not believe, Sir, that there are many people who realise that the Government which preceded the Government of the PNM 1956, or at least still realise because I know once it is mentioned and brought to the attention I do not believe we remember the number of "Political Parties" represented in the persons of people like Albert Gomes, Roy Joseph, Norman Chaing, Victor Bryan, a large number of them.

Almost as many names as one called, one was calling political parties so that although a lot of West Indians, particularly Barbadians, might not think that there is the kind of political stability in the Trinidad situation which one would wish, it is when one looks back beyond Williams that one understands the contribution made by Dr. Williams and the PNM in stabilising the politics of Trinidad and Tobago....

Mr. President, I believe that it is but fitting that we should wish to place on record the high esteem in which we hold the memory of Dr. Williams and Sir, our recognition of the tremendous feats which were performed by one man, who though small in stature has proved that he was among the biggest of all West Indians.

Mr. PRESIDENT: Senator Wickham.

SENATOR J. C. W. WICKHAM: Mr. President, speaking for myself I could not let this opportunity pass without paying some small tribute to the contribution Eric Williams has made to the thinking of my generation.

There can be few West Indians who have had a more profound effect on the opinion of his time. When he arrived on the scene, he brought with him a vision of the Caribbean which was sharpened by the study of our history and the whole generation of West Indians today have had our eyes opened by Eric Williams' articulation of that history. His life and his career have valuable lessons for us, he gave very generously of his talent and of his energy and it will be a long time before those who follow him can escape the shadow of his personality, even those who were opposed to him in principle will always be reacting with his vision somewhere in the background. Fortunately for us his death is not the occasion for bemoaning a life cut short. He gave so generously in such good measure that there is abiding worth that he has left behind.

Historians and Analysts will find it very difficult to write about Dr. Williams because he was not only a visionary and a historian, he was also a politician and the two elements in that personality did not always fit, in many cases, they were like oil and water, but somehow or other, someone will have to make a unity of them.

I want to associate myself with the remarks of the Honourable Leader of the Senate and to say how much I personally have benefitted from hearing Dr. Williams from hearing him in the University in Woodford Square and to urge all West Indians to a deeper study of his work.

Mr. PRESIDENT: Honourable Senators, as the Honourable Minister has said, a great deal has been spoken since the passing of that eminent West Indian Historian, Scholar Statesman and the late Rt. Hon. Prime Minister of Trinidad and Tobago, Dr. Eric Williams. A great deal more remains to be said, but that is not a task which I propose to undertake today.

I first knew Dr. Williams in his student days. We met in London when he had come down from Oxford on a vacation. I also was on vacation in London from the University of Edinburgh. We continued that association whilst he was with the Caribbean Commission in Trinidad. I was a Member of the Legislative Council in Barbados

then and on my visits to Trinidad and by correspondence, we often exchanged ideas of what we considered the important questions of the day affecting West Indians and the Caribbean. We continued that association again in the pre Federal Organisation where we often met at meetings.

Dr. Williams was extremely interested in the education of the West Indian. It was he who in the pre Federal Organisation moved for the appointment of a Committee to review the policy of the University College of the West Indies, as it was at that time, not with a view to political interference in academic matters, but with a view to pointing the way in which it was felt that the aspirations and the future of the West Indian people lay. He was later to become a Pro-Chancellor of the University and he had very strong ideas himself on what the future of the University should be in respect particularly of Medicine, dentistry and the Department of Sociology, which occasioned no little trouble to various thinking West Indians besides Dr. Williams.

Dr. Williams was a man of outstanding intellect and if the definition of genius which as we know includes an infinite capacity for taking pains, if that definition is true, Dr. Williams was indeed a genius. At the various inter-Governmental Conferences over which I had the honour to be Chairman, Dr. Williams knew every line and every reference in all the complex documents that had to be discussed and studied by those Conferences. He was dependant in the slightest way on his advisers. I often wondered when he found the time, or how he found the time to sleep.

Dr. Williams had a concept of the Caribbean that far exceeded the English speaking Caribbean. His was a pan Caribbean concept nurtured perhaps not only by his own historical research, but by the insight which he obtained from his work at the Caribbean Commission where he was deputy chairman in charge of research and which gave him a very clear and incisive look into the socio-economic problems of the area.

One wonders whether the Federation suffered its first blow with the cessation of Jamaica and Dr. Williams produced that formula one from ten leaves naught. One wonders how much of that is due to frustration that was accorded his then recent Economics Of Nationhood by some of his West Indian colleagues.

One wonders too whether his apparent withdrawal in recent years was not influenced by the very hard work which he had undertaken over previous years, and the toll that it must have taken on his physical powers. He nevertheless when Trinidad was enjoying tremendous prosperity, he nevertheless gave great assistance to his neighbours and his friends, and it is gratifying that he established a rapport with our Prime Minister and the

Government of Barbados which one hopes will continue for the mutual benefit of both countries.

It is certain that it will be a long time before a full and proper assessment of Dr. Williams' contribution to this area can be fully made. In the meantime, we join with others in sending our condolences to the Government and people of Trinidad and Tobago and to his immediate family. May he rest in peace.

I ask you now please to stand and observe two minutes' silence as a token of respect to the passing of the late Dr. Eric Williams.

(Honourable Senators stood in their places for two minutes in silence).

I shall direct the Clerk to send the usual letter from the Senate to the appropriate quarter.

PRESENTATION OF PAPERS

SENATOR THE HON. N. A. BARROW: Mr. President, I have the honour to lay the following documents before this Senate:

Customs Tariff (Amendment) (No. 10) Order, 1980.

Customs Tariff (Amendment) (No. 11) Order, 1980.

Customs Tariff (Amendment) (No. 12) Order, 1980.

Customs Tariff (Amendment) (No. 13) Order, 1980.

Customs Tariff (Amendment) (No. 2) Order, 1981.

Customs Tariff (Amendment) (No. 3) Order, 1981.

Economic Report 1980.

Customs Tariff (Amendment) Order, 1981.

INTRODUCTION OF BILLS

SENATOR THE HON. N. A. BARROW: Mr. President, I have the honour to give notice of the following:

A Bill to make provision respecting the giving of effect to the United Nations Convention on a Code of conduct for Liner Conferences;

The Bill to make provision with respect to the Constitution, Jurisdiction and Proceedings of the Supreme Court of Judicature, to make provisions respecting the administration of justice and for matters related thereto and connected therewith;

A Resolution to approve the Civil Establishment (General) (Amendment) Order, 1981;

A Bill to repeal the Dogs Act and to make new provisions for the control of dogs;

A Bill to make provisions respecting the certification and marking of goods;

A Bill to provide for the control of standards and labelling of commodities;

A Bill to amend the Representation of the People Act;

A Bill to amend the Income Tax Act;

A Resolution to approve the compulsory acquisition of land at Checker Hall, St. Lucy, for the establishment of a Cement Processing Plant.

Mr. PRESIDENT: Let it be recorded in the Minutes that the Bills have been read a first time.

PUBLIC BUSINESS

SENATOR THE HON. N. A. BARROW: Mr. President, I move that Order No. 2 be the first Order of the day. Senator Trotman will be taking charge of that Order and also of Order No. 3. The order of business which I propose is Order No. 7, Order No. 2, Order No. 5, Order No. 6, Order No. 4 and Order No. 3.

THE OFFSHORE BANKING (AMENDMENT) ACT, 1981

SENATOR THE HON. O'BRIEN TROTMAN: Mr. President, the Government party in its Manifesto for the 1976 elections on page 3 promised that steps would have been taken to provide for tax haven facilities for overseas investors whose businesses do not operate in Barbados, and promised that the strictest control would be instituted to ensure that that did not lead to the island becoming a shelter for criminal elements, but that investors would be encouraged to deposit funds from companies whose licensing and other fees could have been expected to make substantial contributions to the revenue of the island.

In accordance with that pledge, Sir, the Offshore Banking Act of 1979, 1979-26, was passed in this Place for the following purposes:

To encourage the development of Barbados as a responsible offshore banking centre;

To provide incentives by way of tax reductions, exemptions and benefits for offshore banking carried on from within Barbados; and

To enable the citizens of Barbados to share in the ownership, management and the awards of any business activities resulting therefrom.

The following year the Act was amended by Act 1980-23 to provide for the enablement of certain foreign banks to become licensees and carry on off-shore banking business from within Barbados and to enable certain off-shore banking that is now being carried on for the benefit of Barbados businesses to be continued under the supervision of the Exchange Control Authority. This afternoon we propose to amend the Act for a second time.

The Bill which is before us, Sir, provides in Clause 2 to allow a wholly owned foreign subsidiary of a foreign bank that is a financial institution to apply for licensee status under the Act. Clause 3(b) of the Bill allows the affairs of the directors of an applicant company to be investigated. Clauses 6 and 7 provide for the suspension by the Minister of a revocation of a licence pending determination of an appeal by the High Court. Clause 10 allows activity to be evidence in respect of a trust account if within any period of ten years the account accumulates interest or the principal is increased or decreased. Clause 11 allows credit ratings supplied by a director, officer or employee of the licensee to exempt from the insider information requirement. Clause 22 obviates requirement for withholding taxes on dividends, interest and other returns payable by the licensee. Clause 23 allows for the tax payable under the Act to be collectable by the Commissioner of Inland Revenue, and Clause 25 provides for the non-application of Part IV to the Exchange Control Act to licensees. Clause 26 allows licensees who are a qualified foreign bank to be eligible for the benefit provisions of Section 112 of the original Act. Clause 27 provides for amendment to the Stamp Duty Act and to allow a fixed rate of duty on dutiable instruments of the licensee.

I beg to move that this Bill be now read a second time.

SENATOR N. W. BOXILL: Mr. President, I do not have much to say because I do not know enough about this offshore banking, but what I have said already I intend to repeat in here again. I am not at all happy about this offshore banking. It strikes me as strikingly strange that \$400 billion are knocking around this world and places like the United States, Jamaica, and a lot of other countries are allowing all this money to float around and not go after it. Exactly eleven months from today the Prime Minister of this country said that by the end of May, this was the 9th of May last year, offshore

banking would have been brought to Barbados and they would have been employing 3,000 to 4,000 people.

I pointed out already and I will point out again that we have, I think, ten banks here with something like 38 branches. I forgot to work it out before I came here. Barclays Bank employs 252 people and if Barclays Bank is at their ten branches employing 252 people, I do not see how one offshore bank can employ 3,000 to 4,000 people. I am a bit worried that we are going to get some unsavoury people in this community of ours, and it is my belief and until I am proven wrong I will keep this belief that the offshore bankers who plan coming here are coming specifically to get their dirty money laundered. I am hoping that I am wrong because this is my country and I cannot or will not be satisfied to see this country take a downward step.

As I said before, I do not have much to say about it because I do not know enough about it to criticise it as fully or praise it as fully as I would like. All I am saying is that we should travel with this offshore banking with trepidation. It is a new venture we are going into. I heard the introducer of the Bill talking about keeping out somebody. He did not mention the Mafia, but I guess he meant the Mafia people, but how are you going to know that somebody is from the Mafia? Mafia people do not walk around with a flag saying they are from the Mafia. This is something we will have to keep a very close watch on. I am happy to see money coming into the country, but if it is going to come with this sort of thing like bringing in dope, prostitution, gambling and all the other ancillary appendages that can be hung on to it, it would be better if we left it out, but for the moment I cannot say anything more against it.

Mr. PRESIDENT: I think probably I should make it clear that I would rather members spoke on the amendments and not go back too much on the original Bill which would seem to be criticising a decision already taken, I am advised, by this Chamber. Anyway, not to pay too strict a point on it.

SENATOR A. TRUSS: Mr. President, that is precisely the point I was about to make. On the couple of things which was mentioned by the last Senator with reference to employment, if I remember correctly, and in the interest of having it put in its true perspective, the whole idea of 3,000 people — I think the range of 3,000 to 4,000 persons was mentioned — is not as a creation of one offshore bank, but the total facility after it has been created and is working properly could provide as many as those jobs in other forms that indirectly involve offshore banking as well, so it is not as though you create one facility and automatically employ 3,000 people.

As far as dirty money, dope and prostitution are concerned, I think that is a theory which really should

not have been in any way associated with offshore banking. I think it is foolish. Offshore banking, I believe, is a good thing for Barbados. I believe that the Government is correct in directing its policy in this direction. Already I see that Barclays Bank International has established a facility as the first offshore bank in Barbados, and presently as far as I know, there are three other applications on file, and one of those applications is a major United States Bank. Some of the problems which I understand have been encountered in establishing the facility as quickly as would have been liked previously are that in offshore banking you are faced with double taxation treaties.

At the moment there is no real Double Taxation Treaty with the United States of America. There is an Agreement between the U.K./U.S. an Agreement which Barbados falls into and as a result of the formulation of the Off-Shore Banking facilities, Barbados has since begun negotiating with the United States in establishing their very own Double Taxation Treaty and since this is the crux of the whole matter, it would appear necessary for the Government then to embark on Double Taxation Treaties throughout the balance of South America because none exists at present with any South American country.

Also in major European Countries I believe that Scandinavia is perhaps the only European country that has a Double Taxation Treaty with Barbados. They are working on a Treaty between West Germany and Barbados. All of these things will lay the foundation for when the Off-Shore Banking facilities take off and thereby perhaps fully employing the amount of persons which the Prime Minister said. The Double Taxation Treaty is a major component of the success for Off-shore Banking.

The problem in International Banking that is now developing is that there is a new facility that is being considered by major U.S. banking institutions and that is the International Business Service. Now, the IBS is very much the same as the Off-Shore Banking facility so we have entered into the business of Off-Shore Banking at the very same time that the Federal Reserve Board, a major U.S. Bank, and a major European Bank have been considering for a number of years establishing a facility where in New York, for example, or major U.S. countries, the same facility that an Off-Shore bank can offer, which can be offered by any major bank in the United States.

That has given us a lot of competition. As a result of that being discussed there are several large firms that are waiting to see what the outcome of this will be before they decide to invest money in Off-Shore Banks because, obviously, if the facility is created in the States and major European countries then it would stand to reason that these U.S./European based countries and maybe in the

Arab countries would prefer to have the facility in a New York based Bank rather than having the facility in Barbados.

There was no time, of course, and it was not known publicly at the time that we established Off-Shore Banking that this International Business Service would have been created. Fortunately for us, I do not believe that it is receiving as favourable consideration as many people would like. For example, Canada has already established that they are not interested in this facility. They will continue to do their Off-Shore Banking business outside of the Canadian facility but they are not interested in the International Business Service.

Now all of that explains why it is that Off-Shore Banking has not taken off as quickly as it should but indications are that it is on the verge of so doing because, as I said previously, three other applications are being considered by the Central Bank and one of them is a major U.S. Bank.

The question that the Bill be read a second time was put to the Senate and agreed to.

On motion of Senator O'B. Trotman, the Senate resolved itself into Committee to study the Bill, Senator the Rev. A. Hatch in the Chair.

On the motion of Senator K. Hinds the Bill was taken as read and the 27 Clauses were taken in three Sections of nine each.

Clauses 1 to 27 inclusive were called and passed.

On motion of Senator O'B. Trotman, Mr. Chairman reported the passing of the Bill in Committee and Mr. President resumed the Chair and reported accordingly.

SENATOR O'B. TROTMAN: I beg to report the Bill as having passed before the Committee without amendment and I move that the Bill be now read a third time forthwith.

The question was put to the Senate and agreed to.

SENATOR O'B. TROTMAN: Mr. President, I beg to move that the Bill do now pass.

The question was put to the Senate and agreed to.

LARCENY (AMENDMENT) ACT, 1981

The Second Order of the Day was called — To move the Second Reading of the Bill to amend the Larceny Act, Cap. 139.

SENATOR THE HON. N. A. BARROW: Mr. President with your leave, before I proceed I omitted to inform the Honourable Senate that Senator Blackman would be taking charge of Order No. 4 and Order No. 6, Sir.

I believe that in my introduction of this Bill it would really be to impose on this Honourable Senate if I entered into any lengthy discussion because this legislation arises from a problem of which Honourable Members are only too well aware and that problem Sir is as it says in the Objects and Reasons of the Bill, the problem of the increase in praedial larceny and this is not an attempt at penal reform, but really an attempt by way of a revision of the provisions of the Larceny Act relating to praedial larceny to provide for some tougher penalties and an increase in scope of the legislation.

Sir, it was in April 1977 that a Committee was set up to examine the incidences of praedial larceny and it held its first meeting on the 5th April, 1977 four years ago. One would expect when one is dealing with something as fundamental to the Law as the matter of theft, that many of the proposals emerging really went into the area of penal reform and ultimately decision had to be taken that rather than wait on a Bill which involved the entire reform of the relevant legislation, such as would be reflected in a new Theft Act and in a new Malicious Injury to Property Act both of which are currently being worked on that it would be better to proceed first with this and then allow these major attempts in penal reform to come at a later date.

I believe Sir that all Honourable Senators are aware of such incidents as the farmer who goes out into his field when he realises that people are stealing his produce and then suffers a vicious attack and in one case he was lucky to escape with his life. I happen to know one such person Sir who the knife went just a couple of inches away from his heart, or did not quite penetrate enough therefore, he was hospitalised with a serious illness rather than ending up in the hands of the undertakers. The situation where people plant and others reap is rather a different situation from where youngsters either because of the normal inclination to play pranks, or because all of the boys do it go and cut a few sticks of cane, or pick a few mangoes, or pick a paw paw, or something like this. What we are dealing with is people who drive their motor vehicles to the land, reap what they did not sow and then go and dispose of it and all of course is profit because the only expense they would have had would have been driving because all the investment was the illegal run to the country and back.

It is being recognised Sir that unless the penalties which existed before were seriously increased, then there would be little hope of making any impact on the

minds of a criminal. It may be Sir that some of these penalties may not look like enough, but to make the penalties any stiffer would be to take them outside of the ambit of Magisterial Jurisdiction, therefore to take them away from the possibility of summary proceedings. So, until there is new legislation in relation to that it would be impossible really to get larger penalties. The other thing also Sir is that when you look at what the penalties were like before, when we talk about penalties not being all that large, I think Sir we have to recognise there were penalties like \$96, or an alternative of imprisonment for six months and this is the way in which it is rated as to what is the reasonable penalty by way of fine for a particular period of imprisonment and I think we find now that that goes up to something like \$500. The fine of \$1 000 or imprisonment for one year. You will find that the previous alternative to imprisonment for one year would be a fine of \$100, or something like that Sir. So, it is not just a matter of whether fines themselves bear in Honourable Members' minds a relation to the kind of crime resulting from praedial larceny such as I have just outlined. All cases of praedial larceny after all do not also involve wounding or attempted murder, or what have you.

I think also in this amendment there is a provision where if you use a vehicle for the purpose of transporting either oneself, or the stolen product that the vehicle may be seized and sold. I am fairly sure, Sir that that is one of the new provisions. (ASIDE) That was in before, Sir but largely it is the business of bringing the fines more in line with the fines which existed previously and recognising the seriousness of the commission of the offence of praedial larceny by someone in possession of a firearm. That is specifically provided in Section Four of this Act which commends Section 24 of the principal Act.

As I said Sir, I do not think that I am justified in speaking at any great length on what is really the kind of change of the Bill which does not reflect the overall penal reform which will be reflected in the Theft Act and the Malicious Injury to Property Act.

The new Section 24 (1) reads:

"Any person who steals, or cuts, breaks, roots up or otherwise destroys or damages with intent to steal, the whole or any part of any tree, sapling, shrub, underwood, plant, root, fruit, corn, pulse, grass or other vegetable production, wherever growing, the value of the thing stolen or the injury done exceeds \$500,".

It looks to me, Sir, as though when I went to school it would have been written "exceeding" rather than "exceeds", but that is a long time ago. Both in the Bill on the file and in the printed Bill it says

"exceeds". It should be "the value", I know for a fact that the "the" is left out, and accordingly, Sir, when the Bill is in Committee I shall propose that "the" is inserted before "value", and I shall also propose that "exceeds" should be deleted and "exceeding" should take its place. I think, Sir, that the new clause will make sense. In other words, it ought to read: "Any person who steals or cuts, breaks, roots up or otherwise destroys or damages, etc. etc. vegetable production, wherever growing, the value of the thing stolen or the injury done exceeding \$500, is guilty of an offence, etc. etc."

I move, Sir, that this Bill be now read a second time.

The question was put to the Senate and agreed to.

On the motion of Senator the Hon. N. A. Barrow, the Senate resolved itself into a Committee on the Bill, Senator Hatch in the Chair.

SENATOR SIR MENCEA COX: Mr. Chairman, I beg to move that this Bill be taken as read.

The question was put to the Senate and agreed to.

Clauses 1 to 3 inclusive, were called and passed.

Clause 4 was called.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, in clause 4 where it says 24(1), I beg to move that the word "the" be inserted at the beginning of line 8, and that in line 9 where the word "exceeds" exists that "exceeds" be deleted and "exceeding" be put in its place.

SENATOR N. W. BOXILL: I just would like the introducer of the Bill to explain something to me. In 24(1) it says here "the value of the thing stolen or injury done exceeds \$500" but it went on to talk about corn, who cuts, steals, breaks, roots up or otherwise destroys or damages with intent to steal, the whole or any part of any tree, sapling, shrub, underwood, plant, root, fruit, ...", what I want to know is, why \$500? I am in favour of the Bill 100%, but I think \$500 in corn is a lot of corn. I was thinking that this should be lower, because there are a lot of old people living by themselves, who some of these young scamps go and interfere with. I would like, now that we are trying to make an amendment to this clause, to know if this could be lower. What is wrong with 400? I would like to hear the hon. member on it.

SENATOR R. L. FIELD: Mr. Chairman, I myself was a little worried about this \$500. The \$500 defeats

the purpose of the whole Bill. To go into one's garden and steal a couple of pumpkins or something like that, and probably the person may be armed, it just defeats the purpose of the Bill, because the fellow may decide to steal less than \$500, so he would not have the opportunity of going to court, so I really think that that \$500 should be lowered at least to \$50. It should be more than \$50 and less than \$100. It defeats the whole purpose of the Bill.

SENATOR J. D. S. MACKENZIE: Mr. Chairman, I think there is a misunderstanding taking place here. Section 23 was amended by the Administration of Justice (Miscellaneous Provisions) Act, 1979-33, and that raised the limit. If you look at the law you will see that there were certain punishments at that time for under \$50, and certain punishments for over \$50. The penalties had differed, and the \$50 was the cut off, and the Administration of Justice (Miscellaneous Provisions) Act of 1979 changed section 23 to \$500, and at that time section 24 was not changed to \$500 but remained at \$50, and this is now correcting that. So that it would read that if you steal anything at all under \$500 you will have the penalties that you see here. If you steal anything the value of which is over \$500, you will see the increased penalties that will be given out under section 24 that we are amending.

The philosophy of it, as I understand it, was to raise the level of value that a court could deal with, without having it to go up to a High Court where it exceeds \$50 in value. That was my understanding of it, Sir.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, I have just had the benefit of a legal opinion which I am sure I do not have to pay for. The point made by Senator MacKenzie is partially correct. Sections 23 and 24 in fact were changed, but what happened was that the prison sentence in both Sections 23 and 24 which is where the value was in 23 of under \$500 and in 24 of over \$500 was six months for each, so that the effect of this is to make the prison sentence one year for the larger offence commensurate with the larger fine.

The question that Clause 4 as amended stand part, was put to the Senate and agreed to.

Clauses 5 to 8 inclusive were called and passed.

On motion of Senator the Hon. N. A. Barrow, the President resumed the Chair and the Bill was reported as having passed the Committee with amendments.

SENATOR THE HON. N. A. BARROW: Mr. President, I beg to move that the Bill as amended be read a third time forthwith.

Mr. PRESIDENT: Tell me what the amendment is.

SENATOR THE HON. N. A. BARROW: Clause 4 has been amended in lines 8 and 9 of that Section of Clause 24(1) by the insertion of the word "the" before the word "value", and in line 9 by the deletion of the word "exceeds" and replacement thereby with the word "exceeding".

The question that the Bill as amended be read a third time forthwith was put to the Senate and agreed to.

On motion of Senator the Hon. N. A. Barrow, the Bill as amended was passed.

Mr. PRESIDENT: The Clerk will take the necessary steps to send a message to the Other Place regarding the amendment.

THE CRIMINAL APPEAL ACT, 1981

The Fifth Order of the Day was called — to move the second reading of a Bill to provide for appeals in criminal cases to the Court of Appeal and to Her Majesty in Council.

SENATOR THE HON. N. A. BARROW: Mr. President, this one is a matter of law reform. At the pinnacle of any judicial system lies a Court of Appeal and for this reason what arrangements are made for Appeal since this is a final court always occupies the minds of lawyers. Once upon a time I would have said perhaps of academic lawyers more than practitioners, but I think all lawyers are very concerned about this, and I believe if we looked back to pre-Federal days we will remember that there was the provision of the West Indian Court of Appeal which functioned as a Court of Appeal in this area and from which there lay a right of appeal to the Privy Council. Then came the Federation, Sir, and with it the establishment of the Federal High Court and the Federal Court of Appeal to which every litigant had the right to go.

Sir, we have within our Constitution Cap. 2, the fundamental rights section of the Constitution, a number of fundamental rights entrenched, and in every case a right to appeal lies to Her Majesty in Council. Because there is a provision for appeal, many persons I believe, overlook the fact that few appeals are settled by the Privy Council, and that they are settled mostly by our own arrangements for appeals in our local courts, and therefore it matters what the arrangements are within our Supreme Court system for appeal. At present we do not have the benefit of the wider court which existed in the Federal days. What we have is a single Supreme Court which has both the ordinary High Court function and an Appellate function, because it is a matter of I think four judges all of whom at one time or other sit as High Court Judges with original jurisdiction, it is what one might call a

scratch back court. The Judge who sits as trial judge in this matter will not sit as an Appeal Judge on the same matter. But that is not to say that where you have only four judges you can escape totally the involvement of all of your Appeal Judges in a particular matter. It may be that as Registrar the now Acting Judge had something to do with the matter.

It maybe that more than two Judges were involved at different stages of the matter before it reached the appellant stage and although men of integrity doing a particular job have been able to make that system work, and although as a result of their effort and indeed of their success to get that system to work, there is no suspicion in this community that less than justice is done.

Institutionally, it is not the best kind of arrangement and therefore, Sir, we need to determine what is appropriate. While the door has been left opened within the Constitution for us to participate within a West Indian Court of Appeal, should there be one, because the framers of the Constitution sought and understood this problem, we are still almost 15 years into Independence without any alteration in the original arrangements.

What this Bill therefore seeks to do is, in the first place, to make provisions so that a separate Court of Appeal may exist. There is not, Sir, an immediate indication to bring this into being because a number of matters are still now to be finally resolved and also to bring home the rule of practice and procedure that applied to the Court of Appeal sitting in its Criminal Appellant Jurisdiction.

This Legislation, Sir, is necessary because we have moved from the stage where the Federal Supreme Court Rules still have been made to apply. Let me put it this way. Where you are operating within somebody else's system, then you are operating on the rules involved in that system. If we are making a provision for Court machinery it becomes necessary that the Rules and Regulations under which one operates should all be made clear and the opportunity is taken in this Bill, therefore, to include these Rules.

In Clause 8 there is a provision of the circumstances in which the Courts may squash a conviction and substitute a finding of not guilty on the grounds of insanity. In this same Clause the provisions of the Mental Health Act respecting detention during Her Majesty's pleasure are applied.

In Clause 9 the right of appeal against the finding of not guilty on the ground of insanity is provided but the grounds on which such an appeal maybe brought are set out and in that same Clause there is provision of the grounds for dismissal for such an appeal.

The Bill provides the grounds on which appeals must be heard, the grounds on which appeals may, within the discretion of the Courts, be heard and the grounds on which appeals must fail. I am getting the message, Sir, that this is just such a routine kind of matter for some people that there is really no point in going through trying to find the matters which might otherwise present problems.

For myself if I might quite candidly say having gone through the Bill, I have not found that there are any real points of difficulty and if such points should arise in the course of the debate, then, Sir, we will be able to deal with them then.

Now just let me check one last thing before I sit down, Sir. In short, Sir, in this Legislation the procedures and the rules are clearly set out stating the point at which a separate Court of Appeal should come to be established in this country, and I am trying to recall whether that particular legislation on a separate Appeal Court has been through the Senate already.

At first I started talking against the background of that Legislation having already come down. This is legislation concerning the procedures of the Rules of Court and repatriation of those Rules which would apply within the present system and would also apply at the point when new arrangements for the airing of appeals are made within the Laws of Barbados.

I beg to move that this Bill be now read a second time.

Mr. PRESIDENT: It is proposed that the Bill to provide for appeals in criminal cases in the Court of Appeal and to Her Majesty in Council be now read a second time..... Senator Boxill.

SENATOR N. W. BOXILL: Mr. President, the two points which I want to ask the Introducer of this Bill and to take note of and find out for me. One is this. If — I want to put it as simply as possible — a person has committed an offence against someone else say like rape, or cutting the person, carnal knowledge or anything like that it is an indictable offence and therefore the Public Prosecutor takes over the case. I would like him to know, or like him to look into the possibility of that person carrying their own lawyer along with the Public Prosecutor. It can happen, it has happened before. I want to know if there is anything in this Law that prevents that person from carrying their own lawyer. The complainant is who I am talking about, although it is an indictable offence, if there is anything against the complainant taking his or her own lawyer. Do you understand the point?

The next thing is this, I would like to know, I have reasons for asking this, this may sound a bit strange. I would like to know if all jury decisions always stand because why I ask this is this. In 1960, I think it was in India and I guess the Indians were using the British Law then, a man was found not guilty for murdering his friend, I do not want to go into the reasons why this happened, the jury brought in the man not guilty because the jury were in sympathy with the man, but the judge then told the man that the jury has found him not guilty, but he the judge found him guilty and he gave the man 18 years. The case was appealed, it went to the Legislature, it went as far as to Nehru at the time he was then Prime Minister of India and they did not reverse the judge's decision. I want to know if there is a possibility of anything like this happening here when we come to deal with it in Committee.

SENATOR H. R. LINTON: I had, Mr. President no intentions whatsoever of speaking on this Bill, but just as a practising lawyer to reply to what my friend Senator Boxill said. He raised the question of the litigant or the accused person being represented at the Assizes on indictment. (ASIDE) Oh, I see. He is talking about the injured person, the complainant being represented by a lawyer on an indictable matter. There are certain laws Sir that govern the prosecution of cases in this Island and the duty of prosecuting persons in this Island has in my view been quite rightly placed on the Director of Public Prosecutions and if one reads the Act, one can see that as a matter of public policy, it is very important that not every one be allowed to bring prosecutions willy nilly in matters of indictable nature. I do not want to go into them now, but in a private place, I will in fact speak to my friend on this matter. I would just want to refer him to the Laws that govern the question of prosecution and therein you will find all the public policy.

Be that as it may Sir, there is nothing at the moment that stops such a person as he refers to from paying a lawyer to hold what we call a watching brief and in fact almost every day lawyers are paid in the Law Courts here to hold a watching brief and in such a situation, the Director of Public Prosecutions is very often very willing to listen to the lawyer holding the watching brief because he knows that the lawyer has a client whose interest is necessary to protect, not that of course, the Director of Public Prosecutions needs to be guided, or needs to be advised by a private lawyer in the matter of prosecutions at all. The lawyer's role in that regard is much more relevant when civil action is brought, the injury which the complainant may have suffered and by holding that watching brief, then he can pursue the matter in a Civil Court.

While I am on my feet, Sir, I want to take the opportunity to congratulate the Honourable Attorney

General who has done quite a lot to improve not only the matter of justice in this country, but the circumstances in which justice is dispensed in this country. My only regret is that he has not been able to put up the new court building as has been promised, but I am reliably informed that it will soon be off the drawing board. The Court of Appeal itself will do much Sir to improve the course of justice in this Island. For a start it will increase the number of judges available, it will increase the amount of time that is also available to the judges because what happens now is that the judges who sit as judges at first instance are later on called upon to form a quorum to sit as justices of appeal, this will no longer be so and judges who sit as judges at first instance will be relieved of the responsibility of having to research material cases, facts and evidence in order to hear cases on appeals and then, of course, they will also be relieved of the duty and the burden of sitting as justices of Appeal. As a result, it is expected Sir that quite a lot more work can be done in the High Court, although at the moment it has one of the highest rates of productivity probably in the Commonwealth. A case right now in Barbados in the High Court can come on for hearing in a matter of months whereas in some of the other countries in the Commonwealth it takes a matter of years and I am given to understand that in Trinidad cases can take as long as a decade. So that although courts have been functioning adequately and competently, this particular Bill the creation of a Court of Appeal will enable it to function even more adequately and more competently and will no doubt redound to the benefit of the administration of justice in this country.

I know that when the new court, the physical compound goes up that this will do a lot to relieve the burden that is now being experienced in the cramped quarters in Coleridge Street. I trust that with that will come secretaries and clerks for the judges. At the moment, they share clerks with the Registry, they do not have their own secretaries and I trust that when the facilities are improved that that aspect of justice will be improved. There are also certain areas of justice which I have taken from my notes which we have heard the Honourable Attorney General say will also be improved.

I want to close, therefore, by making it clear that as a practising lawyer I am extremely happy with the rate of progress that has taken place regarding the administration of justice in this country, and I want to compliment the Attorney General particularly as the fees for the Supreme Court and for all the courts indeed received some attention in the Other Place a week ago. I think that those increases are justified when we measure them against the improvements that we see taking place in the courts in this island. Lawyers and litigants alike will be happy for this improvement. Thank you, Sir.

SENATOR THE HON. N. A. BARROW: Mr. President, I am afraid that dealing with this matter I had first begun with the Bill in mind which has not yet reached this Chamber, and I was checking to find out whether that Bill had already come through this Chamber, which is the one setting up a separate Court of Appeal. That has not reached us, and I could therefore have been a little more brief, because this deals, as I said before, with procedures.

There is one other thing, Sir, that is that in checking my Bill, it would appear that certain amendments which were to have been moved when the Bill was before the Other Place had not been moved, and accordingly, Sir, in Committee I shall be moving amendments to clauses, 2, 8, 9, 19, 21, 25, 32, 37, and 41. They are not major amendments.

The question that the Bill be now read a second time was put to the Senate and agreed to.

On the motion of SENATOR THE HON. N. A. BARROW, the Senate resolved itself into a Committee on the Bill, SENATOR THE REV. A. HATCH in the Chair.

SENATOR K. E. HINDS: Mr. Chairman, I beg to move that this Bill be taken as read, that clauses 1 and 2 be taken, and the remainder be taken in parts.

The question was put to the Senate and agreed to.

Clause 1 was called and passed.

Clause 2 was called.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, clause 2. I beg to move that the definition of "person of unsound mind" which at present reads: " "Person of unsound mind" has the same meaning as in the Mental Health Act, 1980" be deleted and the following be inserted in its place: " 'Person of unsound mind' means a person suffering from mental disorder as defined by the Mental Health Act, 1980."

The question that clause 2 as amended stand part was put to the Senate and agreed to.

Part I was called.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, in Part I, clause 8, I move that paragraph (b) of subclause 1 which reads: "Quash the sentence passed at the trial....." right down to ".....as the Governor General thinks fit," be deleted and that the following be substituted in its place: "(b) quash the sentence passed at the trial and shall order him to be detained in a Mental Hospital until Her Majesty's pleasure is known,....." and

the rest which follows applies to both (a) and (b), "and thereupon the Governor General on behalf of Her Majesty may give such order for his safe custody during such detention as the Governor-General thinks fit."

In other words, what happened is that that part was meant to apply to both but has been mistakenly put in as though it was part of (b). That is the first amendment under that part, Sir.

In clause 9, Sir, substitute the semi colon for the full stop appearing at the end of subclause 1(a)(ii) thereof, "as sufficient ground"; and (b) substitute the word "fall" for the word "fail" appearing in paragraph (a) of subclause 4.

It is "fall" to be allowed. It cannot be "fail" to be allowed; it either fails or is allowed. In Clause 19, in paragraph (b) of subclause (1) fourteen appears in figures and it should be spelt out, so that is the word "fourteen" rather than the figure. That one seems to remind me it seems as though the draughtsmen have reversed themselves. In Clause 21 the word "shall" appearing at the beginning of the second line of subclause (1), the amendment is to insert a comma immediately after the word "shall"; so that it reads: "An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated as a prisoner awaiting trial." And in subclause (2) of clause 21, "The Court, if it thinks fit, may on the application of an appellant, admit the appellant to bail pending the determination of his appeal"; the comma after "appellant" is to be deleted. You either have to put a comma at "may" or take out that one. The proposal is to take out that one. In Clause 25, the comma appearing immediately after the word "prescribed" in the fourth line is to be deleted.

Sir, before I move that Part I stand part, I would therefore like to move those substantial amendments.

SENATOR H. R. LINTON: Before the motion is put, Mr. Chairman, I wanted to come down to speak to the Leader who has moved away from section 8 on page 7, because I do not know if he has been instructed by the Attorney General's Department, I hope he has been, but I am yet to be convinced that the manner of printing the concluding words of section (b) from the comma after "known" would make any difference or any substantial difference to the interpretation thereof. I do not know if we just took that last part from "and thereupon" and indent it or bring it further out to the left of the letter "b" in brackets that that should make any difference to the interpretation. I do not see why it should. My suggestion, if you are amending and since we really have to amend, is that we re-word it slightly, but even before re-wording

we have to replace the comma coming just after "known" by a semi-colon. If we take as an example section 9(2) (c) on page 9, Sir, we see a similar thing there where they want to end it off "and in any other case the Court shall dismiss the appeal." They ended that with a semi-colon, and indeed if you check all other Acts or Bills for that matter you will notice that where they want to do something like that, they always end with a semi-colon. So that I would suggest that a semi-colon should come after "known" and rather than using the word "thereupon" I would like to suggest we use "and in either case" meaning in either case (a) or case (b) because I am yet to be convinced that by indenting or whatever you do, anything other than changing the punctuation and the wording slightly, will you get a different interpretation placed on this. I do not see how you could. I think we have to place a semi-colon and we have to say "and in either case", otherwise this can be interpreted so that that concluding section of part (b) does not apply to both (a) and (b). I believe we need to be careful there.

SENATOR H. F. G. ROCHEFORD: Mr. Chairman, while I would like to submit to my colleague here, I do not think I can agree with him altogether here, and I have great temptations to get up on these amendments anyhow, because when I have on previous occasions talked about these things that have come before us, I have always heard how easy it is for the Attorney General's Chambers to rectify these later on in the year and that sort of thing, and then we come down here with this. It really is amusing to me, Mr. Chairman. However, in this particular case with clause (a) I think my friend here is under the illusion that clause (a) and clause (b) are alternatives, but they are not alternatives because it is "may" (a) or (b), so that the rest of the clause "and thereupon" really belongs to subclause (8) (1) and not to subclause (a) or (b). But I agree with him that you should have a semi-colon at "known".

SENATOR THE HON. N. A. BARROW: Mr. Chairman, I wish at one and the same time to bow to the superior wisdom of the legal grammarians at that end and at the same time to share ...*(Asides)* Well I agree incidentally with Senator Rocheford's interpretation that it is "and" and therefore I follow everything else he is saying; but I must say that when I came to replacing "14" with "fourteen" the point could not really escape, but I also think that the legal grammarians must be right that there must be a semi-colon at "known" if that is the form of the Bill, and therefore I would wish to add that to the amendments which I have made, that in clause 8 (1) (b) after the word "known" in line 4 that that comma be deleted and a semi-colon be put in its place.

SENATOR H. R. LINTON: Just one final point, Mr. Chairman. I just want to say that I agree with

Senator Rocheford that my second suggested amendment is not correct because I omitted to observe that (a) and (b) are not mentioned in the alternative at all. They are conjunctive so that it should not be "and in either case", but I remain convinced that a semi-colon is in order.

The question that the amendments to Clauses 8, 9, 19, 21 and 25 as indicated, Part 1 stand part of the Bill was put to the Senate and agreed to.

Part II was called.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, the following amendments are accordingly proposed — amendments to Clause 32. Sir, I am afraid I have to move that Part I be recommitted because I missed one of the amendments to Part I.

The question that Part I be recommitted was put to the Senate and agreed to.

SENATOR THE HON. N. A. BARROW: Sir, Clause 32, the fifth line to Sub Clause 5 reads:—

"The Court may, by order, annul or vary an order made on a trial for the restitution of property to any person, although the conviction is not quashed and the order, if annulled, does not take effect and, if varied takes effect and so varied."

The word "and", the third from the end should be "as" and I accordingly move that "and" should be deleted and "as" be substituted therefor. It should read "as so varied."

The question that with the amendments indicated in Clauses 8, 9, 19, 21, 25 and 32 that Part I stand part of the Bill was put to the Senate and agreed to.

Part II was called.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, I beg to move the following amendments. In Clause 37, the fifth line in Subparagraph (i) in paragraph (b) reads "....the question involved in the appeal is one that by reason....." And then it goes on "its general or public importance....." The word "of" is clearly omitted after the word "reason" and accordingly I move, Sir, that the word "of" be inserted after the word "reason".

The question that with the amendment in Clause 37, that Part II stand part of the Bill, was put to the Senate and agreed to.

Part III was called.

SENATOR THE HON. N. A. BARROW: Sir, Part III, Clause 41, Sub Clause 1 reads: "where in any similar cause or matter notice of Appeal or application for leave to appeal has been given from any conviction....." I am proposing that that Subclause be deleted and the following Subclause be read in its place:—

"Where before the date of the commencement of this Act a notice of Appeal or an application for leave to Appeal has been given to the Court in any criminal cause or matter against any conviction, sentence or order of High Court, but proceedings in respect of that Appeal are on the date of such commencement still pending, all such proceedings shall be continued as if instituted under this Act."

Sir, I move that with that amendment Part III stand part.

The question that with the amendment to Clause 41, Part III stand part of the Bill, was put to the Senate and agreed to.

The Schedule was called and passed.

On motion of SENATOR THE HON. N. A. BARROW, Mr. CHAIRMAN reported the passing of the Bill in Committee with amendments and Mr. PRESIDENT resumed the Chair and reported accordingly.

SENATOR THE HON. N. A. BARROW: Mr. President, I beg to report the Bill as having passed before the Committee with amendments and I move that the Bill be read a third time forthwith.

The question was put to the Senate and agreed to.

Mr. PRESIDENT: This Bill as amended has now been passed. The Clerk will take the necessary steps to send a message to the Other Place respecting the amendments.

SUSPENSION OF SITTING

Mr. PRESIDENT: I propose at this stage to suspend the Sitting for twenty minutes.

On Resumption:

Mr. PRESIDENT: This Sitting is now resumed.

Order No. 3 was called — To move the Second Reading of a bill to amend the Unclaimed and Undistributed Moneys Act, Cap. 93.

Mr. PRESIDENT: Senator Trotman.

SENATOR THE HON. O'BRIEN TROTMAN: Mr. President, Sir the Unclaimed and Undistributed Monies Act of 1981 provides that when an officer has in his hands or under his control undistributed monies, he should pay the same to the Accountant General and the credit of an account to be opened in the books of the Accountant General and that the Accountant General should issue that officer with two receipts which he then takes to the Auditor General, *et cetera*.

The Act generally Sir states that the monies deposited with the Accountant General should be kept by him in account for 20 years and that such monies should be published in the Official Gazette in the month of January every year and that persons may claim that money before the end of 20 years. The amended Bill before us Sir seeks generally to do two things:

1. To release the Accountant General of the obligation to issue two receipts to the public officer from whom he receives the funds, since that really is necessary.
2. To reduce the number of years for claiming the monies to six years.

It has been found Sir that for example, the unclaimed and undistributed monies for 1980 published covered 136 pages of the Official Gazette and it is generally considered that this is not a useful way to spend a public officer's time printing 136 pages of the Official Gazette to advertise that the Government owes somebody two cents and that was the smallest amount advertised in 1980 and therefore, the Bill seeks to reduce the time for claiming the money to six years and the time for advertising the money to the year previous to the collection of the money to reduce the period of advertising from 20 years to twelve months preceding the January before it is collected. It is really a matter Sir to facilitate better administration of public departments who would have to carry on accounts for a long time and we hope eventually to better efficiency in those departments.

I beg to move, Sir that the Bill be read a second time.

Mr. PRESIDENT: It is proposed that this Bill be now read a second time. Senator Rocheford.

SENATOR H. F. G. ROCHEFORD: Mr. President, I have from time to time seen the Official Gazette and the long list of people for whom money is being held and it would appear to me sometimes that the notices include the likes of witnesses; it would seem that a lot of people who give evidence in court cases probably are unaware that they are going to be reimbursed for their appearances in court because I see a lot of these.

I wonder if administratively something could be done to let people know that they are entitled to remuneration for appearing as witnesses in certain cases because I do see a lot of these appearing in the lists.

Mr. PRESIDENT: Senator Trotman.

SENATOR THE HON. O'BRIEN TROTMAN: I am not sure Sir, but I would have thought that the office responsible for paying which is the Registration Office like other offices which owe people money would send to the persons informing them that there is money outstanding. I know that even in the area of undrawn wages, it is drawn to people's attention that department A or department B has the amount outstanding for you. It is done primarily because the accounting officer wants to get the account closed. But as you see Sir from the accounts, sometimes it is not quite worth the forty-five cents to journey from St. Philip to Bridgetown and back to collect a penny in undrawn money from the Treasury.

The question that the Bill be read a second time was put to the Senate and agreed to.

On the motion of SENATOR THE HON. O'BRIEN TROTMAN the Senate resolved itself into a Committee on the Bill, SENATOR THE REV. A. HATCH in the Chair.

On the motion of SENATOR K. HINDS, the Bill was taken as read.

Clauses 1 to 5 inclusive were called and passed.

SENATOR THE HON. O'BRIEN TROTMAN: Mr. Chairman, Sir, I beg to move that the Senate be now resumed and that the Bill be reported as having passed in Committee.

The question was put to the Senate and agreed to.

On the separate motions of SENATOR THE HON. O'BRIEN TROTMAN the Bill was read a third time and passed.

CHANGE OF NAME ACT, 1981

Order No. 4 was called — To move the Second Reading of a Bill to provide for change of name.

Mr. PRESIDENT: Senator Blackman.

SENATOR THE HON. D. G. BLACKMAN: Mr. President, the legislation before us represents another attempt on the part of the Government to move the process of law reform a step further and under normal circumstances such legislation might seem to be of only

miniscule social significance. However, the concept of naming is as old as mankind itself.

In a society such as ours, still caught in the toils of our post-slavery institutions, the activity of naming has come to be virtually meaningless. Wittgenstein, the philosopher of the Vienna Circle, in his early works on logical atomism, maintained that every word in the language of people was a name for something, and that whenever we use words we use names. He in his later works, particularly the philosophical investigations, came to reject what he regarded as a simplistic thesis, that words are the names of the things that they describe, and there arose the distinction in linguistic science between denotation and connotation. The concept of denotation of course is one in which a word merely signifies an object, whereas the concept of connotation treats the meaning of a particular word. In a post colonial society such as ours, names therefore are essentially denotative words without any meaning whatsoever, and this is a legacy of the institution of slavery where slave holders applied names to individuals merely as a matter of signifying different personalities, but without any other meaning whatsoever.

I believe that this legislation, therefore, is significant in that it begins to move us some way back to a situation of dignity whereby names have a connotative dimension apart from the denotative dimension. So that when we say the name "Blackman" which is probably not a good example, since "Blackman" is denotative as well as connotative, is accidentally so, but if we can think of most names, they are merely denotative words empty of any connotative content and they are just there to distinguish one individual from another.

Name changing in Barbados, such as it is, operates under the common law rules in which no formal requirements need to be complied with for an individual to change his or her name. All that is necessary is that the individual concerned may seek to call himself A or B and by continuous usage it may have legal effect. Although in cases of minors, Mr. President, a name may well be changed, a minor may assume his father's surname by the swearing out of an affidavit and the registration of a deed, but this in no way alters the name of the individual in any material sense, because his baptismal certificate will still bear the name that he was given at that particular event.

This legislation seeks to change this situation, and it is not merely cosmetic, because in cases where there are children of common law unions in Barbados whose paternal parent may have gone to another country and is desirous of having them join him, there are all kinds of difficulties usually posed, put in the way of children who have to satisfy immigration authorities that they are really the children of their father.

This legislation will simplify this, because once an application is made in the way provided by this Bill for a change of surname, the Registration Office will now issue a certificate of change of name, and this certificate will be used as evidence that the individual concerned bears the name within the certificate.

The rest of this legislation before us, Mr. President, is procedural and I do not want to tire the Senate by reciting the procedures laid down in this Bill which are self-evident even to laymen, so without any further ado, I beg to move that this Bill be read a second time.

SENATOR H. F. G. ROCHEFORD: Mr. President, I am happy with the Bill generally, but I was struck by clause 10 of the Bill, paragraph (1), "the mother of a child who has the custody of the child, may apply to change the surname of the child with the consent of the man who," and then we go to subclause (b), "was married to her and the marriage was terminated by death." I would just like to make sure that that is what we want to pass here.

SENATOR THE HON. D. G. BLACKMAN: Mr. President, I do not want to waste the time of the Senate. The point made by Senator Rocheford may have been designed to evoke mirth, but a careful reading of clause 10(1) would see that Senator Rocheford omitted, I do not know whether deliberately or otherwise, the important qualifying phrase, "as the circumstance requires."

Clause 10 (1) refers to a number of other subclauses (a) (b) (c) (d) (e) (f) and it is plainly a qualifying clause in relation to clause (1) (a) and if we read the entire clause in toto and include that significant qualifying clause we will see that the interpretation that Senator Rocheford gave is a completely absurd and unwarranted one.

SENATOR H. F. G. ROCHEFORD: Mr. President, I take exception to that because I do not see what circumstances.....

Mr. PRESIDENT: Just a minute. Are you on a point of clarification? Because if the Minister has replied.....

SENATOR H. F. G. ROCHEFORD: I will wait until we go into Committee and deal with it.

The question that the Bill be now read a second time was put to the Senate and agreed to.

On the motion of Senator the Hon. D. G. BLACKMAN, Mr. President left the Chair and the Senate went into Committee on the Bill, Senator the Rev. A. HATCH in the Chair.

SENATOR K. HINDS: Mr. Chairman, I beg to move that the Bill be taken as read and that the Clauses be taken in four sets of seven. (*Asides*)

Mr. Chairman, before you put the motion, I do not know if it is necessary for me to explain to the Senator that when clauses 1 to 7 are taken it means that a member can speak on any clause from 1 to 7. Taking it in sets does not interfere with the normal procedure in Committee.

SENATOR N. W. BOXILL: Mr. Chairman, I appreciate all the hon. member has said, but I wonder if he knows or realises that I have been in both Houses. He has only been in one, so I know the Rules of both Houses and I am saying we should take the Bill clause by clause unless I am voted against.

Mr. CHAIRMAN: First of all the question is that the Bill be taken as read. We have a second motion here now that the Bill be taken clause by clause. I think we should vote on that first.

The question that the Bill be taken as read and clause by clause was put to the Senate and agreed to.

Clauses 1 to 9 inclusive were called and passed.

Clause 10 was called.

SENATOR THE HON. D. G. BLACKMAN: Mr. Chairman, I beg to move that Clause 10 stand part.

SENATOR H. F. G. ROCHEFORD: Mr. Chairman, I would like to say that I have never at any time that I have been in here taken the passing of legislation lightly and no time that I have ever made a comment about anything in here would I consider what I was saying as absurd. As soon as this legislation came to me, I saw that clause and I took it to the Leader of the Senate and pointed out to him that it seemed absurd to me. This was weeks ago, Mr. Chairman. They have not taken any action to correct it and any sensible person reading this must see that something must be wrong with that. There can be no circumstances in which the Hon. Introducer of the Bill says "as circumstances require". I cannot see any circumstances requiring a person to get consent of somebody who is dead. I cannot see any circumstances which could arise where that could be required, and I am not considering this as being absurd at all. I think if you pass legislation like this it is going to be absurd legislation.

SENATOR H. R. LINTON: Mr. Chairman I do not want to add fuel to the fire and indeed nor do I want to incur the wrath of the Minister, but I had previously discussed this with Senator Rocheford. He drew

it to my attention on a previous occasion and I agreed with him then and I still agree with him now. I do not see in any way how the words "as the circumstances require" can limit the generality of the words in the first two lines of paragraph (b), and I agree with him that as it is presently phrased it is absurd. I do not know if it is necessary to have an amendment done now if indeed we do not want to send the Act back to the Other Place. The amendment can be done later. (*Asides*) I do not want to add fuel to fire so I am not going to take some advice which I am getting. I would insist, Mr. Chairman, that in this particular matter Senator Rocheford is on sound ground, and there is no way from a legal standpoint that I can see the words "as the circumstances require" limiting the generality of the words that appear in section (b), and in truth and in fact the section is an absurd section. It may be an error on the part of the draughtsman and I am sure that the draughtsman would perhaps wish to have it drawn to his attention, but any attempt to justify it by the Minister would not make it any better, Mr. Chairman.

SENATOR R. FIELD: Mr. Chairman, there is only one matter here in section (b) that is giving me a little worry. I believe it can be easily explained as I probably might not be too bright on this but that Clause 10 (1) (b) says: "was married to her and the marriage was terminated by death of judgment of nullity within two hundred and eighty days before the birth of the child..." Now I wonder if I am looking at it in the wrong way. It takes about nine months before the birth of a child, so it means she will have to apply for it before the child is born....

If the marriage is annulled within 280 days, that is a little over nine months. Some run into seven months so I am wondering if the 280 days is the right figure. It still has me wondering.

Mr. CHAIRMAN: I think if the President was here he would be more helpful than I can on this matter.

SENATOR THE HON. D. G. BLACKMAN: Mr. President, I want to admit that I did misread the paragraph and that Senator Rocheford is completely right. I apologise without qualification.

Mr. CHAIRMAN: After that gracious apology the question is that Clause 10 stand part.

SENATOR N. BOXILL: Before you put the question I thought you were going to make the amendment here. We cannot pass it this way because if we pass it this way it would still be lost. I thought the hon. member would amend it now and take out the word "death" and have it amended now.

SENATOR THE HON. D. G. BLACKMAN: Mr. Chairman, I propose the deletion of the words "death or".

SENATOR H. LINTON: Mr. Chairman, before that amendment is proposed, I would like to suggest to the Minister that he refer this entire section to the draftsmen. It can come back to us next week because I understand we are meeting then because my attention has been drawn to the period of 280 days before birth. It maybe that they would wish to take the opportunity to give that some consideration when they are considering the other proposed amendments.

If it would not put the Minister's Schedule out, I would like to suggest that this Section of the Bill be deferred. If it would not put the Minister's Schedule out. If it would, then let it go on. (ASIDES). You will have to defer the whole Bill? The word "before" is what I am worried about. Why limit it to 280 days before the birth of the child. Well, the murmurings around the Table here will tell you that there is something amiss with this Section as it stands. It should be postponed so that the draftsmen can study it further.

SENATOR THE HON. D. G. BLACKMAN: Mr. Chairman, from what I have heard and what I see, it seems to me that the Senators are unhappy by the proposal in 10(b) which would require that the mother of the child carry out an act that is impossible; that is, to secure the approval of a dead man. That seems to me to be the only objection in this particular Sub-clause.

Mr. Chairman, on the question of the number of days during which a pregnancy is supposed to last, I am not an authority and I do not accept the opinion of any member in this Chamber as authoritative except the President. In the circumstances, I propose, as I originally did, the deletion of the words "death or" in the second line of paragraph 10(1). Mr. Chairman, unless I hear arguments to the contrary, my proposal for the amendment stands.

Mr. Chairman, there are obviously problems which the draftsmen must deal with in this particular Sub-section and I would propose that we postpone dealing with this Bill until next week at which time we should have the drafting problems of this Subsection straightened out.

Mr. Chairman, I beg to move that the Senate be resumed and the Bill be reported.

The question that the Senate be resumed and the Bill be put back for further consideration was put to the Senate and agreed to.

Mr. PRESIDENT: Senator Blackman.

SENATOR THE HON. D. G. BLACKMAN: Mr. President, the Committee of the Senate approved Clauses One to Nine, but encountered difficulties with Clauses 10 and in its wisdom decided that further consideration of this Bill should be postponed until such time as certain problems could be cleared up.

Mr. PRESIDENT: The proper motion would be for the Committee to report progress and ask for leave to sit again.

SENATOR THE HON. D. G. BLACKMAN: Mr. President, I beg to move that the Committee reports progress and asks for leave to sit again next Wednesday.

The question was put to the Senate and agreed to.

ADMINISTRATIVE APPEAL TRIBUNAL ACT, 1981

To move the Second Reading of a Bill to provide for the establishment of an Administrative Appeal Tribunal for Barbados and for related matters.

Mr. PRESIDENT: Senator Blackman.

SENATOR THE HON. D. G. BLACKMAN: Mr. President, Government in Barbados is conducted upon the assumption that the doctrine of the separation of powers is in existence and as the theory of the separation of powers goes, it is presumed that we have a legislative sector of Government, an executive sector of Government and a judicial sector of Government. We all know that the principle legislative power in this country resides in the Other Place and that Honourable Members in the Other Place are subject periodically to a public review of their stewardship and if the public at large deems that the Legislature, or any Member thereof has violated its rights there are sanctions which will be imposed upon those legislators in the ballot box.

There are some Honourable Members, Mr. President in this Honourable Chamber who were also Members of the Legislature who know what it is to have been found wanting at the awful bar of public opinion. Therefore, there is redress when the legislative arm of Government violates the rights of the people of this country, or are seen by the people of this country, to have violated their rights. Insofar as the judicial arm of Government is concerned we know that judges hold office *quam dui se bene gesserit* for as long as they are of good behaviour. We would not expect to see members of the Bench frequenting certain places in Nelson Street, I believe that this would constitute justifiable grounds for relieving them of their judicial responsibility.

Insofar as the executive arm of Government is concerned Mr. President, the violation of rights of the public

at large has for a long time where it existed has existed with a certain degree of impunity. From time to time, there are public outcries of injustices being visited upon citizens of this country by members of the executive bureaucracy and there are expressions of impotence at the absence of any machinery for redressing these felt grievances and where such machinery exists, it exists in a somewhat loose and uncoordinated fashion and its existence to a substantial degree is known only by a significant minority of the population.

The Administrative Appeal Tribunal Bill therefore seeks to try to be in order, the chaos which exists in the administrative appeal machinery within the executive of Government and at the same time, it seeks to put it on a basis which will ensure that the rights of the public against administrative injustice are protected. The Bill sympathises with, simplifies and unifies the rapidly proliferating appeal bodies which exist.

Mr. President, I believe that those of us who would like to see effective Ministerial Government in this country would welcome this kind of legislation because members of the public in their anguish at not being able to get their grievances adequately redressed often have no alternative, but to attack the Ministers who are responsible for departments where they are victims of administrative injustice.

I believe that the time is ripe, Mr. President, for all of us, not only Ministers, but all of us who perform public services to bear some measure of accountability for our stewardship in dispensing these services to the public, and the Executive Arm of Government has no less a responsibility in this matter than the legislative or judicial arm of Government. That is why I am happy to be able to introduce this legislation into the Senate this afternoon.

I believe that the Cox Commission, the Commission which was established to review our Constitution a couple of years ago, took cognisance of the state of administrative appeal machinery in Barbados, and the Cox Committee in pronouncing upon this machinery found that while in some cases there may be some justification for having a tribunal with its own particular Constitution and procedures, yet it felt that in the interest of the promotion of justice, and in the interest of order it would be necessary to unify the administrative appeal machinery now extant in Government.

So this Bill seeks to meet the recommendations of the Cox Commission and again represents an important milestone in law reform in Barbados. It sets up an Administrative Appeals Tribunal which, upon the coming into force of this Bill, will be responsible for dealing with appeals that arise out of cases brought which would

otherwise have been brought before the following Tribunals:

The National Insurance Appeal Tribunal
The National Insurance Commissioner
The Severance Payments Tribunal
The Income Tax Appeal Board
The Land Tax Relief Board
The Land Valuation Board

All matters that were normally dealt with by these Boards will now be dealt with by a single administrative tribunal.

This Tribunal will have as its Head, a President, an officer designated as President, and the President as envisaged in this Bill will be qualified under section 4 of the Supreme Court of Judicature Act to be a High Court Judge, and with him will be working 20 ordinary members who may either be working on a full time or a part time basis. Four of the 20 members of the Tribunal will be legally qualified officers, and the other 16 have been described infelicitously as ordinary members. There are some of us who might question whether the contradistinction is apposite, legal versus ordinary. Be that as it may, the Tribunal will organise its work in four Divisions; the General Division, Employment Division, Social Security Division and a Tax and Valuation Division.

It should become obvious, after I enumerated the appeal tribunals whose work will be incorporated under this proposed Tribunal, why these four Divisions will be established under this legislation.

One of the important things that this legislation provides, Mr. President, is that any member of the public who has grievances with respect to national insurance, income tax, severance payments or retirement or pension or funeral grant under the Sugar Workers' Provident Fund Act can be assured that the legal ramifications of the problem will be well looked after, since in every Division the Presiding Officer will be one of the lawyers or the President himself. There are some people who feel that this particular Bill is designed to create work for lawyers, some of whom are now Ministers and may return voluntarily and involuntarily to practice. I said involuntarily to give Senator Boxill some courage, because I think he will need in the coming months plenty of courage in order to face the difficulties which will confront him.

I think that we will all agree, Mr. President, that in the past many of the aggrieved persons who brought matters before these appeal tribunals now in existence found themselves shortchanged because many of the cases involved great legal complexity, and with persons presiding over the cases when they came up who did not

have any particular skill in interpretation of the law, led to many a wrong being committed against members of the public.

It is envisaged under the legislation that the 16 ordinary members will not be so ordinary but will be people who will bring to the work of the tribunal the full richness of their professional and other experience in other walks of life. Many of us are perplexed by the intricacies of income tax legislation,.....

Many of us are perplexed by the labyrinthine provisions of the severance payments legislation although my Ministry is carrying out what has proved to be a very prolonged exercise in attempting to simplify the severance payments legislation. It has proved to be much more time consuming than we had envisaged, and therefore it is unlikely that this change of law will come before the next House, and the difficulty with the severance payments can be seen from the fact that of the 230 appeals made to the tribunal that I have just mentioned, 149 were made to the severance payments tribunal alone. That body is at present inundated with work. There are three tribunals meeting at the present time and they cannot do their work in an adequate manner based upon the part time *ad hoc* nature of the operation. It is believed that with this new machinery people with complaints under the Severance Payments Act will have their complaints handled in a much more expeditious fashion.

It was proposed initially to include appeals relating to national assistance in this legislation, but we felt that such appeals were so few and far between and in virtue of the fact that appellate machinery of a fairly satisfactory kind has been established with respect to national assistance, that the National Assistance Appeals Committees are among those tribunals which it was thought convenient should have a separate existence from the Administrative Appeals Tribunal that this Act now sets up. Much of the rest of this Bill is procedural, Mr. President, and I do not wish to go into it at this stage unless hon. members have some problems with certain problems and they want these problems further clarified.

I therefore beg to move that this Bill be now read a second time.

SENATOR N. W. BOXILL: Mr. President, I have a few questions to ask the Minister. Looking at this Bill I must ask myself if you are having something like this, then what is the purpose of having the Ombudsman, because I thought that the Ombudsman was supposed to be somebody to hear these complaints if you did not get justice at the different places. Amalgamating all these different Committees into one leaves me to wonder if that is to be the case as I wrote down here on page 10, why not the appeals from the Town and Country

Planning Tribunal? Why are they not on to this? You mentioned national assistance. Why should these Boards be exempted? I cannot see any justifiable reason.

I do not know if the Minister has anything to add to this, but since you are amalgamating all these Boards into one, I am wondering what we are going to do with the Ombudsman and I am also wondering why these people have been exempted. Maybe the Minister can tell me or if he likes he can mention it when we start to deal with it in Committee, but especially about town planning because he knows and I know that quite a lot of people have been, I would not say unfair, but have had some fairly bad decisions from town planning, and I therefore feel that that Board, if you are going to amalgamate all of them under one heading, should also be placed under this, because this town planning affects mostly poor people like me. I would like to hear the Minister when he gets up to reply or he can deal with it in Committee.

SENATOR THE HON. D. G. BLACKMAN; Mr. President, I believe I explained in my presentation why the National Assistance Appeal Boards or Appeal Committees were not included in this legislation. We have I think six or seven Committees for National Assistance appeals made up of two persons each, and they entertain appeals made by persons who have been denied pensions by the Chief Welfare Officer. Over the past two years the Ministry of Community Services knows of only about three appeals that went to these Committees, and it is not considered at this particular time that it constitutes a problem which would warrant incorporation of these appeals in the Administrative Appeal Tribunal.

The Ombudsman as I understand it is an office which will be set up to deal with problems which touch and concern the constitutional rights of persons that have been trespassed upon. A tribunal such as the Income Tax Appeals Tribunal is one that deal with entirely different matters. It deals with matters relating to the propriety of certain assessments, and I do not believe that an ombudsman which normally concerns itself with more basic rights in any part of the world is ever constituted to deal with this sort of problem. There are complaints that involve fundamental rights and there are complaints that involve interpretation of the application of certain statutes.

I do not know if the nice distinction has borne itself into Senator Boxill's consciousness but the question of fundamental human rights is something completely different from a matter of a dispute between an employer and a worker as to whether the worker should be paid severance or not, recovery of severance payments and the exact amount to be paid. It is a different kind of problem altogether.

In so far as the inclusion of Town Planning is concerned, I will tell you frankly that I really do not know why it was excluded and it is information that I will try to get for the hon. member.

The question that the Bill be read a second time was put to the Senate and agreed to.

On the motion of SENATOR THE HON. D. G. BLACKMAN, the Senate resolved itself into Committee to study the Bill, SENATOR THE REV. A. HATCH in the Chair.

On motion of SENATOR Sir MENCEA COX, the Bill was taken as read and in Parts.

Clauses 1 and 2 were called and passed.

Parts I, II and III inclusive were called and passed.

The First Schedule was called and passed.

The Second Schedule was called.

SENATOR THE HON. D. G. BLACKMAN: Mr. Chairman, I have a few inconsequential amendments to the Second Schedule. There are actually three of them. The first would be the deletion of the words "Act 1980-63" appearing in the first column thereof and substituting therefor the words "Act 1981-".

The second one, Part I of the Second Schedule, delete the word "1980" appearing in relation to the Amendment of Section 46 of the Interpretation Act, Cap. 1 in the second column thereof and substitute the word therefor "1981", just a substitution of 1981 for 1980.

On page 23 of the Schedule dealing with the Petroleum Winning Operations Taxation Act, Cap. 82, delete the full stop in the paragraph after subsection (b), the third line.

SENATOR FRANKLIN: Mr. Chairman, I wonder if with the permission of the mover of this motion we can have the First Schedule recommitted. The reason why is, that I feel very strongly, Mr. Chairman, about non-inclusion of the Town Planning Appeals Committee in this Bill.

SENATOR THE HON. D. G. BLACKMAN: Mr. Chairman, we are amending this Bill before us and in view of that, the Bill will have to return to the Other Place.

If, at this time, the Government believes there is a sufficient reason for adding the Town and Country Planning Department to the list of Tribunals on the First

Schedule, then this will be done, but I could not unless I know the reason for its omission at this time undertake to give a guarantee that it will be included in the First Schedule.

Mr. CHAIRMAN: Senator Rocheford.

SENATOR H. F. G. ROCHEFORD: Mr. Chairman, I am afraid I did not get the amendment which the Honourable Senator brought on page 23.

SENATOR THE HON. D. G. BLACKMAN: Mr. Chairman, page 23 in the left hand column, you will see at the top you will see:

"The Land Tax Act, Cap. 78A"

Then, when you come down the page:

"The Petroleum Winning Operations Taxation Act, Cap. 82A."

Then, you see subsections (a) and (b), paragraph under subsection (b) on the third line after the one in parenthesis, there is a full stop which is to be deleted.

Mr. Chairman, I beg to move that the Second Schedule as amended stands part.

The question was put to the Senate and agreed to.

SENATOR THE HON. D. G. BLACKMAN: Mr. Chairman, I beg to move that the Senate do now resume and that the Bill be reported as having been passed in Committee as amended.

The question was put to the Senate and agreed to.

Mr. PRESIDENT: Senator Blackman.

SENATOR THE HON. D. G. BLACKMAN: Mr. President I beg to report that the Bill was passed by the Committee with a few amendments to Part One of the Second Schedule.

The first is on page 17 and it involves the deletion of the words of the "Act, 1980-63" appearing in the first column and the substitution therefor of the words "Act, 1981".

The second deals with the deletion of the words "1980" in relation to the amendment of Section 46 of the Interpretation Act, Cap. 1, the second column and substitute therefor the words "1981".

The third, on page 23 under "Petroleum Winning Act Cap. 82 subsections (a) and (b) the paragraph after subsection (b) in the third line the deletion of the full stop after 1 in parenthesis.

Mr. President, I beg to move that the Bill as amended be read a third time.

The question was put to the Senate and agreed to.

SENATOR THE HON. D. G. BLACKMAN: Mr. President, I beg to move that the Bill as amended do now pass.

The question was put to the Senate and agreed to.

Mr. PRESIDENT: The Clerk will take the necessary steps to have a message sent to the Other Place regarding these amendments.

Mr. PRESIDENT: Senator Barrow.

ADJOURNMENT

SENATOR THE HON. N. A. BARROW: Mr. President, I beg to move that this Senate do now adjourn until this day week Wednesday, 15th April, 1981 at 2.30 in the afternoon. The Order dealing with the Shipping Bill Sir, we have once more to defer because there is still information which would lead to some amendments which the Honourable Minister dealing with the Bill is awaiting and this information still has not yet come to hand.

The question was put to the Senate and agreed to and Mr. PRESIDENT adjourned the Sitting accordingly at 7.00 p.m.
7.00 p.m.