
THE SENATE DEBATES

(OFFICIAL REPORT)

SECOND SESSION 1976 – 81

THE SENATE

Friday, 8th May, 1981.

The Senate met in the Senate Chamber, Public Buildings, on Friday, 8th May, 1981, at 11.15 a.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 K. R. HEWITT, B.Sc., C.A.; Senator Mrs. E. M. LYNCH, B.A.; Senator Miss M. I. StC. 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, A.I.A.S., J.P.

Prayers were read by Dr. L. Crawford.

ABSENT

Senator Miss O. A. LYNCH, B.A., Dip. Ed., Senator C. I. E. DEANE and Senator J. D. S. MacKENZIE.

PRESENTATION OF PAPERS

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

Customs Tariff (Amendment) (No. 7) Order, 1981.

National Assistance (Amendment) Regulations, 1981.

INTRODUCTION OF BILLS

SENATOR THE HON. N. A. BARROW: Mr. President, I have the honour to introduce the following Bills:

A Bill to amend the Adoption Act.

A Bill to revise and consolidate the law relating to factories and the safety of health and welfare of persons employed therein.

Both these Bills stand in the name of Senator the Hon. D. G. Blackman.

The Road Traffic Bill, 1981.

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

SENATOR THE HON. N. A. BARROW: Mr. President, while we are still on the Introduction of Bills, or if we need to recommit it, there is Order No. 10, Order No. 11 and Order No. 12, a Bill to repeal the Currency Act, a Bill to amend the Central Bank of Barbados Act and a Bill to amend the Exchange Control Act, which three items have not been given a first reading in this Chamber yet.

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

PUBLIC BUSINESS

SENATOR THE HON. N. A. BARROW: Mr. President, I beg to move that Order No. 4 be the first order of the day.

Mr. PRESIDENT: If there is no objection, Order No. 4 will be the first Order of the day.

THE COMMUNITY LEGAL SERVICES ACT, 1981

The first Order of the Day was called — to move the second reading of a Bill to provide for a system of free legal services to persons of insufficient means.

SENATOR THE HON. N. A. BARROW: That Order is being taken care of by Senator Trotman.

SENATOR N. W. BOXILL: Mr. President, before we move into Public Business, I want to draw to the attention of this Chamber that I am not happy at all with what is going on. I got my papers last night and here it is I have not even had time to study these yet. There is one here that I think is consequential for the divorce business that has not even been publicised or anything like this, but here it is you are coming and asking me to be a rubber stamp in this Chamber to support something I have not even had a chance to study. Who expects me to read this? I came in late last night, and I tried to scribble off as much as I could this morning. I am not here for holding up Government's business, but at the same time I think we should be treated with more respect than this.

I am appealing to the Hon. Minister not to proceed. I cannot support any of these measures because I have not studied them, and it is not fair to bring me here on a Friday morning which is such a busy day to deal with something as a rubber stamp. I am not going to be a rubber stamp in here, outside or anywhere else, and therefore I am not in a position to support the passing of either of these Bills in today's sitting.

SENATOR THE HON. N. A. BARROW: Mr. President, if Senator Boxill will indicate the Bill that he is referring to, then we will be in a position to deal with the matter on a rational basis. I cannot believe that he means all of the Bills.

SENATOR N. W. BOXILL: Mr. President, I got a Bill which said: "This Bill would repeal the Legal Aid in Criminal Cases Act, Cap. 139A, and would extend the system for the delivery of free legal services in Barbados."

I only got that today. Then I have another one.

Mr. PRESIDENT: Just a minute. Let us deal with these things one at a time, because my understanding from what the Minister said just now, it seems I am wrong, was that he would like this thing dealt with one at a time, but the Minister tells me he would like an indication as to all the Bills.

SENATOR THE HON. N. A. BARROW: There may be more than one complaint.

SENATOR N. W. BOXILL: That is what I was doing, but the President stopped me.

Mr. PRESIDENT: You wish to indicate all the Bills.

SENATOR N. W. BOXILL: Yes, Sir; all that I have.

Mr. PRESIDENT: All right, just take it easy. Just let me know what the Bills are.

SENATOR N. W. BOXILL: Mr. President, you must forgive me, but I speak rapidly and I speak sometimes a bit above the norm because this is my wont, but it is not that I am shouting at you or mean to be disrespectful.

The second Bill is a Bill to amend the Prevention of Cruelty to Children Act in order to make better provision for the prevention of cruelty to children.

The third is a Bill to repeal the Child Care Board Act and to make better provision for the care and protection of children.

The fourth Bill is a Bill to repeal the Affiliation Proceedings Act, Cap. 213, and to make new provision for the maintenance of certain children that are born out of wedlock. The other Bill of which I spoke is one that is going to be very far-reaching, a Bill to reform the law relating to the dissolution and nullity of marriage, judicial separation and restitution of conjugal rights and to certain other related matters, and to provide for counselling with a view to facilitating reconciliation in matrimonial causes and, in relation thereto, for matters connected with the parental rights and the custody and guardianship of children.

Sir, it is not that, as I said, I want to be obstreperous or objectionable. The point I am raising is that we are legislators and nothing could be worse than hurry-hurry legislation. Hurried legislation is bad legislation, and therefore it is not right for us to come in here and pass these measures without having a proper chance to study them thoroughly. It is not that I am going to vote against them or anything like this, but I have to know what I am doing because you know for yourself, Mr. President, that many times things come from the lower House that nobody seems really to look at and we have to make corrections. This is the house of corrections, it would seem, and therefore why ask us up here to start making the mistakes to send them down there when we know they are not going to be corrected. My view is that I do not see in any of these things that anybody's life is dependent, or they are not waiting to get meals because these Bills will pass, and therefore I am asking that these Bills be held over so that people can study them properly.

Mr. PRESIDENT: You are referring to all the Bills you have named. You said that you had no opportunity to study any one of them? Is that right?

SENATOR N. W. BOXILL: Yes, Sir. I only got them last night.

Mr. PRESIDENT: Does any other member wish to speak on that matter?

SENATOR MISS M. BLACKMAN: Mr. President, Sir, I indicated to the Leader of the Senate a little earlier that my own position was the same as Senator Boxill's. While I do not wish to make any protest or raise any serious protest about it, these Papers were delivered at my home yesterday after I had left for work and I did not see them until after I reached home at 9.00 o'clock last night and with legislation such as this it would be helpful if we could have a little more time to study it.

SENATOR THE REV. A. HATCH: I was just going to say one understands the exigencies of time but if it is within the perimeters available to postpone some of the serious legislation to next week I think generally this will be appreciated because it is our practice to ask those concerned in the field with which the legislation deals to draw to our attention things that need to be raised in Parliament.

Most people have a weekly schedule. I was in Synod until 10.00 o'clock last night and certainly there was not much time to look at some very serious Bills. I therefore hope that it will well be within the perimeters of the possibility that some of the legislation of which we have not have due notice of be left until next week.

Mr. PRESIDENT: I am sorry about this whole thing. We have been trying to sort things out.

SENATOR THE HON. N. A. BARROW: Mr. President, we have had fairly full consultations and there is one proposal members should consider seriously. Senator Blackman is going to be away for a couple of days and hopefully will be back in time for next Wednesday.

What we would wish therefore to suggest is that we hold the items standing in his name, that we hold the Community Legal Services Bill. The Land Acquisitions hopefully would have been circulated by then. They should have been circulated in time for today.

In other words we will have those Items which we can deal with on Wednesday and what I would

like to ask is that Senators allow us to continue with the Family Law Bill and the Maintenance Bill.

I will explain precisely what the position is here. The Maintenance Bill is merely, Sir making provision for maintenance of children who are born outside of the circumstances recognised within the Family Bill. The maintenance provisions are identical with those within the Family Bill and consequently, I would have been making a single Second Reading speech relating to both Bills since the subject matter of one is already contained in the other. Apart from the maintenance provision what the Family Bill really seems to do is introduce a new basis for the operation of the Law relating to marriage.

I believe, Sir that Honourable Members could undertake to let us proceed with those two, essentially it is really proceeding with one thing in terms of principle. Sir, I am referring to Orders Nos. 5 and 6.

SENATOR THE REV. A. HATCH: On the explanation of the Honourable Leader of the Senate, Sir, I am prepared to go along with the suggestion.

Mr. PRESIDENT: Do any other Honourable Members wish to indicate their feelings? Senator Boxill.

SENATOR N. W. BOXILL: Mr. President, I am still at a loss because somebody like they do not think that I am an Honourable Member of this Honourable Chamber.

I have here, Sir, The Bill would repeal the Child Care Board. It is certainly that to which the Honourable Minister is referring. Then, I have here, Sir, the "Bill would repeal the Affiliation Proceedings Act". Then, "This Bill would repeal the Legal Aid in Criminal Cases Act", this is not it, Sir. The other one here, Sir is the "Bill to amend the Prevention of Cruelty to Children Act". It could not be that. But, I do not have any ... (ASIDE: The Divorce Bill.) Which, do you mean this? The Divorce Bill?

The Honourable Member could not be really serious in asking me to approve this Divorce Bill at this time. If you look on page 30, I barely glanced through this by accident. On page 30, Part IV, this is a serious Bill that we are dealing with and I am not going to agree to this, Sir. Part IV says:

"Dissolution and Nullity of Marriage

27. (1) An application by a party to marriage for a decree of dissolution of marriage shall be based on the ground that the marriage has broken down irretrievably.

- (2) Subject to subsection (3), on an application for a decree of dissolution of marriage, the ground shall be held to have been established, and the decree shall be made, if and only if, the court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for dissolution of marriage."

This, Mr. President is a serious matter. The next thing you will hear is, "I divorce thee, I divorce thee, I divorce thee" three times and that is the end of a divorce. I am one for quick divorces, but at the same time, I feel that the church should have some say in this matter.

Mr. PRESIDENT: Just a minute. Are you arguing the merits of the Bill?

SENATOR N. W. BOXILL: No, I am not arguing the merits of the Bill, but I am showing out points of the Bill which would cause me to object to approving of it now, Sir.

Mr. PRESIDENT: Order. It seems to me that you have read the Bill.

SENATOR N. W. BOXILL: This will surprise you, Sir, but I did not. I do not have to come in here and make false statements. I jumped on this by accident and I am appealing to the Honourable Minister not to proceed with it, today. I am willing to facilitate the Honourable Ministers on the Other Side and the whole Government because we are not here to be obstreperous as I said before, but with a matter like this I cannot sit down in here and pass legislation that later on, I might regret. Hasty legislation is bad legislation, so I am appealing to them to withdraw these, I am willing to come back Monday if possible. If Senator Blackman says to come back Saturday evening, I am willing to come back a Saturday evening. I do not want to deal with it today because I have not read it.

Mr. PRESIDENT: I take your point. Would any other Honourable Member like to say anything? Senator Franklin.

SENATOR W. O. FRANKLIN: Yes, Mr. President, first of all, let me apologise for my late coming. I do not know what has gone on before but I got papers yesterday afternoon about 3 o'clock, a sizeable amount of papers, Mr. President on which I am expected to make a contribution. I think that it is unfair.

Mr. PRESIDENT: Senator Barrow.

SENATOR THE HON. N. A. BARROW: Mr. President, the proposals Sir which I offered a little while

ago, when I made the offer, I also said that the Maintenance Bill was already contained within the Family Bill. And that since the Family Bill did not deal with children born outside of the union, then special provision had to be made and I remember Sir, I said that the important point about the Family Bill was that it sought to change the basis for the operation of the Law relating to the dissolution of marriage.

Senator Boxill who claims not to have had time to prepare himself immediately went to the central point in the Bill as a way of demonstrating his unpreparedness to deal with this Bill today. I believe, Sir that no great harm can be done by us proceeding with those two Bills. Essentially the one which has a great deal to talk about is the Bill relating to the dissolution of marriage among other things and that is the one Sir, where the Honourable Senator has already seized on the essential point.

I believe, Sir that if other Honourable Senators do not object that I would really have to insist on our right to proceed with that one, Sir.

SENATOR J. C. W. WICKHAM: Mr. President, this impasse I think ought to be settled quite fairly if we take our duties as Senators seriously. First of all, the objections raised by the Opposition Senators are very valid, but my view is that the Government side has already made some concessions, that if the Bills in question which they propose to go ahead with are introduced carefully, then there can be no objection to a patient debate on them and that we can go ahead and make good use of our time here. I am prepared, therefore, to take the concessions which the Leader of the Senate has made for us to attend to the business of the Government.

SENATOR K. R. HEWITT: Mr. President, I agree with the Opposition Senators that the papers were received late. However, I myself looked at them last night as much as I intend to look at them, so speaking from a personal point of view, I am prepared to deal with the Bill, although as I said I do appreciate the comments made by the Opposition Senators *vis-a-vis* the lateness of the arrival of these Bills, so I am prepared to go ahead with them.

Mr. PRESIDENT: Does any other Senator wish to say anything? I get the feeling that although there is a great deal of justice in what the Opposition Senators have said, and of course it is my duty to take into very serious consideration the minority views in allowing matters to be discussed, I get the feeling that members would be willing to accept the compromise that the Leader has suggested, that we leave out most of the Bills to which objection has been taken and that as it seems members must have read something, I get the impression that members feel they have hit the salient point on the Divorce Bill and that they will be willing to accept the suggestion of the Leader of

the Senate to deal with that later on today, especially if the Leader deals with the Judicature Bill, which would allow members more time to consolidate their thoughts on the other one.

I get the sense of the Senate that they will be willing to accept the compromise solution suggested by the Leader.

THE SUPREME COURT OF JUDICATURE ACT, 1981

SENATOR THE HON. N. A. BARROW: Mr. President, the reason I thought it necessary to have the matter settled as to what we were in fact going to deal with today, was that this Bill which might well have been the only thing we could have done, if the feeling had not been as it turned out to be, is really a highly technical Bill which in a professional sense will attract close scrutiny by lawyers, but which in terms of its broad provisions will do very little really to facilitate debate.

What is important, Sir, is that we have a system of courts adequate for the administration of justice provided for within our Constitution, and that the arrangements for such a system should be such as would remove completely any implication that there is bias or partiality within the court system. Essentially, Sir, the protection given to the courts will be found in the clause in the Constitution which determines that the jurisdiction of the courts shall be as provided in this Constitution or by any other law, and also, Sir, by the interpretation given in decisions relating to the powers of courts. Indeed, there have been decisions on this point in the West Indies, in the Crown Court cases in Jamaica — the Queen and Hinds, the Queen and Jackson and so on — which followed a clearly laid down line in the constitutional cases within the Westminster model, that in the interest of maintaining and giving life to the doctrine of separation of powers, that clause has to be so interpreted as to say that the powers of the courts cannot be taken away by ordinary law, and so when ordinary law may add to the powers of the courts, ordinary law may not take away the powers of the courts.

Ordinary law may not take an area which is within the jurisdiction of the courts and vest it in any other body, even if one attempted to do this by the assignment of people who were already Judges to try cases, because again that is recognised, the assignment of Judges, as a judicial power which is not to be exercised by the Executive. What we do have, Sir, is the need within our own confines to take the legislation relating to the establishment of the courts, to rationalise this legislation, and to provide a modernised version of the law for the provision of our court system.

We remember, Sir, that there have been various changes, and these are matters of history when one

abolished the Court of Appeal and the Petty Debt Court and set up the High Court with Puisne Judges and a Chief Justice, when appeals came to the West Indian Court of Appeal, when appeals came to the Federal Court, with the ultimate Court of Appeal being the Privy Council, which it still is, and this law does not envisage the Privy Council not being the ultimate Court of Appeal.

Indeed if we look carefully at our Constitution, we find that the door is left open for a Court of Appeal to be established. For a number of years, Sir, many of us hoped that such a Court of Appeal would have been established in conjunction with neighbouring countries so that there would be a Court of Appeal of sufficient size and handling a large enough volume of different work as would necessarily have a beneficial effect on the quality of the practice of law.

I believe, Sir, that that day, if it does come, is not immediately foreseeable. The Bill before us, Sir, seeks to incorporate all the jurisdiction that Courts of Record and of Unlimited Jurisdiction in an independent country should exercise with having recourse in statutory provisions to a former imperial power. In other words, it represents repatriation and it also does represent consolidation, provides for the establishment within the service of a court service with a Court Administrator responsible to the Registrar for the efficient day to day administration of the Courts, maintenance of court buildings etc. This is a move, Sir, to retain within the court's administration public officers with the necessary expertise to ensure the smooth and efficient running of the Courts of the Island.

I am aware, Sir, that when we talk about the courts a number of people, and as I look down the table there are at least three such persons here, whose main concern it would be to deal with the great inconveniences which currently characterise court practice, particularly magisterial court practice, and those of us who were listening to the news this morning and indeed those who have been paying attention to the activities of the Attorney General over the years would have some idea of the kinds of plans which are being implemented to make the practice of the administration of justice possible within less uncomfortable surroundings.

This Bill, Sir, the main feature as far as I am concerned, is that it would establish a separate Court of Appeal, and I believe that in a recent contribution in this Chamber I did advert to the fact that while the present system had been administered to the satisfaction of all as far as I know, there were certain inherent weaknesses present in the fact that there was not a separate Court of Appeal with the result that judges sat both as first instance judges and as appeal Judges, and I do not particularly wish to say more about that, because I believe that there is somebody claiming to have had his

constitutional rights affected as a result of the operation of the system.

This Bill also establishes divisions of the High Court, a division of which will be known as the Family Division. I am referring specifically to that because we are going to deal with the Family Bill a little later, and it is the business of the Family Court therefore that we are going to be considering under different legislation. Business assigned to the Family Division is set out in the First Schedule to this Bill: (1) Proceedings connected with any matrimonial cause or matter in respect of which the High Court exercises jurisdiction. (2) Proceedings for a declaration in respect of (a) the validity of a marriage or of the dissolution or annulment of a marriage by decree, and related matters; (b) the paternity of a child; (3) Proceedings in relation to the wardship of minors. (4) Proceedings under the Minors Act and (5) Proceedings under section 26(3) of the Marriage Act and so on.

I believe, Sir, that this Bill has in fact been around now long enough that most Senators have seen it and looked at it and know roughly what is within its four walls, shall we say, within the four corners of the Bill, and also because of its very technical nature I do not propose to speak at any greater length on this legislation. As the question arise which reflect hon. Senators' interest in having matters clarified, I will be only too willing to meet these questions and to give some sort of intelligent answer.

Let me just end as I introduced it; it is a measure that seeks to incorporate the jurisdiction of all the Courts of Record and of Unlimited Jurisdiction in this country, and to that extent therefore what is within the confines of this Bill is bound to be in large measure highly technical.

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

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. N. A. Barrow, the Senate resolved itself into Committee on the Bill Senator the Rev. A. Hatch in the Chair.

On the motion of K. Hinds the Bill was taken as read with Clauses 1 and 2 *seriatim* and the remainder in Parts.

Clauses 1 and 2 were called and passed.

Part I was called and passed.

Part II was called.

SENATOR N. BOXILL: Mr. Chairman, on page 19 (25) (1) it says:—

"A person is not guilty of contempt of court on the ground that he has published any matter calculated to interfere with the cause of justice in connection with any proceedings, pending or imminent at the time of publication, if, at that time and having taken all reasonable care, he did not know and had no reason to suspect that the proceedings were pending or imminent."

The point I got up to raise, Sir, is this. How are we going to know or how are you going to know that he did not know. Let us assume that someone who knew got this thing deliberately published. What then would be the position because this would be interfering with justice. What position he would be in. You see what position I am coming at? If someone who knew and got a publisher to publish it who did not know, what position would he be in.

As I am on my feet I may as well go on. On page 20 (c) "Where the information relates to a secret process discovery or invention that is an issue in the proceedings."

I should read 26 (1) "The publication of information relating to proceedings before any Court sitting in private is not itself contempt of Court except in the following cases, that is to say:" And then it goes on to say these things.

I find these two Clauses are very tricky and then on page 21 at paragraph 27 it says:—

"Upon the application of the Attorney-General and notwithstanding anything in the Coroners Act, the High Court may, if it appears to the Court that any inquest is for any cause inadequate, issue a writ *ad melius enquirendum* directed either to the coroner whose inquest is inadequate or to such other coroner as the Court thinks fit."

I would like to hear the hon. member on these three points that I raise, pages 19, 20 and 21 (ASIDES) It is not a complaint. I want to know what will be the position on 19, 25(1) "A person is not guilty of contempt if that person publishes something and then they go on to state "not knowing that this thing was *sub judice*". I would like to know the position if he got someone else to publish this article.

SENATOR THE HON. N. A. BARROW: Sir, I have been trying to find out what Senator Boxill's difficulties are with one or two of these things. Anyhow, there are three of them and if I understand the first one, it is

really an expression of something which is very common in Criminal Law which is that where there is *actus rea* no crime is committed unless it is accompanied by *mens rea* so that.....

SENATOR N. BOXILL: When you are finished, you can tell me in English.

SENATOR THE HON. N. A. BARROW: I now understand, Sir, what the problem is with one of the Clauses and I understand, Sir, perhaps the problem with the first.

The problem with the second Clause he referred to is what he does not understand because there is no way of expressing the second one in the normal Latin that comes up in the Law from time to time so I do not see what difficulties he could have had with that one.

The first one rather is that if the person who has made the publication has published something that would ordinarily bring him within the ambit of contempt that he has a defence of innocent publication. That is to say, he is able to say to the Court and establish to the satisfaction of the Court that he did it in such circumstances where intent could not possibly be established. I believe, Sir, that is as reasonable and as plain a way as I can put it.

The normal thing, Sir, is that when you charge somebody with a crime that you have no hurry to establish that he has done it that you have to establish intent and I believe that one of the ways of establishing intent is to establish that the person did something recklessly as to the circumstances.

So that you do not necessarily have to intent in every case is not the same thing. So that, if this person knowingly has done certain things and is reckless as to the outcome that this will go to establish intent, but if the person can establish quite clearly that he had no way of knowing, it was not possible for him to know, then he has a good defence. (ASIDES). Sir, it is a little difficult, if I can give the Honourable Senator an example from the Law of Defamation. If you pick up a newspaper, Sir, and it has a libel in it and you give it to somebody else, then, you can be said to have published that libel. If, however, you are a newspaper vendor, you are not expected to know what is within that newspaper and if there is nothing in the circumstances to establish quite clearly that you knew that there was a libel in that newspaper and you go and you give that newspaper to somebody, or you sell it to somebody, there is a Law available to you, the defence of innocent publication because there were no circumstances indicating that you had any right to know as opposed to the man who sits down and writes the article who edits the

newspaper and therefore knows or is presumed to know what is going out in it and who must under the obligations imposed by Law take the necessary precaution.

So, what you have here is a representation within the Criminal Law of something which has been known for a long, long, long time within the Civil Law. I hope Sir that explains that. (ASIDES).

Mr. CHAIRMAN: Senator Boxill, were you speaking again?

SENATOR N. W. BOXILL: No, Sir, I was not speaking again.

The question that Part II stand part of the Bill was put to the Senate and agreed to.

Parts III to X inclusive were called and passed.

Part XI was called.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, Sir, I beg to move that Part XI stands part of the Bill.

Mr. CHAIRMAN: Senator Boxill.

SENATOR N. W. BOXILL: Mr. Chairman, Sir, I wonder if the Honourable Minister can tell me, in Part XI, the Judicial Council. Does the Council appoint the judges, or are the judges still being appointed as they were in the Amendment to the Constitution in 1974?

Mr. CHAIRMAN: Senator Barrow.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, Part XI says:

"There is hereby established a Judicial Council which shall be responsible for the administration of the Courts of the island and shall, a, b, c, d."

- (a) relates to formulating policy relating to all matters effecting the performance of the court;
- (b) is keep under review matters of jurisdiction and procedure;
- (c) is administer legal aid;
- (d) is prepare an annual budget for submission to the Minister of Finance.

I wonder, Sir, if that answers the Honourable Senator's point.

I believe that he did not read correctly.

Mr. CHAIRMAN: Senator Boxill.

SENATOR N. W. BOXILL: Yes, Mr. Chairman, I read quite correctly. He did not need to read for me. I think he knows that I can read quite well as well as understand quite well. But, the point which I was trying to raise is that in 1974, there was a hullabaloo about here about, "hands off the judges", so, I am saying now is a good chance that they have since we had made an amendment to the Constitution which they thought was so obnoxious.

SENATOR O'BRIEN TROTMAN: On a point of order, Mr. Chairman, the Bill under consideration has nothing to do with the appointment of judges in this country. I believe the Honourable Senator is slightly out of order.

Mr. CHAIRMAN: Well, that is not a point of order.

SENATOR O'BRIEN TROTMAN: It is not relevant Sir and therefore is a point of order.

SENATOR N. W. BOXILL: The Honourable Member Mr. Chairman does not know what a point of order is whether it is a point or pint, but what he does not understand is that we are dealing with the Judicial System and since you are dealing with a judicial system you have to be dealing with judges. This is the Judiciary we are dealing with whether you like it or not. We are in Committee and in Committee, I am entitled to ask what I want to ask about the judges, so if the Honourable Member does not know his parliamentary procedure, I would advise him to read Cabinet Government by Jennings or come out by me later on when he is not too busy and I will give him a few pointers. Do not get up here and do that at this stage.

The point that I was making, I made because you see nothing has been done here, Sir, I knew that the judges would be appointed the same way, I knew this, but it is my duty to make the Government as uncomfortable as possible when it suits my purpose, therefore this was the time I feel to be facetious but he cannot get up trying to direct you, Sir who have more experience in this thing than he has. A junior should be more circumspect, Sir.

Mr. CHAIRMAN: Senator Barrow.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, Sir am I therefore to assume that whenever the Honourable Senator gets up and speaks and is being facetious that it is so by intention?

The question that Part XI stand part of the Bill was put to the Senate and agreed to.

Part XII was called and passed.

The First and Second Schedules inclusive were called and passed.

The Third Schedule was called.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, Sir, I beg to move that the Third Schedule be the Third Schedule to the Bill.

Mr. CHAIRMAN: Senator Boxill.

SENATOR N. W. BOXILL: On the Third Schedule, Sir, you see this is why Honourable Members should appreciate when I said that I do not deal with legislation without reading it.

Line five at the end, you would notice, you have there:

"The Chairman may at any time call a such a meeting" I think that that "a" is superfluous. You see why I like to read my things before I come in here. It is not fundamental, but it could cause some problems later on.

Mr. CHAIRMAN: Quite right, Senator, the duty of the Opposition is to oppose. We normally regard that as a typographical error rather than in need of amendment, but thank you for drawing it to our attention.

The question that the Third Schedule be the Third Schedule to the Bill was put to the Senate and agreed to.

The Fourth Schedule was called.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, just before moving this, the Bill was circulated with two sheets of amendments which were made in the Other Place, with the result that the "a such a" was already taken care of when the Bill went through the Other Place. (SENATOR N. W. BOXILL: Is that on the Fourth Schedule?). I am saying, Sir, that "a such a" in the Third Schedule was already taken care of.

I beg to move that the Fourth Schedule be the Fourth Schedule to the Bill.

The question was put to the Senate and agreed to.

On the motion of SENATOR THE HON. N. A. BARROW the Senate was resumed and Mr. PRESIDENT resumed the Chair.

On the separate motions of SENATOR THE HON. N. A. BARROW, the Bill was reported as having passed the Committee without amendment, and it was read a third time forthwith and passed.

Mr. PRESIDENT: I understand that members are now in possession of the acquisition Resolutions, and if there is no objection we can deal with them now. Do I take it there is no objection to dealing with the acquisition Resolutions at this stage?

**RESOLUTION TO APPROVE THE COMPULSORY
ACQUISITION OF LAND AT OLDBURY, ST.
PHILIP, AND PARAGON, CHRIST
CHURCH, FOR USE BY THE
BARBADOS DEFENCE
FORCE**

SENATOR O'BRIEN TROTMAN: Mr. President, the two areas of land to which the Resolution refers have to do with land at Paragon and at Oldbury, which formerly used to be occupied by the Space Research Corporation which has left Barbados some time ago. With the folding up of that Corporation's operations in Barbados, it has been decided that in the interest of the security of the airport first and foremost, and secondly in an effort to give the Defence Force some area for their exercises, it would become necessary to acquire the land mentioned in the First and Second Schedules to the Resolution.

One area of land, Sir, has to do with land at Paragon on which the Paragon House is situated, and the other is away to the east at Oldbury, so that in fact we are dealing with two small portions of land at the distant ends of a large area of land of about 170 acres running to the sea side of the airport, between the airport and Long Bay.

The important thing about the Resolution, as we see it, Sir, is not only the matter of the Defence Force exercises, but in fact it does allow the Government to provide proper security for the airport in Christ Church.

I beg to move that the Senate do now concur in the Resolution.

SENATOR H. F. G. ROCHEFORD: Did the Senator say that the 170 acres were already the property of the Government?

SENATOR O'BRIEN TROTMAN: Yes, it is.

The question that the Senate do now concur in the Resolution was put to the Senate and agreed to.

**RESOLUTION TO COMPULSORILY ACQUIRE LANDS
AT ALLEN VIEW, WELCHMAN HALL AND
STURGES, ST. THOMAS**

The eighth Order of the Day was called — to move the passing of a Resolution to approve the compulsory acquisition of lands at Allen View, Welchman Hall and Sturges, St. Thomas for the purpose of providing an access road to the Harrison's Cave.

SENATOR O'BRIEN TROTMAN: Mr. President, for this Resolution the plans are not yet available, but as I understand it, the absence of the plans need not interfere with the business of the Senate as it relates to the Resolution, because as I understand it, Sir, the descriptions of the twelve portions of land are clear and the Senate is therefore empowered to pursue its business without the actual detailed plans being presented.

The cave at Allen View is progressing. It is hoped that it will soon be ready for the visitors and other Barbadians who want to go and see it, but in the meantime there is no proper access road, as the Resolution suggests, and what the Resolution seeks to do is to provide a proper access to the cave if it is to become a commercial venture.

I beg to move that the Senate concur in the Resolution.

SENATOR W. O. FRANKLIN: Mr. President, I cannot agree with the Senator at all that the absence of a map cannot in any way inhibit the passing of this Resolution. It is impossible for these Schedules to say for certain that these lands being acquired are absolutely necessary for the construction of the road, and we may well be passing a schedule to acquire land from persons that may well be kept if we knew where the road was going. I do not agree that the absence of the map is not important, and I would have a lot of reservation to give consent to acquiring twelve parcels of land unless I am in a position to make sure that they are absolutely necessary for the construction of the road leading to the cave.

SENATOR N. W. BOXILL: Mr. President, I wonder if the Introducer of this Resolution can tell us if these roads have already been cut and how far they have got with them, or if we are now going to acquire these properties to cut the roads.

Now when the hon. member had finished introducing the Resolution, I had not got down to the Third Schedule yet, and this is, as I said already, bad business. We are not here to hold up Government business, but at the same time we should be given more consideration than this. Do not expect that we are dumb driven cattle that you will bring something and ram it down our

throats this way and therefore we have to accept it. To add injury to insult or insult to injury, the hon. member had the gumption to tell us that the maps were not even necessary. They may not be necessary because I do not want to look at them at this stage, but it is his bounden duty when he is asking us to pass legislation to acquire people's land to bring the maps here and let some of us look at them. I think there are twelve pieces of land and by the time I got down to No. 3 in the Schedules, this belongs to one William Green, the hon. member had finished introducing the measure already.

As I said before, we are not here for holding up the business, but I hope in future — of course he will not be here much longer — if he is bringing this sort of Resolution to the House, would pay more attention to the documentation that he is bringing to present before us, because he must remember that all of us are not rubber stamps and all of us are not always going to approve of everything that you come in here with.

SENATOR H. F. G. ROCHEFORD: Mr. President, I would like to follow on a little on what Senator Boxill has said. It would appear to me that this Resolution has already passed the House of Assembly, and it would seem strange that the members of that Other Place were not as much concerned about the parcels of land that they did not seek.....

Mr. PRESIDENT: I do not think that is in order.

SENATOR H. F. G. ROCHEFORD: I just wanted to know whether a map was presented to the Other Place.

Mr. PRESIDENT: That is another thing, but don't make any comment on how the Other Place choose to conduct their business.

SENATOR THE REV. A. HATCH: Sir, the issue which the Opposition has pinpointed does raise the whole question of how Parliament is serviced. One is very well aware that there must be a quite complex inter-ministerial cooperation on the development project of the Caves Authority, and that therefore where the files and papers are at any given time does present certain difficulties. There are people who are qualified here and in particular in the request for a plot plan or a site plan, that individual may need that specifically. I have suggested previously that a location plan would suit our needs. I was even somewhat rude on that occasion but as the Parliamentary Secretary is not listening to me now it may not do any purpose to apologise when I say if he did not understand what I was saying I would write it out for him. I really do not mean to be impertinent, but I do mean to emphasise the point I was making that when one makes an application for any development be it even of a small home, you have not only to provide a plot plan or a site plan, but you also have to provide a location plan. It

would be an extremely simple exercise if the Ministry of Housing, Lands and the Environment were instructed that whenever a Resolution for compulsory acquisition is brought to Parliament, a location plan, and I would like to emphasise the words, a location plan, which is simply a tracing off the plans that exist in the Town and Country Planning Department is provided with it, and I am absolutely certain that for a least twenty out of the twenty-one members in here a location plan would make an awful lot more sense than the site plans, because very often we do not know where the site or the spot is.

Why I think it is important not only to say this again but to support the Opposition in this instance is because there has been a degree of discourtesy with which Parliament has been treated today in the lateness of the provision of papers. This degree of laxity requires that the Government instruct the services, the Civil Servants of the country accordingly. It caused, according to the Press, the release of a fugitive from this country within the last month simply because presumably some Civil Servants or others did not lay in Parliament documents that should have been laid in Parliament, and I think it is all part of the same scene that the Cabinet is responsible to give clear, more precise instructions to the civil servants of this country and to see that they are kept.

SENATOR THE HON. N. A. BARROW: I do not really want to be too contentious, I do not really want to prolong what is really a debate unlikely to take a great deal of time, but in the first place let me explain what Senator Hatch has just referred to as the discourtesy relating to the lateness of papers, because in the first place one has to recognise that up until six months ago, in fact less than that I think, the situation with the Government Printery was totally chaotic, and it would be less than fair if I sat here and said nothing when through the outstanding efforts of a public officer on assignment to the Government Printery we are now able to get not only the Bills printed and gazetted as the law requires which was not being done some months ago, but we have been able to get the Senate debates out. I believe about a year's backlog of Senate debates has been printed within the last three months, so that they are now up to nearly the end of October and the House of Assembly debates up to about the end of September.

A fantastic amount of work has been done since Mr. Grey Forde has been put in charge of the Government Printery. What happened in relation to these Bills was that at the time when the Bills went to the Printery and there was no hold up anywhere, this is a case where share pressure of work which the Printery could not handle happened to be responsible for the Printery not having to be able to finish the Bills until Wednesday afternoon and the machinery of Parliament succeeded in getting them to members, I thought I understood, Thursday morning.

The Senate did after all meet here on Monday and the share volume of printing was responsible for the Printery not being able to get things out earlier than this. This is not like it used to be where share inefficiency and incompetence within the Printery prevented things from getting out and I really would not wish the Public Officer who is in charge now and who is doing an excellent job by any standards to be blamed for what has happened here. It was the volume of printing.

If you will remember, Sir, the attitude on this side was also not one of discourtesy but we also recognised which Bills people would have read and our sense of the situation was that people would be ready to debate these Bills and since another one was similar in proportion to what we did.

In relation to those acquisitions, I think, Sir, it is not entirely fair to accuse the Government or the Public Officers of not treating Parliament with any courtesy. We have been through this and in the Senate we have insisted and it has been observed by Senator Hatch on many occasions when we did not get the Maps and we did not get them circulated in here early enough but it is now the norm for these Plans to be circulated in here and generally members do have some idea of where the lands are that we are acquiring.

I remember last week or week before, whenever it was, when Senator Trotman described the provisions for parking at the Post Office as being made to the East or to the North, whichever one it was, and it was Senator Hatch who looked at the Plans and set him right because we all knew the area.

I will admit that there are some times when Site Plans will help but I do not think it is a clear statement of the case. I think it is an over statement of the case to insist that every time these things come in here there will have to be a Site Plan and I believe that very often when they come in here they are very full and they are very clear.

In relation to those before us today, it is one of those exceptional circumstances where plans are not available where the acquisition is taking place before the survey is completed and the plans therefore are not available to us but it is an acquisition in relation of doing things to an existing dirt road.

I am sorry that Senator Boxill has no difficulty in recognising land but there are one or two things which come through where we are not seeking to impose on members but where we do indeed say that a certain kind of reputation for managing the affairs of the country responsibly has, I believe, been established and if on the odd occasion there is justifiable reasons that there are no

plans, I do not believe, Sir, that members have to try to make a big issue out of it.

SENATOR H. LINTON: Mr. President, I think that in all this there is a slight danger of this Senate missing an essential point in this whole issue. Whereas I sympathise with members who can make much use of these Maps in identifying the area that is being acquired and I can appreciate the usefulness of such Maps, I would not want this most essential point clouded. That is, whether or not the people whose lands are being acquired have received adequate notice and have been given the chance to make their representations. I think their interest is of paramount importance.

I have no doubt that in this particular case the owners of the land, whoever they are, have been adequately notified and that they are happy with the situation. I think that is the most important point in this whole question of Land Acquisitions and a Map does not help us with that.

The problems I get in my professional capacity are the people who get notices late or who do not get notices at all so that the point I would like to see emphasised in this Chamber is whether or not the owners have received notices. I am under no doubt on this occasion that they had but I do not wish to have that attention of a Map being circulated in here to cloud the essential point that if justice must be done we must be satisfied that the land owners are happy and I am sure that the Minister will tell us that they are happy. Thank you, Sir.

The question that the Senate concur in the Resolution was put to the Senate and agreed to.

**RESOLUTION TO APPROVE THE LEASE TO
AVISENE CAESARETTA CARRINGTON OF
LAND AT PINE ROAD, ST. MICHAEL FOR
THE PURPOSE OF PROVIDING PLAY-
GROUND FACILITIES FOR THE
MERRIVALE PREPARATORY
SCHOOL**

The Ninth Order of the Day was called — To move the passing of a Resolution to approve the lease to Avisene Caesaretta Carrington of land at Pine Road, St. Michael for the purpose of providing playground facilities for the Merrivale Preparatory School.

SENATOR O'BRIEN TROTMAN: Mr. President, Sir, on this occasion there is a Site Plan but we do not have any working documents on the bigger plans. The Principal of the Merrivale Preparatory School, Mrs. Carrington has sought permission to lease or rent an area of land which is described in the Schedule for the purpose of providing a playing area for her school.

The Resolution, Sir, seeks to give permission to lease the land on the terms which are set out in the Schedule and these are;

- (i) that the land be kept in a clean and tidy condition;
- (ii) that no permanent structure be erected on the land;
- (iii) that the rental be at the rate of \$960.00 per annum to be reviewed every 3 years;
- (iv) that the Lease should be for a period of 5 years with an option of renewal.

I beg to move, Sir, that the Resolution do now pass.

The question was put to the Senate and agreed to.

SUSPENSION

Mr. PRESIDENT: I think it is convenient now to suspend the Sitting. As I look at the clock, I think a convenient time to resume would be 2 o'clock, so I am asking Honourable Members to be as prompt as possible, so that we can get ahead with the business. This Sitting is now suspended until 2.00 p.m.

On Resumption:

Mr. PRESIDENT: This sitting is resumed.

FAMILY LAW ACT, 1981

Order Number Five was called – To move the Second Reading of a Bill to reform the law relating to the dissolution and nullity of marriage, judicial separation and restitution of conjugal rights and to certain other related matters, and to provide for counselling with a view to facilitating reconciliation in matrimonial causes and, in relation thereto, for matters connected with the parental rights and the custody and guardianship of children.

Mr. PRESIDENT: Senator Barrow.

SENATOR THE HON. N. A. BARROW: Mr. President, let me at the outset Sir say how grateful the Government is to the National Commission on the Status of Women in Barbados as a result of whose deliberation, the present legislation is now before us. The Chairman of that Commission, Sir was Miss Monica Forde, who is a Lecturer in the Faculty of Law at the University of the West Indies, Cave Hill and on that Committee also, we find that there was a Senator Marjorie Blackman. I presume, therefore, Sir that the Honourable Senate

must take some credit also for the excellent work done by that Commission.

The Commissioners did a really outstanding job and one of the Bills which we had the pleasure of dealing with in this Honourable Senate and which is now part of the Law of Barbados was that dealing with the status of children by which the odious distinction between children who were previously categorised as legitimate or illegitimate was forever removed from our Statute Books and from that flowed a number of consequences, but none indeed, perhaps so significant as those enshrined in the legislation which will follow the Bill which I am now introducing, but because there is a similarity between the two pieces of legislation, I shall crave the indulgence of the Honourable Senate to deal in my Second Reading speech with the principles involved in both pieces of legislation.

The point is Sir that insofar as children form a central part of this Bill, the provisions for them are identical with the provisions in the Maintenance Bill which we will debate next. In considering the impact of Law on women the Commission quite properly considered the impact of the Laws on children and indeed, their concern with the general position of the Family Law has resulted in Parliament having before it proposals for the major reform of the Family Law of this country.

There are some things, Sir which one might say about Family Law as it is evolved without the review of the Statute Law in that field and therefore, allowing the Common Law to ride almost unbridled. The main thing I would wish to say, Sir is that when society looked at a woman as not being able to own property that found its way into the Law until there was a Married Women's Property Act which recognised that aspect of the personality of the woman that would permit her to own property. When in the Common Law, the position of the courts was that the illegitimate child was the child of no one *filius nullius*, that important pronouncement of the court operated to create distinctions and to impose disadvantages which make no sense in our community.....

And so when we abolished the distinctions we found that it was necessary to go and do much more if there was going to be adequate provision for all children. I believe, Sir, that if we had had a full debate today on all the Bills before us we would have come away at the end of the day with the knowledge that there was a great deal that needed to be done to provide properly for the care of our children, and I would hope that the fact that the two Bills standing in the name of Senator Blackman – the new Child Care Board Act and the Bill to amend the Prevention of Cruelty to Children Act – the fact that we have not dealt with those two Bills would still permit us no doubt as to the concern which is expressed in this

report, the Report of the National Commission on the Status of Women, for the legal protection necessary for the young, and indeed which is demonstrated in the legislation which we have had to deal with, this legislation now being dealt with, and those Bills we will deal with next week.

The fact, Sir, that this country has at least now come to its senses in recognising that emphasis must be placed on the proper provision for care and development of children. In the legislation before us, Sir — and incidentally, I regard the Adoption Bill of which we gave notice today as part of this package — in the legislation before us you will find that there are provisions made for a reform of the law relating to divorce, nullity of marriage and other matrimonial causes. For the first time we are recognising that it is the role of the law to provide for counselling, and if possible, reconciliation prior to the dissolution of marriage, that the provisions in the law with regard to welfare, custody and guardianship which were never very clearly spelt out, and which many persons will argue led to a great degree of injustice being done, that these should be clearly spelt out in the hope that in administering the law the welfare of the child would indeed come through always as the primary consideration of our courts.

We also wish to recognise that it is a fact of life that there are unions outside of the formal contractual state of marriage, and that in the same way that obligations arise and need to be regarded by the courts as serious obligations where there is a formal contract of marriage, in that same way in a number of these other situations the obligations arise and will need to be satisfied when the unions terminate.

Perhaps, Sir, the point in this legislation which will attract the greatest attention is the replacement of the various grounds for divorce by a single ground of irretrievable breakdown. I wish, Sir, to pay attention to this for a little while, because a number of persons, indeed the majority of persons, live outside of the operation of the divorce courts. I wish perhaps it were possible to say that nearly everybody does, but the activities of the divorce courts are very familiar to some of us, Sir. A number of persons, however, have never gone there and will never go there, and there is therefore the feeling that if we keep the law very strict and forbidding that we will discourage people from going into divorce courts; and there is a second feeling leading on from this, equally fallacious of course, in fact, more fallacious, Sir that by keeping people out of divorce courts we will in fact be doing something for the institution of marriage. Perhaps, Sir, we need to recognise that a whole lot of people will live within the same house, the institution of marriage will continue in that house, but indeed the marriage would have broken down a long, long time ago.

We also must recognise that where in any society any law on any subject becomes in the eyes of that society irrelevant to the realities, then people will get around it, so that we do not like keeping the law of a certain kind to discourage people from finding solutions to their problems. What we do is force them to find dishonest solutions to their problems, or indeed solutions which may in the long run do far greater harm to the integrity of the community. What I wish to say, Sir, is that as adults we all know that the family situation, the contented, happy, little family situation which one might seek may be entirely a surface matter. What goes on inside may be a completely different matter and it is not the function of laws to make hypocrites of a population. It is the function of laws, in my view, Sir, to recognise the reasonable aspirations of a community, to recognise reality and to permit persons the normal development which they can reasonably and legitimately expect as members of any community.

The divorce law of Barbados is outmoded. A number of other countries have come to the position where they have recognised that their divorce laws are outmoded and have changed them. We are only now coming to this position. In my view, Sir, one of the reasons this legislation has come here without objection from the Churches, all of whom were consulted on the legislation, in my view the reason it is here without these objections must indeed be the recognition by the Church that if the law is unfair and unworkable, then it can only force people into dishonest habits, and that if the Churches are to operate effectively, the climate has to be prepared where Churches can deal with their congregations as people and not have to face what appears to them to be one thing but what in reality is another.....

I believe that the Churches are no different in that respect from any other organisation in that you do not want to have to deal with naked hypocrisy. There can be no doubt, Sir, when you look at the way in which people get divorces in this country today that the judiciary recognises the unworkability of the present laws, and therefore chooses not to make it difficult for persons to get divorces, because the law is unreasonable.

First of all, we are taking family matters and subjecting them to an adversary system in which all sorts of unseemly matters fall to be discussed in a court room. We completely, by the operation of the present set of laws, rejected the notion that there is anything essentially private and personal about marriage, and I submit that there is nothing more private and personal than the relationship between two individuals, man and wife. Indeed, Sir, one is forced to go to unseemly extremes to prove adultery. There are comments that I would make in private which I could never make in public, but I believe that if the courts were to strictly observe the standard of proof

necessary for adultery, there could be no divorce on the ground of adultery in this country unless the place was littered with an army of private detectives. We have to decide whether that is the kind of society we want, and I believe that a retired Judge who is still with us was quite right when a number of years ago he ran the private detectives out of his court. I think he was completely right. You have the ludicrous business of people following people around perhaps with cameras and certainly with a number of people, because the evidence in terms of adultery must be corroborated.

I must add, Sir, that there is also the lighter side of that story where the injured husband not knowing that he needs corroboration goes to the house where he suspects the unfaithful wife to be and becomes a victim of some serious blows by the offending wife and the suspected paramour; but should you have to reduce people to that? It is a very serious business. There are people who consult lawyers in divorce actions and then the wife discovers or in fact she may not, but the lawyer discovers that the husband will not speak to him, or as you say, he has him up in mind because since his wife is consulting him about a divorce, he automatically assumes that there is something going on between him and the wife. In my view the whole thing is very dirty. Of course, Sir, you know the beautiful thing about an action based on adultery is that those who wish to protect themselves from detection will really never be detected; so it is really a very unfair situation anyway.

Then you move from there to cruelty and sometimes some of the worst examples of cruelty will avail the injured party nothing, because he or she did not have the presence of mind to get medical evidence at the same time. I would like to tell you that there are people who when the other party does something they do not like are quite capable of taking a cigarette lighter, plugging it in while giving the other party an innocent drive, then pulling it out and administering a burn. That might seem primitive to you and me, but to some people it is apparently quite natural behaviour. A lot of the examples of cruelty of course are not such as may easily be understood and detected. There are things that people can do to each other which constitute some of the most disgraceful examples of cruelty and which may not be provable in a law court. There are people who can drive you out of your mind by constant badgering, but as I say, unless it is very cruel, unusual treatment, even though the poor woman may be beaten every morning she wakes up, or the poor man, in which case every morning he wakes up, even though that might be the case, if three years have not passed you cannot do anything about it. So woman or man who is being cruelly treated must wait and subsist in relationship for three years taking all the blows and whatever other forms of cruelty there are until three years have passed, and then assuming one is still alive, willing enough to proceed

down the road to the divorce court and present the evidence and get the divorce.

Then, Sir, there is something called desertion which says that three years after the party has been married to the other party and that party has been deserted, that is to say, it is either simple desertion or constructive desertion, where one just ups and leaves without the consent of the other, or in the case of constructive desertion, the party who leaves may even be the party who has been deserted because indeed the other one created conditions in which the other one could not possibly have stayed there. If three years have passed, then you may succeed in a petition for a divorce.

The other two examples are not so common. These are not the ones that operate every day, the ones relating to venereal diseases or indeed the one relating to insanity, but the three principal things, adultery, cruelty and desertion, three years and then you can bring the adultery action, three years and you bring the cruelty action, three years and you can bring the desertion action, unless you can establish to the court's satisfaction that there has been cruel and unusual and almost inhuman treatment. There is no way to get around the three year bar.

The point is, Sir, that that is the old Divorce Law founded in the Common Law. It is the Divorce Law founded on fault and almost every civilised country has now come to recognise that in matters relating to the family, we should get away as far as possible from the concept of a fault and seek to recognise what the realities of human relationships are because if we proceed with faults, Sir, there is no reason to isolate adultery, cruelty and desertion because as many things as are capable of being produced by the personality of man, so many grounds indeed should there be for divorce and if one is going to be logical and I do not know what the limits may then be and I hasten to explain, Sir, that when I say "man", I am not excluding "woman". It is very important.

Indeed, those of us who have had a look at Family Law with any seriousness have indeed all wondered that it has taken a long time, not only in Barbados, but in other countries. I believe, Sir, that I have somewhere a copy of the Family Act of Australia which is a 1975 Act and which is the Act that was used as inspiration for our draftsmen who were working on this because it has turned out that that is one of the most satisfactory pieces of legislation in this whole area and once upon a time, Sir, I might have been able to stand up here and tell you which country reformed their Divorce Laws roughly along these lines, Sir, in what year but Trinidad for some years now, Sir, — in fact, they followed very closely on the English Matrimonial Causes Act of 1970

and for sometime the Trinidad Laws have been changed to reflect this kind of situation.

If I may venture a comment, Sir, and I see Mr. Chase is here who is the draftsman to whom I am responsible to this afternoon and I would like to know why Mr. Chase did not reduce the qualification from two years to one year of Marriage but I know of cases where people in less than one year it has been absolutely clear that the marriage has broken down but I think, Sir, that the law likes to be a little cautious and would not like to be accused of what Senator Boxill was saying a little earlier that soon there will be a situation of I divorce, I divorce, so I think that is why we are stuck with two years.

There are many cases where, when the marriage is already clearly broken down, the people have not yet been married for a year and if I may again interject a personal view, this Law recognises but not quite sufficiently the fact that when a marriage breaks down, it breaks down and since there is no way that anybody would be able to prescribe for human behaviour, there is no way that we can produce any formula for persons to say when a marriage breaks down and when it should not break down.

The fact is that I would have thought a year to be a reasonable period but I must admit that two years is not an uncautionable period so I think the two years represent something of a compromise between those of us who would go a little further and the unreasonable provision of three years which existed before.

With the law as prohibited as it is now, Sir, it is very difficult, I believe, for people and for Senators to accept that the highest rate of divorce in Barbados is among very young people because we see that if you get married at 22 or 23 in three years' time you are 26 and therefore you want to know how all of those 25 - 29 year olds are divorced already and it is one thing one can always say for the young and it is that when change is necessary, if the laws do not change, they will still go ahead and that statistic alone is indicative of the rejection by the society of Divorce Laws that have been long outmoded.

I am not, Sir, using this in anyway to reflect on the desirability or otherwise of the nuclear family in our society. That to me is no point. I believe that the point is one which we face everytime we have to deal with Legislation of this sort. Are we going to support laws which might have had and I doubt indeed that this is true of the Divorce Laws frankly that might have had some justification in another age or are we going to recognise that there are perfectly reasonable alternatives which are workable in our society.

I believe, Sir, that if people do not have to go and tell a Judge or seek to justify it to a Judge that one or the other partner in a relationship of marriage is a despicable, horrible individual that that in itself will make for better and more understanding relationships.

Mr. President, when two people are married and the marriage is broken down and one or the other wants to get out of it, some of the most terrible things happen. People who yesterday had respect one for the other become obsessed with the idea of finding fault, of finding in somebody that you thought was a wonderful person, somebody that you had respect for some of the most degrading and despicable things. I do not believe that we need a system of laws that reduces people to such inhumane relationships and I believe that is the cause for reform of the Divorce Laws.

Within any marriage, Sir, there are going to be difficulties and relationships among people are always difficult relationships and none of us can deny that but the fact is that whatever the reason, and the reasons might be myriad, it is not a fact that marriages break down only because of adultery.

Now, Sir, there are a lot of marriages in which adultery by one partner is accepted by the other. It is not a fact that marriages break down only because of cruelty. There are some examples of cruelty which are quite accepted in some relationships. Do not ask me why or how it is a fact but it is not a fact either that marriages break down because somebody leaves home, that they only break down for that reason.

Some of us on the other hand produce a completely different reaction. How is a Divorce Law that says adultery is a ground for divorce reconcilable with what we know to be a fact in Barbados, when a husband goes out in a number of instances and has a child by somebody else and the wife is very concerned that he should bring home that child and not let that child suffer because she does not think that the mother has the means to bring up that child. All of us in here know instances of that sort, all of us. How can we reconcile this kind of harsh legislation and on the other hand all that happens, Sir is that when you have adultery as a ground, it is a matter of either who gets caught first, or who having caught the other party wants to use it. These may not be very nice things to say, but they are true and I think that a lot of us, Sir are well aware of the truth of these situations.

In my view to continue the Divorce Law of the same sort that we have is an exercise in hypocrisy and if it were only that perhaps, we could live with it, but it works a whole lot of hardship on people. There are

people Sir, who live in fear of the other partner and who cannot because of that fear get the kind of evidence that is acceptable and would get them a divorce under today's Law and for that reason and that reason only have not worried to petition. So that, the Law has another disadvantage as it now stands in that it works a very serious burden on those against whom some psychological hold has already been exercised. Sometimes it is not psychological, sometimes, it is straight beating up.

The legislation Sir before us, naturally we focus on the removal of fault and the recognition that is, the marriage is dead, it is dead. If it is not dead, then, what can be done to save it should save it, hence we have the Marriage Counselling Divisions. But, if it is dead, it is dead and there should no longer in the Law be any situation where because you and I agree that our marriage is finished a judge may void the petition on the ground of collusion. The whole concept of collusive actions runs contrary to modern day thought.

So that, the proposal is Sir that the sole ground for divorce should be that the marriage is broken down and that there be provision for counselling and reconciliation. That a petition be entertained only after two years of marriage, that a spouse's act of adultery should not act as a bar to financial relief. Sir, if we look at other provisions of this legislation, you will find the extent to which it is stressed that the welfare of children and the family and the support and property obligations should be given consideration.

If you look at Part V of the Act, Sir, you will find that in this Law which says that a decree *nisi* should become absolute after one month. You will find that the court, in order for the decree *nisi* to be absolute must declare that it is satisfied that there are no children under the age of 18 years, or that the only children of marriage who have not attained the age of 18 years are the children specified in the Order and

"(1) that proper arrangements in all the circumstances have been made for the welfare of those children,

or

(ii) that there are circumstances by reason of which the decree *nisi* should become absolute notwithstanding that the court is not satisfied that the arrangements described in subparagraph (1) have been made."

In other words, Sir, unless there are some extraordinary circumstances, the decree of divorce shall not be final until the children have been provided for to the satisfaction of the court. That I think Sir is a statement of the social conscience of the community.

I can go through quickly, Sir the provisions which this Act makes. I have mentioned the provisions for marriage counselling. There is a statutory marriage counselling provision, but in addition to this, then, the Honourable Attorney General may recognise others as marriage counsellors I do not believe, Sir, that that needs too much going into. I look around the table and I do not get the impression that I need to.

Part V is the one I have just referred to, I am only looking at V and VI Sir because when once we decide that the only ground should be the irretrievable breakdown, then a great deal else in the Law becomes technical, that the Law must provide, for example, as to whether parties can be said not to have been cohabiting in the event that there has been an interruption in the period of staying away from each other.

The provision is in there to indicate that where the court is satisfied that the interruption has not been a serious interruption, then the cohabitation is not deemed to have been resumed. Just let me make a point about that, Sir, before I move on to Parts V and VI, because how practice develops when what is written in the Statute is unreasonable is really a case in point.

There has been a divorce case in this very Barbados, Sir, involving two people living in the same house who were divorced on the ground of desertion. They never stopped living in the same house. If the telephone rang and it was for the one who did not answer the phone, a note would be written and the other one would come up, take the note and return the call or answer the phone, as the case may be. When the Maid cooked, one would sit down and eat and then leave the table and the other one would sit down and eat. If they were going out to a social engagement, communication would again be in writing when one was ready a note would again be written "I am ready, go down and bring around the car," and the other one would go out and bring around the car. They would go to the function, separate, and then at the appointed hour return to the car, go home and resume their separation.

The point I am making, Sir, is that if I had remembered that particular case a little earlier on I would not have had to go into all the detail I did as to how unworkable the present law is, because I believe that case is an eloquent commentary on the divorce laws such as we have, Sir. But I mentioned it in this context of cohabitation because the thing about it is, there have been quite reasonable grounds for people to decide they cannot live together. Even within the context of the existing laws in which whether through weakness, whether perhaps having things to settle and having too much to do one with the other, or for whatever reason, the offended party had crossed the line and found that his case was prejudiced, because another thing in the divorce law as it

stands is that there is something called condonation, so that where the wife has been adulterous and the husband goes back and cohabits with her and resumes a sexual relationship, or cohabits in its fullest sense, he is deemed to have condoned the act of adultery. However, if the husband has been adulterous and the wife has resumed the full cohabitation with her husband, she is not deemed to have condoned anything, which is a very interesting feature in the present law. The man can condone, but the woman apparently cannot.

There are circumstances like that where the marriage has broken down, it is at an end, and it is only being kept on because of the nature of the divorce laws. Where they know it is at an end and people agree, okay, go right ahead, there is nothing I will do to stop you, and it is found that the statement of corroboration which comes from the other party is to be a suspect, then we find that there has been collusion.

Sir, as far as children are concerned, there is a clear statement in the law before us that nothing involved in the conduct of the two parties should affect the children of the marriage. There is an obligation to provide for those children, and if we look at Part V we will find that the court goes clearly into the subject, as I have mentioned, in section 42, the settlement in relation to the children can stop a divorce from becoming final, and where the court makes its order there are a number of things that flow from it.

Some people will be concerned, Sir, about situations of child snatching, or indeed where somebody has rights of access and the person with custody takes the child up and takes the child outside the jurisdiction. It is very difficult to see how the law can change substantially in that respect, because after all, we will be relying on action taken in another jurisdiction to deal with this matter. In other words, you can always stop somebody from doing it if you know they are going to do it, but people will sit down even before their own lawyer and say 'Oh, no. I will be very reasonable, I understand that so and so must have access, I will not remove the child from jurisdiction.' The lawyer will go into court and obtain custody of the child for that party and then when that has happened, the person just quietly gets on a plane with the child or children and takes the child or children out of the jurisdiction. That is clearly an act in contempt of court, but it is very difficult to see how you are going to stop it, and that is a point which concerns a whole lot of people.

The general provision is stated in section 51:

"The parties to a marriage or union other than a marriage are liable, according to their respective financial resources, to maintain the children of the

marriage or of the union who are unmarried and have not attained the age of 18 years."

That is the general provision as regards maintenance, because in that case they have joint custody of the child, but where the child is not within such a union or marriage, then we are dealing with a situation where the court has awarded custody to one or other, and you will find, Sir, that where one is entitled to access to the child, in fact that is dealt with very fully in section 43, the power of the court in custodial proceedings, like the right to stop and search any vehicle, vessel or aircraft, to enter and search any premises or place, named or described in the warrant, and to take possession of the child. If you believe, Sir, somebody is trying to abduct the child, and somebody who has it in custody or access makes a complaint to the court.

In relation to Part VI, I believe it is important that we read section 53 carefully and recognise what it says, because it says "In determining the amount of maintenance, if any, under section 52, there are matters to be taken into consideration, the age and the state of health of each of the parties; the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment." That (b) is very important because if people have the capacity for gainful employment, why should they not be encouraged to be gainfully employed. "Where either party has the care or control of a child of the marriage or union other than a marriage who has not attained the age of 18 years; the financial needs and obligations of each of the parties; the responsibilities of either party to support any other person; and it goes right on.

All these are reasonable grounds which must be taken into consideration in determining whether one party ought to maintain the other and to what extent. These are all reasonable grounds which people ought to take into account. In other words, we do not want an absolutely ludicrous situation such as some may argue exists in some parts of the United States of America where if "A" and "B" should have a marriage dissolved, "A" must then give to "B" one-third or one-half or whatever portion of "A's" worth. What we have is a perfectly straightforward situation. If two persons are no longer married and one is in need of support and the other is in a position to give that support, and in all of the circumstances it would be reasonable, because that is what these things listed down here mean, that in these circumstances it would be reasonable to give some measure of support, then that other party, whether that party be the ex-husband or the ex-wife should give that support. It is a clear undeniable recognition of the equality of women and men, either spouse.

I do not know, Sir, that there are other provisions in here which at this point require any elaboration, and I believe that in one way or other I have dealt with the principal features of this legislation. As you are aware there is an Adoption Bill coming and when the three of these Bills are taken together they would have represented a major improvement in the family law of this country, and perhaps at a later date they may be consolidated so that a single Bill in parts may be brought down, I do not know, but at least there will be a law on the Statute Book which will indicate quite clearly a substantial reform and updating of the law in relation to the family.

Mr. President, I move that this Bill be read a second time.

SENATOR W. O. FRANKLIN: Mr. President, first of all let me express my appreciation to the mover of the motion for the fullness with which he has treated this Bill. I believe he has done this realising the fact that I have had a very short time to go through this Bill, but I have been able to figure through it quite quickly while it was being moved by the mover of the motion. There comes a time, Mr. President, when all adults and all societies like adults have to reach a stage where they have to be honest with themselves and stop being hypocritical about certain things in the life of an individual and in the life of a community. I think it is fair to say that this time it has reached as far as the divorce laws of Barbados, and it is interesting to see that the people who made the move towards this direction were the Commission for Women's Rights as it could easily be called, and in so doing I think they have touched on an area of family life in Barbados that was for a long time one of deep concern to people.

I, Mr. President, like all of us, am a firm believer in keeping the family together wherever possible, and the fact that a marriage should not be made that easy to be broken as not to have any meaning at all. On the other hand, if the reverse is true, you will get the situation that is so well pointed out by the mover where you can become ridiculous to satisfy the laws of this country. I would wish to say, Mr. President, that with the moving of this particular bit of legislation, if one should look back on it ten years from now I think I am fairly certain in my mind the statistics would show no alarming increase in divorces because of the introduction of this Bill. I think it is reasonable to assume and from my personal position to acknowledge the fact that people only come to the stage of divorce where there is absolutely no other way out, particularly the Barbadian, because most Barbadian people have had some type of religious upbringing and they still believe very deeply in the institution of marriage; the younger ones may not have that deep-rootedness, but all in all I think that most people appreciate that marriage should be kept together wherever it is humanly possible.

We have heard a lot and there has been a lot of research that has been gone on about the children of broken marriages, what has happened to them, etc., but strange enough I have never seen any research about children living in a marriage under terrific strain and stress that would better be resolved had not the laws of Barbados been so archaic before and this is an interesting area of research and I would be glad if anyone can draw to my attention research in this area.

I think it is reasonable to conclude that the same types of problems that are so readily enunciated in the children of broken homes can be found in marriages where there is terrific stress and strain and people are just existing in so-called marriage arrangements for the satisfaction of the laws of this country and not only the children but when one thinks of the mental agony that couples can be undergoing because of this situation, I think when all is added, it is fairly reasonable to assume that this type of legislation could only do us good in this community.

I have quickly rushed down the headings of the Act in order to give me some appreciation of how the Act is laid out and my major concern as I read here about any Divorce Laws in Barbados would be (1) that everything is done humanely possible to make sure that the couple try and try to make the marriage work and in this respect I am very glad to see the Counsel Clause introduced and on this point I would hope provisions would be made by the Church, the Welfare Department and other interesting people to make sure that there are ample members of trained Counsellors that would assist in this area because there is no point making provision if you do not have trained personnel to carry out the provisions under this Act.

Secondly, of utmost concern to me is the fact that the children in the marriage, that all reasonable provisions would be made to protect those children in the marriage by way of care and attention, financial assistance wherever needed, visiting rights to whoever is the person not given custody of the child and all that is humanely possible to make the dissolution of that marriage as easy as possible to the children of that marriage.

On the point of maintenance of the divorced man or wife as it maybe, I think it is interesting to see that as far as I know, for the first time, that the equality of the sexes are being seen in a way that the wife if she is in a better position to take care of the husband than he is should share the burden that the husband has been carrying for so long. We cannot have equal rights for women alone in the areas that benefit them. If they are in a position to do so, they should share equally.

Custody of the children, I know, Mr. President, will pose a problem in any Divorce Laws of Barbados, in any

Divorce Laws at all because children are the offspring of two people and the emotions of the people in most cases are very close and it is reasonable to expect in most cases that both parties will need the custody of the children. I think this is one way the Law is very specific and all due care should be taken to make sure that whatever is the final outcome of the custody of the children that the children are the ones whose interests will come first in this particular one.

Mr. President, I personally think that it is the type of legislation that can do no harm being added to the Books of the Laws of this country and as I have said before, my personal opinion is that there will no mad rush to the Divorce Courts of this country because of this law and the only thing which will happen is that the pressures which a lot of people are going through for the pretence of society and because of the archaic situation would be a relief to the betterment of the persons concerned and more particularly to the children who would have some reasonable existence outside of the house where there is nothing but stress and strain and cruelty and all the things that children should not be exposed to. *(Applause)*.

SENATOR K. HEWITT: Mr. President, just a few words on this Bill. In looking at the Bill, Sir, there are about four things that strike me and these are things which I tend to support.

First of all, Section 22 seems to give ample support to the idea that the family unit is, of course, the most important unit or grouping in the society as we know it and it is indeed heartening to see legislation emphasising that one of the principles under which the legislation or the Court should proceed is one which gives people recognition that the family unit is the natural and fundamental group unit of our society.

This concept is further emphasised Sir, in other areas of legislation where it is pointed out that before the final year for the separation or annulment is given that everything should be done in an effort to see whether a reconciliation is possible. The concept of the family union seems obviously to go beyond the concept of the family union only in a marriage situation and hence the legislation also records and gives reconciliation to that unit even outside the realms of Family Marriage.

The second thing that struck me as I read the Act was the importance which the Act gave to the welfare of children of a proposed separation both from the fact of the effort which would be given to ensure that custody was given to the person best suited whether that person was father or mother or indeed it considered that the best person for that might neither be father nor mother.

It also went into great length to ensure that adequate provision was made for the maintenance of

children and in some cases even for children beyond the age of 18 especially in the case of education and in the case where children might be mental and so forth.

The third thing that struck me, Sir, was the essence of the Bill, as Senator Barrow pointed out earlier on, where the ground for separation or dissolution, I should probably use the word was merely that the marriage had broken down irretrievably.

I support Senator Franklin when he says that in moving to this position, there was no need to anticipate any more divorces or to anticipate that this Bill, or Act as it would become would necessarily lead to any greater incidents of dissolution. In that, I found that the word here of extreme importance was the word "irretrievably"

Section 92, Sir also caught my eye, where it makes provision for a family or counsel and thereby recognising the need to keep the Law under constant review and as such to help to ensure that it maintains its relevance to the society of the day. Sir, Section....I do not remember the Section, but in the Act reference is made to cohabitation agreement and a separation agreement and it struck me that perhaps the Act might have contemplated.....

Mr. PRESIDENT: Section 65.

SENATOR K. HEWITT: It struck me that the Act might have contemplated agreements between couples while still married and prior to friction coming into play. The problems which arise when one has to deal in these cases, when one has to deal with the allocation of property and so forth, in my opinion, those problems are compounded by the fact that arriving at the decisions tend to take place in an atmosphere of then hostility and it would seem to me that perhaps some provision could have been made, where while a marriage is still on a sound footing, that agreements could be made as to how property is owned. The concept of a marriage contract as such is not new although in areas, some places where there are marriage contracts, such marriage contracts are in a different context. People who might have gotten married in the province of Quebec, Sir may have marriage contracts, although as I said the context and the reason would be different from what I suggesting, but it would seem to me that the time for agreeing on the respective holdings of a property is at a time when people are still very much on friendly terms and noticing the cohabitation agreement and the separation agreement, I was wondering perhaps if the Act might not have gone a little further and made provisions where married couples can in fact have a marriage contract, or some arrangement not anticipating a divorce, or dissolution, but in case it did happen, the allocation of the property would have been done at a time when friction and hostility might have been at its minimum.

One final, point, Sir, it is a specific rather than a general thing in Section 10(2) (a):

"An approved marriage counselling organisation should not later than 31st December in each calendar year furnish an audited statement"

et cetera. The thing that struck me here is that in indicating when such a statement or report should be made, it does not seem to say for what period. In other words, the Act is specific in saying that something should be done by 31st December, but it does not say relating to what period relating to ten years before the immediate twelve months or what.

SENATOR THE HON. N. A. BARROW: This is a point of elucidation, Sir. Senator Hewitt is giving way. I understand the point he is making. I think he should look a little further up, I think that it is the preceding clause of the Bill. Is it the preceding clause, which Section is it again? Section 10. There is a Clause preceding that which permits the Honourable Attorney General to allocate public funds towards the operation of such a service.

Mr. PRESIDENT: Section 10(1).

SENATOR THE HON. N. A. BARROW: 10(1) it is.

"The Attorney General may upon such conditions as he thinks fit, grant to an approved marriage counselling organisation in respect of its marriage, counselling services"

What I was about to say is that the wording of that Section 10(1):

"as he thinks fit" is enough to give him the power to require the marriage counselling organisation to report for the full calendar year, or for any such period as he considers necessary because the reporting provision is for the protection of the proper expenditure of public funds. Really, that is what it is. So, I think if you take the two together, there is enough protection built in there to enable us to know that the money is being spent as it is. If not, of course, whatever you do is under full audit and if the man does not comply he would not get any more money.

SENATOR K. HEWITT: Sir, I understand what the Honourable Minister says, but I still feel that if an Act is so specific as to say not later than 31st December it should be done, it should be that specific as to say for what period and I think this is normally done in the others which would say, "for the previous financial year ended" whenever it was. It is not a big point, but going over it I am not too sure I would necessarily accept that explanation is 100%. I really think Sir, that in spite of the explanation and in spite of the fact that the funds are voted from Parliament which has a year end ending March, in spite of all of these

things, we still have various other corporations with year ends December and year ends March. Obviously, it could not mean the calendar year, or the then calendar year because he could not report 31st December on that same calendar year. I really think it could be more specific, I am sorry for repeating myself and in addition to saying, giving the limitation, or the deadline for the report, it could also state the period for which the report is applicable. (ASIDE).

Mr. PRESIDENT: I think if I might intervene just to clarify. Would not subsection (3) where the Attorney General can exempt the organisation may be the point that the Honourable Senator is making?

SENATOR K. HEWITT: I do not think that it was a big point.

Mr. PRESIDENT: Senator Lynch.

SENATOR Mrs. E. M. LYNCH: Mr. President, while I give my support to this Bill, I do not do so lightly, so I would like to say a few words about it. Sometimes when legislation of this nature is passed, it seems to me that there is need for even further discussion and explanation by persons equipped to do this sort of work, such persons as priests and social workers and youth leaders because the intent of the legislation is often misunderstood.

Now, the Bill on the status of the child provokes some comments which somehow left one with the impression that the idea got about that since all children would have the same status, then, it really did not matter about ensuring that there was a strong, basic relationship upon which sexual relationships should rest.

It did not matter. If everybody was going to be the same, then it did not matter whether we made proper preparation and had a proper sense of responsibility for bringing human life into the world, and so an Act such as this seems to me to be trying to avoid the bitterness which often marked divorce proceedings, the sort of agonising choices which the child had to make within itself, even if not verbally. Already, although as the Leader of the Senate pointed out, there are such difficulties in obtaining a divorce at present, still there is a rise in divorce which is causing some concern among those people who think seriously about the social implications of the breakup of the family unit. So that already there is a rise in divorce whether this Act were passed or not. I do not know how we would be able to estimate whether the passing of this Act would make it rise still more, but we know that the rise is there already, therefore there are already factors at work against the maintenance of strong family units.

I think, therefore, that we must make it clear that legislation of this sort which tries to indicate compassion, understanding of the human situation, the difficulties of making right choices, the difficulties of adapting to other people, that this sort of legislation does not indicate that marriage as a relationship is not worth preserving or worth working at. I really was touched by the way in which the Leader dealt with this Act, the fairness with which he handled it, it was very helpful to us all, I am sure. When he commented on young people, the fact that even people who marry young were divorcing rather quickly, the fact is that young people are themselves developing and when they marry very early in our society they also tend to begin having their families early. We usually begin having our first child almost as soon after marriage as possible, if not before, and within this sort of situation the young people are themselves coming to grips with developments within their own personalities and they greatly complicate this when they take on at the same time the responsibility for other lives, and very often they are not capable of making the sacrifices necessary for the rearing of young children before they have themselves settled their own problems of development, and therefore they are very apt to separate. It may be that a few years later they will tell you, as they have sometimes told me, that they were sorry they had separated, that if they had been a little older perhaps they would not have separated.

So that this is not a sort of a very simple and straightforward matter, no social problems ever are, they are always complicated, but I think we must say clearly to the public, the people who may want to look carefully at this Act — I hope there will be a sufficient number of copies that people can get hold of it and be able to study it really closely — and as I said before, that people who deal with the young and with groups of various kinds in the community will take the Act and go through it carefully and help people to understand what it is the Act is trying to say. It is not trying to say that marriage should be discarded lightly. Wherever there is a human being there is a human family, and so this should warn us that the human family has a very important function. In fact, we may be starting at the wrong end, although it is better to have your counselling somewhere or other, but preparation for successful family life starts long before marriage. It begins in learning as we grow the difficult lessons of tolerance, of forgiveness and sharing, and the supreme importance of human relationships.

In a society like ours which of course looks continually towards the wealthy communities like North America, Canada, Britain and so on, we are tending to go in the direction of the worship of material well-being, material prosperity, of things rather than people and it may be that one of the social goals we should very

clearly enunciate is that we put our human relationships above all else.

I think that if young people came up in this sort of environment, one in which they begin early realising that they had to make adjustments in order to get on together and that human beings really become human within relationships, ... When we were talking about dealing with the Education Bill the other day it struck me that we need to realise that it is within a relationship that children learn best, and human beings if they effect their own salvation, they effect that salvation within the context of human relationships, within community. So marriage carries with it the idea of commitment. That is why marriage is important. I think lots of young people are being tempted to say that marriage is so difficult, why should we worry with marriage at all. We would like to have a child or two, we will have a child, we will not bother with having to take care of another adult human being, having to restrict our own wishes, to have to tell somebody that you are going somewhere and discuss what you want to do. It is so much easier not to worry about marriage, and there is a very strong trend in that direction, that it is something one need not bother with, and in going in this direction it is rather tempting often because of our own special social history.

In countries where perhaps this seems to be the trend, there is still that strong base of tradition to the nuclear family which is rather weak with us, and so I think we have to be careful that we do all we can while we meet the complications of the human situation to try to preserve what is essential for sound social development, and certainly the preservation of the family is and we cannot say too clearly that what marriage indicates is not a useless tradition, not couples of bridesmaids and so on walking down the aisle and the other trappings that go with the social occasion. What marriage indicates is that we consider the bearing and rearing of a family as being so important that we are prepared to commit ourselves to it. Marriage really implies that high level of commitment to a task which is seen to be both social and individually important for development. We do have to make a case for marriage today because there is a very strong case for not worrying with it.

There are certain features of this Act which indicate that a great deal of thought has gone into the making of it. It does make a clear statement about the importance of the family; it has provided or is going to provide social work services for the family and I may say this as a teacher, that wherever I have had to deal with children whom we could not somehow manage to save, it was because there was no family; the family had disintegrated. Although I did my best I was not trained

sufficiently and certainly did not have the right as a Headmistress to be a family case worker out of school hours; so I hope that the Welfare Department will have a sufficient number of family case workers both for dealing with this sort of situation as well as for giving support to the counsellors within the schools, because they can only go thus far and they very often need to have someone who will spend more time on the family unit.

The Act has certain features such as counselling, though usually by the time people reach the stage of thinking of divorce, they do not very often make use of the counselling. I think the preparation for counselling should come very much earlier, probably before marriage or immediately before the birth of the first child. Then the Act itself provides for a situation in which there will be the avoidance of bitterness. It will not be necessary for one person to prove that the other is an absolute villain or entirely worthless in order to get a divorce. Then there is time to think it over before the final step is taken. I think all of this is very praiseworthy, and though we regret that we should have to provide for the dissolution of marriage, human nature being what it is, it seems that the best we can do is first of all to have within the arrangements we make for helping people to grow up, the guidance, the discussion and the counselling necessary to enable them to better make their way towards the establishment of stable family units, and then, if it does reach the stage where dissolution is found to be necessary, it should take place within an atmosphere which indicates that we do not cease to be human, because we find it difficult to solve our problems. But I think the clear indication should be that we do consider that the family is so important and we are so far behind in learning the first basic lessons of preparation for family life that no one should be encouraged to take this Act and the other, the Status of the Child, as meaning that marriage is a useless institution, is out of fashion and that we should spare ourselves the trouble of working at it, because if we do I think that we are going to regret it very bitterly in the future.

SENATOR J. C. WICKHAM: Mr. President, I rise merely to add my compliments to the Leader of the Senate in introducing this Bill and in the manner of its introduction. One particular point which took my attention was that there is no mention of the word "divorce" in the Bill. The word "divorce" has a slightly pejorative sense, and its replacement by the word "dissolution" I think tends to take the sting and stigma out of the act of separation which is surrounded by all sorts of notions of very strange happenings....in Hollywood but one can only welcome a piece of legislation which goes towards relieving the tensions and, as Senator Lynch said, the bitterness of a state which as

long as 50 years ago Mr. A. B. Herbert called "the state of holy deadlock."

SENATOR H. LINTON: Mr. President, this is indeed a very interesting piece of legislation which has been brought before us today. My only regret which has, of course, received airing in this Chamber earlier is that it could not have, in fact, been circulated earlier so that all Senators, including myself, could have studied it more thoroughly.

I am not making that a complaint, Mr. President, because I was fortunate enough to have been privileged to see an earlier draft of the Bill some time last year when I was asked to give a talk on the subject to the members of the Y.W.C.A., I think it was, and since this Bill is now before us it resembles in a large measure the draft which I saw then so I can have no quarrel myself about the delay in allowing Hon. Senators to see this Bill.

I would begin by saying that it is a very interesting Bill and that one of the points that makes it so interesting and as I listened to Senator Mrs. Lynch this was brought home more forcibly and it was supported when Senator Wickham spoke and it is the question of definition because Senator Wickham remarked that he was glad to see that there was no mention of the word "divorce" throughout the Bill except, of course, coming in the Objects and Reasons, it says "the Laws relating to Divorce" but I support Senator Wickham in that but a lot of use is made of the word "dissolution".

As Senator Lynch spoke, she began to look through the Bill for a definition of marriage because the trend of her argument was that marriage is still a living institution, something with which I do not disagree at all. Of course, everything has its limitations and I do not disagree with her at all but even though I perused the definition section throughout the Bill I did not find a definition of marriage I did not give up because on page 26, clause 22(a) is a very vague definition of marriage. For all those who like myself have been seeking for it and felt they could not find it, there is indeed still a very vague definition of marriage. It states there that "in the exercise of its jurisdiction under this Act or any other enactment, the Court shall have regard to the following principle, (a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all other voluntarily entered into for life."

That of course I immediately observe to be what could be called a rehash of the definition given by Lord Penzance in the famous case of Hyde and Hyde which was decided, I believe, in 1701 where he said that in Christendom, marriage is a union of one man with one wife to the exclusion of all others for life.

Mr. PRESIDENT: Does not the marriage ceremony prefer "other" as I remember it? (Laughter).

SENATOR H. LINTON: You probably have been attending a lot of weddings, Sir, and I think you are right, a lot of other weddings other than you own. Yes, Sir, that is true. Of course, Lord Penzene as indeed this definition makes a serious error in so attempting to define the institution of marriage because what this definition is actually saying is that once a marriage ends in divorce it was never a marriage. That is what it says.

In other words, it nullifies all marriages retrospectively because the logical conclusion is that once it did not last for too long it never had been and could never have been indeed a marriage and that has always been the quarrel if the Leader of the Senate remembers his Family Law and this has always been the quarrel of Lord Penzene's definition as it was given in the classical case of Hyde and Hyde but that should not cause us any degree of dismay, Sir.

I mentioned that to bring home the point to Senator Wickham again that that was another device to use not only to give us an indirect definition of marriage but also an indirect definition of divorce and I think that that augers well for the Act itself.

Now the legislation itself is long overdue. It is most welcomed from every stand point. It is welcomed from a social standpoint. It is welcomed from an economic stand point and I do believe it is also welcomed from a christian standpoint.

I do not know what will be Senator Hatch's reply to that or to go further what would be the response of the Church on this and I will say here that I hope we do not hear much of this talk about not having time to discuss this Bill and I take issue with Senator Lynch because I know myself of the vast number of Organisations and since the last two years or so since the Report by the National Commission on the Status of Women who have been discussing this Bill.

Indeed, most of the provisions of this Bill have been taken directly from the Report of the National Commission on the Status of Women and those of us who have read it, and it was given out free to all Senators, would notice that most of the provisions were in fact taken from that Report so I do not want anyone, Church, Senator, or anyone else or to hear it being reported as not having time to read what we are putting into Law here now without any contrary statement contradicting that because I know it has been circulated for three or four years at least since the Report by the National Commission on the Status of Women was published. I know that this Bill does not differ substantially from what was put in there.

Now the Bill is quite sensibly set out in Parts and most Senators who have already spoken have dealt with it Part by Part and I, too, propose to go through its various Parts in great detail because this is the first time I have read the actual Bill but I wish to go through it Part by Part to highlight those Sections that I think will be of interest one way or another.

If I may start with Part I and call on other Senators who has spoken so far in here but I must of course welcome the provision that is made for Marriage Counselling Organisations. This is a welcomed innovation in terms of Barbadian Law. It was introduced in England in English Law under the Divorce Reform Act of 1971 and has worked reasonably successfully but I would have to agree here with Senator Mrs. Lynch when she said that she thought that Marriage Counselling should take place long before a divorce is in the offering because by the time the parties have reached the Attorneys-at-Law, on whose shoulders a duty has now been put under Clause 13(1) (a) of the Bill, to make sure that the parties are made aware of the reconciliation services it also states that "he must take such steps as in the opinion of the Attorney-at-Law may assist in promoting a reconciliation".

The duty of assisting in promoting a reconciliation, Sir, has been put fairly and squarely on the shoulders of the Attorneys-at-Law. I do agree with Senator Mrs. Lynch that those duties should rightly have been put on the shoulders of the Chief Welfare Officer and his workers.

Because by the time the parties who want to be divorced have reached the lawyers, there is simply no point referring them to the reconciliation services, they would have gone through every available avenue by then, the Church and the Welfare Officer. In my experience that has usually occurred, very often.....(ASIDES)..The Honourable Leader could interrupt me to make the point if he wants to because I am interested.

SENATOR THE HON. N. A. BARROW: Sir, since I am invited, if you will agree. The point I am making Sir is that a lot of people do not in fact go to the Welfare Officer, in fact they go to the lawyer and the Clause is designed to ensure that those who go to the lawyer without having tried anything else at all would still be made aware of the facilities available before anything too final happens. I think that that is all that is involved.

SENATOR H. R. LINTON: That is a good point, Sir but in the circumstances of this particular piece of legislation, it is fallacious. It is fallacious, Sir, in the sense that a lawyer is never the first line of approach where two parties wanting to get a divorce, perhaps never is too strong a word. I would say that 95% to 98% of the times that parties do reach a lawyer, they would have taken

advice from family, friends, church, doctors, you would know, Sir because in your profession, you may have had occasion to grant this sort of advice. It is very, very seldom the first line of attack and so that, that is why I say that the Honourable Leader's point was fallacious, I see a duty here is put on the Registrar to advertise the court's counselling facilities and if all other counselling facilities are so advertised, so that all and sundry know of them, I think that by and large prospective divorcees would have taken counselling advice by the time they reach the lawyer and in fact, Sir, this is what happens in England because under Section VI of the Divorce Reform Act of England where a duty is put on lawyers to swear a document stating that the clients have been referred to the counselling services, it becomes a mere formality.

What happens is that the lawyer has a stencilled sheet where when you consult him about matrimonial problems, he gives you this sheet, the Law puts a duty on him to make sure that you have been referred to counselling services and you have to sign that document as evidence that he has drawn your attention to the existence of the counselling services. He charges you for that and sends you away. The next time you go back, he has another stencilled form which states that I so and so, so and so certify that I have taken my lawyer's advice and I have been made aware of the existence of the counselling services. He makes you sign that one and he charges you for that, then his job begins, so that it has become a mere formality. By the time in fact the litigants reach the lawyer, it is a mere formality. I would really like to have seen that duty put higher up in the scale, but, it would not be all lost in any event, Sir because on occasion the lawyer can be more persuasive in these matters than the priest who very often knows both parties, or a friend who likewise is in that position. Very often, it is the one party most aggrieved who goes to the lawyer that puts him in a position, where he can be more persuasive so that in fact the provision will not be 100% lost, if I may say that to Senator Mrs. Lynch through you, Sir, but I do agree with her partly that the duty could have been put higher up the scale and not directly on the shoulders of the lawyer, so that busy lawyers will indeed make it a formality. That Sir takes care of Sections One and Two and I cannot stress enough the usefulness of this innovation as it relates to the counselling services. I trust that counselling services will be set up all over the island, that the Welfare Department will not restrict its services to dispensing them wholly and solely from its Bridgetown office, but that they will have a peripatetic marriage guidance counsellor one who will go around to all the parishes to give this counselling once or twice a week.

I do not want to see my St. Philip people who are experiencing matrimonial problems put under further distress by having to come to Bridgetown up Bay Street, sit down on a long bench like when you go

up to the prison or something like that next to a cold wall with no flowers in it or anything like that waiting to be told one or two things by a marriage guidance counsellor. I trust that the atmosphere would be correct, I hope that the officers who are going to give the guidance will be carefully chosen for their humanitarian aspects more than anything else and that persons seeking their services would not be made to wait for long hours on hungry stomachs before they can see them.

I want to echo the words of Senator Hatch, when he said earlier in a debate on another Bill that civil servants must know and must be ordered to carry out the wishes of Parliamentarians. Perhaps, it is not a bad time to support Senator Blackman when a few weeks ago, he tried to make sure that his orders as Minister were carried out in his department. I believe that is what Senator Hatch was trying to do too earlier, support him obliquely and I support Senator Hatch in that.

I come now, Sir, to Part III which deals with the jurisdiction in matrimonial causes. I have already touched on the attempt of the legislature to give a definition of marriage. I would not go so far as to say that it was clumsy but it did not really succeed too much in effecting the purpose it was designed to achieve. Section 24(1) coming under that Part, Sir, is also a useful section where proceedings of a summary nature, that is of the Magistrates' Court are pending and proceedings are also brought in the High Court, the ones in the Magistrates' Court can of course be adjourned, so that the High Court can deal with their matter. By and large that section is a procedural section, it sets out the persons who can divorce and there is nothing wrong with that at all.

Now, Part IV is a very, very important section so far as lawyers are concerned because what Part IV does with respect to divorce is to remove all of the previous grounds of divorce, adultery, desertion, cruelty, and other grounds and it has replaced them with one ground. In actual fact, it has adopted the English principle of divorce. The Law of Divorce in Barbados henceforth will depend on the irretrievable breakdown of the marriage. This Bill has gone much further than the British legislation. I think it seeks to encompass not only the British Reform Act of 1979 but it has taken note of the Australian Act, the New Zealand Act and I believe I see some Scottish thinking in it too. Irretrievable breakdown can be established according to Section 27(2):

"if and only if, the court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the

filing of the application for dissolution of marriage."

Of course, separation does not mean one party leaving the house and living at another house because Section 28(1) in supplying us with the meaning of separation states that it can be constructive separation as well. It means that even though the parties continue to live under the same roof that does not mean that there is not a separation. In fact that would not stop the courts holding that they have lived separately and apart, that is constructive separation. Separation of two kinds, of course, *de facto* and *de jure* separation.

What this means is this, Sir. In terms, as Senator Barrow said, of adultery, for example, no longer will it be necessary for a wife to look for lipstick on the husband's collar or for soiled tissues in the back of the car, or anything of that sort in order to prove that he has been committing adultery, and of course the husband will no longer have to, as we in Barbados put it, peep behind the wife in order to make sure that he could get a divorce. That is in terms of adultery.

In terms of desertion, here again the Leader is quite correct, neither party now has to wait for three long years before he or she can petition for a divorce, twelve months continuous separation will suffice, but the greatest benefit of course will be in terms of cruelty, because even in terms of the law cruelty has always been a question of degree, and by definition it implied injury to the body or to the mind, mental or physical injury, mental or physical cruelty. By and large it is proved in the courts in Barbados by normally the wife, unfortunately, but sometimes the husband too, saying in court that he has suffered certain injuries, the wife beat him up or she did not cook or wash his clothes, or something like this, and it led to his depression and anxiety, and as a result he had to go to the doctor and he prescribed certain pills. This is true also in the case of the wife, and she says she cannot live without these pills, Valium or something like that, and sometimes of course this is a lot of lies, but that is what it amounted to. Of course, the wife would say that the husband came in early in the morning or very late at night without any or reasonable explanation and that led her into fits of depression, and very often in fact she was glad to see the back of the husband anyway. She would have preferred if he did not come in, but now that she wants a divorce she says that he came in late at night or early in the morning.

This led to a lot of untold difficulties, a lot of people saying things they do not mean and things they did not want to say, things they would otherwise not have said. Believe it or not, Sir, up to now we still have to go through this rigmarole in court and one or other of the parties is still required to go to court to give this

evidence on oath. That brings me to an interesting departure in this Bill, which a lot of Senators may not have seen, and I do not think the Leader of the Senate commented on it.

Under Part IX — Procedure and Evidence, a very interesting section, there are two very important provisions. Section 74(1) states that subject to this section and the rules, all proceedings in the court shall be heard in closed court. That is a departure from what presently obtains, because at present proceedings in divorce cases, except in relation to ancillary matters, are held in open court, and anybody can go into court any Monday morning and hear all the sordid details about the marriage as they took place years ago.

The second departure contained in that Part, Sir, relates to the question of the formality. Section 74(3) states that in proceedings under this Act the court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted. That is a very important provision, Sir. That provision has effectively relaxed every rule of evidence, and now the Judge is free to hear precisely what the parties have to say. He can listen to them, he can put down his pen and tell them to talk. He does not have to be governed by the rules of hearsay, he does not have to be governed by any other rules of evidence, because the section permits him to dispense with any undue formality, and most importantly, to make sure that the proceedings are not protracted. I think that will benefit litigants, lawyers and the society as a whole.

The most important provision of Part IX relates to the fact that the rules of the court — whatever rules you call them, matrimonial causes rules or whatever — may provide for evidence of any material matter to be given on affidavit at the hearing of proceedings for principal relief — that is in a divorce — that are undefended at the time of the hearing, and also for proceedings other than proceedings for principal relief, in other words, virtually all matrimonial matters including an undefended divorce can now be done, if my understanding of that section is correct, by the presentation of a sworn affidavit. That will obviate the necessity of parties having to go to court on the witness stand and trotting out all the sordid, sometimes scandalous and sometimes offensive, sometimes insulting, sometimes humiliating details, as per section 77 of Part IX. Once you can do that, that will relieve the parties of having to go to court, relieve them of the embarrassment of having to go there if their lawyers can then present the evidence for them by affidavit. I take it that my interpretation of that section is correct. It is not ambiguous in any way, so that I trust that I am correct, once the rules make provision for it.

Now, if that is so, even if that is not so, but particularly if that is so, I am going to venture to suggest

that this could and probably should lead to a reduction in the cost of a divorce. I have chosen my language very carefully, Sir, because I have not looked at the total ramifications of this Act at all, I have only read it today for the first time, but if what I perceive to be flowing from it is correct, it could and probably should lead to a reduction in fees, but I do not give a guarantee that it will, and there may be very good reasons why it in fact will not, Sir.

Talking about the question of cost, Sir, another very enlightened provision on which Senator Hewitt remarked was the question of the cost, and I think that is provided for in section 94, Part XIV: "Each party to proceedings under this Act shall, subject to subsection (2) and section 95, bear his or her own costs."

Mr. PRESIDENT: I do not remember Senator Hewitt mentioning anything about costs.

SENATOR H. R. LINTON: I am sorry, Sir, I thought I heard him say something about costs. My apologies to Senator Hewitt, Sir. However, under section 94 each party to the proceedings under this Act is now required to bear his or her own costs, except it is the opinion of the court that the circumstances do not so justify. We have a very iniquitous system in this country where as a general rule the man in Barbados is asked to pay the costs of both parties. The rule is iniquitous, Sir, it is like its corollary where the husband is normally ordered to maintain the children. Sometimes you are likely to get a very flippant order where the means of the mother are not at all taken into account, and in these modern days we have a lot of women working for a lot more money than a lot of us poor fellows, and I do not see how that could be right. If you are going for equality, then it should be equality in everything. If they want to get a divorce, then the court should be required to look at the means of each party.

Now, Part V again, Sir, section 39 is a relatively novel provision, but here again another interesting provision and a provision that is long overdue in terms of Barbadian law, and the provision that I strongly suspect has escaped the notice of a lot of Senators here. Here it states:

" 'union other than marriage' or 'union' means the relationship that is established when a man and a woman who, not being married to each other, have cohabited continuously for a period of 5 years or more and a child has been born of that relationship."

SENATOR THE HON. N. A. BARROW: Mr. President, I rise on a point of elucidation really, and I am glad the Senator has given way. When I introduced

the Bill I should indeed have drawn attention to the clause because the other amendments, and there are about nine other amendments, are not substantial amendments; they are more grammatical; and really, Sir, I hate to raise anybody's hopes and then dash them in this particular way, but on page 37 of the Bill the amendment will be the striking out of the words "and a child has been born to that relationship" because the five years has come to be a standardised point. I had intended making this point during the second reading speech, and I am glad that Senator Linton referred to it because it is a point worthy of clarification.

SENATOR H. R. LINTON: I am sure we are all grateful to the Leader of the Senate, but of course the importance of that provision is that once again we are as a country, as a Parliament here giving recognition of the common law marriage, and this is nothing new in our legislation because we saw it in the Succession Act, we saw a variation of it in the Status of Children Reform Act and I think we are seeing it in the Vital Statistics Act, and now we are seeing it in this Act. We are getting greater and greater albeit belated recognition of the common law marriage as we know it in the West Indies.

I can see throughout this Act and I would say at this point the influence of the Church being reflected in this Bill. I have no doubt therefore that the Church had a lot to do with the final draft of this Bill, and I am grateful that their influence is so heavily reflected in the Bill.

Now I was just going to say that that idea of the union, they call it a union as opposed to a marriage — perhaps there is need for the technical distinction — has been carried on throughout Part V and therefore it is very important that persons now living in a common law relationship should realise that insofar as the welfare and custody of children are concerned, they are going to be bound by the same rules of law as persons who have entered into a Christian marriage. Section 50 to which my attention has just been drawn, for example, states that "A party to a marriage or union other than a marriage is, subject to subsection (2) liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so." In other words where you have been living in a union which is a common law marriage, or simply put, where a man has been living with a woman for five continuous years, he will now be under a duty to maintain her so far as he is reasonably able to do so. This obligation only arises where the other party is unable to support herself or himself for several reasons which are set out in section (2). I must point out that not only are the males under a duty to support the females; I want to get it straight that the women have asked for equal rights and they

have got it, and the females are also under duty to support the males if they are reasonably able to do so. We are bringing the ladies now on par with the men which is what they have always been asking for, and there can be no quarrel with that, at least not from a male point of view. And of course all the duties that impose upon a married couple are now by virtue of that definition imposed upon a couple who have been living as man and wife for a continuous period of five years. It will of course be up to the women to make sure that they keep diaries and make notes of the dates they start to live with the men because I can see a lot of men wriggling out; I can see a lot of men saying I was not with her for five years, I was with her four years, 364 days and ten minutes, so I am pulling out now. I think the women ought to keep some diaries to make sure. I speak subject to the slight correction which has been drawn to my attention. Some women may also wish to wriggle out if they in fact have the money as they are wont to do nowadays.

I turn now, Sir, to Part VI which is of course the troublesome part of this Bill, the question of maintenance and property. Now I have just touched on the position as it relates to maintenance and I find no fault with those provisions as they relate to maintenance at all. The Bill essentially incorporates the principles as they are presently applied in the courts of law in Barbados except for children of course, because now there is a duty to support children up to 18 years if they are not going to school, and if they are going to school after 18 years there is a discretion whereby the court can still ask one or other party to continue to support them. I see a difficulty here because only last week there was a question relating to the powers of the School Attendance Officers who can only make sure that children attend school up to sixteen. Somebody raised a point, I do not remember what the point was, but I can see this difficulty of children between the ages of 16 and 18 years arising because quite a number of our children are in fact working between 16 and 18 years. However the provision is limited further down in section 54(i) where the income, earning capacity, property and other financial resources of the child must also be noted.

In Part VI here again on page 57, clause 53(k) I detect the influence of the Church in this Bill. It says that in determining the amount of maintenance which must be paid among other things which the court must look at is the need to protect the position of a woman who wishes only to continue her role as a wife and mother. If, Sir, I did not detect the influence of the Church in the nature of that provision, I would have described it as an anachronistic provision. Just imagine a situation of a young wife of 22 or 23, fairly well qualified with one child and she decides I don't want to work, I want to continue with my role as a wife and

a mother. That is one of the matters the court has to take into account in determining the level of maintenance which she requires, so if she insists on remaining home because she wants to be a wife and a mother, that is to be looked at. I regard that as being fairly anachronistic.

I will go on Sir. In Section 53 Subsection 3 — (ASIDES) I have just been given some good advice, Sir. Section 56, Sir, I have had a useful explanation on this Section from the Deputy Chief Parliamentary Draftsman who quite kindly explained to me that in Section 56(3), an Order under this Section relating to the declaration of titles, rights or interest in the property of the parties is not binding on a third person.

I was very perturbed about that. If for example, a husband has a mortgage on a house and the parties have a petition for dissolution of the marriage and the property rights have to be declared, then any declaration made by the Court, for example, if the Court Orders the husband to transfer his interest in the house or the wife or vice versa that declaration would not be binding on the mortgagee, the person from whom you got the mortgage, but it was explained to me, Sir, that the overriding principle relating to the protection of the third party rights is greater in these circumstances than that of protecting the individual rights of the parties and I can see that because if mortgagees feel that at anytime these parties may go through a divorce and the Court may order to transfer everything to the woman who does not have a fixed job or the man was a semi-lay-about then, we are taking a bigger risk because we are not going to get as much money for loans and I can see why that provision was made.

Of course, it waters down considerably the powers of the courts but I think that is inevitable so I will pass on from that.

Now perhaps not my final point but the main point I would like in closing relates to Section 57, that is the property of the parties to the marriage where the Court is given the right to alter the interest of the parties in the property.

Over the years when my ex-colleague and learned friend, Senator Connell, was occupying the Chair which is now being occupied by Senator Franklin, and Senator Hunte occupied the one now being occupied by Senator Boxill, we used to have a friendly discourse on the rationale underlying the distribution of the proceeds of sales in the matrimonial home and it was my contention then that the law was not half as difficult as it was expressed to be.

Now, I used to see it then that the Law required two criteria, (1), that any indirect contribution made by the wife was referable to the contribution of the property and (2) that it was of a substantial nature. That was essentially the law. It is still the law as was expounded in the cases of *Giseng* and *Giseng* and *Petit* and *Petit* which my friend and colleague Senator Barrow is fond of referring to and which I submit are two difficult cases to understand, Sir, and I am happy, Sir, to note that under Section 57(3) as it was expounded and laid out in *Giseng* and *Giseng* and *Petit* and *Petit* has not been altered in any substantial way because the question of referability has been retained quite fairly and ambiguously.

Section 53(3)(a) in considering what orders should be made in this Section, that is in deciding on the interest rights in the matrimonial home, the Court should take into account the following "(a) the financial contribution made directly or indirectly by or on behalf of a party or a child to the acquisition, conservation or improvement of the property," or otherwise in relation to the property so the first ruling of my argument was this that the contribution by a party or a child must be in relation to the property. In other words, it must be referable to the acquisition of the property.

What the Bill does not state is whether or not it should be substantial. That in my submission, Sir, will depend on the common law. Any Resolutions on this problem relating to the quantum of the contribution is going to be decided, in my mind, in accordance with the common law and I am sure, Sir, that the question of the quantum, how substantial it is is going to loom large and therefore if a wife or a husband for that matter performs jobs of an inferior nature around the house they are not going to qualify for a share, right or interest in the house or whatever.

The contribution made directly or indirectly to the acquisition, consideration or any improvement of the property by either party including any contribution made in the capacity of homemaker or parent, (b) does not alter my argument, Sir. (b) is connected to (a) so in other words when you read (b) it must still be in relation to the contribution made by the homemaker or parent in relation to the property.

The only question left unanswered is the quantum in those sections and I really do not think this Bill could have been any clearer on the point. I do not believe that the draftsmen could in fact have done a better job. The answer must of course be left with the Judge deciding the case. He must treat each case on its own merit and decide on it in the context in which it comes before him and this has been my main argument all along. No criteria can be set out to determine how

much a wife or a husband is entitled to. Therefore, the Courts have under this Bill to use their discretion to determine how much, if any, the wife or husband will be entitled to.

It has widened the concept of *Giseng* and *Giseng* and *Petit* and *Petit* by talking about conservation and improvement and their contribution as a homemaker or parent. It has made that clear because that was deduced by inference in those cases under statutory and common law where statutory provisions are made that where you make a contribution to the acquisition of property in a matrimonial context as a homemaker or a parent, then you are entitled to share in the proceeds of that property.

Another interesting provision comes in Section 59 where those who are to be ordered to pay maintenance can be ordered to make lump sum payments either in one amount or by instalments. We have a situation here nowadays where people have large sums of money in banks stacked away but do not have much liquidity and indeed weekly or monthly do not receive more than would allow them to pay a reasonable amount of income tax yet, when they are called upon to pay maintenance, they are judged principally on the amount of income coming in when the month comes. I think that that is wrong that all of the circumstances should be taken into account in ordering maintenance payments.

There is just one criticism I have to make about the Bill and this criticism I am going to make because it has been repeated in the Bill which will come before us shortly, this afternoon, I believe the Maintenance Bill, Sir, and it is the question of attachment of earnings. I need to study it much more thoroughly but my initial reaction of the provision here on page 90 Clause 87 where provision is made for the attachment of earnings for the purpose of ensuring payment under an Order of the Court.

Attachment of earnings, as I understand it, is a situation where the Employer is ordered to deduct such weekly or other sums to pay them to another person in respect of maintenance or what have you. That is the attachment of earnings.

One of the problems today is with mothers having to go to courts and find that because accounts have not been done, they could not receive their allowance. Men move from address to address and when it is time to pay alimony, they just do not want to pay it, Sir, but they have stable jobs or employment. That is why this provision would be so useful. But, Section 88(1) I believe provides that no employer could deduct more than one third of an employee's wages except for deductions in respect of income tax. Subject to that Act, Section 88 as it seems

to me is limited where the worker is going to give the employer provision to deduct maintenance from his salary. I doubt that very much.

Sections 87 and 88, my only final criticism of that relates to the manner in which maintenance is worked. I do not see any provision under this Bill for maintenance orders of the court to be serviced by the Registry. If the Order is put on you in the Magistrate's Court, the money has to be put into the court. The duty is put on the Clerk of the Court to see that payments are made. If payments are not made, the Writ Server can arrest you, check the money that is on you, pay it and then take you up to Glendairy until the remainder of the money is paid.

SENATOR THE HON. N. A. BARROW: On a point of elucidation, Sir, when I read the Section, I made it two separate things. The court may order for collection of earnings and the other Section said that the persons subject to the Protection of Wages Act which says that an employer cannot deduct more than a certain amount and that the employee may consent to the deductions. In other words, I made them as two separate things. We all perhaps read this quickly. The business of consent does not seem applicable. Maybe I am wrong and the Honourable Senator is right, I think that my perception of the draftsman is right, but your perception of what he has here is wrong.

SENATOR H. R. LINTON: I am sorry, Sir, I was looking around for the draftsman. Section 88 is intended to protect the provisions of the Wages Act. If that permits deduction of half, he can give consent to have two thirds deducted. If the Honourable Leader looks, Sir at the Maintenance Act it is repeated there. I do believe that it is going to cause problems both with the Protection of Wages Act and I think we are going to have to insist to an amendment to the Protection of Wages Act, so that where it concerns wages, that can be deducted even when the total deductions are then made.

SENATOR THE HON. N. A. BARROW: On a point of elucidation, Sir. I do not think that Senator Linton got my point. Section 88 relates to the Protection of Wages Act therefore the Section can only be limited in respect of.....let me put it another way. Section 87 relates to the court order. The Protection of Wages Act provides a limit and here that provision in the Protection of Wages Act is being modified. In Section 88 on the other hand the two people may agree to the amount. Section 87 says that no matter what the Act says, this is a statutory provision that the court may order that this is attached to the earnings.

As I see it, Sir, there is no real conflict. If we read the two Sections quickly, we get them together, but if we look at them separately, we see that Section 88 is saying

that subject to the provisions of the Act two people may do X or Y. It is a point which I want to clear up.

SENATOR H. R. LINTON: I would want to disagree with it in that that Section 87 is not mandatory. It seems that Rules may make provision and it makes provision for provision to be made. I think we need to look into it.

I want in closing Sir to say that it is a good Bill and I am happy to give it my wholehearted support.

Mr. PRESIDENT: Senator Hatch.

SENATOR THE REV. G. A. HATCH: Sir, the last speaker, said that he saw the hand of the church in this Bill and he therefore anticipated that there would be no public outcry from anyone and certainly the church leaders about it. There is unlikely to be any outcry from the church leaders about this Bill for the very reason that it had wide circulation to churches.

It is precisely the lack of circulation to the Barbados Christian Council to which Bishop Gomez was referring. In a situation where the four main churches in this Island probably own more school property in this Island than the Government, it is amazing that they should have been omitted. As the Honourable Minister said it certainly must have gone to every teachers union, parent teachers associations at its national level as well.

I would support the point made by the last Senator that there will be no need for an outcry, but hope that the circumstances which caused the former outcry will not be repeated as well.

He said that he saw not only the hand of the Churches. He did not use the word, but I think he foresaw the heavy hand of the Churches in the stipulation that a woman who wishes only to continue her role as wife and mother should do so, and I would tend to agree with him that this seemed to cut across the way society and legislation is moving in Barbados, and if legislation, as the Leader of Government Business implied, should represent the dynamic within a society at a given time, the dynamic in a society at this time is that some people go into marriage expecting to be wives and mothers and not to support a layabout husband — I think that was your word, Sir — and therefore it is reasonable that the heavy hand of the Church should be contained in this legislation.

I found that many Senators referred to section 22 of the Bill in which a definition of marriage was outlined. It seemed to me an entirely acceptable definition of marriage, and I find that though the last Senator made, to use his own words, a subtle point, it seems to me a

fallacious point that he was making. The first principle of marriage as it is outlined here is the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all other voluntarily entered into for life. On the definition which the last Senator adduced, that this would mean, he says, that any marriage that was dissolved never was a marriage. That seems to me fallacious, because then until I die I do not know if I am really married.

SENATOR H. R. LINTON: If the Senator will give way, Sir, that is precisely my point. That is why the definition is wrong.

SENATOR THE REV. G. ANDREW HATCH: My point in contradistinction would be that it is my intention under God to maintain my lifelong union with my wife, and in that respect I think marriage is constituted. Now, the Church has the difficult responsibility of trying to maintain what we call — the Biblical term we use — the sanctity of marriage, and by that we simply mean the permanency and the security of marriage; maintaining that on the one hand and on the other hand expressing compassion for those whose marriages break down. I am personally as a would-be Christian ashamed of the fact that for too long it would seem that the Church's almost "hang up" on marriage, its insolubility and its opposition to divorce, it almost seemed as if divorce, dissolution and remarriage was the only unforgiveable sin, and this is surely not a Christian position. The Christian Church, as I say, has the difficult role of trying to maintain the sanctity, the permanency of the marriage unit, but at the same time expressing compassion on those whose marriages need and justify dissolution.

With this in mind, one has to pay attention to the concern expressed by Senator Enid Lynch that we do have to make a case for marriage. I think it is in this light that one is made somewhat nervous by the tendency to make marriages more easily obtainable, because if public opinion, and if law has to respond to the public opinion in a society, if public opinion no longer is certain and positive about the upholding of the permanency of marriage, and as Senator Enid Lynch says, makes a continuing case for the permanency and sanctity of marriage, then to take the way out through the dissolution by the legal process seems too easy a course to take, and therefore as I say as some other Senator said, and I think the same Senator Enid Lynch, all of these human, social, ethical issues are extraordinarily difficult and certainly extraordinarily difficult for the Church.

Senator Linton spoke about the provisions of the English law upon which apparently this is derived, of the responsibility by law laid on the attorneys who undertake cases for the dissolution of marriage to ensure that the

party for whom he is acting is aware of the facilities that exist for promoting a reconciliation, but he went on to describe the superficial way in which this requirement of the law is approached in Britain in very many situations, as almost to destroy the effect of this. He did not say it here, but one happens to know that you pay your 25 pounds on the first visit, and you pick up the form which tells you where the marriage guidance clinic is, and you come back on the second week having then to pay another 25 pounds to sign the form to say yes, you know where it is, and maybe even that you have been there. Now, this is to make nonsense of the process or the insistence on reconciliation, and I hope to God — and I use that word pointedly — I hope to God that the legislation we are now passing will not be used in that way in this country.

It is in this sense that I wish, finally, to say how significant the proposal for reconciliation is within this Bill. This is a great opportunity for the Christian Churches in Barbados, not traditional, I suppose there is not a Priest or Pastor worth his salt who has not done a great deal of marriage counselling, and this holds true for many lay Christians as well. On an organised basis the Methodist Church at Bethel has for many years struggled with a very modest family counselling service primarily aimed at difficulties within marriage, struggled with great difficulty mainly because of financial inadequacy of the congregation of the Methodist Church and some others who have participated to provide the funding needed to continue this service to the public of Barbados. There has been an ecumenical approach to this problem as well where through the Caribbean Conference of Churches training in marriage guidance over the years has been provided from the early days of the visit of Dr. Mace, of which Senator Blackman will know, and Bishop Tolbert of the African Episcopal Methodist Church, who was also the Guyanese High Commissioner in Barbados in terms of family life education.

This needs to be extended to a considerable extent, and I think the hand of the Church in this Bill, if it was not there before, is perhaps most important in this respect, in that here is now the opportunity and the encouragement of the Government of a country in as late a day as 1981, in an increasingly materialistic world encouraging the conciliation of marriages as far as possible, and going even further to offer to make funds available for those agencies, presumably primarily of the Christian Churches, which will undertake this difficult, time consuming and patient work.

I think that opens an opportunity for significantly creative alliance of State and Church in this country once again. I personally was one who felt that the separation of Church and State in Barbados was necessary, that there is absolutely no reason why the country as a whole should pay for the upkeep of places of worship,

for Anglicans, for example. I think it is an entirely different situation where now in its social outreach such as, for example, the PAREDOS programme in which Senator Marjorie Blackman is involved which is supported financially by CADET which in turn is supported by a German Protestant Agency, why the Government should not consider, as it has already done in free air time, the support of such a programme which has an enormous potential for good in the Island.

I think once again that this is an excellent opportunity for the Church to witness to the social gospel of this community and a very creative opportunity for cooperation between Government and the Church specifically in the possibility of the Government making finance available to the Church for work probably than which no institution is capable of a better performance.

SENATOR THE HON. N. A. BARROW: Mr. President, I could not fail to permit myself a smile just now as Senator Hatch began his address because he started out precisely with a point on which I intended to make my reply, and I was going to take as my example Sir Joycelyn Simon in 1965 who at that time was head of the Probate Division of the court, President of the Probate, Divorce and Admiralty Division and there is an interesting statement in the seven pillars of divorce reform. "No divorce shall be available at all where there are infant children, say, up to sixteen or seventeen years of age; where there are no such young children, divorce should be available either (a) on the proof of a fundamental matrimonial offence or (b) by consent." These are the days when the Press attends to sleep.

The point I am trying to make is that Simon opened up the argument, let us face it, some people get married for companionship, some people get married on the traditional hallowed ground of raising a family which I think is enshrined in the marriage ceremony in the Christian Churches, and therefore on that basis one has always to ask the question, how far is marriage personal and how far is marriage a concern of the State, and therefore I think more and more there is emerging the view that in so far as there are no children to a marriage, then if the marriage has broken down, let it be over as quickly as possible. In so far as there are children to a marriage, there are complexities and the marriage must therefore be terminated when it has broken down, but within a framework that allows of the continuation of certain basic things, and one of these is the continuation of the role of wife and mother. She may no longer be wife, but she still wishes to be mother to those children, and I believe if we move it outside the business of dissolution of marriage, we all recognise that most people like to see their own children taken care of up to a certain point directly by a parent and after that perhaps they can be more liberal in terms of

allowing other people to look after them, and so to me clause 53(2) (k) on page 57 has always made excellent sense. That was a reference that both Senator Hatch and Senator Linton I believe were making even though they did not state it specifically. There is really no argument whatever.

In fact, Sir, that does lead us precisely to where I intended before hearing Senator Hatch speak in my wind up, leads up straight on to the point, how far does this Bill recognise marriage both as an institution of the State and as a personal matter; and this Bill seeks indeed to recognise both points. If it did not recognise marriage as an institution of the State, there would be no point in marriage counselling provisions; there would be no point in the maintenance provisions such as they are in this Bill; there would be no point of the emphasis on custody provisions such as there are in this Bill. At the same time if it did not recognise marriage as a personal matter, a serious matter of private personal, intricate relationships, there would be no point indeed in having the form of legislation which we now have in that there is a single ground and that matters relating to ultimate relief may be heard without the glare of publicity and the kind of horror press, I would normally call it, which divorce actions can easily feed.

The basis of the legislation therefore, Sir, is that marriage is at once a personal matter and a social and community matter, but that once there is satisfactory evidence that the marriage has irretrievably broken down, then there is no point in trying to force people to continue an unreasonable relationship. The general framework of the law must recognise that maintenance both for spouses and for children must be related to the need recognised by the State for the persons in relations of proximity of spouses and children to provide for them. Therefore there is no point in continuing the legal theory that a man must provide for a woman, or that a child who may have been endowed and properly provided for must still have some additional form of provision; so that what you see running through the law here is that if a woman can earn or if a man can earn, why should he or she not go out and earn? If there are reasonable, understandable circumstances, why should the other party not provide?

I believe, Sir, that we have been trying very hard to arrive at a fair formula and all of those persons, all of them, I am not talking here about Government alone, I am talking about all of those persons starting with Miss Norma Forde and her National Commission of Women. People like Miss Pat Simmons. Senator Blackman I have mentioned before, Professor Carnegie and Mr. Ronnie Hughes. I mentioned the two of them because they were the only two men battling with all of those women and Father Jemmott. I believe, Sir, there were about three men to about nine women.

I believe, Sir, that when we come to look at the Report of the National Commission on the Status of Women that we will find out that it was because there was a reasonable number of men that they were able to introduce such a valuable document.

I believe, Sir, that the position is very clear. Now, if there are a couple of points, I would like just quickly to deal with them.

Senator Lynch remarked on the difficulty of getting a divorce, yet the divorce rate was rising. I could not agree with her more because indeed that was one of the plans in my own argument.

Senator Linton said, and I would like to believe that I am quoting, Sir, that there should probably be a reduction of costs in divorce actions. I would wish humbly to submit, Sir, there should and probably would not be a reduction in the legal cost for divorce action.

SENATOR H. LINTON: Is the Leader allowed to cast aspersions on the character and integrity of a profession, particularly the legal profession and particularly on members of that profession in this place, Sir?

Mr. PRESIDENT: I am not sure that by saying that the cost will not go down is casting aspersions on a profession.

SENATOR THE HON. N. A. BARROW: I was about to say, Sir, that all professions know that there are always reasons why the cost will not go down but I still think, Sir, and I saw Senator Linton was very carefully choosing his words and I thought at one point he almost said the cost should go down. However, Sir, one of the things I am looking for is to see if the cost of Conveyances in the Plantation Tenantry Scheme and the Statutory Conveyancing and there are one or two others but I would like to see the Legal fees go down where there is no work to be done specifically, where Government is guaranteeing titles. I would really like to see if the cost is going down.

They tell me, Sir, that the reason for the high cost is the work the Attorneys have to do to ensure that the title is good. If the Government is guaranteeing it and the title is good I am hoping, Sir, that in those areas, even in divorce where the law is now simplified, that the cost will probably go down.

There was another statement made by Senator Linton that there are a lot of women working today for a lot more money than us poor fellows and I wanted to counsel the Senator, Sir, that when people talk about a poor lawyer, they are not talking about money. I just believe, Sir, that they are not talking about money.

Sir, to move to two points which Senator Linton made. There is one point which he made on which I think we have straightened out and I was glad he raised it because in the event that his original contention is correct, it is certainly something that Lawyers should pay serious attention to and that was Sections 87 and 88. I read it one way and he read it another. In the event that I read it wrong, the Lawyers should pay serious attention to it.

The other one was where the Senator seemed to be saying that the powers of the Court were being watered down by the protection given to third parties. I also read that a little differently because I thought that since the equity would be distributed in any event that no order of the Court, no matter under what manifest terms could be interpreted as detracting from the security which the mortgagee has, otherwise a very bad market for mortgages would generally be created.

Now it is that kind of thing that I believe if this law is going to throw out problems that they will surface at that point but again, I believe, it is probably a matter on which both Senator Linton and myself was trying to reach into areas which will only be satisfactorily resolved after the legislation has been in force for some time.

On the business of matrimonial property, 57(3)(a) and (b), I believe that this Statute does make a significant change at 57(3)(d). I believe there is no unanimity on the point that there was a point because I was about to make a point or two about it but I can just say roughly that in so far as cases go, I believe that that position in 57(3)(b) since it talks about the contribution made in the capacity of homemaker or parent that it is getting much nearer to the principle of family assets as advanced by Lord Denning in Hazel and Hazel and earlier in Faulkner and Faulkner than the two cases which tended to be regarded by lawyers as the landmarks in this case.

I think we have to remember that the Matrimonial Property Legislation in the United Kingdom was modified after the Petit and Giseng Cases and was modified along the lines of Hazel and Hazel rather than along the lines of the judges expounded in those cases.

The point put differently is this that as long as you recognise that by staying home and working in the home a woman can be making a contribution once you say a spouse but in fact it is usually the woman who stays home, raises children, provides and so on. As long as we recognise that that is really homemaking and qualifies for a share in the assets in the family, we are talking something completely different than is recognised by common law judges who prefer to see evidence of a financial contribution so that at (a) we are dealing with

the financial contribution and then at (b) we come down and we see that the contribution may not be financial but by virtue of the homemaker and being a parent a contribution may arise.

Finally, Sir, just let me say and in relation to that point, once there is a matter of matrimonial property, there is nothing that can be advanced here no matter how two or three of us understand the words spoken or the words written down. It will not be capable of three or four different interpretations because matters of matrimonial property always has to be settled in an area of collusion.

Therefore, I must say, Sir that Senator Hewitt's contribution on the marriage contract was far more relevant than a lot of us understand. It comes out of the Civil Court and it makes a lot of sense. People having entered on something sit down and agree on what they intend because later on, when you come back you sit on it and say, this is how we reached along this road. We are now deciding that the division must take place in an atmosphere of friction. (ASIDE). As a matter of fact, there is an aside that when you get married, you do not have a lot of things. In many cases, when you get married, it is not necessarily the first time.

Mr. President, I am encouraged at the unanimity of opinion on this Bill, since Sir, it is a Bill that Honourable Members did not have a chance to study in as close detail as they would have liked, otherwise. I believe that there is something in Senator Linton's point it was already advertised far and wide in the Report of the National Commission on the Status of Women and none of us must be heard to say that we did not hear about it.

Thank you, Sir.

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 G. A. HATCH in the Chair.

Mr. CHAIRMAN: Senator Hinds.

SENATOR K. HINDS: Mr. Chairman, Sir, I beg to move that this Bill be taken as read, Clauses One to Five together and the remainder in parts.

The question was put to the Senate and agreed to.

SENATOR H. F. G. ROCHEFORD: Mr. Chairman, Sir, there are still some other sections which are not included in any other part.

Mr. CHAIRMAN: And then the Schedules. Thank you.

Clauses One to Five were called.

SENATOR THE HON. N. A. BARROW: Sir, before we get to Clause 1 to 5, I should draw to your attention in the Objects and Reasons at (e) there is harbouring “; and” that “and” should be deleted so that you get “;”. I would therefore at this stage move an amendment to the Objects and Reasons, Sir.

SENATOR H. F. G. ROCHEFORD: I am not seeing that as part of the Bill.

SENATOR THE HON. N. A. BARROW: I had no intention of sitting down. I was going to ask that that be changed and in relation to Clauses 1 to 5, I would like to move that Clauses 1 to 5 stand part. In that case, I have to move an amendment to Clause 2. Clause 2 in the definition of “decree”, it is line two “decree nisi and to order”, “to” should be deleted and the word “and” substituted. Page 4, Sir, still Clause 2 “maintenance agreement” line two after the word “made” insert “,” and after the “,” insert “whether”. In line four after the word “force” insert a “,”.

In line five after the word “marriage” insert a “,”. Those, Sir are the amendments to Clause 2.

I beg to move Sir that Clauses 1 to 5 stand part.

The question was put to the Senate and agreed to.

Part I was called.

Mr. CHAIRMAN: Senator Barrow.

SENATOR THE HON. N. A. BARROW: Sir on page 11, Clause (3), Sir:

“Relevant time means for the purposes of paragraph (a) of subsection (2). It should be paragraph (b) of subsection (2).”

We need to recommit Clauses 1 to 5 Sir for that correction. It is Clause (3) page II.

Mr. CHAIRMAN: With your permission, we recommit Clauses 1 to 5.

SENATOR THE HON. N. A. BARROW: I beg to move, Sir that Clauses 1 to 5 with corrections stand part.

The question was put to the Senate and agreed to.

Parts I and II inclusive were called and passed.

Part III was called.

SENATOR THE HON. N. A. BARROW: Sir, in Part III, Clause 22(a) notwithstanding the Anglican ceremony. Sir, it was intended to include "others" rather than "other" "the exclusion of all other voluntarily entered into for life".

SENATOR H. R. LINTON: Sir page 27 proceedings section 23(3) the fifth line "proceeding" should be "proceedings" add "s".

SENATOR THE HON. N. A. BARROW: Sir, I would like to move that amendment, that "proceeding" be deleted and the word "proceedings" be substituted in line 5.

The question that Part III stand part was put to the Senate and agreed to.

Part V was called.

SENATOR THE HON. N. A. BARROW: Sir, Part IV, page 30, clause 28(1), in the last line delete "or" and substitute a full stop for the semi-colon. I move that Part IV as amended stand part.

The question was put to the Senate and agreed to.

Part V was called.

SENATOR THE HON. N. A. BARROW: In Part V, Sir, clause 39 on page 37, at the end of the page, the last two lines, delete "and a child has been born of that relationship". I beg to move that Part V as amended stand part of the Bill.

SENATOR W. O. FRANKLIN: Part V, section 47, Sir, line 7, I think something is missing there if you start from line 6, "The Registrar or other appropriate....."

SENATOR THE HON. N. A. BARROW: If the Senator will give way, I am sorry. There is another amendment, and it is to insert in line 7 after the word "appropriate" the word "officer". It is the Registrar or other appropriate officer, Sir.

SENATOR Miss M. I. St.C. BLACKMAN: Mr. Chairman, just one comment from me. It seems strange that it should take 12 months only for a marriage to be annulled, whereas it takes five years to establish a union. Really, the two periods of time seem a little inconsistent. Five years to establish a union but only one year to establish that a marriage has ceased to be a marriage.

SENATOR THE HON. N. A. BARROW: Sir, if I recall it was the National Commission that used five as the qualifying period for most of these matters. Indeed,

the proposal in relation to this specific section was that it should be either two years and bearing a child or five years, and what slipped in here is five years and a child, which I believe, Sir, suits some people.

The question that Part V stand part was put to the Senate and agreed to.

Parts VI to XI inclusive were called and passed.

Part XII was called.

SENATOR THE HON. N. A. BARROW: Sir, in relation to Part XII, page 92, there is a cross there between an injection and an injunction. There is an "n" that needs to be inserted. I move that "Injunctions" be deleted and "Injections" be substituted.

With that amendment I move that Part XII stand part of the Bill.

The question was put to the Senate and agreed to.

Part XIII was called and passed.

Part XIV was called.

SENATOR THE HON. N. A. BARROW: Sir, Part XIV, page 96, clause 96. The present clause reads: "After the coming into force of this Act no action lies for damages for adultery or for enticement or labouring of a party to a marriage." While some people might argue that makes sense, although I do not understand how, the word obviously should be "harbouring". I move, Sir, that the word "labouring" be deleted and the word "harbouring" be substituted.

With that amendment, Sir, I move that Part XIV stand part of the Bill.

The question was put to the Senate and agreed to.

Part XV was called and passed.

The First Schedule was called.

SENATOR THE HON. N. A. BARROW: I beg to move that the First Schedule be the First Schedule to the Bill.

The question was put to the Senate and agreed to.

The Second Schedule was called.

SENATOR THE HON. N. A. BARROW: I beg to move that the Second Schedule be the Second Schedule to the Bill.

The question was put to the Senate and agreed to.

The Third Schedule was called.

SENATOR THE HON. N. A. BARROW: I beg to move that the Third Schedule be the Third Schedule to the Bill.

The question was put to the Senate and agreed to.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, I beg to move that the Senate do now resume and the Bill be reported.

The question was put to the Senate and agreed to.

Mr. PRESIDENT resumed the Chair.

SENATOR THE HON. N. A. BARROW: Mr. President, I beg to report that the Bill has passed the Committee with an amendment in the Objects and Reasons, an amendment to Clause 2 at the end of line 2 by the substitution of "and" for "to", an amendment to Clause 2 in line 2 on page 4 adding a comma and then "whether" after "made"; adding a comma after "marriage" in line 5; on page 11 in paragraph 3 line 2, delete (a) and substitute (b); page 26, clause 22(a) the deletion of "other" and the substitution of "others"; on page 27 in clause 23 (3) delete "proceeding" and substitute "proceedings"; on page 30 clause 28(1) delete all the last line and substitute a full stop; on page 37 clause 39 delete "and a child has been born of that relationship" in the penultimate and last lines; page 49 clause 47(1) in line 7 after "appropriate" add "officer"; on page 92 the heading "Declarations and Injunctions" instead of "injunctions" as at present, and page 96 clause 96, line 3, the word should be "harbouring" instead of "labouring".

I beg to move that with these amendments the Bill be read a third time forthwith.

The question was put to the Senate and agreed to.

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

Mr. PRESIDENT: The Clerk will take the usual steps with regard to a Message about these amendments. The copy that goes to the Other Place will have to incorporate these amendments. My understanding is correct that the amendments we have made here will be incorporated into the Bill that goes to the Other Place despite the fact that they have made a first reading of the Bill. Anyway let the amendments we have made be incorporated in any Bill that goes down to the Other Place.

Proceed with the next Order.

THE MAINTENANCE ACT, 1981

The Sixth Order of the day was called — to move the second reading of a Bill to provide for the maintenance of certain children born out of wedlock and for related matters.

SENATOR THE HON. N. A. BARROW: Mr. President, as I said in introducing the last Bill, one introduction serves for both. Just let me explain why that is so. The reason is as follows: that once we decide that in this country there is to be no distinction between children, then we must have common maintenance provisions. As the law now stands, Sir, there is one set of maintenance provisions for children born within wedlock and another set of maintenance provisions for children born out of wedlock. As a matter of fact, if we look at the Affiliation Proceedings Act, Cap. 213, we will find that the maximum that may be awarded by a court for the maintenance of a child is \$20 per week. If the child is born in wedlock, that is not so; so the fundamental distinction being made this afternoon, Sir, is that whereas one set of children were looked at as poor relations and the other set were looked at as being entitled to whatever level of maintenance their parents could best afford and they needed, we will all now introduce a single standard; all children will benefit by a single standard. That is to say, that as in the case of the child born within the marriage or within a union other than marriage, the standard will be what the child needs and the parents can afford for its upkeep. In this case, Sir, the same standard will apply.

You will also remember that we have modified the law to make it easier for the child born out of wedlock in that the father can now go and register as the father, but there are still cases where the mother will need to seek the assistance of the court in establishing the paternity of the child. She may know the paternity and he may know the paternity, but he may not wish to admit it, and therefore the assistance of the court has to be sought by way of affiliation proceedings. This is a Maintenance Bill and not just an Affiliations Proceedings Bill. It has to do therefore with maintenance of all children other than those covered within the Bill we have just dealt with. The first part of this Bill has to deal with affiliation proceedings because those children who are neither within the marriage, within the union other than marriage nor do they have the father's name down on the registration, also need to be provided for.

I believe, Sir, we are all too familiar with the cases where a man may support a child but when he dies the child is back to square one. In fact, a child is worst off at square one because the support has disappeared and yet there is no truth and there used to be no presumption in law that that support meant acceptance of

paternity. As the law now stands by a recent amendment which came through this very Chamber, that support may be regarded as proof of paternity.

What we are doing here now, Sir, is that those children who were not provided for in the other Bill we are providing that there be adequate maintenance provisions for them. I will do something which I did not do with the last Bill and I will point out that there are one or two amendments and they occur in the printed Bill.

The printed Bill does not have a Marginal Note for Clause 6 which is "Application for Maintenance". Sorry, Sir, it has a Marginal Note but the way in which it is printed it reads:—

- (a) a single woman
 - (i) who is with child, or
 - (ii) who has been delivered of a child, may make an application to the Magistrate."

The way the printed Bill has it, it does not look as though "may make an application, etc." applies to both (i) and (ii). I would like to draw it to the attention of the Hon. Senate that it should have been printed in such a way that it would be clearer that "may make an application...." right down to "child" refers to both (i) and (ii) so that is the way in which it is printed, Sir.

In respect of Clause 9, Sir, the numeral 3 is used instead of 9.

In Clause 15, Sir, there should be a Marginal Note "power to extend duration of orders" which apparently does not appear in the printed Bill.

Clause 21, Sir, subclause 3 "any payments ordered to be made under Subsection (2) are recoverable in accordance with Section 23 or under Rules made under Section 29. Section 29 provides for making of Rules and that part was left off. That is a textual change here but I think I would just point them out at this stage.

Sir, Section 22, there are two amendments to that. In Subclause 6 you will see "any sum ordered to be paid under Subsection 4(1)(a)", it should read "(a) (1)". In Subclause 7 "any payment ordered to be made under Subsection 4 is recoverable in accordance with Section 23, or Rules made under Section 29". In between "23" and the comma "or Rules made under Section 29."

Under Section 24(2) "any sums of money required to be paid by an Order made under this Section are recoverable in the manner provided for in Section 23, or under the Rules made in Section 29. You will notice, Sir, that these amendments are minor but are necessary.

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

SENATOR H. LINTON: Mr. President, I do not intend to detain the Senate in any lengthy speech or debate on this Bill because it so closely approximates the ancillary provisions in respect of maintenance as reflected in the Bill which we not too long did.

I do not think it calls for any lengthy discussion on the matter but I want to say how pleased I am that at long last not only has the common law marriage now being referred to as the union to be given equal recognition with the Christian marriage as we know it, but the single parent is being now looked after at the same time as those parents who are in a marriage.

I think it is very important, Sir, that social legislation such as this which is going to benefit such a large number of people should be made very public and I hope that the Government Information Service that comes under the Portfolio of the Leader of the Senate will make sure that people are made aware of the provisions of this Bill. It is a great piece of social legislation and I think that it should not be allowed to go unnoticed and in particular the people should be told that the Barbados Labour Party has done this for them.

There is just one suggestion that I want to make with regard to 28(2) on page 30. It states:

"Subject to any rules to the contrary, relatives or friends of either party, welfare or probation officers and legal practitioners may be present in Court unless in a particular case, the Court otherwise orders."

I have no doubt, Sir, that that is an error. If it is allowed to stay there would hardly be a problem given the present Constitution of the Bench but we do not know how long we will have sensible people on the Bench and therefore I want that power which is given to order Lawyers to stay out of Court to be removed.

I will not be supporting the Bill Sir if the Honourable Leader does not give me some undertaking that the court would not have this power to remove an Attorney unless there is contempt. Imagine you are a representative in a court and the Magistrate tells you get outside you are keeping too much noise. I think a case like this the Welfare Department can be made to appear on their behalf, Sir.

Mr. PRESIDENT: Senator Barrow.

SENATOR THE HON. N. A. BARROW: Mr. President, there was a point which crept into the other Bill which we have just dealt with which tended towards

the point of the right of the court to exclude the Attorney of one of the parties and which was excluded. I would hate to make a hasty decision on this, Sir. This looks to me very much like the same point and while it was excluded from the other Bill, it seems to have crept back into this one. I am speaking, Sir, subject to correction because I assume that this point was banished.

I spent the whole morning before coming to the Senate working on this Bill and this point in fact never hit me. Legal practitioners may be present in court unless in a particular case, the court otherwise orders. I would like to believe Sir that an interpretation of that would stand, Sir, "legal practitioners", but not including legal practitioners who are advising parties in the case. I cannot see how that interpretation will stand. I believe it is the same point that has crept back in. I would undertake to draw it to the attention of the Honourable Attorney General so that when the Bill goes to the Other Place that point will be taken up.

I would not Sir wish without adequate preparation to do an amendment, I prefer those who have the Bill now and who will do amendments. It will get back here and therefore, I believe it would be better than to do an amendment.

SENATOR H. R. LINTON: On a point of information, Sir, if the Honourable Member would give way. I do not know if consultation makes provision for litigants to be legally represented. I do not know how it conflicts the right for parties. I do not want to pass the Bill here well knowing that it deducts from the rights of the citizens of Barbados. I think that what the Honourable Leader could do is strike it out, if they want it back on, it can come back on, so as not to compromise our position here. We ought not to pass it at all.

Mr. PRESIDENT: Your point is if it is struck out here, if it is a good reason to pass it back to us. It is an easier way.

SENATOR H. R. LINTON: Not easier.

Mr. PRESIDENT: Proper way.

SENATOR THE HON. N. A. BARROW: Sir, I am almost annoyed to admit that Senator Linton is right. I cannot imagine in, in the circumstances, I believe Sir indeed that that is the best thing to do "pass" should be deleted, the word "and" inserted as substituted and the words be deleted. I can make the statement categorically that in the forming of these two Bills, there has never been any concept of Judicial Officer should have the right to call the officer in without the permission of Counsel. At no point have we admitted, therefore, I cannot find any ground to disagree with

Senator Linton even though I am seeking very hard to disagree.

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. G. A. HATCH in the Chair.

On the motion of SENATOR K. HINDS, the Bill was taken as read, clauses 1 and 2 seriatim and the rest in Parts.

Clause 1 was called and passed.

Clause 2 was called.

Mr. CHAIRMAN: Senator Wickham.

SENATOR J. C. W. WICKHAM: Mr. Chairman, I would be very grateful if the Honourable Leader of the Senate would clarify for me the definition of "child".

SENATOR THE HON. N. A. BARROW: Sir, we have just dealt with the Family Law Bill in which there is a definition of children. I am trying to recall it exactly Sir. I am sorry, Sir, let me deal with it as it should be dealt with whether I can find it or not.

The Status of Children Act says that all children are children within the law. That meant that there was abolished the distinction made in the 1916 case of Barnard and McHugh in which a child born out of wedlock was declared to be *filius nullius* the child of no one. Therefore in all of the common law, wherever the word "child" appeared it meant the child born within wedlock. In our law now when we talk about the child we are talking therefore, since the Status of Children Act, of all children, no matter how born. If in an Act we wish to deal with a child who is not covered within the frame-work of marriage, we will have to put a definition in which limits for the purpose of the operation of that particular Act, and that particular Act alone, the definition of child, so that you will not find a confusion in the law that the child who is treated in one way here, which is the law relating to marriage, the other child who is not the child within wedlock should be treated the same way. The only way to do it is to have another law saying now, 'as regards children who are not born within wedlock, or who are not children of a union other than marriage, a union other than marriage being defined as man and woman living together for five years. This is why in this one it says: "'child" does not include a child of a

marriage or union other than marriage." In other words, the Bill we have just dealt with, the child that is dealt with in this is not to be considered as being again dealt with in here.

The question that Clause 2 stand part of the Bill was put to the Senate and agreed to.

Part I was called and passed.

Part II was called.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, in relation to Part II there is an amendment which relates really to the printed presentation rather than the substance, but would clarify the substance if that change were made.

I beg to move that Part II stand part of the Bill.

The question was to the Senate and agreed to.

Part III was called.

SENATOR THE HON. N. A. BARROW: I beg to move, Sir, that Part III with the following amendments stand part of the Bill. The amendment to section 15 by the insertion of the marginal note; amendment to Section 21 by the substitution in place of the comma at the end of subsection (3) of Section 21 of the words "or under rules made under Section 29". An amendment, Sir, to Section 22 by substituting the letter "a" for the numeral "1" and the numeral "1" for the letter "a", and the amendment of Section (7) of section 22 by the insertion after "23" in line 2 of the words "or rules made under Section 29"; the amendment of Section 24 by the addition to subsection (2) of the words immediately after "23", "or under rules made under Section 29"; the amendment to Section 28 by the insertion of the word "and" in line 2 between the words "party" and "comma", the deletion of the words "and legal practitioners", and Sir, in Section 9 at the beginning of Part III, the deletion of the number "3" and the insertion of the numeral "9".

With those amendments, I move that Part III stand part of the Bill.

The question was put to the Senate and agreed to.

Part IV was called and passed.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, I beg to move that the Senate do now resume and the Bill be reported.

The question was put to the Senate and agreed to.

Mr. President resumed the Chair.

SENATOR THE HON. N. A. BARROW: Mr. President, I beg to report the Bill has passed the Committee with the amendment indicated at the end of the second reading, and move that the Bill as amended be read a third time forthwith.

The question was put to the Senate and agreed to.

SENATOR THE HON. N. A. BARROW: I beg to move that this Bill do now pass.

The question was put to the Senate and agreed to.

Mr. PRESIDENT: I assume that as in the previous case the Bill that goes to the Other Place will incorporate these changes and that due notification will be given, as this Bill has also been read a first time in the Other Place.

THE ADJOURNMENT

SENATOR THE HON. N. A. BARROW: Mr. President, I beg to move that the Senate do now adjourn until Wednesday, 13th May, 1981, at 12 o'clock.

The question was put to the Senate and agreed to and Mr. President adjourned the Senate accordingly. 6.24 p.m.