

THE SENATE DEBATES

(OFFICIAL REPORT)

FIRST SESSION 1981 – 86

THE SENATE

Wednesday 15th December 1982.

The Senate met in the Senate Chamber, Public Buildings on Wednesday, December 15, 1982, at 11.15 a.m.

PRESENT

His Honour Senator J. C. W. Wickham, M.B.E.
(Deputy President)

Senator the Hon. N. A. Barrow, B.A. LL.B.,
(Minister of Information and Culture) (Leader of the Senate)

Senator the Hon. O'Brien Trotman, (Minister of State in the Prime Minister's Office)

Senator H. R. Linton, LL.B.

Senator C. I. E. Deane

Senator Mrs. E. M. Lynch, B.A., G.C.M.

Senator C. A. Griffith, (Parliamentary Secretary,
Prime Minister's Office)

Senator J. E. D. Williams

Senator Miss J. Clarke

Senator A. P. L. Reece

Senator St.C. E. Howell

Senator Mrs. M. O. Reece

Senator E. E. Greaves, B.A., Ed.M.

Senator W. W. Hall

Senator A. W. A. McClean

Senator Mrs. G. G. Reader, M.B.E.

Senator C. D. Seale

Senator the Rev. Can. I. McK. Jones

Senator K. A. Rouse

Senator L. A. Ward.

Prayers were read by Dr. the Rev. L. A. Crawford.

ABSENT

His Honour Senator the Hon. Sir Arnott Cato.

PRESENTATION OF PAPERS

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

Instruments adopted at the 68th Session of the International Labour Conference held in June, 1982;

The 13th Annual Report of the Barbados Development Bank, 1981–82;

Report of the Immigration and Passport Department for the period 14th March, 1980 to 31st December, 1981;

The Annual Reports of the Caribbean Broadcasting Corporation for the years ending 1978 and 1979.

MOTIONS RELATING TO THE BUSINESS OR SITTINGS OF THE SENATE AND MOVED BY A MINISTER

APPOINTMENT OF CHAIRMAN OF COMMITTEES

SENATOR THE HON. N. A. BARROW: Mr. Deputy President, in the absence of Sir Arnott Cato today, and with yourself acting as President, I would like to move that Senator Linton be appointed Chairman of Committees for today.

The question was put to the Senate and agreed to.

INTRODUCTION OF BILLS

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

A Bill to amend the Port Authority Act;

A Bill to amend the Shops Act;

A Resolution to approve the use of the sum of \$3.7 million to be borrowed from Barclays Bank International Limited for the purchase of the assets of Aero Services Limited;

A Resolution to approve the Special Development Area (Parish Land) Order, 1982.

Sir, I would wish at this point to state that the matters which I have just introduced, the one which may in fact be of some debate — I have not noticed that the others have been controversial — is an urgent one, and it is a Bill that has not been properly noticed, and therefore I would have at the appropriate time to move the suspension of Standing Order 45 (2).

I would like to ask members of this Honourable Senate to agree with our dealing with these matters today. I should state, coincidentally at the same time, that in relation to the two items on the Order Paper — the Companies Bill is to be done by Senator Griffith and the Factories legislation by Senator Trotman.

I wish I can have the concurrence of Senators to deal with these other matters. As I explain them and just cannot agree to it, then I would have to agree to withdraw them and suspend the sitting to Friday in order to have them dealt with.

Mr. DEPUTY PRESIDENT: Is it the general feeling of the House that we can proceed with these matters as outlined by Senator Barrow today in the interest of expediency? (Pause). So be it.

Let it be recorded that the Bill to amend the Port Authority Act and the Bill to amend the Shops Act have been read a first time.

SENATOR THE HON. N. A. BARROW: Mr. President, the order in which I propose that we take these matters is: the Port Authority (Amendment) Act, the Shops (Amendment) Act, the Resolution on Aero Services, the Resolution on Parish Land and then No. 1 and No. 2 on the Order Paper for today.

SENATOR Miss J. CLARKE: Mr. President, I beg to give notice of the following Bills which have passed the Other Place. Firstly, the Barbados Chamber of Commerce and Industry Bill, 1982 and, secondly, the Agricultural Society (Amendment) Bill, 1982.

SENATOR H. R. LINTON: Mr. President, I beg to second Senator Clarke's notice of the Bills.

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

PUBLIC BUSINESS

THE BARBADOS PORT AUTHORITY (AMENDMENT) ACT, 1982

The First Order of the Day was called — To move the Second Reading of a Bill to amend the Barbados Port Authority Act.

SENATOR THE HON. N. A. BARROW: Mr. President, in the 1975 Port Authority Act there are provisions contained in Sections 28 — 31, forming Part VI of the Act, relating to the delivery of goods, the disposal of unclaimed goods in possession of the Authority, the removal of goods after they have been sold by public auction, tendering of dangerous and offensive goods etc. to the Authority for carrying, storing or warehousing.

The 1978 amendment to the Act includes the repeal of these sections, Sections 28 to 31, and a search has failed to establish what was the basis for such repeal. It seems as though the relevant documents were caught in the fire down at Lands End. But what has happened now, Sir, is that whatever course of action should have followed that repeal was therefore unclear, and in the meantime, goods accumulated in the Port and the authority for dealing with these goods is no longer in existence.

I am informed that there is something in excess of \$1 million worth of goods which the Port must dispose of, and some of them are perishable items, so that the need for legislation for this purpose is now urgent. This Bill therefore seeks to restore to the legislation those sections which were repealed by the 1978 amendment, Sections 28 to 31 of the old Act.

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

SENATOR C. D. SEALE: Sir, I support the Bill. I see the need to remove the old cargo down there.

Sir, the Bridgetown Port can be described as a model port for the Caribbean and I think it is a port which all Barbadians should be proud of. However, of late, in an effort to attract container transit cargo, the port has embarked on a programme which calls for a lot more equipment.

However, for some reason or the other, I gather that the Board of the Port Authority have turned down all requests to buy any further equipment and this is resulting in considerable hold up of delivery of containers and also considerable loss of wages to freighters.

I wonder why, because looking at the Port Authority accounts, you will see that they have some-

thing like \$14 million in deposits around Bridgetown so I do not think there is any need for funds.

I understand that there is a new crane on order, but I also understand that the crane that they had originally is not in working condition and cannot work any more, so that this one crane is really only to replace. But there is more need, and I think there is need for another.

I would only hope that the Government would take quick action because delays in the Port cause merchants considerable problems; after all, there is spoilage. When you delay containers with foods and you have them outside in the heat for two and three weeks, they cannot be the same as when they arrive and there is no recourse to insurance for that.

I would only beg that the Minister in charge take a good look and come up with some more equipment down there, because we have a model port, it is a port of which we can be proud, it is efficiently run and it only needs a little more equipment at the moment.

Thank you.

SENATOR E. E. GREAVES: Mr. President, I just want to make one observation Senator Barrow, in introducing this amendment, referred to an amendment which was made in 1978 and that it apparently removed this section from the 1975 Port Authority Act, which, as I understand it, was a new Act.

I suspect that if you were to check the debate in 1978, you would probably find the reason advanced there, and I would just want to make the observation that the Barbados Labour Party Government, particularly during the last five years, 1976 to 1981, boasted about its legislative programme, about the kinds of laws which were passed in this country, how modern they were and all these sorts of things, and I am a little amazed now to find that we are in this situation now where these so-called legal luminaries would have made an amendment to an Act and do not even know the reason why the amendment was made, cannot find any proper justification for the amendment, and we are now back in a situation where that kind of approach has obviously landed the country in a situation where there is an accumulation of goods in the Port.

I do not know if you can still call goods which have been accumulating for four years as "perishable"; they would have already perish, but the thing is that we have this kind of situation now where we have got to come and redo legislation which was amended and nobody knows the reasons for which the amendment was introduced.

I think that this, in my view demonstrates inefficiency on the part of the persons who were in charge of the legal department and the drafting of legislation in this country during that five year period, and there is a lot more in the laws which we passed in that period which are missing, and we have been seeing from time to time the Senate being asked to make amendments and repeal certain sections because a lot of the laws seems to have been passed without any thought being given to their application within the society and the practicability of them.

What we have been saying all the time is that we had an Attorney-General who went around the world and picked up bits of legislation from different countries and would come back to Barbados and then string them together and put them into an Act. We are now paying the price of that.

I am saying that this demonstrates inefficiency on the part of the Government, and I really am surprised that we could have this kind of amendment being re-introduced here and no proper reason given.

I thought the Leader of the House would have taken the time to investigate the reason. Do not tell me that the records have been destroyed. There would be a file relating to this in the Attorney-General's Office, and there would have to be a reason given on the file for the 1978 amendment, but maybe he does not want to expose his Administration for the kind of slap-dash and inefficient way in which they have been passing legislation in this country.

But we are now landed with this. There will be more.

SENATOR THE HON. N. A. BARROW: Mr. Deputy President, there is something in what Senator Greaves has said, that is to say, a lot of noise. Anytime that we can find a member of this Government who does any legislative drafting, you must show us and then you can comment on the efficiency or otherwise of draftsmen and lay that charge at the door of the Government.

I believe, Sir, it would be unfair to the people who draft laws and it would be a little bit ungrateful to support the position of Senator Greaves when we recognise that the same draftsmen that are responsible for leaving out the four sections, which, in this case, seem to be important sections, are the same people who, although by every possible standard the department is under-manned, have been responsible for the drafting of all the items of major legislation like the reform of property legislation, the reform of company legislation, and the reform of factories legislation.

There is a whole massive amount of legislation which has been redone in this period of time, and most of it we do not see back here, but if it happens in a particular instance, for whatever reason, I am making the point, really, that there might have been a good reason and that further action might have been contemplated, but those files were in fact destroyed in the Spring Garden fire. It may be that it was not done deliberately and that the files would have shown, if they were with us, what remedial action was to be taken, because we are aware that remedial action was supposed to have been taken in the past.

I am not going to be one who will stand up here and belittle the efforts of the parliamentary draftsmen when (a) I would be more able than Senator Greaves to do a little drafting and I cannot do any and (b) I know I am more able than the Attorney-General, whom Mr. Forde succeeded, not only in drafting or anything of the sort, but even in just getting the mouth open.

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

On motion of Senator the Hon. N. A. BARROW, the Senate resolved itself into Committee on the Bill, Senator H. R. LINTON in the Chair.

Clauses 1, 2 and 3 were called and passed.

On motion of Senator the Hon. N. A. BARROW, the Senate was resumed and the Bill was reported as having passed the Committee without amendment, Mr. DEPUTY PRESIDENT in the Chair.

On separate motions of Senator the Hon. N. A. BARROW, the Bill was read a third time forthwith and passed.

THE SHOPS (AMENDMENT) ACT, 1982

The second Order of the day was called — to move the Second Reading of a Bill to amend the Shops Act.

SENATOR THE HON. N. A. BARROW: Mr. Deputy President, Section 16 of the Shops Act gives the Chief Labour Officer the power to grant licences to open shops on visits of tourist ships, but at subsection (2) it says:

“Provided that no licence on any period so specified may include any hours on any public holiday or closed day as well as on any other day:

“Provided that no licence shall be granted authorising any shop other than an airport, harbour or hotel shop to be open on any Sunday, Good Friday, Christmas Day or Boxing Day.”

The effect of this Bill, by proposing to delete “Sunday” from that list, is, Sir, to permit licences to be issued for the opening of shops on Sundays when there is a tourist ship. That is all that this particular Bill seeks to do.

The Minister responsible for the subject has announced elsewhere that there is comprehensive legislation which is coming down and that legislation will deal with the whole question as to when and under what circumstances shops should be opened.

We know, Sir, that this is a subject on which there are views that extend from no limitation on the opening to extremely stringent regulation of opening hours. At that time, Sir, I believe the advocates of every view would be able to make a full contribution to the debate.

But in this particular one, Sir, what the Bill seeks to do is very narrow, which is simply to permit that, in the circumstances outlined in Section 16, shops may be opened on a Sunday.

The general conditions under which this will be done, as we know, Sunday is a bank holiday and we know what usually follows where there is a union agreement and this kind of thing. I am sorry, Sir, I did not mean that Sunday is a bank holiday. Sunday is a day that is treated in union agreements usually in much the same way as bank holidays.

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

Senator Greaves.

SENATOR E. E. GREAVES: Mr. Deputy President, Senator Barrow has indicated that the Government is contemplating comprehensive legislation on shops and one would expect, since this is going to be an area affecting workers, and particularly workers who are represented by the Barbados Workers' Union, that an opportunity would be presented for the union to express its views on this particular matter. We have our views on the question of the opening of shops on bank holidays and on Sundays.

With reference to this amendment, as I understand it, the amendment would provide for the opening of all the shops on any Sunday on which a tourist ship visits Barbados.

Now, if we look in the Act at the definition of a shop, what do we find? Cap. 356 of the Act defines a shop as follows:

“.....any premises or place where retail trade or business is carried on (including the business of a

pawnbroker, barber or hairdresser), any premises licensed for the sale of intoxicating liquor, any wholesale provision shop,".....
presumably, that would include warehouses.

".....refreshment house, restaurant, shop in which milk or milk products are sold, parlour or cook shop, and includes any part of a building in which a shop is located when such part is used for the purpose of exposing for sale or for the storage of such goods or otherwise for the carrying on of the trade or business of such shop."

Now, as you can see, Sir, this is a very wide definition for the "shop" and we have previously raised objections to opening without limitations and our position on this remains the same. We think that this is very wide and I certainly cannot support this amendment.

When the proposals from the Government come for a new Shop Act, I think that the time will be ripe for the union to make its views known on this particular issue, but as it stands now, this is a further avenue or an opportunity which is being created for exploitation.

Now, I just want to say this: one would very well counter with an argument that if workers are called upon to work on a Sunday or bank holiday, they will be paid for it, and paid, maybe, at rates over and above normal rates. That is an argument which would be advanced. That is true. But there are times when everything that a worker wants is not just pay. I think a worker needs some rest also, he needs time for himself.

Just on Saturday, I was on Broad Street and some shop assistants approached me expressing concern about the proposal that there would be a further extension to the opening of shops, and this was included. So it is not anything that I am talking just off the top of my head. It is a concern which is being expressed by those persons who work in the shops, they would be put to further inconvenience.

As I said, I think that when the time comes, we will be able to give a very clear position on this. I think that the position of the union on this particular matter is already generally known. Since it relates to working conditions, quite naturally, we would have to express some concern on this particular matter.

I just want to say, Sir, that when the voting comes, I will be asking that my vote be recorded against the amendment.

Thank you.

Mr. DEPUTY PRESIDENT: Senator Williams.

SENATOR J. E. D. WILLIAMS: Mr. Deputy President, on a Bill that is as important and fundamental as this one, I believe that I will have to go along with Senator Greaves in that the unions ought to be involved in something like this. There are a number of existing agreements between the unions and employers and this is going to have a serious effect on those particular agreements and the servicing of them in the future.

While I will support the Bill, I will say, Mr. Deputy President, that I am glad to hear that the Leader of the Senate has said that a more comprehensive Bill would be coming in the future. I am hoping that this would be used as a period whereby people would be able to assess and be able to get the kind of comments and feedback that, ultimately, could modify what we get here as a comprehensive Bill in the future.

But, as I said, the unions ought to be involved in it and Government certainly should listen and try to gather the kind of information that obviously will come out of a Bill of this nature.

Thank you.

Mr. DEPUTY PRESIDENT: Senator McClean.

SENATOR A. W. A. McCLEAN: Mr. Deputy President, I know that the unions in Barbados, and one union in particular, seems to be particularly concerned about the extension of working days from a five day week to a six day and so on. There is a notion that it should be regarded as a normal working week. Somehow, I believe that there are other ways of insisting on the extension of work days without insisting on such a definition of the Shops Act.

In relation to Sunday, I believe the original saying was that the normal work week was five days. It was probably routed in matters to do with our religion, but, perhaps more so that it is a religious day when people worship the Lord. But every day is the Lord's day and, therefore, there is nothing particularly wrong to carry on certain activities once you have to regard it as a normal work day. So that in a sense, I, myself, cannot find any basis other than religion to opening on Sunday; and the religious belief that one should not work on that day, I am not particularly in persuasion of.

I know that there is supposed to be some kind of legislation dealing with the point which makes my supporting this amendment valid. But I, myself, am not too interested in just having the shops open for tourists and so on. If shops can open on week days, they can open on the weekends for everybody, not only for the tourists.

Now on the question of exploitation of workers, I am sure the union is strong enough to enforce contracts

that are satisfactory to workers in the context of working days and, indeed, I would like for the unions to look into the normal Monday to Friday working days and the Sunday, which must be paid for on an overtime basis.

I was a member of the Transport Board when one of the earlier arrangements came in. It was introduced at the bargaining table and I tried to get other members to insist on that measure. I think that one of the most unfortunate things to happen in Barbados is, when we introduced this Bill, of stressing working from Monday to Friday, when we know that transport must go on for seven days a week. We know that, in the interest of the economy, transport must continue for seven days. Now, that must create problems for that service. You will find that in Sanitation also, and you will find that in the private sector.

You are setting up a situation whereby you are only working up to a Friday as opposed to operating Saturday or Sunday. I think it is shortsighted and harmful to the economy when unions insist on such arrangements. You can have a forty hour work week, but not necessarily Saturday and Sunday, because life must go on on those two days.

I know the unions, especially the Barbados Workers Union.

Asides.

SENATOR A. W. A. McCLEAN: You will see me in my office working on the weekend. We work Sunday to Sunday. So, Mr. President, if he does not know, don't blame me.

I think, basically, I would be supportive of this amendment, but I hope that we will quickly amend the Bill in a way which makes sense in the context of the present day in which we are living, and which would be fair to the workers.

I thank you.

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

Mr. DEPUTY PRESIDENT: Please record the dissent of Senator Greaves.

On the motion of Senator the Hon. N. A. BARROW, the Senate resolved itself into Committee on the Bill.

Clauses 1 and 2 were called and passed.

Mr. CHAIRMAN: Please record the dissent of Senator Greaves.

On the motion of Senator the Hon. N. A. BARROW, the Senate was resumed and the Bill was reported as having passed the Committee without amendment, Mr. DEPUTY PRESIDENT in the Chair.

On separate motions of Senator the Hon. N. A. BARROW, the Bill was read a third time forthwith and passed, Senator GREAVES dissenting.

Mr. DEPUTY PRESIDENT: The Leader of the Senate had earlier said that the order for the next two items would be, the Resolution to approve the sum of \$3.7 million for the purchase of Aero Services, followed by the Resolution to approve the Special Development Area (Parish Land) Order. He now wishes to reverse that order and, therefore, read as Order No. 3, the Resolution to approve the Special Development Area (Parish Land) Order.

RESOLUTION TO APPROVE THE SPECIAL DEVELOPMENT AREA (PARISH LAND) ORDER, 1982

The third Order of the day was called – To move the passing of the Resolution to approve the Special Development (Parish Land) Order, 1982.

SENATOR THE HON. N. A. BARROW: Mr. Deputy President, the Resolution itself is quite clear. The Addendum points out the selling price of the land – 48 cents per square foot or \$5.16 per square metre – and that it is part of the programme of transferring the title of tenantry lands to the tenants.

There is an overriding principle, Sir, which is enshrined in the Land Development Duty Act Cap. 78, which states that whenever Government undertakes or proposes to undertake in any area expenditure from public funds which, in the opinion of the Minister responsible for Finance, is substantial, the overriding principle here is that if Government expends public funds on the development of land, then people should not just come into a windfall, the owners of that particular land.

Obviously, if I spend that money to improve the land and you sell it and I cannot have any means of recouping, then I would have really spent money in your interest wholly and solely. So to prevent any sort of unfair gain, this legislation was enacted, and under that legislation this Order therefore falls to be made. It allows the Government to levy a development duty to ensure that the expenditure from the public funds is in some way recouped in the event of a transfer rather than a private individual making an unfair gain.

I move that this Resolution be concurred in.

The question was put to the Senate and agreed to.

RESOLUTION TO APPROVE THE USE OF THE SUM
OF \$3,700,000 TO BE BORROWED FROM BAR-
CLAYS BANK INTERNATIONAL LIMITED
FOR THE PURCHASE OF THE ASSETS
OF AERO SERVICES LIMITED

SENATOR THE HON. N. A. BARROW: Mr. Deputy President, Aero Services (Barbados) Limited was developed by the Barbados Flying Club and BARCAIR as a private airline company, and is a subsidiary of Barclays Bank International Limited.

Barclays used to operate a Beach Baron for taking its members around the area in the course of their duties, and eventually bought out the Flying Club and until now has held 46 per cent of the shares in Aero Services, the remainder being held by a number of private individuals.

The company now operates eight planes on a commercial basis, it presently employs a total of 42 persons, including nine pilots.

Barclays has subsequently purchased a Cessner Citation and it is understood that the policy of the bank is to replace its vehicles, including the aeroplane, every three years. The result is that the plane has been maintained outside Barbados, and the need by the bank for the facility of providing air services has been considerably reduced. For this reason, the bank does not wish to continue as a major shareholder in Aero Services and therefore agreed to make a loan to Government, the proceeds of which will be used to acquire 70 per cent of the assets of Aero Services.

The following considerations were taken into account by Government in coming to its decision:

- (1) the need for an air taxi service operating out of Barbados to service the tourist industry;
- (2) it would be undesirable to add to the level of unemployment which would result on the closure of the company;
- (3) the company could serve the nucleus for the expansion of the aircraft maintenance industry in this island;
- (4) the need to provide for crews and the maintenance of Coast Guard aircraft being used for search and rescue, anti-smuggling and similar operations;
- (5) the need for backup services when the Coast Guard aircraft is insufficient or out of service.

You will see, Sir, then that that list included certain services which would have to be provided and for which Government would have to pay.

The company holds a contract with Safari Tours for the operation of day tours. Consideration is being given to the utilisation of the aircraft during the time that such aircraft remain idle between the setting down and picking up of passengers at their points of destination. This may involve the use of equipment, some of which will be different from that now in service, but there have been discussions with CARICARGO and LIAT from which there appears to be real possibilities in the direction of securing this equipment.

The indications that there is scope for expansion in maintenance activities and that there will be need for some aggressive marketing for this to be developed. It is the maintenance side of the company that has been the most profitable side of the company.

The company also holds contracts for the movement of passengers and mail principally.

I referred in that list to the fact that Government would have to pay for certain things, that is, in referring to the provision of crews and maintenance of aircraft for Coast Guard being used in search and rescue, anti-smuggling and similar operations, and the need for backup services to the Coast Guard aircraft. The possibility of Government setting up its own facilities for the maintenance of the aircraft has been looked into. Indications are that there will be a vast difference in cost between what it would cost the Government to do so and the cost of having the services provided by Aero Services.

In order to fully quantify the financial aspects, I suppose one would have to be able to put some cost on the value of search and rescue operations carried out by the Coast Guard. I do not know how you would do that, except that we know we have to maintain some kind of capability in this matter, and I think one ought to recognise, therefore, that if there is a means of dividing this service, which is cheaper than the operation of Aero Services, that this in fact would have been a commanding reason against taking the decision which Government has taken.

In the last five years, for example, the number of fishing boats which went adrift was well over 100, and, in the last two years, the Defence Force has given an assistance to some 42 vessels; so in search and rescue, there is a continuing business which is of obvious importance.

Faced with the fact that Aero Services was going to close down and that there were these considerations,

which were extremely important to Government and which would have to be organised by some other means if Aero Services close down, the Government appointed personnel to do a study, and it was on the basis of that study that the decision was taken to enter into agreement which has been entered into.

The cost to the Government of this loan, which is a loan for 25 years at 4 per cent interest, again I think, Sir, one has to look not just at the size alone but the terms, a 25 year loan at a 4 per cent interest with a 7 year interest grace period.

I think we also have to look at the fact that — I am thinking largely about people who talked about using money for something else — when a loan, which is based on one of the softest terms available, is being offered for a particular purpose, we must remember that the loan is being offered for that purpose and not any other purpose.

The last audited accounts, the 1980 accounts, showed a deficit of \$738 264, of which interest accounted for \$320 544 and depreciation, \$297 897. The 1979 position was a deficit of \$291 235. The interest accounted for \$231 387; depreciation, \$249 754.

The accounts also revealed what was described as a "top heavy expense pattern" and an unusually high "Accounts Receivable". This persuaded the people doing the study that with certain suggestions — I will not deal with those suggestions now — for increasing the company's operations, that the company could be made profitable in a short time. The expectation is that Government should accrue sufficient in dividends over a 25 year period to repay the original loan.

The position therefore, Sir, is as follows:

Firstly, the company does certain services for the Government which the Government needs to have done, which Government must have done.

Secondly, if the company goes under, then Government will have to pay to have those services performed, and, according to the people who did the study, the services would then have to be paid for at a far higher rate than it would cost to have the company do them.

Thirdly, the company can be used as a nucleus for expanding the aircraft industry in the island.

Fourthly, that the company performs the role of an air taxi service operating out of Barbados to service the tourist industry, and that this is a role that must be continued.

And, finally, there is an employment factor, and we obviously do not wish to throw any more people out of work.

The advice given to Government is that the company can be made profitable and, therefore, that the funds, which are being lent on extremely concessional terms, can be recouped to repay the loan out of dividends.

Given, therefore, the need to keep the thing in service, and secondly, its potential for development and profitability and that the financing has been made available on very good terms, the Government has decided that it would be in our best interest to purchase Aero Services at this stage.

Mr. President, I move that this Resolution be concurred in.

SENATOR A. W. A. McCLEAN: Mr. President, it seems as though the Leader, Senator Barrow, has in some sense given us an explanation which is at some little distance from what I see here before me in the Resolution.

He made reference to the company and the company continuing operation and so on, but it seems to me that what Government is proposing is that they will buy the assets of the company rather than attempt to buy the shares of the company, in which case, then, Aero Services would still, presumably, be liquidated and some new company be established with the assets, the planes and so on.

If I am correct in assuming that that is what is going to happen, that they are going to buy the airplanes and whatever equipment they have there and set up a new company, I wonder if there is a valuation on those fixed assets, so to speak, what it is and to what extent this \$3.7 million correspond to the 70 per cent of the net valuation of those fixed assets and whether there is a substantial component for intangibles associated with that you will be moving into the shoes, so to speak, of some going concern or whatever.

Beyond that, I would like to suggest that the point which was made about the reasonableness with which Government can get certain services supplied by this company which is envisaged, should not be especially of the essence in terms of deciding whether this is a good proposal or not, because one would hope that if this new company is established, assuming it is a new company that will be established, and if they enter into contractual arrangements with different Government agencies and so on that they would charge Government at some economic rate. Otherwise, what you might have is a hidden subsidy to the Defence Force, which would come out looking as though some Government Corporation or whatever, some company in which Government has major shareholding, is operating inefficiently and making losses.

What is actually happening is that you are granting a hidden subsidy to other activities of Government, and to the extent that that happens, you can anticipate certain adverse consequences for the company. One is that the company would be hard put to charge other people for services at rates which are entirely out of line with what they charge in Government. They would have difficulty in justifying that type of situation.

The next thing is that if the company, by virtue of its subsidising certain Government agencies, is forced into a loss position, it is going to demoralise Government, and good managers would want to be out of that. Good managers do not like to operate in situations where they cannot make a hand of the business, and you would probably find that management would deteriorate and the company itself might in the future fold up, and you may have to go to alternative arrangements and pay people at economic rates.

So I suggest that Government, if they were getting in the past same type of concession from the Barclays owned thing, that is all well and good, but in terms of their majority owned thing, they should try to come to reasonable contractual arrangements with them which relate to what Government would have to pay elsewhere and relate to the natural reasonable cost of the service.

I, Mr. Deputy President, am inclined to support this Bill. I know that the terms and conditions of the loan are distinctly concessionary, and would not have any significant effect on our debt service situation in the foreseeable future.

I thank you.

SENATOR C. D. SEALE: Sir, I must confess that I am a bit confused with this concession. As Senator McClean said, I was aware that we were buying assets, and as Senator Barrow said, we appear to be buying Aero Services.

What worries me is that Aero Services has been a private company operating for a couple of years with perhaps the greatest expertise at its disposal, Barclays Bank being a shareholder of 46 per cent, and Aero Services has failed. I think it is in receivership and I believe that the Receiver is Mr. Phillips.

Now this gentleman is a very able man and I can see right away his hand here in the negotiations probably with Barclays Bank, when I see they have been able to get them not to expect any interest for seven years and in repaying the loan in 25 years. That is most generous, but that reminds me of a man coming to me and maybe saying I will give you a check dated a years' time for \$50,000, I am bound to make it back, and I don't know what will happen at the end of the year. So I am wondering what is going to happen in seven years' time, whether Aero Services will have any funds.

Sir, another thing that surprised me is what little information we have been given here, really, to comment on. Sir, the Leader of the House has given us a report of the balance sheets of 1979 and 1980. This is nearly the end of 1982, and I am confident that if a company lost \$349 000, that in 1981 that interest charge would have jumped quite a bit, and I am certain that it would have tripled in 1982, so that the deficit is way down.

I wonder whether, perhaps, the purchase of the assets and the reformation of the whole company might not necessarily have been the answer. I think that, perhaps with some generous terms from Barbados, the Government has done it, but I would rather have seen the assets being sold off and the Government form a completely new company and have Mr. Phillips look after it the same way, and I think that we would come out a lot better.

I am going to support it because I believe that the company does have some justification in Barbados. It is a great asset to the tourist industry and also an employment generator, and it would definitely help Government in the servicing of its own aircraft.

So, on those grounds, I am going to support at least the rescue, but I would like to suggest that another look could be taken at the whole method, and that the \$3.7 million that we are going to vote today be used in a different manner than just taking over the shares.

Another thing that Senator Barrow told us is that the Government will now own 70 per cent of the shares, and I wonder who owns the other 30 per cent. Is that being owned around the private shareholders, or is that being held by Barclays? I would really like to know that. So, Sir, with those few words I support the Resolution.

Thank you.

SENATOR E. E. GREAVES: Mr. Deputy President, just a short contribution on this Resolution. Sir, I listened very carefully to what Senator Barrow had to say in the presentation of this Resolution, and I am still trying to be convinced about the real purpose behind the purchase of Aero Services Limited, and indeed about the overall wisdom of the purchase.

Now Senator Barrow has outlined a number of reasons why the Government is going into this arrangement relative to Aero Services Limited. Some of these arrangements, he has indicated, can be profitable and other arrangements can be described as services for the Government. As he quite rightly said, one cannot put a cost on or indeed attach a profit to search and rescue operations, anti-smuggling and similar type operations.

The thing is that we have a situation with a company which clearly has been losing money for a number of years. It was operating substantially by Barclays Bank, which is an international bank, and which I believe ought to have had the management expertise and the finances to have ensured that this company remained or operated in a viable kind of way. This, however, was not the case,

with the result that we have the Government being faced with a situation where it is purchasing a company which has demonstrated that it is a losing company. Both Governments always seem to find themselves placed in this position where they are called upon or expected to rescue. What we are doing here is really rescuing a company which was operated by Barclays Bank.

I did not realise that the Government of Barbados was so generous. This is extreme generosity on the part of the Government, because what I am saying is that if Barclays Bank was operating this company and could not turn it into a viable concern, I have my doubts, irrespective of the reasons which Senator Barrow has outlined, that the Government would be able to turn it into a viable operation, given the level and the quality of management skills which exist in the public sector and, generally speaking, which are available in this country. I have very serious doubts that this would be a viable venture.

Now, Barclays Bank, I must confess, was very generous also, but, after all, who would not be generous if you are going to take off a weight off a company's back in the way that the Government is doing in this particular instance.

So, I do not want Senator Barrow to expect that he could sway me with the argument that the terms are extremely generous, the loan is repayable in 25 years with the first probable instalment or interest being paid after seven years. I would agree that these are very generous terms, but certainly they ought to be when one takes into consideration the load that the Government is proposing to take off Barclays Bank.

It seems to me, Sir, that what the Government is doing here is, in truth and in fact, building up the Defence Force.

I am doubtful about the point which Senator Barrow made about the ability of the company to attract and to maintain a situation where they would be able to expand on aircraft maintenance, in the island. That seems to be one of the big points which has been made.

Let us really examine the aircraft which are maintained, or which could possibly be maintained in Barbados. It would be, obviously, the same planes for Aero Services, some small aircraft, I am not sure to what extent LIAT aircraft would be maintained here, but, as I understand it, maintenance would be done by their own people here and I would think that back in Antigua where LIAT is headquartered, you would get a lot of the maintenance being done there.

What about the other aircraft that call at Barbados frequently that fly into Barbados? BWIA? I mean, the most business that we could do on any BWIA aircraft here would be just enough to get the aircraft down to Trinidad, just next door, for major maintenance to be

done in that country. What about American Airlines and the other international airlines that call here? Very often, when something goes wrong, they will fly in their own maintenance people.

What I am saying is, we are left with a situation where I really cannot see where this expansion is going to take place. I am not too confident that this maintenance section, which has been bruited as one of the major areas in which they will be able to attract work and, therefore, hopefully assist in turning this country into a viable operation at least, that the potential is there as Senator Barrow has indicated.

So, as I said, I am still at a loss as to why we are moving in this particular direction. Senator Barrow did indicate that the purchase would mean the saving of the jobs of 42 persons, including nine pilots. I really would wish the company well; I am not at all pulling the company down but, as I said, I am concerned about the viability. That is the point.

I am concerned about the viability of the company, because the company, even although it was run by one of the most successful business ventures in the world, has not demonstrated that it can be viable, and I am concerned, given the level of management in the Public Service and the level of management skills in this society, that we would be able to turn this into a viable proposition.

So, really, my position on this would be — certainly, I would wish the company well but I have some hesitation in supporting the venture.

I recognise that the money which Barbados is making available to the Government for the purchase of the assets of Aero Services is a special arrangement, which as Senator Barrow has rightly pointed out, cannot be used for other purposes.

I know the argument would be advanced that it is just \$3.7 million but this is another \$3.7 million which will be added to our debt situation, another \$3.7 million. And in a situation where people in Barbados are becoming frightened by the massive.....

SENATOR E. E. GREAVES: They told me so.

By the massive debt, Sir, which this country is accumulating, people are concerned, one is left to wonder where is it going to stop.

Every week, you see no indication of any brakes being put on, of any restraint in the area of debt accumulation being practised by the Government, but

almost every week, last week — I am not reflecting on any vote — it was an additional burden. This week, it is another burden, and the Lord knows, as weeks go on and months go on, how many other burdens will be placed on the taxpayers of this country.

I am saying that this is an additional burden, the viability of which we are not certain, and I have my doubts that the Government would be able to turn this operation into a viable one. As I said, Sir, I would hesitate to support this.

Mr. DEPUTY PRESIDENT: Senator Hall.

SENATOR W. W. HALL: Mr. President, I am just looking at this Bill today not too critically, but rather with some measure of concern. I have listened to the Leader of the House and three members speaking on the Bill and I share some of their apprehensions.

Sir, it is conspicuous that a businessman, a successful businessman like Senator Seale; it is conspicuous to see the celerity in which he pounced on the idea that the company is a non-profitable one, and with other businessmen, these are the things they look for when buying a company. Or when buying shares or anything like that, Sir, it is obvious that one looks at the track record of the company.

I am sure that if Senator Seale was buying a race horse, he would not buy one with Time Form rating of 22; he would tend to buy one with 104, like Concorde Heroe. You know why, Sir? He will do that because he wishes to make sure that that horse will pay for itself, at least, Sir. Senator Simmons says "at least," and that is true — at least pay for itself. That is the least he expects — self-financing, Sir.

I mention that, God knows, Sir, not in any derogatory sense; in one with great admiration, because I do feel that when you can do that it shows what stuff you are made of, and, obviously, stern stuff financially, Sir.

It is not what you do always, Sir. Sometimes, as you know, it is how you do it and indeed when you do it, and it seems to me Sir, to borrow money from Barclays Bank — Senator Simmons says to bail out Barclays Bank — to go into the same business so that you are bailing them out Sir, does not make sense to me.

I do not know, maybe the Minister will get up, Sir, and I do wish that Senator Barrow replies, because if Senator Trotman is going to reply as per usual, Sir, I know that I will not be in any way enlightened. So, therefore, let Senator Barrow get up and tell me. Senator Trotman says he is going to reply to me; he always does it.

I do feel, Sir, that borrowing money from Barclays for something that Barclays has gone on record as saying is not economically viable — I think, Sir, I read that in the media — I am not too happy at all with that.

I must say that the Leader of the House did say something about the problem of using money for something else when you borrow it, he alluded to the fact that this \$3.7 million must be spent for the purpose for which it was borrowed. Fair enough, Sir, all right with me, Sir. But, perhaps — there is no point in telling me that — he should have told the Chairman of Committees in the Other Place when he got up and criticised the Government. In fact, I wouldn't say criticise the Government. What he did do, Sir, is to get up and let his conscience be his guide, and he had the intestinal fortitude to do so.

He said that it could be spent in getting some roads and some street lights for people. I do not recall if he said in St. George. I do not recall that he said so. But he would be much on the mark if he said Wavell Avenue and Long Gap and St. Stephen's areas that are very much in need of these facilities, Sir. But let that pass.

Asides.

SENATOR W. W. HALL: The Government spokesman, Sir, I thought that perhaps they would have used the opportunity to reply to me when the time comes, but to heckle, to me, Sir, is something that I have grown accustomed to, and I do feel that it will not stop me from making the point, that the fact that you have a good arrangement financially, the terms are good — fair enough you have good terms — are you saying Sir, that if you are not financially sound, if you have no money and you do not know what exactly is going to happen, like Senator Seale alluded to the fact, if you are saying that and the bank offered you something at a good lending rate; are you saying, Sir, that you will go into it? Or are the Ministers over there saying, Sir, that they would put their personal money into a venture which seems not too profitable or perhaps will not be too profitable for a long time, Sir? These are the questions that I am asking.

While not being too critical, I am just wondering, Sir, if in these days of recession this is a priority at this time. In making these few points, I do not intend to be overly critical, although I know it is a sensitive area and anytime you speak, the Ministers on the Government benches would obviously react unnecessarily. The Minister did say the good points of the Bill. I said that he did say, note the tense, I did not say that he will say.

He mentioned redundancy. Redundancy is a non point to Senator Griffith, Sir, so be it.

Aside.

SENATOR W. W. HALL: Oh yes, I forgot that he is going to be a Minister soon. I forgot that Senator Griffith is going to be a Minister, Sir.

Redundancy, Sir, he did mention redundancy. Redundancy concerns us all, or indeed it should. But there is some redundancy in his very office, or dismissals. I would rather say redundancy, Sir, because, with redundancy, there is a possibility that you can be rehired when things improved. That is not the case of a dismissal.

There is redundancy. One saw it in the last Estimates when you could see the reduction in the various Government departments and no one cried foul. We know Sir, there will be redundancies of many more in Bridgetown, in Broad Street. There is no doubt, Sir. Nineteen hundred and eighty-three will not dawn without having redundancy, because when there is a recession, it is obvious that people will have less spending power and, obviously, the companies or the merchants will have to send home some people. So, Sir, there are redundancies in Bridgetown.

It might not be well known to Government that there is redundancy in the airlines. Even though we look at that sympathetically.....

Asides.

SENATOR W. W. HALL: Senator Greaves says that BWIA is cutting off five (5) from January, Sir. He should know..... he deals with that. Sir, I would just like to say.....well, I wish you would speak to Sen. Griffith, Sir.

Mr. DEPUTY PRESIDENT: I am trying.

SENATOR W. W. HALL: Well, he is not far away. Well, if he is going to be a Minister, he should act with a little more decorum. I do not understand. I would have thought that if he is going into the Cabinet, Sir, he should carry some measure of expertise. And it is not necessarily in energy, it should be in the behaviour patterns, and I do hope that he would desist from his unnecessary heckling.

I was only saying that, from the notes that I have, the Minister alluded to the air taxi service, redundancy, expansion, aircraft maintenance, search, anti-smuggling, back-up services, and the fact that the maintenance was the most operative aspect of the company. Those are notes on what the Minister had said Sir, and what I am saying is that I consider that, in this time of great recession, the Government should think twice, or even three times, Sir, before venturing into something of this magnitude.

I notice the Defence Force. Whenever the Defence Force is called — it was done in the Estimates — there

is always some great reaction to this. What I would like to find out, Sir, is if this is the basis of the \$3.7 million the fact that no price is too high for security.

I know that we need security in Barbados. I agree with that. As Senator Greaves is saying, he is not going to get up and attack the fact that people should not be in a position that you cannot search for them when they are lost at sea and that there should not be a situation where you have anti-smuggling, but what I do feel, as I said, is that there is a time and I think the time of recession is hardly the time that we should spend this \$3.7 million.

Like Senator Greaves said, you are in an area where you do not wish to be critical of a Bill like this, where you probably find that there are redundancies to the measure of 42 jobs. If you say that they should go down the drain, obviously you would hear that you are against people working.

This is not the case, we are not saying that at all. We feel that the maintenance of these jobs will be very important for them and indeed their families, but I still feel that, to the average man in the street and to every Barbadian the Government at this time spending \$3.7 million to acquire 70 per cent of the value of the assets of Aero Services Limited is one which one must look at with a great degree of apprehension.

SENATOR THE HON. N. A. BARROW: Mr. Deputy President, first of all let me deal with the point made by Senator McClean, who raised the question of whether we are purchasing the assets or whether we are purchasing the shares.

I have spoken the way I did because at all times it was clear to me that it was 70 per cent of the equity that was being bought. As far as I can see, in everything I have seen, the company is in receivership and the monies are being spent to purchase 70 per cent of the value of the assets. Even in the text of the Resolution, that is so; so, in the absence of any further information, I cannot advise the Senate that that is not what is being done, as far as I can see. I have no reason to believe that it can be done otherwise. That is what is being done.

There is a point which the Senator also made, which is that one should be careful in reorganising a business to make sure that we do not pursue policies which would mean that Government is not paying the true rate for the service being done, otherwise it would mean that the company would be losing money by underwriting Government's expenses. I think that point is self-evident. I can understand the point and I do not think the Government has any difficulty in understanding that point.

In relation to points made by Senator Seale, the tenor of his speech was really no different from that of Senator Greaves' speech, in that the general point was that if the company is presently being run by Barclays Bank and is losing money, then there is at least some doubt as to the capacity of somebody else to turn the company around. I am going to return to that point in a minute.

There is an assertion made by Senator Greaves, however, which I think needs to be answered immediately, because I think he misunderstood me when I said that the maintenance operations were the profitable operations.

I was not saying it is projected that they would be profitable. The air wing of the company is losing money, the maintenance is what makes money, so I think if we accept that part, it will indicate what I am going to deal with in terms of a reply to the points made by Senator Seale and Senator Greaves.

In relation to the points made by Senator Hall, all I can say is that it is not a horse we are buying. The form of the horse really is not so important here.

Asides.

SENATOR THE HON. N. A. BARROW: The form is important, but it is not a horse we are buying; we are not buying a horse. The point is, Sir, that the gentlemen at that end may be taken up with the whole idea of form and horses, but there are times when analogies are simply not apposite, and this is one.

We are dealing with a situation anyway in which to talk about bailing out Barclays is foolishness. I do not believe that Barclays Bank needs to be bailed out, and certainly if Barclays Bank is going to be bailed out, in a case like this, they are selling what, on an independent valuation, has value, so that it really does not matter who buys it. We are not dealing with a bankrupt situation, we are dealing with tangible assets in existence, and the value of 70 per cent of the assets happens to be \$3.7 million. That is the first point.

The second point is, if you are talking about public debt and you are talking about the domestic aspect of that debt, the only way the people can lose their money is if the economy goes very, very bad, in which case they will lose it anyhow.

It is not the same as foreign debt. I am sure that Senator McClean, if he did not make the point when he commented on the terms of the loan, I am sure that he would agree that the implications of foreign debt and domestic debt are quite quite different. If this one

happens to be an arrangement which is not onerous by any means to service, then, surely, we have to look at other aspects.

As I was saying, if you are going to bail out Barclays Bank, Barclays Bank is at the same time extending overdraft facilities of \$300 000 to the company. That is not part of this loan and part of any guarantee, that is an overdraft for the purpose of the company's operation, and if the company cannot be pulled around, the money that it, in fact, will lose will be Barclays Bank's money, extended on the overdraft.

I think we have to look, Mr. Deputy President, at this situation. The bank quantified how much it would spend for ferrying its staff around in the Caribbean and, having quantified that, decided that they would furnish themselves with a craft to do this rather than spend it in commercial travel, and then they would have the flexibility which that gives, Sir. That is not unknown.

Therefore, whether the air wing of the company was making money was not an important aspect of the operation for the bank. For all you know, if you quantify what the bank would have spent otherwise in travel and compare it with what they would lose in the air wing, in that sense it might have been making money. I do not know.

The bank was not charging itself economic rates for flying around the Caribbean. The bank would have been doing precisely what Senator McClean has cautioned Government not to do, which is they were flying largely at the company's expense. I mean, that is fairly obvious. And Government could do the same thing, indeed, by having its aircraft maintained and so on, virtually at the company's expense.

I am not going to speak with any great deal of warmth or anything on the matter. There are companies in the United States, of which those of us who read are perfectly aware, that purchase going ventures where they are satisfied that certain things can be done in order to pull the company around. One company that has had success in operating in that way in the U.S. in fact also operates in Barbados. I am not going to mention the name.

So there are companies which do this and, therefore, what we must look at is that aspect of the study that says that if certain things were done which can improve the management of the company, then the company could be turned around. That is one aspect.

The second aspect is that where Government itself needs the services, one of the considerations has to be not whether the company is making but whether Government would be spending more, in the event of operational loss, than it would had it had the maintenance services provided elsewhere. Those are the considerations which, in my view, must carry more weight.

One of the first things that the company has to do, and that it is said the company must do, is that since the aircraft for example, which were suitable, perhaps, for Barclays Bank purposes, are not aircrafts suitable for the development of the service which the tourist industry needs, they will have to get rid of those and change the kinds of aircrafts so that that they have aircrafts which can do inter-island traffic, which it is necessary to do, which can run an air taxi service. That is one of the things which has already been determined, because that is already clear.

Mr. Deputy President, I do not remember any other points of substance which were made in the course of comments and which require any direct reply. I think those are the points which were raised and I have tried to deal with them.

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

SUSPENSION OF SITTING

Mr. DEPUTY PRESIDENT: I have been informed that the President has now arrived and I think that it would be convenient at this stage to have our recess and the Senate will stand recessed for an hour.

On Resumption:

Mr. DEPUTY PRESIDENT: This sitting is now resumed.

THE COMPANIES ACT, 1982

The Fifth Order of the day was called — to move the Second Reading of a Bill to revise and amend the law relating to companies and to provide for related and consequential matters.

SENATOR THE HON. O'B. TROTMAN: Mr. Deputy President, the Bill under review comes with a long, extensive summary of probably 20 pages. The summary was prepared by a local Companies Law Committee headed by Mr. Justice Williams of the Supreme Court and several officers of the legal profession, including the Solicitor-General, and others.

The present Act as presented to Parliament is an attempt to update the present company law which finds its origin in English law. The new Bill, in general, has, as the first page of the summary says, eleven major changes implemented in the local situation. It points to the fact that the new Bill would provide for the incorporation of a single shareholder to form a company, provide for the giving of the capacity of a natural person to a company, it provides that a company would no longer need to have to state its objects and powers, but could enfold restrictions on its objects and powers, and the summary continues on page 2, which I need not read since it is already printed.

I want, however, to draw your attention to one or two things. Sir, the new Companies Bill will put an obligation on shareholders to consider the rights of workers employed by the Company when they are taking decisions affecting the company, and that is a major change in the present legislation. It also provides for the simplicity of accounting in companies, and the new Bill will specifically spell out the powers and duties of directors of companies. All this can be found quite well laid out in the summary, which forms the preamble to the Bill. The Bill makes specific provisions for the termination of service of directors, the right of notice, the way in which directors' meetings should be conducted and the general delegation of powers, etc. These are all, as I said earlier, set out in the summary, which forms the preamble to the Bill, and there is no particular need to recite those provisions.

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

SENATOR C. D. SEALE: Mr. Deputy President, this Bill is a very comprehensive piece of legislation and I wish to congratulate the Company Law Committee on the drafting of it. It will certainly make it a lot easier to open or form a company and a lot easier to close it down too; so I can only hope that the attorneys in Barbados will now charge a lot less to form a company.

However, there is one area that has me a little taken aback. Under "Financial Disclosure", I think it is Clause 152, it says that a company must send a copy of its financial statement to the Registrar if it is a private company or if the gross revenues as shown in the most recent financial statement, referred to in Section 147, exceed \$250 000 or the assets as shown in those financial statements exceed \$1 million.

I notice, Sir, in the preamble, that the reasons given for this were that it was felt that the financial disclosures to the Registrar would be required by all public companies or all larger private companies, those with over \$250 000 gross revenues or \$1 million in assets.

Mr. DEPUTY PRESIDENT: Excuse me, Senator Seale. This is a very voluminous document, so would you state the page.

SENATOR C. D. SEALE: I am sorry. This is page 8 of the summary to the Bill.

Now it is my submission that the gross revenue of a company, as I understand it, is the revenue that the company earns for the sale of its products or its services before its expenses. Now any company in Barbados with about 15 to 18 employees would have to have gross revenues of about \$250 000 in a year in order to survive, therefore I do not think that they could come under the category of larger private companies.

Also, Sir, I wonder whether it is correct legislation that you should be able to report when you reach a certain point, but the year, for instance that your revenue goes under \$250 000, you obviously would not have to send in a report to the Registrar, and I think, going on to the end of page 8 in the summary, it says:

"Further it would recognise that "private" companies may have a significant impact upon the economy and disclosure would therefore probably be in the public interest, introducing an element of public accountability. On the other hand, it could be argued that this would be an invasion of privacy."

Now I certainly think that a private company with about 15 to 18 employees having to place its financial statements before the public would allow its bigger competitors to see its operations, and that may in a way lead to that small company being obliterated, maybe put out of business. I would like to propose that that amendment be taken out, "the gross revenues" and Section 152 (1) on page 109 would now read "A company

(a) that is a public company, or

(b) the assets of which as shown in those financial statements exceed one million dollars, ..."

I think that we can understand that any present company in Barbados with assets of more than \$1 million can be categorised as a larger private company, and also Sir, when you categorise it on assets, the only way those assets could be reduced is if the company starts to lose money.

I think that is one of the reasons for the accountability to the public, so that they can see the trends, because you can get a larger private company with a fairly large payroll of about 200 to 250 people, and that is a major company in this country, and to let it necessarily go under would mean that this disclosure would allow some sort of remedial action to be taken early, and I would wish that that amendment, if possible, be introduced.

Sir, companies in Barbados are at present under great pressure. I believe that is an understatement, Sir. Sir, one of Barbados' two main industries, and I would like to think of it of the very main industry, tourism, is — I do not want to sensationalise it by saying that it is in severe trouble, but a visit to a few hotels in the last couple of nights would reveal that there is more staff than guests, Sir.

In fact, one restaurant owner told me a week ago that he had a night where nobody whatsoever turned up for dinner. I just imagined if Cave Shepherd got no customers on Broad Street for one day; just imagine the traumatic experience that would be Sir, for management.

I think that, in general, one of our problems in tourism in Barbados is summed up with what I read earlier today from the President of the Hilton International — we are just not spending enough money on promotion. Sir, I have made this point here earlier, that Barbados only spends something like \$22 on promotion per head per tourist per year, and this is much too small.

We, apparently, are putting our thrust in the wrong direction, and I only hope that we come around to the consumer. Sir, I was just in Texas and I laid on my hotel bed and I saw on television, "Come back to Jamaica". I did not see a thing about Barbados, Sir. What I really want to get on to virtually is, Sir, nobody in the United States, do not mind what we might say, knows where Barbados is. When I told them I was from Barbados, they did not know where that was.

Sir, we have to get out there to the consumer and stop, I do not like to say wasting our money on these jaunts, these trips, because these fellows at the Tourist Board work hard when they go; there is no doubt about it — but they work hard and achieve nothing. That is the problem, Sir, and I want to see achievement and the only way you can get achievement, you can get tourists coming back to this country, is to let the public know and the consumer in the United States know, let them know about our hotel prices.

We have got a lot of problems with hotel prices being high. Why not come with a television ad which reads, "Spend a vacation in Barbados from US\$150 a week up." Do not tell them about Sandy Lane prices, Sir. Tell them about Senator Howell's place, Sir, because these are the places that you can stay and he is in a fashionable district, Sir, very close to the sea.

So, I am just wondering and making an appeal. I have a favourite saying of making a little shake, Sir. I get the impression, not necessarily the Board, Sir, but the people working for the Tourist Board need a little shake up, Sir, because when you are not producing, I believe, like the Americans, you have to do a little something about it.

Obviously, with declining tourist arrivals our tourist officials cannot pat their backs; they have to shake up a little, Sir. There is something that they are doing wrong and I would only hope that they swing and come around to the consumer.

Sir, to be a business man in Barbados; to be a successful businessman in Barbados is very hazardous, Sir. You know, I started studying that when you are a successful surgeon, Sir, you are referred to as an eminent person. When you are a successful lawyer, you are referred to as a brilliant person, Sir, but when you are a successful businessman, you are either tricky, lucky, smart – but you never, never really – get any adulation, Sir. They tell me I have been successful, Sir, but the type of praise I get for being successful is not all that nice, Sir.

Laughter.

Sir, as I said earlier on, this is a very comprehensive piece of legislation, it has been a long time in coming, no doubt, the planners have looked after the professionals, because I notice that you now have to get an approved auditor and, therefore, you are well looked after, Sir, your company's books have to be well done. I do not have any quarrel with that, Sir, and I can only hope, as I said earlier, now that things are so easy that the attorneys will be a little easier.

Laughter.

Sir, on just one very final point. We have to send these financial statements to the Registrar. What does this Registrar do with them, Sir, and how competent is the Registrar to really read them or to do anything about them, Sir? I would like to know these things because I wonder if we are only sending them to be filed or maybe packed up in some office; as we heard earlier on, they might go to the Archives, Sir.

Nevertheless, with those few words, I support the Bill and again I think it is very comprehensive, Sir.

MR. DEPUTY PRESIDENT: Senator Howell.

SENATOR St. C. E. HOWELL: Thank you, Mr. Deputy President, I rise in support of the Bill and to make just two very short observations.

Like the last speaker, Mr. Deputy President, I think that this Bill is indeed a comprehensive piece of legislation, it is onward looking, it gives more than a tinge of practical as well as legal protection to investors in Barbados, Sir.

The timing is also right, Mr. Deputy President, when we consider that quite recently this Chamber passed the

Securities Exchange known as the Stock Exchange Bill, which is soon to become law. This measure, when it becomes law, coupled with the promise we have had from the Minister of Trade and Industry to also update the legislation in relation to partnership; I am in no doubt, Mr. Deputy President, that, when these three pieces of legislation are all placed on our Statute Book, Barbados through its investors will be placed in a very favourable position.

We are a developing country and there are people in this country, Sir, who, as a result of these pieces of legislation and our developing society, would be for the first time taking the first steps, so to speak, in investing money, some large, some small, in companies and, therefore, it is only fitting that Government should introduce legislation to make sure that people who are investing money, and who are relatively inexperienced, will be given some measure of protection.

This Bill does more than that. I think that this piece of legislation, when it becomes law, will indeed be the envy of many, not only English speaking Caribbean countries but other countries in the world as well. Such is the depth of the piece of legislation.

The area, Mr. Deputy President, that I would like to direct my attention to first is Section 16 of the Bill, which deals with pre-incorporation contracts. I know that there are other lawyers on this side and there are other people who would direct their attention to certain things but I think this is important because, to someone who practises for a living and someone who has taught this subject for some time, one of the areas which has always bedeviled people who are about to invest money is that often we have the high flyers, and we in a developing country such as Barbados must always be careful because we can have a situation whereby people come into the country proposing to do all things which appear to be great at first, and if one is not careful, and in the absence of legislation such as this Bill which is about to become law in this country, we would well find, or we could find, that people in this country are in fact taken for a ride and could quite easily be ripped off.

Section 16 of this Bill, Sir, is known as what the Law Committee in England has referred to as the sabandra clause, Sir. That is, this area of the law is governed by the common law and it presents all sorts of problems where a company is about to come into operation and you have a promoter who goes around and he discloses only so much it would appear from the case, Sir, to confuse the third party, where a contract is set up and, if all goes well, the company comes into being and soon after, it ratifies the contract and it reaps the benefit.

But if, as is often the case, things do not turn out well, there will be all sorts of dilatory measures and the

company does not in fact come into being and the third party is left holding the baby, so to speak, because often there will be terms in the contract, exemption clauses excluding his liability. The company is only a legal personality and, therefore, it cannot, in fact, be sued, nor can it bring actions until it comes into being, and as long as it is preventing or deliberately avoiding coming into operation, it is protected.

Now this new measure, Sir, seeks to avoid all of that. It takes us away from the common law protection and the very, very complicated area of the law of agencies — master, servant or agent and principal and the conjugate type system. It gets rid of all of that, in that by Section 17 of the measure, Sir, the company is given the status of an individual, although again in Section 16, sub-section 2 it is presumed that the company will have to ratify these transactions within a reasonable time, always a question for the court to decide. But the fact that the company would in the future be given the existence of an individual, it will save a lot of problems with people in this country, who would be investing money for the first time, because they can now sue the promoter and sue the company when it comes into being unless, of course, as I said earlier, it has been expressly excluded. So that is a great measure of protection for the new investors in this country, and it is to be welcomed.

As I said, Section 16 and Section 17, as far as I can see Sir, seem to compliment each other.

If I may turn very briefly, Sir, in the same area, Division B on page 12, and have a brief look at Sections 18 and 19, Sir — I wouldn't be long on this — I would only say that to me — I would hope that the Minister will clear it up: I do not think it is much that he can do really, not because of lack of any legal knowledge — but there seems to me to be some honest conflict, Sir, between Sections 18 and 19.

By Section 18, we seem to be trying to protect investors by still holding a sort of a tight range on the company, saying that you can only do those things that you are provided to do in the articles of the company, which are the instruments for regulating the company. But that does not seem square with Section 19, which says, Sir, if I may quote it:

“For the avoidance of doubt, it is declared that no act of a company, including any transfer of property to or by a company, is invalid by reason only that the act or transfer is contrary to the articles or this Act.”

I think that is a little unfortunate. It does not appear to me at all to be clear. It may well be clear,

but it seems to me that by Section 18 we are trying to maintain some restriction as to what the company can do by virtue of its articles, and then, at the same time in the very next section, it says that if you do that nonetheless, it does not matter that you are contravening your articles, and this has always been the area where we will call upon the company to account.

It seems to me to be an unfortunate state of affairs. I think that is an area that the courts may be called upon, in a very comprehensive piece of legislation like this, to clear up which of those two sections is the governing section. It seems to me to be a process of approbating and reprobating at the same time. I think the courts should be called upon to adjudicate on which of those two is to be the governing section.

Very briefly, Sir, I will turn from those areas over to Section 228 of the Bill and I do this, Mr. Deputy President, because I think this, in fact, the whole area there on page 184, restraining oppression, which governs Sections 228 to 231; I think this can very well be tied up with Section 16 in the sense of providing very comprehensive protection to investors.

This is the area which has always presented some difficulty once the company has been going on, and in particular the very small companies where we have companies going for some time, run or managed by a small number of people, directors usually, and the payments are usually by way of the shareholding; they do not get salaries as such; and then you always get a situation where one director owns about 5 per cent or 10 per cent more shares, and all sorts of funny things happen.

It is only in 1973 that they attempted to get to grips and deal with this area in England, where Section 210 I think it is, under the 1948 Act of that country; it has been said that that section is more a threatening section than one that really leads to any true remedy in the courts, because, once you have invoked that section it meant that, in the final analysis, the company will be wound up — and that is not the type of thing we would want in Barbados as a developing society.

We find, therefore, that in Section 228, investors — not only investors, Sir, but people who are engaged as a whole in the company, directors, officers of the company and so forth, can seek permanent order at a later time, and there are some fourteen remedies under Section 228 subsection 3; some fourteen remedies, whereas under our old law which was based on the English law, there was only one remedy if you were not satisfied. When the just and equitable principal saw that what was being done was so bad to be classified as oppressive then the only just and equitable thing to do was to wind up the company. This Act is indeed far reaching because, in addition to winding up, there are thirty other options or alternatives.

I do not think that I would wish to say much more about that, Mr. Deputy President, because I know there are lots of people who would like to speak on this Bill. I have tied in Sections 228 to 231 with Sections 16 and 17 because I think these are the two areas together in this very comprehensive legislation which would serve in the future to protect investors in this country, and this is to be welcomed, because many countries, even developed countries in the world, are screaming out for this type of comprehensive legislation.

SENATOR J. E. D. WILLIAMS: Mr. President, I really had no intention of speaking on this Bill, but I rise to make one or two comments. The first is in relation to a suggestion coming from Senator Seale, that \$250 000 gross revenue in any one year is not a significant enough figure that that particular company be asked to file financial reports to the Registrar.

If, for example, you had four such companies, then surely you are talking about a million dollars in gross revenue. And I would think that, in an economy like ours in Barbados, that is a significant figure. It has an effect on our economy and, therefore, I believe it is wrong to believe that if a company has gross revenue to the tune of \$250 000 that they should not be compelled to disclose the financial position.

I strongly believe that there are a lot of companies as well which will probably come close to the \$250 000 or slightly over, and therefore you are talking about a number of companies out there that at the present moment do not disclose their financial position and it obviously puts this Government in a fairly difficult position to understand the impact that they have on the total economy. I firmly believe that they should be asked, as the Act indicates, that they should file financial reports with the Registrar.

In the area of auditing, I recognise that companies now are compelled to have auditors, and I think it stipulates that they ought to have independent auditors, which I go along with, but I trust and hope that this in itself does not make it more difficult for very small businesses. I firmly believe that you should have an independent auditor, yes, but if it is going to affect seriously very small business, that is something we might have to look at in the future.

I agree with the idea of both private and public companies having audited financial statements, and I notice that there is also an accommodation now where lawyers are supposed to be attached to companies. I do agree with Senator Seale that in as much as it becomes a lot easier now for companies to be formed, that it should obviously become cheaper to an entrepreneur, a very

small businessman, to become incorporated. The difficulties which existed before no longer exist as far as incorporation is concerned, and I also want to say that the idea of looking at the question of pre-incorporation contracts was a good one, because it creates a kind of safeguard for third parties who do business with companies before they are incorporated.

The one other point I think needs to be mentioned is the question of permitting cumulative voting. Often, you find that in companies there are a number of small shareholders who, because of the number of shares they have, find it difficult maybe to get someone as a director to represent them, and the whole question now of having cumulative voting where minority shareholders will be able to pool their votes together and have a director on the Board who can articulate their position, I think this is a forward looking step.

Mr. DEPUTY PRESIDENT: Excuse me, Senator Williams. It would be very useful if you would make a reference to that point.

SENATOR J. E. D. WILLIAMS: That was Clause 67. Also, I think that the idea of somewhat restricting the powers of directors is a good one, and I refer to Clause 123, in managing the affairs of the company.

Let me say that Senator Howell even suggested for one minute that Clause 19, which declares that no act of a company is invalid, might conflict with 20. I tend to believe that when people invest money in a company — and I am referring now to the shareholders — it is all well and good to think that directors ought to have the absolute power to determine any particular area of activity in which they should venture.

I think if I were going into a company or buying shares in a company, then I would want to be sure in my mind that we are not just going to embark on any and every economic activity willy nilly, and while I believe that the whole Act is trying to make sure that the whole question of *ultra vires*, which has been problematic over the years, no longer remains a problem to third parties who lend money to companies, at the same time I do not think that one needs to give a company too wide a scope to enter into any kind of activity where shareholders then would have little or no say in it, and I do go along with the idea of having both Clause 19 and Clause 20.

In general, Mr. Deputy President, I think that the new Bill in itself shows a lot of new, novel areas, and I, too, would like to congratulate the people who drafted it and to say that I believe it would indeed rationalise a lot of the problems we have now in companies.

I thank you.

SENATOR MISS J. CLARKE: Mr. Deputy President, as I rise to support this Bill, I would like to reiterate the point made by other speakers to the effect that this Bill was long overdue. I think that when we consider that we are fast approaching the end of the 20th century and we are still operating under 19th century legislation, it cannot be denied that this was definitely an area which was due for reform.

I believe that the first serious attempt at reviewing company law in Barbados dates back to the Sixties, when I believe a Company Law Committee was formed in 1965. I understand that that committee functioned under the chairmanship of the former Attorney-General, Mr. Henry Ford, and that it met for some 65 times during which it prepared a long list of recommendations, which were eventually thrown out. I would like to think, however, that those meetings were not fruitless in that they may have had some impact on the thinking which eventually led to the reshaping of our law.

I, myself, have had the privilege of sitting with the *ad hoc* committee which met in recent years to review the drafts which immediately preceded this Bill. Therefore, I am very much aware of the time and effort which has gone into this piece of legislation. I think that much credit is due to Mr. Justice Williams, Mr. Jim Ryan, U.N. Consultant, the former Attorney-General, the present Minister of Trade, Tourism and Industry, the staff of the Ministry of Legal Affairs as well as the staff of the Ministry of Trade, as well as to those members of the legal and accounting professions who gave up many a Saturday, meeting to review and argue and debate the various clauses of this Bill.

I think it was also a first in the history of this island when representatives from the legal profession, the accounting profession, the business community and representatives of Government and Civil Service met together in their own time to look at a piece of legislation before it went before Parliament. I hope that this kind of technique will continue in the future and I think that we must record our thanks, particularly to Mr. Justice Williams and to Mr. Ryan for this very modern piece of legislation which is before us today. Having waited this long for a new company law, I think it is only fitting that we should move away completely from the old law and, instead of coming with amendments to an archaic piece of legislation, to come with what is a modern day approach.

I think it is also significant that we are breaking with the tradition of following English Law and adopting a more modern approach, after the Canadian system, which, perhaps, tells us that the former colonies are going up.

Like most speakers who have gone before, I, too, agree that the explanatory summary, which precedes the Bill, is very comprehensive and as such, it means that it makes it easily understandable for the average layman who is not of a legal background. While we may still not be able to understand and interpret all of the sections, I feel that that explanatory summary is particularly helpful.

To my mind, one of the most significant features of this Bill is the new approach to incorporation. I think it is a decided advantage when we can move away from the traditional system of providing a never ending list of objects and powers in the articles of association to the newer approach of simply using a technique of restriction. Companies are therefore no longer forced to list everything imaginable in their objects and powers in order to make sure that they do not run into difficulty later on.

I think, too, that this Act is going to be something of a challenge to the business community as well as to the legal profession since it is all-embracing, it is so completely new in approach and it is going to take a deal of time for shareholders, directors and corporate secretaries etc., to become fully *au fait* with all of its clauses.

I believe that adequate provision has been made in Sections 347 through 356 for transitional arrangements, but bearing in mind the fact that time flies, I think that the legal profession, which is traditionally known to be slow moving, will need to get some new energy in order to back up business communities in making sure that compliance is duly accomplished.

I believe that, by and large, the business community in Barbados is inclined to being good corporate citizens, and I think that this new Bill will assist them in this, even though it may be something of an educational experience for some years to come.

I believe that the facility of achieving incorporation will augur well as we are moving into more business ventures. I believe that the spirit of development is fairly widespread in this country, and we are going to see more and more business being created in the future. The systems built into this Act, which will protect the investing public, are important, and I think that there will work hand in hand with the Securities Exchange Bill in assisting the Barbadian public to become truly involved in ownership and investment in our country. I, myself, look forward to the day when public ownership will be very

widespread and I think that this Bill will do much to assist in accomplishing such an objective.

Like Senator Williams, I agree that there is need for protection of minority shareholders and I think that this is adequately taken care of. Obviously, no new piece of legislation is going to be understood by all parties concerned overnight, but I think the fact that we are breaking with the tradition of the old Act will, in itself, assist us in our understanding of the new Bill in so far as we will be putting aside that as being passed, and of historical interest mainly, in terms of moving into the 21st Century with this very modern and up to date piece of legislation.

Thank you.

SENATOR W. W. HALL: Sir, on the outset I would just like to say that I have no quarrel really with the Bill and, certainly, I speak more so out of a desire to be informed on a few areas that are somewhat grey.

Sir, in the Other Place, this Bill went through with indecent haste and I feel that in this rather August Chamber that honourable senators would not allow the same to happen. I think it is a very comprehensive piece of legislation, and complex too, and I do feel that senators from all walks of life would obviously like to add their quota and add their contributions to this Bill.

What I think I am particularly pleased about is the fact that those people in the accounting field, who have been practising over the years but who are not qualified — when I say qualified, those without specialist training — are being allowed to continue. I think this is very good, because we know that, in the engineering field and indeed in the field of dentistry, the same thing happens and I think that it is all for the good.

I am sorry that Senator Rouse is not in his place because — this is not being derogatory, this is rather complimentary — I think that he would agree that he can extract teeth better than most people who had specialised training, and Sir I hope the records would show that I said that he is competent.

And the fact that they have allowed some accountants in Barbados to continue training despite their lack of specialist training, I think, Sir, this is a good thing.

I think, Sir, what is rather important is that the Institute of Accountants has been given a very big role to play because, as of now, members must be members of the Institute and this Institute has the power to decide not only who practices but what the accepted practises are.

I know that they had a seminar the other day, quite recently, with accountants, lawyers, business people giving

them some idea of the contents of the Bill, and I know, Sir, that all and sundry were rather pleased to be enlightened with the contents of the Bill.

Now the Minister, in introducing the Bill, Sir, did little more than reading the explanatory notes. I daresay, Sir, that I know his style; I know that he has read a lot of company law lately and I think that he, in winding up the debate, Sir, will probably be able to give honourable senators an answer to the few queries that they will raise. But I must say, Sir, that he was not as eloquent as he can be, neither was he as explanatory as he could be, but I feel, Sir, that he is saving it for the last. In the spirit of Christmas, he is keeping the best wine for the last.

I alluded to some grey areas, and I think that some of the areas that are not particularly clarified are the ones connected with company accounts. Previously, companies with two subsidiaries could file separate accounts. Now, the interpretation is that the companies can file one set of consolidated accounts.

It is important when we live in times when our accountants have all been trained in various parts of the world — there are, as you know, C.As, C.G.As, A.C.C.As, R.I.As, and I think what is important in the interpretation of this Bill is that they speak a common language.

Only a few months ago, I think it was the Prime Minister who said he could not understand the accounts of Cable and Wireless, and it is heartening to see that when the accounts are audited in the future it would be done in standards applicable to Barbados and not necessarily standards imposed by parent companies on us, and this would be something good.

But I do feel that when the regulations come down we will be in a better position to clear up some of these grey areas, although I know the Minister will clear up a few today. I do feel that the regulations will do so because the Act tells us what to do, but the regulations tell us how it is done. In other words, it gives us the methodology. With that in mind, I feel you would be in a better position.

I think much praise has been heaped on Justice Williams, and I must say I concur in this. A great job has been done by him and the other groups of experts who have made some significant contribution to this Bill.

I did mention that there would be a few grey areas. Another one is the area where companies must be registered beginning from 1st April, 1983 in two years' time. Now if they are not registered, they will cease to operate, they will not be able to pay dividends, they would not be able to sue anybody, and the directors, I think, would have to pay something like \$100 a day.

Now, Sir, a question I would like to ask is this: is the Registrar in that office adequately staffed to carry out this operation? I know it will be said by the Minister that it would be a simple form and registration will be made easy, but I would like to tell him that there is a simple form to fill out for a birth certificate and a will, but there is a lot of blockage down there.

Senator Simmons alluded to the fact the other day that there was chaos in the Registrar's Office. He did say, however, that he had a marital interest and he declared that, despite the fact that Hansard had recorded that he made a "marginal" interest. I think there are grounds for divorce in that, seeing that his wife is legally trained.

(Asides)

SENATOR W. W. HALL: I have read the debates and I thought I would mention it to him, and I wonder whether it was a marginal interest he had in the Registrar's Office, but he has assured me that it is a marital interest. I am very glad to hear that because I am a dear friend of both Senator Simmons and his wife, and I would not like to hear that anything is amiss.

Sir, quite seriously, two years — beginning on All Fools Day. I wonder how significant that is. I dare say that when the regulations come down again, we will have a good look at them and we will be able to see how practicable they are.

I think I must confess that quite recently while training around the Garrison Savannah, I was running and the Minister of Legal Affairs was walking every step of the way, still panting, asked me in quite a jocular fashion if I was aware that the Registrar's Office is continuously blocked up, and I said "yes, we have debated that in the Senate and we are just wondering whether it is just lack of staff."

I was rather serious, and he told me that so many people are changing their names to "L.C."; that that is the reason. I think what is happening is that he is taking himself very seriously, but I rather think he should take God seriously and not try to take himself seriously when he feels that that is the reason why it is blocked up.

I feel it is blocked up because of the inordinate amount of work that a few people have got to do down there, and it is obvious that you need more staff. If that is not so, perhaps the Minister can tell me, but I honestly wonder with the record of long outstanding issues to be settled in the Registrar's office, how practicable it is for us to expect that, within two years, all companies in Barbados can be registered.

I think Senator Seale alluded to the fact that companies are under pressure. It is true, and in days of recession you find that companies must advertise even more;

the competition becomes more intense and obviously we tend to catch the eye of the consumer. Only today while coming here, I listened to the radio in the car, and while someone was interviewing a young man and asking if he was in town to shop, he said: "I am in town, but I am not shopping because I have not got any money to shop with, so I cannot be categorised as a shopper." This is what is happening. People have not got a lot of money and, therefore, it is little wonder that businessmen like Senator Seale find that there is a drop in sales, and his role as a businessman becomes a lot more hazardous than it would normally be. This is why I referred to a redundancy in Bridgetown in the other Bill earlier today because there are so many areas.

In London on Sunday mornings you can go into Petticoat Lane and it is something like a flea market situation where you can get valuable merchandise at reasonable prices, but it has an effect on the big chain stores. In New York, you will find that the big chain stores like Macy's etc. are now getting a lot of competition from the little Jewish shops around the corner. In Australia, you will find that the Italians and Latvians have come into the place and have started this rather personalised service, and they, too, have taken the bulk of the trade.

Senator Seale did not say it, but I am quite aware of the fact that there are some people who are driving around in large lorries. I do not know if they are wholesalers who would probably go and buy his merchandise and go hither, thither and yon in the country and sell them, I do not know if at cheaper prices than Senator Seale sells at, though, from what he has been advertising, I doubt it; but somehow along the line they have been able to survive. They haven't got a big warehouse, there is no physical structure and they are self employed, so I believe they pay taxes.

The point I am making is that these people will definitely dig into you. I think it is safe to assume that. I am giving the reasons why I think companies in Barbados are feeling the pinch, and the Leader of the House will respond, I suppose.

There was a time when we used to worry about the Indians when they came here walking with a valise in their hands and gravitated to using a bicycle, then an old car and then a good car, and now the whole of Roebuck Street, and we wonder what manner of men they were. Have they got greater business acumen than we have? The point is that sticking to it, going out into the field and their serious attitude towards trade are the reasons why they have been able to progress. Some people may have different reasons, but I would like to think that is the reason why.

Another area is the level of expectation which is very high for school leavers, and, with a good educational system, Sir, this is what happens.

I feel, Sir, that the Companies Act is a — I would not even say good, Sir, I would say great piece of legislation. I have alluded to one or two grey areas that I suspect the legislation would put right and I do feel that those who have been charged with the responsibility of drafting such an Act must be congratulated, and, as Senator Clarke said, having steered away from the old English system and moving towards the Canadian system, which I think is rather progressive, the citizens of Barbados and, indeed, the business people and all of those who are connected or would be affected, even the workers more so than anything else, the workers, they will obviously gain from it, because we see in some sections of the Act, Sir, where there is great mention made of shareholders and the way it is now being changed where workers themselves might well find themselves sitting on Boards. I am quite sure that the Barbados Workers' Union would have a lot to say about workers' participation and things like that.

I do feel, Sir, that it suffices to say that the Act is a good one, the work done has been commendable and I do feel that it is worthy of approbation, Sir.

Mr. DEPUTY PRESIDENT: Senator Simmons.

SENATOR D. A. C. SIMMONS: Mr. Deputy President, Sir, I had better begin by concurring in the observations of those members whom I heard, who commended the honourable Mr. Justice Williams and his team, including Mr. Ryan, the draftsman of this Act, for what they have produced, Sir.

This piece of legislation has come to Barbados after the last Companies Act, which was enacted in about 1910, 72 years ago, Sir, and I think it is Senator Clarke, Sir, who indicated that it is very timely, with the development of Barbados as it is in this century, for us to have the type of legislation that is as comprehensive as this Bill is, that will mark us down as a progressive nation.

One of the weaknesses of the current piece of legislation is that as the judges say from time to time — not in Barbados about our legislation, but it is a phrase that is used — "You can drive a coach and horses through the 1910 legislation." It has been totally inadequate to the needs of business. It has been the result of nineteenth century thinking and it reflects the concept of *laissez-faire* to the extent, Sir, that the 1910 Act totally disregards the interest of the employees of a company. It is clear that in 1982 the interest of employees cannot be disregarded.

Before I come to an examination of the Bill, Sir — it will be in some detail — earlier today, Senator Greaves made some very unsavoury comments about Mr. Henry Forde, when he was the Attorney-General, because there was a piece of legislation before us that needed to reinstate sections of the Port Authority Act that had, for some reason or another, been repealed in 1978. Senator Greaves was, I think, particularly unfair to Mr. Forde for what he did during his tenure as Attorney-General.

I want to say at the outset, Sir, that the prime mover of this Bill, this Companies Bill, the person whose creature this is, was the former Attorney-General, Mr. Henry Forde. I wish to let it go down in the records of this Senate, Sir, that, as Attorney-General, Mr. Forde was the most intellectual, scholarly and energetic Attorney-General that this country has ever seen.

I do not care about Mr. Keith Walcott in this context; I am saying that Mr. Forde was the most energetic, intellectual and scholarly Attorney-General that we have ever had, Sir. His scholarship, has vision and his erudition have not been matched by any and cannot, I had better even say could not also, be matched by any of his predecessors in office. And the sheer mass of reformist and original legislation of every kind, but especially in the area of social legislation, that was turned out between 1976 and 1981 bears testimony to my description of Mr. Forde, Sir.

He has been the greatest legal reformer in the history of Barbados and his final legacy as Attorney-General was to leave, almost in its final form, the Companies Bill that is now before us.

Sir, I want to approach my speech from perhaps a radical point of view. I am not going to go through the new features of this Bill, Sir. I think that these are accurately done in the explanatory summary and notes which accompany the Bill at the front.

Essentially, what I want to ask, Sir, as a member of the Barbados Labour Party, which is a party grounded in the principles of democratic socialism, is whether this Bill, as a creature of a democratic socialist Government, answers some of the questions that it should answer in 1982, in terms of being legislation of a democratic socialist party. This is, in my view, Sir, essential for us to ask in 1982, having regard to the philosophy of the governing party and having regard to what company law is about.

In my submission, Sir, company law poses a direct challenge to capitalism, in terms of its regulation, and company law can provide, certainly for me, the most interesting and fascinating study of all the legal subjects. That is a very subjective view, Sir.

Essentially, a company is a capitalist phenomenon. It is an engine or vehicle for the aggregation of capital and, therefore, the law relating to companies provides the formal legal structure for the operation of these capitalist phenomena within our western-type society, Sir.

In its essence and its basic simple form, a company is a legal artifact in which a person invests his money and receives shares for that money, and this legal entity, artificial legal entity, is then managed by directors, who employ workers, and machines, very often, on behalf of the investors, that is the shareholders, and they all do it, — we all do it; I have two companies — we all do it with a view of profit.

So in short, it is the shareholders who provide the capital, the directors who organise and manage, and the employees who do the work — that is the structure. What profit or loss that remains at the end of the year, Sir, stays with the shareholders.

Now in the past, as I think I said at the beginning of the speech, Sir, the companies law of Barbados, following closely behind the companies law of England — ours was in 1910 and theirs was in 1908 — only considered the interest of the investor, that is, the shareholders, the directors — never the interest of the third parties that I mentioned. I said there were three — the investor, the director and the employee — company Law only considered the first two. But the people who used to work and generate the revenues and the profits for the company were ignored by the law for the good reason that company law evolved, really, in its modern form, in 1897, in the case of *Solomon v. Solomon*, and, as I said, those were the days of *laissez-faire*, so the hewers and drawers were not contemplated by the legislation.

So in 1982, a democratic socialist Government has to ask itself whether it will create a set of regulations such as constitute the sections of this Bill, given new premises and based on new philosophy, or are they going to continue merely updating and scratching around?

Not only, Sir, were the interest of the employees not considered by the statute law, but even the judges — I am referring here to the English judges, I do not want to be misquoted; I am not talking about Barbadian judges — the English judges developed the judicial decisions and the law in such a way as themselves to be blinkered in relation to the interest of employees.

There is a famous case that I could mention, a case call *Parke v. Daily News*. I don't know if anybody has mentioned it before, but *Parke v. Daily News* was one, I think it was in 1961, where the court in England, in a most reactionary decision, held that, in considering whether the directors could be legitimately take into

account the interest of employees in a takeover bid situation; when the directors themselves in the take over of the newspaper were willing and, in fact, did consult the interest of the employees, the court in England held that the directors were acting *ultra vires*. The directors could not, as recently as 1961 that was the thinking, take into account the interest of employees.

Now I am happy to say, for all those who walk around the Caribbean and malign the government of the Barbados Labour Party as a reactionary government, as a conservative government and all of that, I am happy to be associated with this piece of legislation because this is one of the most progressive pieces of legislation of its kind throughout the whole Caribbean. It is an advance of the Jamaica Act of 1964, which was itself very progressive and revolutionary. It is in advance of the Ghana Act, which my old professor Jim Gower drafted, and I am pleased that we have gone even beyond that.

(Asides.)

SENATOR D. A. C. SIMMONS: Yes, he would know about him; he has his book.

(Laughter.)

The principle law was this: directors must act in terms of carrying out their duties, in the best interest of the company as a whole; that is the legal principle. But, as recently as 1961, to take the interest of employees into account was held not to be acting in the best interest of the company as a whole. Employees did not fit into the group. They were separate, distinct and apart.

But why company law is important, why it is a fascinating study, Sir, is that way back in 1932, in a book called "The Modern Corporation And Private Property" by Berle and Means — I have one of the few around, Sir; I was told that you cannot get them in England anymore — Berle and Means had equated the power of the modern corporation, modern in the sense of 1932, even then, with the power of a nation state, and had found that corporations in the United States, where the study was based, wielded as much power as the Government.

That is undoubtedly true about Barbados and has a lot of relevance to small countries such as ours, especially in the area of multi-nationals and so on, they can exert influence and pressure that some Governments cannot compete with. Their turnover exceeds the budgets of many Caribbean States, including Barbados.

If the corporation can ultimately and, in fact, sometimes does have that kind of power and influence running alongside the state machinery, surely it is incumbent on the state to enact rules, regulations, and laws to control

the operation of those companies. And this is what we are doing in this new Companies Bill, Sir.

Somewhere I read, Sir, that in the past century the limited liability company has become the most important form of trading organization in England, in the UK. And in Barbados, I think Senator Clarke may have said that, ever increasing use is being made of this legal device for the operation of businesses.

Now, Sir, what principles should subsume a companies law? I would venture to suggest there are three, Sir. The old Act clearly was based upon three principles and I think this Act is also based on three main principles, and the three that I would suggest, Sir, are these: That there should not be unnecessary obstacles to the formation of companies, secondly, that there should be the widest possible disclosure; thirdly, that, as far as it is possible, every effort should be made in the legislation to obviate fraud, I could add another one, Sir, in view of this Act, which was lacking in the 1910 Act, that the interests of minority groups should be adequately protected.

This Act admirably meets those four criteria which I have set out, and which I will explain as I go along.

In addition to those four main principles, to come back to my hobby horse, that in today's world there is a fifth interest that should be protected or should be regulated in the company law, and that is the interest of employees. I am glad to see that that has happened in this Act, so the Act meets with my wholehearted support and approval because I think it measures up to the five principles that I have enunciated.

Let me deal now, Sir, just in a kind of skeletal way, with some of the main areas of the Act. Having asked what are the principles, and having said that the Act does meet the principles, I think we need to look at them, Sir.

The question of formation, that there should not be any major obstacle to the formation of companies. That is the contemporary view. I do not necessarily share it in its entirety, except to say that limited liability, in my view, is a privilege granted by the State, and therefore you should have to pay properly for the privilege of limited liability. I think, in recognition of this, ever so often in budgets the Prime Minister will increase the fees that are payable to the Registrar upon the formation and incorporation of a company. There has been a steady increase over the years, I think, because if you want to form a company and use the mechanisms, pay for it. I see nothing wrong with that.

The Bill abolishes the need for two persons to incorporate a company. This may be a conundrum. When you think of a company, it usually imports more than

one. I cannot be in the company of myself, or I suppose I can be, but in a very metaphysical way. You usually think of two people, but now that has gone, because they say in the Bill that you can incorporate a one man company.

All they are really doing is giving effect to Solomon v. Solomon, which allowed one man to form a company. All they are doing is recognising that today in Barbados this is what happens, that one person really can be the substantial shareholder and put up a nominee as the second shareholder, certainly for registration purposes, so the Act has really taken a realistic view of contemporary business in that regard.

I think when I came in I heard Senator Williams talking about the fact that the memorandum has been abolished, and I share some of his fears — I did not hear Senator Howell, but I think they must have been talking along similar lines — that the advantage of the present law was that in registering a memorandum you had to set out what purposes you were formed for, and you only had the legal capacity to trade and do business within the ambit of those expressed purposes.

Of course, Sir, this area of what they call *ultra vires* provided a nice study in the "toing and froing" between the judges and the lawyers. The lawyers try to get around it, Sir, they still do, by putting in wide clauses at the end. It is a comprehensive thing that says that these 30 or 40 things that you set out is for the company to do almost anything. Each one is independent, and then you use the form "or any other business which in the opinion of the directors may be incidental to the attainment of the above objects" and all of that. There are ways and means of doing it, so that the lawyers could make, and have made, a nonsense of the *ultra vires* rule.

I was not part of any of the sub-committees that met on the Companies Bill, so I do not know what they took into account in deciding to abolish the *ultra vires* principle. What I do know is that in 1962 the Jenkins Committee in England agonised very, very long on the question of the abolition of the *ultra vires*, and they ultimately retained it, because it was felt that it could possibly give vent to all kinds of activities.

I want to ask this question of the Minister in relation to this Bill: how can you adequately protect the interest of the shareholders and potential shareholders if there is not a document which expresses the purposes for which you are formed, and on the basis of which I will throw in my money?

In other words, a person will invest in a company both in theory and in practice because the company is set up as say, a travel agency. You look at its accounts, it has

been doing well, so you go out for money and they say, yes, you have been operating as a travel agency all the time.

But under the new law, where your purposes are not known, upon what basis do you invest, other than this nebulous thing that you have the capacity to do any and everything an individual can do, other than what is immoral or illegal or treasonable, can an investor invest? I wonder, I just throw it out. I want to see it in operation, because I suspect that it can lead to fraudulent practices.

There are companies in Barbados today which will be formed for a specific purpose, people will get money, they will run the company for a couple of months, and then you hear nothing more about them; they have gone with the money. The company phenomenon has been abused in Barbados in certain cases, and to this extent, I am going to be conservative, or if they like to call me reactionary, to the extent that I am hesitant about the abolition of the objects clause of the *ultra vires* principle. I know that Dickerson and those in Canada have advocated it and we are following it. I want to see it work in practice.

Now, Sir, in its early part, dealing with formation and so on, there is a very interesting and heartening feature of the Bill. It sweeps away a lot of the common law decisions against contracts made prior to incorporation.

Again, what they have done, clearly, is to codify the common law rule that was taken from the case of *Kelner and Baxter*, but, again, if a company is not legally born until the day it is registered and incorporated, does it really have the capacity contract before that day? All they have done, Sir, is to make the individuals, I believe, personally liable in the event of any pre-incorporation contract. I think that is the effect of the new provisions.

I have dealt with the *ultra vires* already. I now want to deal with the question of shares and capital. An important development, especially having regard to the new securities legislation, which, obviously, has to go hand in hand with the Companies Bill; a very important and progressive feature is that the new Bill prohibits the issue of shares with a par value.

That, again, the no par value question was one that exercised the minds of the Jenkins Committee in 1962, and Jenkins admitted, Sir — I have the Jenkins Report in my bag — that he had received a lot of evidence in favour of the introduction of no par value ordinary shares and he recommended the inclusion of a rule, similar to the one we have, in English law. It was never accepted.

Similarly, in the area of shares and the protection and maintenance of capital, there is a rule still in exis-

tence, known as the rule in *Trevor and Whitworth*, which is a rule against treasury shares, which prohibits a company from purchasing its own shares under the present common law.

That has gone, Sir. It has gone, but the Bill has made an attempt to protect capital. For example, if it could apply the same amount of money in paying a dividend, then the company could purchase its own shares. It has adopted a kind of half-way house in relation to this rule that prohibits at the moment, a company from buying its own shares.

The reason why we have had the rule, Sir — and again I hope that the court will be very stringent if any of these situations come before the court for adjudication — the reason why we have had it is to maintain the level of capital with a view to the protection of creditors. That is the principle that underscored rule, and so long as the draughtsmen are satisfied that what they have done in relaxing the *Trevor and Whitworth* rule will protect creditors, then, perhaps, it is a progressive feature.

It is progressive, Sir, in my view, because the new departure recognises that it acknowledges the case that an efficient company does not distribute all of its profits but retains some in the form of reserves or sinking funds, for eventualities, as Mr. Williams will know as an accountant, for replacement of assets and what's not, fixed assets especially, and, certainly today retained profits now provide an important source of finance for companies and self-financing is a very important source of funds. I see the lawyers around the table nodding Sir.

As to management, Sir, I think the Bill makes its greatest strides as a progressive piece of legislation in the new and comprehensive provisions relating to management. It seeks to recognise what I call, Sir, "essential shareholders' democracy" by vesting the management in the directors but allowing the shareholders, by unanimous agreement, to adopt a different management structure if they want — and this whole concept of what I called "shareholders' democracy" runs through a lot of the Bill, both on the provisions relating to management and, also, the provisions relating to accounts and disclosure.

Sir, I remember I said it a few years ago at some luncheon at the Chamber of Commerce — that one of the greatest problems that would confront Barbados in the decade of the 80s was the question of management, and that was two or three years ago. I have not seen anything to disabuse my mind of that belief since then, and so it is very essential for contemporary business legislation, such as this Companies Bill, to pay regard to the importance of the management of companies, which can have a direct economic influence in a society.

There are now commendable provisions, introduced to bring into legal recognition the important role of the secretary. Now, I do not remember the sections, Sir, but in the old law, in the current law, no statutory recognition is paid to anybody called "a secretary." He does not appear. He is not defined. The Secretary is just anybody, but they all say that documents must be filed and signed by the secretary — but he is not known. He has not got any kind of personality, legal or otherwise, but even the judges in the common law decisions in England sought to limit the functions of a secretary.

He is really a small person, Sir, but we are making him into somebody, clothing him, vesting him with some kind of personality, authority, scope and power and so on, dignifying him — somebody used the word, thank you — and I think, Sir, that the new provisions dealing with management, are aimed at greater efficiency and modernisation of companies, and they are to be commended.

But in relation to the question of management and directors, there is a very important advance in this piece of legislation from what has gone before, and it is in relation to the disclosure that has to be made by directors.

The present law it is woefully weak. All kinds of things happen in Barbados today in companies, in terms of their management, what directors do, how they contract; they have conflicts of interest and they are not disclosed and so on.

Now, that can operate to the prejudice and disadvantage of the shareholders and investors in the company, and it is time some law has come about which deals with that and requires directors to make proper disclosure.

There is nothing which says that a director of company "A", who is also a director of company "B" and has shares in it, cannot contract with that company. In England, it was bad until 1967, because in England, you only had to disclose the nature of your interest and you disclosed to your own cronies; you disclosed the nature of your interest to those on the Board with you, to the directors, not to the shareholders whose money you are managing or whose business you are managing, so if you got a small board of three directors, they could all gang up and, for collateral purposes, defeat the interests of the shareholders.

(Asides).

SENATOR D. A. C. SIMMONS: I am not getting into the integrity legislation. That has died and will not surface again.

What we have now under the existing legislation is such a loose arrangement as to make a farce of what are often serious decisions, which, as I said, could, and in some cases do, affect the financial viability of companies.

What this new law provides for is that disclosure must be made to the company, and I understand when they say "company" in the legislation, they are talking about shareholders and not the directors; they are talking about the corporators, the shareholders themselves.

There are important provisions which prevent or limit insider trading, which is a concept that gained momentum in big countries from the 1960s, and, like so many other things, it would pick up and catch on in Barbados because we are great imitators, certainly not innovators. This Bill now proposes to limit the ability of directors to do any insider trading, especially where there are interlocking company relationships.

One feature of this new legislation, for which I think every director of a company in Barbados should be grateful, is that it sets out in broad terms the duties of directors. There are several directors, probably hundreds in Barbados, who do not know what their duties are. I am saying that categorically. I am talking about their duties in relation to law, their legal duties, and how they must relate to shareholders and so on.

What a lot of people understand by "duties" is to see how much money they can get at the end of the year and not put their hands in the till, run it fairly clean and try and make a profit; but the law goes beyond that.

There are all kinds of duties. There are duties of care, skill and diligence, and there are fiduciary duties, and there have to be fiduciary duties because you may be a director of a company with no interest in the company in the sense of not being a shareholder, but you are there to manage the company on behalf of a number of persons who have invested their money, and a number of employees and so on, who, if you make wrong decisions, may find themselves landed on the redundancy market or the dismissal market as Senator Hall was talking about earlier today.

It is therefore very essential that you should understand as a director that, in relation to your company, you have certain fiduciary duties, and the Act now spells out a number of those duties. If directors buy the Bill and look up the law, they will understand better their relationship with companies.

I had an experience when I was Chairman of C.B.C. that I did not believe that a decision — that is why I had to resign — that I was told to take was in

the best interest of the corporation, C.B.C., as a whole. I felt it would have landed C.B.C. in the incurring of unnecessary expenditure, and, as the head Director of C.B.C., I could not go along with it and therefore I felt the proper thing for me to do was to resign. The record now has the reason why I left C.B.C. on March 13, 1981.

(Asides.)

SENATOR D. A. C. SIMMONS: If you cannot go along with it, you must get off. There is no disgrace in resigning.

(ASIDES: You start a debate on C.B.C. one of these days.)

I recognised or I thought I recognised what my duty was as a director, to the corporation I was running. I am not saying anything about the other directors; some may not have shared my view. That is a matter for them.

Sir, the Bill says

"In determining what are the best interests of a company, a director must have regard to the interests of the company's employees in general as well as to the interests of its shareholders."

Mr. DEPUTY PRESIDENT: Excuse me, Senator Simmons. May I just, in keeping with my previous request, ask you to name the section.

SENATOR D. A. C. SIMMONS: This is Section 95(2).

Mr. DEPUTY PRESIDENT: It seems an important point you are making, and I should like to know the section.

SENATOR D. A. C. SIMMONS: I did not know you had requested it before, otherwise I would have given it. It is Clause 95(2) dealing with the duty of directors and officers. It says that

"In determining what are the best interests of the company, a director must have regard to the interests of the company's employees in general as well as to the interests of its shareholders."

I think Senator Greaves ought to find this a most progressive enactment. Senator Greaves will speak in praise.

I mentioned the case of *Parke v. Daily News*. That is the provision that now sweeps away *Parke v. Daily News*, certainly from application in Barbados,

in the future. *Parke v. Daily News* is still good law in England, but goodbye to *Parke v. Daily News* in Barbados.

Sir, it is my contention that, quite outside the bounds of labour/industrial law, this Companies Bill recognises the contribution of employees as a vital element in the organisation and the operation of companies. To that extent, and if for no other reason, this is a great piece of legislation.

In relation to minorities, I spoke of minorities at the beginning of my address, one of the weaknesses of the present legislation is that it gives no adequate protection to minority groups or a minority in a company.

You cannot get to court effectively. Short of trying to wind up the company on some just and equitable ground or whatever, which is always a difficult thing because it is discretionary, you cannot get to court. There are situations abounding in this country where people who are in control, and who constitute the majority interest or groups in the company — I am not calling any names — operate the company in their own interest and to the neglect and to the prejudice of minority shareholders, and the poor minorities have a very limited right of — I use the word, "appeal" in a very restricted sense — right of appeal to courts.

Now this law goes in advance of the English Act. The English Act has a strong provision in Section 210 dealing with oppression, but this Act, Sir, — I want to find the section for you — yes, 228 deals with restraining oppression, 228 (1) and (2), but I am not going to read it because it is there before us all, Sir — what I want to comment on is that part at page 185 which says,

"that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matters complained of."

Why I say this is in advance of the English law, Sir, is that it uses the phrase:

"unfairly disregards the interest of".

That is not the English law. The English law is "oppressive and prejudicial" but this goes in advance. and it is very wide, "disregards the interest of".

I am happy for this, Sir, as a lawyer, because I can see myself having a lot of fun in court asking the judges to interpret whether certain behaviour disregarded the interest of any shareholder, Sir. The lawyers are nice in here, Sir, we will have some fun with that.

But it is an advance. It is definitely an advance and it gives you the right now to go to court whereas you do not have it under the Cap. 308. So minority groups should not any longer feel themselves shut out of enforcement of their rights.

With that, Sir, I can read Section 420. We have no real powers of investigation in the current Companies Act, but under this, any shareholder of a company or, alternatively, Registrar, may apply – and even *ex parte* – without giving notice for an order directing that an investigation be made of the company and any of its affiliated companies. This is a very crucial provision, Sir, because it strengthens the hands of the shareholders and, in particular, minorities.

If the directors are abusing the company's business and they are not giving information, as a lot of them do not give information – they do not hold meetings, shareholders cannot get anything out of them – a shareholder can now go to court and say, "I have not been to an annual general meeting for the last five years, never had a notice, I do not know what is going on. I know the company is trading and it must be making money but I am not brought into the party. I do not know what is going on. I want an investigation." It is a very.....

(ASIDE: Stop the party.)

SENATOR D. A. C. SIMMONS: Stop the party, Sir.

(SENATOR THE HON. O'B. TROTMAN: Not this one.)

SENATOR D. A. C. SIMMONS: That one, not this one. I gave that slogan and I will be the one to say when I will take it away, or find a new one.

Yes, Sir, "Do not stop this party", that is a dead horse now. We are in the saddle. King Swallow has a new set of tunes since then, Sir. I will find something for 1986, Sir, for them.

So I think that members and people concerned with companies should be heartened by the minority provision of 228, allied to the increase in power for investigations under 420, Sir.

Sir, one comment on Section 152 (1). I do not know if anybody mentioned this, Sir. It is about companies having to file financial information with the Registrar:

"A company".

I am looking at (b), Sir:

"the gross revenues of which, as shown in the most recent financial statements referred to in Section

147, exceed two hundred and fifty thousand dollars or the assets of which as shown in that financial statements exceed one million dollars, shall send a copy of the documents referred to in section 147 to the Registrar".

(ASIDE: Financial statement.)

SENATOR D. A. C. SIMMONS: That is the financial statement, Sir.

I wonder, Sir, and it is a pity that this Bill went through in such great haste in the Other Place, because I really feel that this is one that could be amended up. Small companies – look, this is not a lot of money we are talking about – gross revenues of \$250 000. A lot of small businesses in Barbados turn over that, and you are asking them to disclose financial information.

Aside

SENATOR D. A. C. SIMMONS: No, Sir, I have nothing against the disclosure by companies of financial information.

The weakness of this Bill is that it lumps together and equates a small private company with Da Costa and Musson, Harrison and big public companies. It makes no attempt, really, to differentiate as to the requirements of a small company as against a large public company.

At some time, I suppose it is too late now to do anything about amending it – I feel that it conforms to what Senator Greaves would wish and I would wish; disclosure, sure; but I think that if you are going to have a limit, you have to have a limit that is a little higher than this, half million perhaps. Two hundred and fifty thousand dollars, I think that is a little low, Sir.

And, as I said, Sir, one weakness in the Bill is in the applicability of all these rules, or most of these rules, if not all, to private companies as well as public companies, where I think that a greater burden of disclosure and attempts to prevent fraud and so on should rest upon public companies.

The Bill, of course, does seek a lot of information in relation to private companies, but I just think, Sir, that, when we look at company law again, we need – the next time we are going to amend or upgrade this Bill – to find some mechanism for dealing with private companies and public companies.

I think the present law went a little too far, because most private companies are exempt, called exempt private companies from having to file accounts and balance sheets and so on with the Registrar. There are many small private companies, which do very well, and, perhaps, their contribution or their potential for contributing to the economy is hidden and Senator Greaves

from his point of view would want to see balance sheets when he is negotiating and so on.

Aside

SENATOR D. A. C. SIMMONS: I understand, Sir, he missed the beginning of my speech, otherwise he would have understood the philosophical angle from which I looked at this Bill, Sir.

I think, Sir, that the definition of a private company is rather limited, and I have some suggestions which Senator Trotman can pass on. I feel that having regard to what I said before, a definition of a private company could have embraced certain other considerations, and — they would have to say whether they are worth it — I thought of about six:

First of all, that a private company could have been defined as a company that was managed, controlled or owned by substantially the same person.

Secondly, that it was a company not under the control of another company, which is not itself a proprietary company, as in Australia.

(ASIDE: Singapore.)

SENATOR E. E. GREAVES: No, Singapore has PTE and that sort of thing.

(ASIDE: Proprietary.)

SENATOR E. E. GREAVES: Proprietary, too?

(ASIDE: Yes.)

SENATOR D. A. C. SIMMONS: Thirdly, Sir, it could have been a company whose shareholders were limited in number with a restricted right to transfer shares to the public, such as now exists. Fourthly, a company that, and the definition of a private company, one that had a weekly labour force not exceeding say, whatever they want 150 persons or whatever. That is an arbitrary figure they could have played around with. Fifthly, a company whose turnover did not exceed, let us say, \$2 million dollars a year, and sixth, as I was discussing with Senator Reece, a company in whose name could be included the word "private", such as they have in Singapore; it clearly differentiates.

I feel that the definition of a private company could have been enhanced by writing into the draft considerations such as those I made, Sir.

Sir, there are very strong provisions in respect to auditors. Senator Hall talked of that. But just to enforce the point again about shareholders' democracy and to

make sure — I think this is not so much to enforce shareholders' democracy, except in a very limited way, surely, I think the aim here is to prevent fraud.

Under 165, the auditor can now demand from the present or former director, officers, employees, or agents of the company and they must give him such information and explanations, access to records, documents and so on as are in his opinion necessary to enable him to make an examination and report as required under Section 164. So the auditors' powers are considerably strengthened under Section 165, where they can now demand certain information — and it must be given by the management, and even the employees, if it is a situation that the employee can give him.

So, I think, Sir, that Barbados can be proud of the Companies Act, 1982 as being the best and the most progressive piece of companies legislation in the whole Caribbean and certainly in advance of many developed countries. It is a credit to Mr. Justice Williams and his committee and I have already congratulated Mr. Henry Forde whose brainchild it was.

I am proud to be associated with this piece of legislation and to lend it my whole-hearted support, Sir.

Applause.

Mr. PRESIDENT: Senator McClean.

SENATOR A. W. A. McCLEAN: Mr. President, in rising to support this Bill. I would like to associate myself with the remarks of earlier speakers, complimenting all those who had a hand in the preparation of the Bill.

But I would like to suggest that, really, this Bill should not be seen as a culmination of a process, but as preparing the ground for a new approach for the purpose of companies legislation. I want to suggest that companies legislation should be seen, essentially, as an instrument of social and economic control of corporate activity, and, as such, from time to time Government must concern itself with the focus or the particular emphasis that they would want to give social and economic organizations in Barbados.

I noted that Senator Simmons sees the companies legislation largely as regulating companies which are capitalist phenomena. I think the idea that companies are essentially capitalist phenomena is a culture-bound one. It is true that in Barbados and America and so on that most of the companies in existence are capitalist companies, but a company is a formal legal structure which can be used by people with different thrusts to what they want to do. You can have a company which is established, especially if it can be established by one man, not specifically for making profit. You can have a company which

sees the interest of the workers, as on the same level as the interest of the share holders. That would not be capitalism again; that would be some other form of social organisation, mutualism or whatever.

I am suggesting, therefore, that we should not stick with a notion that companies are about capitalism and companies legislation is about regulating companies which must remain capitalist. We should see it in a wider sphere, as given expression to the general will of the community, so to speak, in terms of what companies ought to be doing at a particular point in our history.

In relation to some of the specific criticisms or queries, or questions raised on certain provisions in the Bill, I would like first to speak on the point of disclosure. We have had two suggestions that a larger number of companies should be exempted from provisions of disclosure, that the provisions will apply to very small companies.

I tend to view that disclosure should be almost total. The only reason why I will agree with some stipulated minimum size is in recognition of the fact that you might have some companies which are virtually non-existent or non-operating, and therefore you do not want to be concerned with having to check up on non companies, so to speak. But as long as the company is operating and there is some type of on going and worthwhile substantial entity, I do believe that it should disclose a certain amount of financial information, and the amount provided for in this legislation is not in any way excessive for any type of company.

This information is important for all sorts of reasons, some of them are relating to the interest of the companies themselves. If Government does not know what is happening to a particular class of company, they would not know how to modify legislation or taxation, or to create incentives or things like that to assist those companies.

Some people might feel that it might be a source of embarrassment if they disclose that their company is not making any money and so on, and there will be some social cost to them because of that. But if there are any consequences flowing from the fact that your company is not making any money, they are just consequences. It means that you would not be able, perhaps, to get certain benefits that were given to you on the presumption that you were running a worthwhile company. So I do not see that this is something that the law should give you protection against.

There was a suggestion that bigger businesses might make use of this information to close down the small ones. If the big businesses want to close down the small ones, they do not have to get any information of that

order to do it; they can do it anyhow. Right? So, I do not think that that is a particularly significant reason why you should protect small businesses from disclosing the information.

You also have the interest of third parties who might get involved in the company, even employees. Someone might give up a job in one firm to go and work for another one not knowing that it is on the verge of bankruptcy. You should protect people from that type of possibility.

Also, Senator Simmons made the point about trade unions. I think that our industrial climate would be enhanced considerably if trade unions bargain in the context of full information about the financial circumstances of the companies they are bargaining with. It is when they have to bargain in the dark that they must make the assumption that the company is doing very well. But if they had the information, well, they would be bargaining in the full knowledge of what is possible and what is not possible.

(Asides)

SENATOR A. W. A. McCLEAN: It may be that. They may still ask what is not possible. But even if they ask about what is not possible, they are not expecting what is not possible. We must make the distinction.

Again, there was a point about Sections 18 and 19, raised by Senator Hall, as to whether there is some level of conflict. I, myself, see those two clauses there as complementary and necessary, especially in the context of the new decision not to identify, to move from the process of identifying your purposes and your objects to excluding specific activities.

Without Section 18, the business of exclusion of certain activities will have no content to it. So you must indicate that if things are so excluded and the shareholders proceed to carry out business which relates to such areas of exclusion, that they are acting *ultra vires*. At the same time I believe that you need to give people in the community some type of protection against *ultra vires* actions by the shareholders.

I do not think that if I go and enter into a transaction with a company, buy something from them or something like that, and it was found that the people acted *ultra vires* in selling me this thing, that I, on the basis, that I should have been aware of that, must suffer the full consequences — that should be a matter between the directors and the shareholders. And except it was a case where it is quite evident that I was party to the fraud in the real sense, I should not be penalised by virtue of some *ultra vires* action based on decisions of shareholders and directors.

So it is in that sense that the law must make it possible that they can recognise the validity and therefore insulate third parties from loss resulting from an *ultra vires* action where such a course of action is required, so, in a sense, I see the two things as complementary, and 18 as necessary.

I think, basically, that I agree with most of the other points made by Senator Simmons, except, perhaps, his difficulty in reconciling, maybe at a semantic level or whatever, the idea of a company of one person.

There should be no difficulty there, because the company is a separate and distinct legal entity which stands apart from the shareholders, and it is just a matter of whether we can allow one man to hold the shares in an entity out there, or more than one man.

SENATOR D. A. C. SIMMONS: On a point of elucidation, Sir. It is not that I had any difficulty, what I was saying is that one might think that it was not possible to have a one man company because the word "company" imports more than one, but I understand it quite perfectly from the legal point of view in *Soloman v. Soloman*, and what happens in businesses, as I said, where you have a substantial shareholder, and then perhaps a nominee.

SENATOR A. W. A. McCLEAN: Yes, Mr. Deputy President. In relation to that, I take Senator Simmons' elucidation of his point.

The last point which I would want to make quickly is that I believe there is some need for a Government agency to monitor this new Act, when it is passed, with a view to observing the level of compliance therewith and with a view to detecting problems associated with it, because, undoubtedly, every contingency that could arise could not be anticipated by the people who drafted the legislation or the people who inspired the legislation. So if we are ultimately to have company legislation which is truly Barbadian, company legislation in the sense that it fits ideally our set of circumstances, we will have to monitor it, prune it and adjust it over the years, and there may be some agencies specifically concerned with this.

I think that an area that should specially be looked at would be the extent to which it is conferring new benefits, so to speak, on workers and minority interests, because it is all well and good to have legislation which will allow a worker or a minority shareholder to seek redress in the courts, but we know that, basically, that procedure is one which excludes a lot of people even from trying. When they try, the whole process of legislation and so on is such that, if you do not have the financial resources somewhere along the line, you might find yourself disadvantaged, not because you have a bad

case but because you cannot maintain your case in terms of the financial requirement thereof.

So, it may be that we should strive for a situation where the Company Act can kind of enjoin people to behave in a way which would not be prejudicial to minority interests, to workers and so on, rather than to just give them a vehicle to get redress when the people do what they want to do to the disadvantage of the minorities and so on.

With this, Mr. Deputy President, I must say that I am highly pleased with the effort which has gone into the preparation of this Bill, an attempt to come up with comprehensive legislation which speaks to our existing circumstances.

It was mentioned that we are following the Canadian model. I would hope that, although this may be so in some measure, that this might not be the most important thing that we can say about this, because ultimately what we want is not a Canadian model as opposed to a British model — we want a Barbadian one. Maybe at this point in time we can get more lessons from Canada and Britain to look at what is going on there and other places, but the final decision as to whether what was put in here should have been what is appropriate for Barbados, and not what Canada has.

SENATOR A. P. L. REECE: I thank you, Mr. Deputy President.

I also rise to support this very wide ranging and comprehensive piece of legislation. It has been too long overdue in Barbados. I am sure that point has probably been made before, perhaps I missed it when I was not in the Chamber.

One of the first points I want to touch on, since most points have been quite well covered so far, is the fact that, in order to administer this Bill when it becomes an Act, I believe that we will have to either upgrade the functions drastically of the Registry, or create a new Companies Registry.

I dare say the latter is the more advantageous approach, because the current Registration Office is already quite overburdened with the tasks it has to perform. It already has its difficulties with monitoring companies and sending out reminders to persons and public companies who are under default in filing their annual returns in spite of the different penalties which attach to either default.

We will need to have a Companies Registry which can specifically look to those problems, monitor them and enforce them for the good of the general public,

especially in the area of disclosure, which we have heard so much about, and which I will touch on lightly later.

Added to that particular aspect is the question of the regulations, which have to be put in place before this Bill, as an Act, can be practically enforced. There is a host of sections in this Bill relating to articles of association, comparative financial statements, amendments of articles, amalgamation and reorganisation. There is a host of sections which require certain regulations, and, except those regulations are put in place, it will be well nigh impossible to operate under this Act, and there is a lot of work – I am sure a sub-committee will have to be appointed to prepare these regulations to make them worthy of that status, and then we can talk about implementing the Act to fulfil this very wide measure in the companies activities which we need to cover.

The functions which the Registry will have to perform will have to be tied in with the regulations to which I have just referred, because it will be the Registry, again, which will have to monitor those regulations and make sure that they are adhered to by one and all.

We have also heard, Mr. Deputy President, that the Bill removes this question of public and private companies – and with a little less noise from across the other side of the table perhaps I can get the point across – the question of the level of disclosure that is there under Clause 152, if the gross revenues exceeds a quarter million dollars or the assets shown in the financial statements exceeds \$1 million.

What has surprised me is that the members of the Small Businessmen Association have not come out and contested those figures, because I myself, share the view of Senator Simmons, that the figures are quite low. I feel that those figures could be raised somewhat, because although they assist the general public, and bankers for that matter, in getting that kind of disclosure, not withstanding the fact that any banker that is approached by a member of the small business association will want to have their audited statements presented.

But it assists members of the general public who may have to deal with a banker. Someone may be in the position of an intended creditor for a small company and he may not go to the bank and ask for an audited statement because he may not have the expertise to examine that audited statement, but, at least, he would want to have some type of financial disclosure to examine the statement and decide whether he is going to be a creditor of that company or not.

This is not supposed to be in conflict with the need for disclosure that I mentioned earlier, but I would have thought that since there are so many small business

companies, which have gross revenues – gross revenues, mind you, not net income; gross revenues – exceeding \$250 000, they may consider it cumbersome on their part to have to file these statements with the Registrar, and further, for the Registrar to have to monitor and pursue those people who are in the default of filing these financial statements.

That, also, will further encumber the work of the Registry as presently constituted and, therefore, fortifies the reason for having a separate Companies Registry to deal with that bulk of work that will ensue from the implementation of this Act.

It is to be regretted, I say again, that there has been no comment from the Small Business Association, and, again, as Senator Simmons said, we may perhaps have to look at this further down the road. It shows how much the general public needs to look at new legislation as it comes out, look at draft Bills and make some input and not just rely on Members of Parliament to put over to them what is contained in the Bills. I know that we are here to represent them, and we certainly do, but, certainly, organisations should speak out more on matters which affect them directly.

To move on, Mr. Deputy President, with regard to the regulations, when the regulations are effected, one would hope that they would have the effect, when there are properly implemented, of supplementing the efforts of the Registration Office. They should not, that is, detract from the efforts of the Registration Office, and, of course, these regulations assist at obtaining some equity and statistical information on larger companies. I cannot say public companies, because the Bill now removes that distinction between private and public companies.

What we know for a fact is that in Barbados, and this is no secret, there are currently a lot of public companies that are being run like private companies – all their decisions are made by a few people around the Board table, there are not any disclosures made to shareholders where there should be, no minutes are circulated to members and everything is done in small cliques.

There are instances of transfers of shares in escrow. Although the transfer creates a sort of constructive trusteeship of those shares, many people have been known to breach that position, even in circumstances where no voting rights were reserved – and voting rights should be reserved in such circumstances. The Bill, when passed as an Act, will, of course, be able to monitor that situation and get rid of it.

I feel that an unsuspecting public should be protected, and what follows from the position where these public companies are run like private companies so that

no one knows, or few people know, what happens to the transfer of shares, is that a person who wants to make a statement or a forecast on that company, or wants to invest in that company, is not protected, because that company may make some misleading or false or deceptive statement.

I feel that, perhaps, shortly after the Act is implemented, we should bring in legislation to make it a criminal offence for persons to try to use false or deceptive information or dishonestly conceal any facts which would induce a person to acquire shares or dispose of shares in such companies, and I feel that those officers or those companies should be made punishable by imprisonment. It is as serious a situation as that where people used those types of devious approaches to induce people or to cause someone to transfer their shares for their own benefit, especially in a majority – minority shareholding situation.

I believe that unionists like Senator Greaves and so on would do well to look at these situations as they relate to directors' duties to employees, as Senator Simmons so comprehensively dealt, because, to extend Senator Simmons' point somewhat, what I believe we are approaching, thanks to this very good piece of legislation, is what the unionists are always talking about – and I am sure Senator Greaves is quite familiar with this – and that is, worker participation.

You do not have to be a unionist to talk about worker participation or know about it, and the directors' duties are such that in ensuring that the employees' interests are protected, one of the more practical approaches to ensuring the same is to have workers sit on the Board of Directors. That could represent the epitome of worker participation at that level of the Act and where the Act is geared to represent the workers in that regard.

There is, therefore, a need, Mr. Deputy President, for workers' organisations, like the ones we see represented around this table, to enhance the implementation of such a meaningful provision, so that the due regard can be had for workers – quite apart from any profit sharing aspect of the company, which most companies, in any case, already have in place for their workers.

That, of course, is a favour extension of the statements made by Senator Simmons and I am sure that Senator Greaves would probably be touching on them. I do not know if he still wants to touch on them; I am sure that his piece is already well covered.

Mr. Deputy President, I believe I have touched the areas that I wanted to touch after hearing the previous speakers. I will not carry on with the other notes I have, nor the speeches, and I thank you.

SENATOR E. E. GREAVES: Mr. Deputy President, this Companies Act, as has been pointed out, has been long in coming. Indeed, I believe it was in the Sixties that there was some talk about the need to revise the existing Companies Act which was in operation since 1910.

I believe, like most bits of legislation which have very wide implications and which are complicated, there is need to proceed carefully to ensure that (a) as many loopholes as possible in the existing legislation are stopped, and (b) that new ground is broken so that the legislation would be able to relate to a modern situation. I would think that, in view of that and in view of the fact that today we are discussing the Companies Act, that is reflected in this new legislation.

Listening to the honourable senators who have preceded me, and particularly listening to Senator Simmons and, to a lesser extent, Senator Reece, I am particularly pleased to see some forward thinking coming from those two honourable senators, particularly as their thinking relates to the workers and the role of workers in companies.

I would want therefore to address my brief remarks to the section on disclosure, and this seems, Mr. Deputy President, to have led to a considerable amount of debate and discussion, the question of financial disclosure in Division "G" on page 106. I believe that disclosure of financial information respecting companies of whatever size ought to be a must, and even the restriction which is at present put on companies, that is that companies in excess of \$250 000, because presumably companies below \$250,000 do not have to disclose, I am saying that any company that is formed, regardless of the size of its financial operations, so long as it is employing people, has a responsibility to file and disclose information relative to its operations.

I have known of situations, and indeed it can be fairly said that, from my point of view of working with an organisation which represents workers, we have hardly been in any situation in negotiations for improved wages and working conditions of workers where we could have access to any meaningful information on the companies with whom we negotiate. If for example, you go to the Registrar's Office to get information on the companies, all you are going to find filed there is a list of directors and a balance sheet which does not say anything. There is hardly any information that you can get out of that requirement as exists under the 1910 Act.

I would like to see a situation, and presumably this new Act makes provision for this, where information can be obtained, because it would assist not only the union which is negotiating on behalf of the workers, but even if we come to a situation where negotiations

break down at domestic level and have to be referred to the Chief Labour Officer for conciliation, that information could be had by the Chief Labour Officer. At the present time, even the Chief Labour Officer, who is called upon to conciliate matters, does not have access to information which would enable him to formulate a considered opinion on matters which are referred to him. So I would welcome a provision in this area, provided, of course, that we have full disclosure of financial information.

The question of the protection of the interests and having regard to the interests of companies' employees relative to decisions which are made in the company is a very important one. Too often directors of companies seem to think that what they do and how they operate a company is their business and their business alone, without recognising that workers who are involved in keeping their business going at least make a very important contribution towards the business, and, in some instances, if, let us say, it is the business which is involved in sales, like any of the stores in Bridgetown, they provide some very important goodwill for the company. Therefore, I am glad to see that we are going to have an Act which will make it incumbent on directors when decisions are being made, particularly decisions which will affect the welfare and well-being of people who are employed in the company; that due regard must be had to this.

As I said, there are a number of businessmen who seem to adopt the attitude that the company is their company and what they do is their business and not the business of the employees or the business of anybody else, and I am glad to see that this new Act will remove that kind of approach and will introduce, hopefully, a new approach into the management of a business, particularly as management decisions will relate to people who are employed by companies.

The point which Senator Reece made about the need for workers to sit on Boards of Directors is a point which I would certainly endorse. It is one which the Barbados Workers' Union has been looking at and calling for. I can certainly remember that we were negotiating with a company where we were able to get the company to accept the idea of having a worker sit on the Board of Directors, but then, apparently, there was a legal tangle that was encountered, because it was argued that in the existing 1910 Companies Act, it was not possible for a worker to sit on the Board of Directors, and I would hope that this new Act will provide that.

I am not referring to any specific sections in the Act. I was looking to see really where the definition of "director" would have been and whether it was extended to make it possible for workers to sit on the Board of Directors, but I would hope that this has been considered and that provision is made for this.

This would certainly demonstrate a seriousness on the part of the Government, it would demonstrate a new departure, and it would also demonstrate an attempt to deal with a real situation and to recognise the worth and the value and the contribution of workers to an enterprise and would give real meaning to the concept, as Senator Reece has pointed out, of workers' participation.

I know that the Government set up a committee some years ago, I believe in 1977 or 1978, to examine this whole question of workers' participation. I am not sure what has happened to that committee, it seemed to have died a natural death — I do not know whether a report has been submitted; I have never seen or heard of a report — but that might just have been for some kind of window dressing without any particular seriousness.

I would have thought, Sir, that we would be able to benefit from that kind of report and the recommendations of that report; and where they affect the workers as far as being able to participate meaningfully in decision making in enterprises, that that would have been incorporated in the existing Companies Act.

I would hope that this new Act would make that kind of provision because I believe that workers, and particularly workers who have been working at the company for a long time, have a right to be able to have a representative sitting at that level of decision-making, whether the representative comes from among themselves or whether the representative is somebody who is selected by them out of trade union movement — but at least somebody to have that kind of impact on decisions which are made.

There is no doubt, as I say, that decisions which are made will and can affect the general welfare and well-being of the lives of workers, and one has to recognise this.

It is fairly clear from what has been said and from the very wide and involved implications in this Act that there will be need, as Senator Reece has pointed out, for constant monitoring of the Act, and I would think that the idea, which has been suggested by Senator Hall, and supported by Senator Simmons and by Senator Reece, about the upgrading of the Registry or maybe the establishment of a Companies Registry, a separate Companies Registry, is something which we will have to give serious thought to if we are going to be really looking in any serious way at enforcing and implementing the provisions of this Act.

As I understand it, at the present time the Registry is already overburdened, cramped as far as space is concerned. There is a shortage of personnel, all of the problems

associated with inefficiency are present, and if we are going to be.....

Aside.

SENATOR E. E. GREAVES: I am talking about qualified personnel.

(SENATOR A. P. L. REECE: Say what you mean.).....

SENATOR E. E. GREAVES: When I talk about personnel, I am talking about people, you know. When I talk about personnel, I mean qualified personnel.

Aside

SENATOR E. E. GREAVES: Yes, I used to work in the Registry, so I would know. When I was in there, it was much better.

Aside.

SENATOR E. E. GREAVES: Oh yes, you spent a couple of weeks there. That is true. You would not believe that we worked together.

There is another point, Mr. Deputy President, that I would want to raise, and again I am sorry I cannot refer to a section, but it is an idea which I am throwing out. There are many companies which, from time to time, are wound up, or maybe go into receivership or liquidation and.....

Aside.

SENATOR E. E. GREAVES: Better to receive than to be liquidated. Yes, when you liquidate, you are out.

But on the whole question of the ranking of claims, I seem to think or to believe that the claims of workers do not rank too high. I am speaking from memory now, but I seem to get that impression and I would like, for the purpose of clarification, if the Minister in replying could give some indication as to what is the position as far as this is concerned. It is a serious point, the question of the claims of workers on a company if a company is, you know, winding up or going bankrupt, and you are having a number of these problems which we have been experiencing recently.

And, Sir, one final point that I want to make is that there is a lot of information in this Act concerning shareholders and relating to directors of companies.

This is a very cumbersome Act and it embraces a wide range of things. It is new, in that it goes beyond what is contained in the existing companies legislation

and I would hope that the Government would do more than merely to pass this Act and to say that we have a new Companies Act and that is the end of it. I believe that the Government has responsibility over and above just passing legislation like this, and I would like to think that there is some kind of programme where the Government Information Service can play a meaningful role, if it has never yet played a meaningful role, in this society.

It can play a meaningful role in dissecting this bit of legislation and getting information across to the public, to shareholders, to directors and across to everybody concerned about what the new Act is, about their rights, about how they should proceed, and do this on a continuing basis, because I believe that this is important for this to be done — and Government Information Service would have its work cut out for the next two years.

(Aside: Trade unions, too.)

(Laughter)

SENATOR E. E. GREAVES: I am not denying that at all. You see, this is why I am saying that the Government Information Service has a responsibility in this area. We certainly, from our part, from the union's point of view, would make it possible. We need more money from the Government. We will talk about that later on.

(Laughter.)

Sir, in all seriousness, the point which I am making is that there is going to be a need for the education of everybody, because this is an important piece of legislation, and I think that all of the sectors should try to know more about it and to find out more about it.

I mean, you talk about workers and workers' education. I take your point. More and more, I believe, as we go along, we will find that workers will be expressing an interest in owning shares in businesses and, you know, participating much more than they have been participating before, and they will want to know something about when a share is of some value, when somebody is ripping them off or taking advantage of them and when they can really take advantage of a situation which might be presented to them. Even to the extent, Mr. Deputy President, of buying out and completely owning a company, as I believe Senator Linton is quite aware with the one up there at the Pebbles Beach. I do not know how much involved he was, but I am not too sure that those fellows know what they have gone into completely. But anyhow, what I am saying is, is that the possibilities are there for everybody to get interested and to become involved in getting to know much more about this Act.

So, as I said, I would hope that we would not just pass the Act and that is the end of it. There still is a lot more work that remains to be done if we are going to be able to say in any meaningful way that we have a Companies Act which will operate and about which people will be informed.

Thank you.

SENATOR THE HON. O'BRIEN TROTMAN: Mr. Deputy President, Sir, after a long debate there has been a lot of concurrence in support for the Bill. One or two points were raised. The question of Section 162 was raised by most of the speakers who contributed to the debate — the question of the level at which a small private company will not be required or will be required, as the case may be, to make necessary returns to the Registrar.

It has been generally represented in that the question of a quarter million dollars is a small amount of money. One senator said that any small business which operates in Barbados and which employs, I think he said, about ten or twelve people, would be, in fact, a company in the quarter million dollar bracket; and it was generally considered by that senator and Senator Simmons that a company which is that small, which has been forced to disclose financial information to the Registrar, would become an easy target for the bigger companies.

Now I anticipated that question two weeks ago and took the precaution of feeling out people on it, and it is generally considered that, whereas a quarter million dollars is not a very high ceiling, the information which, in fact, has to be returned, is not detailed enough to expose the small companies to the grabbings and the ravings of the big companies which exist in Barbados, so it is not considered to be any real threat to small businesses in Barbados.

Senator Greaves, in the final points of his submission, raised the point of the claims which workers have on companies which are being wound up. It is my understanding, Sir, that it is still a priority claim on such companies. I believe they take third place only to Income Tax and National Insurance contributions which have been collected by the company out of the workers' salaries. So the position has not changed, as I understand it, in relation to the claim on workers on a company that is being wound up.

The other one point which was raised which seemed to have caused some difficulty is the question of what appears on the surface to be a conflict between Sections 18 and 19. Section 18, I believe, restricts the power to carry on business which is not properly defined in the

articles and which might be contrary to the Act if it is a company, and Section 19 seeks to validate such acts, and one Senator thinks that is a conflict.

In fact, there seems to be no real conflict. Section 18 says:

"A company shall not carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising, nor shall a company exercise any of its powers in a manner contrary to its articles."

Section 19 recognizes that, notwithstanding that that is prescribed by law, those acts might be carried out and, therefore, Section 19 says,

"For the avoidance of doubt, it is declared that no act of a company, including any transfer of property to or by a company, is invalid by reason only that the act or transfer is contrary to its articles or this Act."

I believe that this is in keeping with the point that Senator Simmons was making earlier, the question of protecting shareholders, because even though Section 18 does make it unlawful for the company to carry out certain businesses, if they are carried out, the interest of the shareholders have to be properly protected, and, therefore, the safety net seems to be in Section 19.

Those seem to be the main points raised besides the ones of general support which came for the Bill.

The one question which I have not picked up yet is the question of separate registry. The committee which worked on the draft Bill did recommend, for Senator Greaves' information, that a separate Companies Registry be established. That is being examined at present and, therefore, I cannot speak with any certainty as to what will happen. But it is one of the recommendations of the committee, so it has not gone without acknowledgment.

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

The question was put to the Senate and agreed to.

On the motion of Senator the Hon. O'B. TROTMAN, the Senate resolved itself in Committee on the Bill Senator H. R. LINTON in the Chair.

SENATOR MISS J. CLARKE: Mr. Chairman, I beg to move that this Bill be taken in Parts and Divisions rather than Sections.

The question was put to the Senate and agreed to.

Clauses 1, 2 and 3 were called and passed.

Part I, Divisions A, B, C, D, E, F, G, H, I, J, K and L were called and passed.

Part II, Divisions A, B, C, D and E were called and passed.

Part III, Divisions A, B and C were called and passed.

Part IV, Divisions A, B and C were called and passed.

Part V, Divisions A, B, C, D, E and F were called and passed.

The Schedule was called and passed.

SENATOR THE HON. O'B. TROTMAN: Mr. Chairman, I beg to move that the Senate resume and the Bill be reported as having been passed in Committee without amendment.

The question was put to the Senate and agreed to, and Mr. DEPUTY PRESIDENT resumed the Chair, and reported accordingly.

SENATOR THE HON. O'B. TROTMAN: I beg to report the passing of one Bill in Committee without amendment and move that it be read a third time forthwith.

The question was put to the Senate and agreed to.

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

The question was put to the Senate and agreed to.

ADJOURNMENT

SENATOR THE HON. O'B. TROTMAN: Mr. Deputy President, I was testing the feeling of the Senate

as to whether we should continue tonight or come back on Friday, but most people want to come back next year, apparently.

In that case, I beg to move that the Senate do now adjourn *sine die* to meet in the new year.

Since we will not be meeting officially before the Yuletide Season is over, on behalf of this side I wish to wish you, the President and members on the other side a pleasant Christmas. We look forward to seeing you refreshed in the new year. I hope you do not get a lot of trouble from the other side next year.

SENATOR E. E. GREAVES: Sir, speaking on the adjournment, I would just like on this side, and certainly on behalf of Senator Hall and myself, to extend the Season's Greetings to yourself, and we would ask you to convey our greetings to Mr. President, and also I would want on our behalf to convey the Season's Greetings to all other members of the Senate.

I think that this is the time for goodwill, even although goodwill might not have existed previous to this, at least this is the season for goodwill, and we would want to extend that to members of the Senate, and we look forward to a very fruitful, productive, active and hectic 1983, because we know that the lashes will be hot in here in 1983.

Thank you, Sir.

Mr. DEPUTY PRESIDENT: In announcing the adjournment of the Senate *sine die*, may I extend the good wishes of the Chair to all members of the Senate and hope that we will all come back refreshed for activity in the New Year.

Thank you all very much.
5.50 p.m.

CONTENTS

PRESENTATION OF PAPERS

SENATOR THE HON. N. A. BARROW:

Instruments adopted at the 68th Session of the International Labour Conference held in June, 1982;

The 13th Annual Report of the Barbados Development Bank, 1981-82;

Report of the Immigration and Passport Department for the period 14th March, 1980 to 31st December, 1981;

The Annual Reports of the Caribbean Broadcasting Corporation for the years ending 1978 and 1979.

MOTIONS RELATING TO THE BUSINESS OR SITTINGS OF THE SENATE AND MOVED BY A MINISTER

MOTION RE APPOINTMENT OF CHAIRMAN OF COMMITTEES.....Senator Barrow.

INTRODUCTION OF BILLS

A Bill to amend the Port Authority Act;

A Bill to amend the Shops Act;

A Resolution to approve the use of the sum of \$3.7 million to be borrowed from Barclays Bank International Limited for the purchase of the assets of Aero Services Limited;

A Resolution to approve the Special Development Area (Parish Land) Order, 1982.

MOTION RE ITEMS ON ORDER PAPER.....Senator Barrow, Mr. Deputy President. (Bill to amend the Port Authority Act and Bill to amend the Shops Act read a first time).

SENATOR Miss J. CLARKE:

The Barbados Chamber of Commerce and Industry Bill, 1982.

The Agricultural Society (Amendment) Bill, 1982.

PUBLIC BUSINESS

THE BARBADOS PORT AUTHORITY (AMENDMENT) ACT, 1982.....Senator Barrow, Senator Seale, Senator Greaves.

THE SHOPS (AMENDMENT) ACT, 1982.....Senator Barrow, Senator Greaves, Senator Williams, Senator McClean.

MOTION TO CHANGE ORDER OF BUSINESS.....Mr. Deputy President.

RESOLUTION TO APPROVE THE SPECIAL DEVELOPMENT AREA (PARISH LAND) ORDER, 1982 Senator Barrow.

RESOLUTION RE THE BORROWING OF \$3 700 000 FROM BARCLAYS BANK INTERNATIONAL LIMITED FOR THE PURCHASE OF ASSETS OF AERO SERVICES LIMITED.....Senator Barrow, Senator McClean, Senator Seale, Senator Greaves, Senator Hall.

SUSPENSION.....Mr. Deputy President.

COMPANIES ACT, 1982.....Senator Trotman, Senator Seale, Senator Howell, Senator Williams, Senator Clarke, Senator Hall, Senator Simmons, Senator McClean, Senator A. Reece, Senator Greaves.

ADJOURNMENT.....(Christmas recess).....Senator Trotman, Senator Greaves, Mr. Deputy President.

SPEAKERS IN THIS ISSUE

BARROW, Hon. N. A.

CLARKE, Miss J.

GREAVES, E. E.

HALL, W. W.

HOWELL, St. C. E.

MCCLEAN, A. W. A.

REECE, A. P. L.

SEALE, C. D.

SIMMONS, D. A. C.

TROTMAN, Hon. O'B.

WICKHAM, His Honour, Deputy President.

WILLIAMS, J. E. D.