
THE SENATE DEBATES

(OFFICIAL REPORT)

FIRST SESSION 1986 – 91

SENATE

Wednesday, March 1, 1989

The Senate met in the Senate Chamber, Public Buildings, on Wednesday, March 1, 1989 at 11.15 a.m.

PRESENT

His Hon. Senator M. deL. Jordan, (Deputy President);
Senator the Hon. Sir James Tudor, K.C.M.G.,
(Minister of Foreign Affairs) (Leader of the Senate);
Senator the Hon. L. V. H. Lewis, (Minister of State
for the Civil Service);
Senator A. Morrison;
Senator N. W. Boxill;
Senator D. A. Comissiong;
Senator Mrs. V. C. Fraser, B.S.S., J.P., M.F.C.A.;
Senator Mrs. G. L. Eastmond;
Senator A. J. N. Phillips;
Senator T. A. Prescod;
Senator J. C. W. Wickham, M.B.E.;
Senator the Rev. Canon I. McK. Jones;
Senator C. A. Blackman, Q.C.;
Senator Mrs. P. Y. Forde;
Senator J. S. Goddard;
Senator Dr. L. L. Shorey;
Senator Dr. the Hon. C. D. Clarke, (Minister of State
for Finance).

Prayers were led by Senator the Rev. Canon I. McK. Jones.

Mr. DEPUTY PRESIDENT: The Senate is now in session.

MESSAGES FROM HIS EXCELLENCY THE GOVERNOR-GENERAL

Mr. DEPUTY PRESIDENT: I have received the following Message from His Excellency the Governor-General to the Honourable the Senate:

His Excellency the Governor-General has the honour to inform the Honourable the Senate that, acting in accordance with the advice of the Leader of the Opposition, His Excellency has declared the seats in the Senate held by Miss Billie Antoinette Miller and Mr. Louis Randall Tull, Q.C., to be vacant with effect from 24th February, 1989, and has appointed under the provisions of Section 36(3) of the Constitution, Mr. Alfred Wendell Audley McClean and Miss Vere Patricia Brathwaite to be Members of the Senate also with effect from 24th February, 1989.

I shall now call on the Clerk of Parliament to invite the Senators to take their places.

Senators Miss V. P. BRATHWAITE and Mr. A. W. A McCLEAN were escorted to their places by the Clerk of Parliament.

Mr. DEPUTY PRESIDENT: It is indeed a privilege for me to welcome you both to the Senate on your first sitting today.

I have had the pleasure of working together with Miss Vere Brathwaite over a period of time and I certainly look forward to her sterling contributions when we return to the Senate Chamber, such as she will make here while we use temporarily the Chamber of the Other Place. I know her contributions will be very valuable.

I have also had the privilege of being associated with Senator McClean, shall I say, for over 25 years. I have followed his career. That would have been since his early

student days, and I know that we shall have some very worthwhile contributions from him as well. We know from even the more recent times that he has been following with keen interest what has been taking place in Parliament. We can therefore look forward to some lively debates from both of them.

Welcome again. I now invite both Honourable Senators to take their seats.

Applause.

SENATOR THE HON. SIR JAMES TUDOR: Mr. Deputy President, like you I am taking this opportunity, before the Senate proceeds to discharge of its business, to give a generous welcome to the two Senators who have just joined this Board.

For their leader, Senator McClean, this is of course the second time around, because he has already served in this Chamber. He will, I believe, add his specialty to the variety of expertise, clear headedness and balance which this Chamber always strives to maintain.

We also welcome the junior Senator, Senator Brathwaite, for her own sake, of course, but also for this fact that she will reinforce the generous assistance of Senators Blackman and Comissioning to the Senate in matters of law.

There was, alas, Sir, no opportunity to thank Senators Miller and Tull for their contributions in this Chamber. They represented their party with diligence and efficiency and I should like this appreciation of their contribution to the public life of our country to be recorded. We may hear more of them as time goes on.

The Constitution of this country has put us all to the test in recent weeks and we have emerged from this experience with credit. Yet the Constitution is not a tightrope, it is a guard wall.
11:25 a.m.

It is a guardian. It cannot provide for every political contingency. It can only protect against abuse of the political process. It may, therefore, be silent in respect of matters not envisaged, when it was written, but it cannot forbid the writing of laws especially in cases where people suffer hardship, or loss of earnings innocently in the process.

This Government has already promised to provide public accommodation for the Leader of the Barbados Labour Party in these premises.

I am also prepared to recommend to the Cabinet that appropriate compensation for the loss of earnings be provided by Parliament for those who were employed by

the recent Leader of the Opposition and who are now suddenly severed from their work through no fault of their own.

Parliament must always be ready to show compassion in genuine hardship without distinction of party or faction. Democracy and decency both begin with the letters "D".

Thank you, Sir.

SENATOR Mrs. G. L. EASTMOND: Mr. Deputy President, I would like to add some words to the welcome remarks that have been made.

In welcoming Senator Brathwaite first, I would like to say to you, Senator Brathwaite, I am very proud and pleased to see a young lady with such high cheek bones, and a beautiful face adorning the halls of this Chamber.

I know and I have heard that you are related to me for, indeed, I was praying that some day I would have had a daughter who would be opposing me and I also used to say I wished I had a husband opposing me but, unfortunately, this did not happen but you to me would be as though you could have been one of my children.

You have intelligence. You have everything that goes with it and most of all, what I want to tell you is that you must have determination and go forward for your country because it is the country that really matters. It is not the party so much.

We lay a lot of stress on party affiliations, etc. but our country comes first in everything and when you have to speak out you speak. I am sure I do not have to tell you that because I have been hearing quite a bit about you. This is the first time I am meeting you, strangely, but my family knows about you, of you and your family.

I want you to take my congratulations to your mother and let her know that she has a beautiful intelligent daughter.

To you, Senator McClean, I have known you for so many years that I dare not count them. You have been a power of strength to my family advising them, etc. and I know that the dedication that you have put into your work, not only at the university, but to your friends when they are in need of help and they need some advice. I am sure that you are going to give the same dedication here and we are looking forward to some very serious debates I know that you both will be very honest and knowing you because you have been a very great part of my family, your family and my family. I am glad to know that you are both here.

In welcoming you I must say I did not say good-bye to Senator Miller and Senator Tull. They did do very well in this Chamber. The part they played was an excellent one.

Senator Miller sometimes would go off the deep end sometimes but that is necessary but through it all she graced the halls as well as Senator Tull.

To you both now I wish you all the luck in the world. you have a determination. You have the spirit. You have the gut feeling. Go ahead. Go after it.

Thank you.

SENATOR Mrs. V. C. FRASER: Mr. Deputy President, I should like to welcome both of the new Senators to this august Chamber but, of course, you know where the heaviest part of my welcome would stand.

I do welcome Senator McClean gladly and I have been associated with him long years when he was a Member of this particular party. I have continued to watch his progress and his statements and so on and I know that he is the type of person who likes to debate any particular issue and, I believe, he will continue to debate at that high level of dignity that we would definitely look forward to in a Chamber of this kind.

Senator Brathwaite, I have not known you before. It is strange. But I believe you have known me. However, I am a person who feels very happy always when a woman graces the hall of any place and recently, just in the last few weeks, I have been watching your career and I know that you are going to make a sterling contribution to the debates here in Parliament. I especially feel that the more women we get anywhere the happier Barbados will be and I am sure that you will be an inspiration to other women to help them to realize it is not so bad in politics. We have our good moments too but we will argue strongly about issues which we do not agree on but we will argue and we will disagree to agree.

Once again I say a hearty welcome and I am looking forward to the debates and I am looking forward to hearing from you and hearing about you and like Senator Eastmond, I want to place on record my appreciation for the debates that Senator Miller and Senator Tull got involved in and how they represented their particular interests and party. I think that we must thank them for what they have been able to do and I am sure they will go out there in the community and do some more work.

Once again I welcome you both.

SENATOR C. A. BLACKMAN: Mr. Deputy President, it is my privilege and mandate on behalf of the independent Senators to welcome Senators McClean and Brathwaite to our Chamber. They are our neighbours by extension on this side of the table and the relationship of cordiality which existed with their predecessors in place I am sure will be maintained.

I am sure that Senator McClean will bring to bear his economic experience and background and Senator Brathwaite with her youthful enthusiasm will make a contribution of note in this Chamber.

I would also like, Sir, to associate myself with the expressions of regret in terms of the temporary absence of those who were here before but to use the term of the late President of Guyana, "the vagaries in the democratic process have their own immutable ways of working things out". Therefore, as Mr. Tull would have said, these things happen and not to worry but we do appreciate their contribution in this Chamber which will be sorely missed.

SENATOR A. W. A. McCLEAN: Mr. Deputy President, I rise to express my appreciation for the warm welcome which I have received, and indeed, which we have received here today. This is my second occasion in the Senate. This time in a slightly different capacity. Previously, I sat a little further up as one of the independent Senators. Today, I represent a party, the newest party in this Parliament and I would like to indicate that for me this is an historic moment for the country.

It is also a moment when we should come to appreciate the character of our Constitution which is centred on parliamentary democracy rather than party partisanship.

11:35 a.m.

We concentrate on parliamentary democracy rather than party paramountcy, and so my presence here is but an expression of the fact that a majority of people who do not represent or support the Government have joined together to give Barbados another choice, and the two of us represent that particular projection in this Parliament. We recognise the particular circumstances surrounding the departure of those who sat in these seats before, and we are appreciative for the work which they would have done during the time that they were here. I look forward to their continued involvement in the political affairs of the country and maybe perhaps to their return to this Chamber as some people indicated, but we also look forward to the continued existence or the continued presence of the party which I represent in this Chamber. I thank you.

SENATOR Miss V. P. BRATHWAITE: Mr. Deputy President, there is no greater honour than for a man or woman to be called upon to serve his or her country, and though it matters not the capacity in which one is called to serve, it is for me at one and the same time a signal honour and an humbling experience to take a seat in this august Chamber today.

It is my fervent desire and firm resolve at all times to seek to promote and protect the interests of all Barbadians and at all times to place country before self. It is also

intention to protect and uphold the rules, traditions and conventions of this Honourable Chamber.

I look forward with great zeal to participating in the matters which shall come before the Senate.

Mr. Deputy President, may I thank you for your warm expression of welcome and encouragement.

PRESENTATION OF PAPERS

SENATOR THE HON. SIR JAMES TUDOR: Mr. Deputy President, I am commanded to lay the following documents:

Guarantees granted under the Exempt Insurance Act, Cap. 308A to the following:-

- (1) Durham Casualty Co. Ltd.
- (2) Greenwich Potomac Reinsurance Co. Inc.
- (3) Natcan Insurance Co. Ltd.
- (4) Reliance National (Barbados) Insurance Ltd.
- (5) Resource Re (Barbados) Ltd.
- (6) Retail Insurance Ltd.
- (7) Sunchest Reinsurance Co. Ltd.

The 10th Annual Report of the National Sports Council for the Financial Year April 1, 1987 to March 31, 1988.

SUSPENSION OF STANDING ORDERS

SENATOR THE HON. SIR JAMES TUDOR: Mr. Deputy President, I rise to move the suspension of Standing Order No. 45(1) and (2) to facilitate the conduct of today's business. There is a Bill to amend the Franchises (Registration and Control) Act which was done in the Other Place yesterday which has come to us. I believe this Bill has been circulated.

SENATOR C. A. BLACKMAN: Mr. Deputy President, on the motion for the suspension of the Standing Orders for the purposes of facilitating the debate, I just wish to give notice that many of us received our copies of the Bill rather late. I got mine on Monday; the amendments to the Bill were brought here this morning and for the purposes of the motion for the suspension of the Standing Orders, I wish to give notice of objection for the purpose of dealing with this Bill today.

SENATOR A. W. A. McCLEAN: Mr. Deputy President, I wish to facilitate the work of this Chamber as

much as possible, but we have only received the Bill about a few minutes ago and have had no chance to read it. I understand there were amendments made in the Other Place and although we would not necessarily object to proceeding today, we would appreciate that that should be after some type of suspension to allow us time to have a chance to look at the Bill. We take our work here seriously because we consider this to be a Chamber of review, and we cannot really review until we have read, and so I would hope that the notion of some type of suspension should find favour with the other side.

SENATOR THE HON. SIR JAMES TUDOR: I respond to those requests or comments in two ways. First by saying that the Bill is an urgent and required Bill, and secondly by saying that I regard the request for time to study the Bill particularly as it has only been done in the Other Place yesterday as reasonable, and I am proposing therefore a suspension of this sitting for half an hour. I will do this, but not now, but I just assure Honourable Members that I am willing to accommodate what I regard as being very reasonable scruples by just telling you that I will do this at the appropriate time.

The question that the Standing Order be suspended for the remainder of today's sitting, was put to the Senate and agreed to.

APPOINTMENT OF ACTING DEPUTY PRESIDENT

SENATOR THE HON. SIR JAMES TUDOR: Mr. Deputy President, at this juncture I need not draw to the attention of the Senate the fact that you yourself by being where you are have drawn attention to the Senate the fact that the President is away and will not be returning until March 5. In order therefore to facilitate our business it will be necessary for us to have somebody to act in your place, and I now beg to move with pleasure that Senator Wickham do act as Deputy President of this Senate for the remainder of today's sitting.

I beg to move.

The question was put to the Senate and agreed to.
11:45 a.m.

INTRODUCTION OF BILLS

SENATOR THE HON. L. V. H. LEWIS: Mr. Deputy President, I wish to give notice of two Bills and to beg that they be read a first time:

A Bill to amend the Franchises Registration and Control Act

and:

A Bill to amend the Parish Boundaries Act.

Mr. DEPUTY PRESIDENT: I direct that it be recorded that the Bills have been read a first time.

Mr. DEPUTY PRESIDENT: Senator Tudor.

SUSPENSION OF SITTING

SENATOR THE HON. SIR JAMES TUDOR: I beg to move, Sir, that this sitting be now suspended until 12:30 p.m.

The question that the sitting be now suspended until 12:30 p.m. was put to the Senate and agreed to and Mr. Deputy President suspended the sitting accordingly at 11:47 a.m.
11:47 a.m.

ON RESUMPTION

Mr. DEPUTY PRESIDENT: The Senate is resumed. Senator Tudor.

SENATOR THE HON. SIR JAMES TUDOR: I should just like to crave the indulgence of the Senate before we resume on Public Business to draw to its attention the draft of a Message which it is proposed should go from this House to the Other Place in respect of the Queen's visit next week.

It is proposed that there be a Joint Sitting of Parliament and in order that that might come about, the Senate has to invite the Other Place to join the Senate in the Senate's Chamber.

Accordingly, a Message from the Senate to the House of Assembly has been prepared for distribution among Senators which reads as follows:

"MESSAGE
from the
HONOURABLE THE SENATE
to the
HONOURABLE THE HOUSE OF ASSEMBLY

The Senate desire to convey to the Honourable the House of Assembly our congratulations on the occasion of the 350th year of the inauguration of your Honourable House. We also have the honour to invite your Honourable House to attend the Senate Chamber on Thursday 9th March, 1989, at 10.00 o'clock in the morning to wait upon Her Majesty the Queen to present addresses by both Houses of Parliament in celebration of the 350th consecutive year of Parliament in Barbados."

I commend this Message in its form to the House and I recommend its passage.

SENATOR J. C. W. WICKHAM: Mr. Deputy President, in the interest of accuracy and fine tuning I note that the details contained in the booklet about the visit to Parliament show that Members of the House will enter the Chamber at 9:50 a.m. So that that invitation should be amended. It is only ten minutes but it may be a significant ten minutes if we do not get it right.

SENATOR THE HON. SIR JAMES TUDOR: Say 9.50 a.m. then or 9.45 a.m.?

SENATOR J. C. W. WICKHAM: Something like that. But certainly not 10:00 a.m.

Aside.

SENATOR THE HON. SIR JAMES TUDOR: Yes, Sir, that is accepted.

The question that the Senate accept the Message as read was put to the Senate and was agreed to.

PUBLIC BUSINESS

Mr. DEPUTY PRESIDENT: Item No. 2.

SENATOR THE HON. SIR JAMES TUDOR: Mr. Deputy President, I am asking leave for Senator Clarke to take charge of this item.

FRANCHISES (REGISTRATION AND CONTROL) (AMENDMENT) BILL, 1989

Order No. 2 was called – To move the Second Reading of a Bill to amend the Franchises Registration and Control Act.

SENATOR Dr. THE HON. C. D. CLARKE: Mr. Deputy President, this Amendment proposes to close certain loopholes in the existing law so that persons who have had their applications denied for a franchise cannot now get around the existing law and set up such a business. If the enactment is not enacted, Government would be robbed of revenue as contained in S.I. 1987 No. 71. That is, there is a \$10 000 fee for the issue of an original licence and a \$2 000 renewal fee for any such licence.

In addition, it will contribute to foreign exchange leakages. That is, such companies having been denied a formal franchising arrangement, the individual or firm can then over-invoice the purchase price of their imports and by so doing make payments for what would otherwise be for the franchise.

A franchise arrangement is one that is engaged with selling of any contract under which, and the operative word here is independent wholesalers, retailers and service

institutions are organized to act in consort with each other or with manufacturers to distribute given products or services.

The contract that is drawn up is between the franchisor and the franchisee and some of the characteristics which identify a franchising arrangement are as follows:

(1) the first might be defined as the site selection. Here the franchisor either makes the selection of the site or must himself give approval to the site that has been selected. In addition, the franchisor decides on the design, the lay-out and the colour scheme of the premises which will be used for the purposes of the franchise.

In addition the franchisor requires the adopting of a common trade name and established decor and interior arrangement as well as standardized operating procedures.

The franchisee, that is, the local person who might be acquiring the franchise is obliged:

(1) to purchase the equipment from the parent company or from some approved source;

(2) carry the inventory determined by the franchisor.

And finally, the franchisors themselves, the ones granting the franchise reserve the right to purchase a franchisee's business either for a cause or at the discretion of the franchisee. Let me restate that. The franchiser may purchase the business if there is a breach or cause or at his own discretion. There are costs involved in such an arrangement and these include:

(1) An initial fee. A royalty on gross sales. Rental and lease fees on equipment and fixtures supplied by the franchisor and a share in the profits.

In addition, sometimes management consultant fees might be included in these arrangements.

An example, a case in point has been cited by Cotler in Marketing Management in the Chapter on retailing, wholesaling and physical distribution decisions, page 577 and it states that McDonald's charges a franchise fee - this was in 1983 about there - of about US\$150 000 for the franchise, the payment of royalty fee of 3%, a rental charge of 8.5% of the franchisee's volume. In addition, it requires a franchisee, all new franchisees, to attend Hamburger University for three weeks to learn how to manage the business.

Against that background and the possibility for leakages the advantages to be gained by the Government and the people in Barbados if loopholes are closed are as follows:

(1) We can control the entry of certain business into certain areas which we have reserved for Barbadians.

I have already shown the various areas through which there could be foreign exchange leakages. By plugging the existing loopholes we can achieve some savings on foreign exchange to the extent that we have the industry or the market demand for those products already fully satisfied by the existing industry. We can prevent making experienced workers redundant in order for new companies to hire new workers who will normally enter at the lower end of the scale.

12.40 p.m.

I think that there are certain myths surrounding the whole concept of franchising that should be exploded at this time. It has been said that by allowing franchises to enter into the food industry, especially the fast food industry that they would be necessary adjuncts to the tourism industry. But to the extent that that sector has already been fully served then the country as a matter of fact by encouraging a franchising arrangement will stand to lose foreign exchange.

It has been argued that more agricultural produce will be purchased. Then again, if there is no market for the finished product, there is no point in buying the input. All that will happen is that there will be a new purchaser of the raw materials instead of the existing purchaser.

It has been argued that there is a limitation of choice in terms of fast foods. But this is a rather weak argument since it will only be to the extent that one would be only limited to the brand name.

It has been argued that there will be a restriction of competition and I can only agree with those who say that competition would be restricted but only to the extent that we cannot afford the luxury of spending scarce foreign exchange on non-essential imports.

It has also been argued that there will be improved quality product at lower prices. I do agree that while increased competition may lead to greater and wider product selection, it will not necessarily lead to improved product quality or low prices. An example of this is the need to regulate the airlines in the United States.

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

Mr. DEPUTY PRESIDENT: Senator McClean.

SENATOR A. W. A. McCLEAN: Mr. Deputy President, I rise to support the Objects and Reasons of the Bill. In saying this, I take direct attention to the question of support at the stage of the Second Reading, because in

looking at the details of the Bill I can indicate now that in Committee stage we will go on to make certain suggestions for amendment thereto. Because we feel that given the short time we had to study it, there seems to be certain obvious defects which we hope can be improved on all sides.

Now going beyond that I would want to indicate quite early that in supporting the Objects and Reasons and supporting the idea of control and the better regulation of franchise business and preventing circumvention thereof, this does not extend to the motives of this particular legislation necessarily. I know that this particular legislation came before this Chamber at this point in time because of a particular set of circumstances. But the legislation must be viewed beyond the question of its immediate motivation and in that sense the legislation has merits. Indeed, it may have merits in terms of the particular reasons why Government was motivated to pass it through the Lower House yesterday and to bring it here in the hope of passing it through all stages again today. But I would want to suggest that we should not see ourselves at this stage as legislators as getting too closely involved in agreement or disagreement with what Government may or may not intend in relation to the awarding of franchises to particular businesses. Yet for all that, I should think that it might be appropriate for me to make contact with the submissions of the Honourable Senator Clarke in his reference to the business of fast food franchises and so on. Note that this is a matter which has exercised Governments in Barbados over the years. If I recall correctly going back as far as 1974 and on at least 2 subsequent occasions since then in relation to one particular business, on all of those occasions, Government found that it was not considered to be in the best interest of the country to award such a franchise.

I would hope, however, that decision would have been made out of the specific circumstances of the time and I would hope that there can be an appreciation that what is inappropriate today could become appropriate tomorrow because Barbados is a dynamic community and circumstances change. I would hope that Parliamentarians, parties, and so on will not get too caught up in the matter of having to adhere to a decision made 10, 15 or 20 years ago or even yesterday if the circumstances should change.

So I would hope that this legislation was not intended to be seen as an effort in sustaining an incontrovertible decision in relation to any firm or anything like that.

Now mention was made of merits and demerits of fast food foreign exchange implications. All economic activity has some type of economic implication as far as foreign exchange is concerned, either direct or indirect. What is important is not just to focus on a particular outflow for a particular purpose but to focus on the total picture to determine whether the net situation is one of foreign exchange benefit or foreign exchange loss. Sometimes it is not always obvious where the matter rests. We need to

engage in serious analysis in this regard and it would have been helpful to the extent that people would want to direct such matters to our attention that we will be informed of the results of careful studies intended to indicate what is the net foreign exchange impact from any given area of economic activity or the introduction of some new venture.

In relation to the other matters of choice, competition, and quality, we should always have some attachment to the idea of giving people a choice, the idea of providing quality and also the idea of allowing some measure of freedom as opposed necessary to competition. Competition connotes freedom to get involved in some given area of activity in a manner which is not entirely hamstrung by legislation or any other given situation. So that to the extent that those matters are raised, they should be taken seriously but they might be outweighed by other considerations. We have heard mention of such other considerations such as the impact on indigenous businesses, small businesses like the Baxter's Road business and that type of thing as far as fast food franchises are concerned. Indeed, if those submissions are correct, they should be taken seriously. But we should endeavour to ensure that they are correct.

12.50 p.m.

We should not beguile ourselves or attempt to beguile others with statements which are not necessarily correct when the truth lies in a different direction, when the protection being afforded is not necessarily for the small Baxters Road operations but for operations much more similar in appearance and the method of operating to the particular franchise that you are deliberating on. We should not presume to tell the people that you are protecting the man in the street when you are protecting someone in the castle. The people in the street have a sense of these things.

SENATOR Dr. THE HON. C. D. CLARKE: I do not think in my presentation I said that we were protecting any particular group. I did not identify any one, I did not say we were protecting any group in Baxters Road. I just want the record to show that.

SENATOR A. W. A. McCLEAN: Mr. Deputy President, I did not attribute that view to Honourable Senator Clarke. I did make contact with his submission, but I was going beyond that to address the type of issues which were raised. I did not consider myself to be limited to the points made by Senator Clarke, but to the general issue of cost and benefits, protection and things like that. I recognise that he did not make that type of point, but nonetheless the point has been made by others in other places and in other circumstances.

It seems essentially that the man in the street has a sense of these things and often is aware of certain motives, and is aware of things which are in and out of his interest, and I believe that Governments should at times take public opinion into consideration, especially when they are making

decisions about protecting the public, because you may be protecting the public from something against which they need no protection.

As I said, this is a Second Reading and we should here be debating the general principles of the Bill, but yet for all that we would want to indicate that we have certain concerns over the specifics of the Bill, some of a purely technical nature and some relating to the probable scope of the Bill, the number of people who will be affected thereby, the problems with policing the Act and similar matters.

I thank you.

SENATOR THE HON. L. V. H. LEWIS: Mr. Deputy President, this matter of the franchises legislation is probably before us 12 months after it might well have surfaced, because more than one year ago there were more than 200 business establishments, including more than ten of the shops in the Baxters Road and Nelson Street areas, and areas like that, along with the restaurants which are found in luxury hotels, along with all of the fast food operations. I mentioned all of them which are owned by persons born and bred in Barbados, pointed out through a petition to Government the fact that there was a possibility that the existing, or the former, legislation exposed any sovereign Government of Barbados to the possibility of it being undermined, and it is because of that that not only the Democratic Labour Party but indeed the Barbados Labour Party and all of the Unions who have interest in the matter indicated in no uncertain terms that the loopholes in the law ought to be closed.

It would be trite if any Government found itself in a position where in its lawful right of responding to all the people in the community, and in furtherance of preserving what is national in the country, that persons acting out of their own interest could in defiance of stated positions in the country challenge the sovereignty of that country. This, therefore, is the basis on which the Government of Barbados has come to the point where there is action to respond to a threat to its very sovereignty. It is the reason why, if the existing amendments when implemented provide evidence that there is further need to go beyond this in order to ensure that the right of Government is not challenged, it will be necessary to amend this or any other Act from time to time.

I mention these things in passing, because this is not a partisan matter as far as we are concerned, it is a national matter and we expect that all parties involved, including the Independent persons here in the Senate, would recognise that we only have one country and we have a duty and responsibility to ensure that that country is not endangered or infiltrated by any activity about which we feel very strongly.

SENATOR J. S. GODDARD: Mr. Deputy President, I have listened carefully to the comments made by Senator Clarke and Senator Lewis. Originally I had some doubt and reservations about supporting the Bill. They removed that doubt from me, because I am now assured that the purpose of this Bill is to close loopholes that had existed in the previous legislation, that there is fear and concern that the Government could lose licence fees, franchise fees, royalty fees and foreign exchange generally, and I think the Government should be commended in stopping any circumvention of the law. We have to hold the law in the highest regard, so I can support the Bill on those grounds.

However, Sir, I would like to question the wisdom of whether or not we allow in large international organisations to our country, whether it be in car rentals, hotels or soft drink manufacturing or fast food. The world has become very, very small, the global village as someone referred to it years ago and made that phrase very popular, and while I understand the concerns for trying to reserve certain areas of the economy for local entrepreneurs and business men, I believe by admitting competition from the outside with the expertise and the technology that they can bring in enhances the productivity and standards of the local entrepreneurs. I think experience has shown that such competition has upgraded standards in the local economy generally, not only in the fast food business, but by denying the public access to certain products or services that international organisations might be able to offer locally may be improper and an injustice to the local populace.

I believe, myself, the vast majority of people would like to see the fast food operators expand.
1.00 p.m.

It is my view that the method of control should not be by stopping whether a licence is denied or not. The method should be by restricting the number. In other words in whatever field if operators want to come in legitimately and franchise the local entrepreneurs, we should not allow them to use their massive financial resources to come in in large numbers and literally swamp out the competition locally and adversely affect so many of their local competitors. I believe the answer lies generally, there may be an exception, in allowing them in provided they conform to the laws and regulations and local standards, and I am extending this to the trade unions, respect local industrial practices and conform to good local labour regulations, allow them in because the competition would be healthy and people would benefit, but restrict the numbers.

Having said that, that is really more a comment on a matter of Government policy. I can support the arguments I have heard for the purpose of this Bill which is to prevent any circumvention of existing legislation. I thank you.

SENATOR C. A. BLACKMAN: Mr. Deputy President, I am generally supportive of the attempt behind

the legislation except that it would have been preferable having regard to the comments made by Senator Lewis that the Bill should have been put before us with more deliberate consideration last year when the representations were made than for us to deal with it in crisis management at this time, because there are aspects of the legislation, Sir, with which I have some concerns, and although like other speakers I will support the measure for the purposes that have been given for the legislation, I have some concerns.

I have a concern, Sir, whether the Bill as drafted may not require enactment similar to the provisions we need to deal with the Tenancies Freehold (Amendment) Act. I have some concerns whether there are not some constitutional implications in the legislation for those existing rights which might be abridged in some fashion, and I will offer that out of an abundance of caution when we come to pass this Bill that we should divide and ensure that there is a two-thirds majority in the House.

But, Sir, I have another concern. I have a concern whether the Bill may not catch up some enterprises that are not perhaps thought to be in danger, and it may be a good thing perhaps to deal with them as there are some outlets in Bridgetown, Mr. Deputy President, which are utilising names in their businesses that suggest a relationship with international business houses. There is a place towards the end of Bridgetown that calls itself "Macy's". There are others who call themselves "Learner Shops" and I know that these have been matters for which legal advice has been sought and given in respect of infringement of their trade mark rights and it still continues. But I share in some respect, Sir, the observations of Senator Goddard that we cannot have it really both ways in that when we try to expand our horizons in Barbados and attract people as when the Heywoods Hotel was looking for management and you were talking to international chains which itself is in a way a franchise, whether it is Sheraton or Intercontinental or what-have-you, and then close your door when you think that the exercise is not one that you are totally happy with.

My other concern, Mr. Deputy President, is the provision of the substantive Act where the Minister under the Act is both judge, jury and chief executioner. Objections are made to the Minister who determines the objections. Section 12 says that the decision of the Minister under this Act shall be final. I think, Sir, that good administrative law practices today suggest that there should be some stand back review mechanism so that one body is not seen to be judge, jury and executioner in one swoop. Like Senator McClean I feel perhaps some of these considerations can be dealt with in Committee in terms of examining the language of the Bill before us. I think it would be in the interest of all concerned if legislation of this kind should not smack so much of the stamp of almost an *ad hominem* measure if it would not be a travesty of the norms which could almost be called the McDonald's Denial

of Entry Act when in fact you are dealing with a wider issue or should be dealing with a wider issue.

I think we ought to look at franchises and the totality of franchises, whether it be fast food, ground transportation for car rentals, for service marks, in a less heated atmosphere, and perhaps look at a new over-view of a Bill that is not custom made to deal with a specific issue.

SENATOR Dr. L. L. SHOREY: Mr. Deputy President, I expect to be very brief on this matter. The antecedents to the legislation now before us for consideration are I think pretty well known, and let me say immediately that I certainly share Senator Blackman's views on one of the matters he mentioned just before he sat down, the appearance that it is designed to deal with a particular agency organisation. In fact in my own thinking the word that came to me even as a non legal person was that it smacked of an *ad hominem* approach, and I feel very uncomfortable about that. I recognise of course that the situation in which this developed, one could almost say provoked the introduction of a measure to deal with what amounts to, as I would see it, a crisis situation, and therefore I am not really opposed to the measure.

1.10 p.m.

I just wish to record my concern that one would be a lot more comfortable in mind if we had been able to have the foresight, perhaps, to have handled the matter some time ago.

The intent of the measure is, I think, clear and, certainly, on the matter of the need to ensure that legislation is not circumvented, I think that most citizens would agree that there is a very strong case for provisions of this sort irrespective of the particular issue that might have brought it to the fore.

I think that legislation needs to be protected against efforts which human beings are always likely to make to find loopholes. I think it is to be expected that people would seek to find loopholes and, I think, that one of the things that we have constantly to be on the look-out for is attempts to do this and recognize the need to seek to plug them so that I have no hesitation in supporting this Bill.

I would just add that I would also like to support Senator Blackman's position that we, perhaps, need to look at ensuring that there is provision for review. On another matter years ago I expressed the view and I still hold the view that I do not feel comfortable about Ministers as individuals having the last say on matters. I have never felt comfortable about this.

I have never been persuaded that one Minister and this has nothing to do about party because we are talking about human beings and, therefore, I am always in favour of, if

you want to call it a reference board, an appeal board, a review board, some kinds of provisions to protect the public against possible misuse of authority and this is not meant to be an accusation about any particular Minister. It is that human beings are human beings, Sir.

Thank you, Mr. Deputy President.

SENATOR Mrs. V. C. FRASER: Mr. Deputy President, in supporting the amendments to the Bill, I would like to say that I am very pleased that the Government has seen it fit to follow the citizenry and those persons who have particular interest in the whole idea.

It is good for us. It is healthy democracy to see when the citizens of a country who are going to be involved and are going to feel the pinch most could get up one morning and decide that they are going to get together and they are going to put forward to Government any measure that is going to affect their livelihoods and I think this commendable indeed for the citizenry of this country.

No matter what people think whether you are just protecting one group of people, I think you are protecting the country which is vitally important because I have seen in other places where some of these people come in and they are closely associated or they are part of what you call in the Spanish word "macalias" or multi-national corporations.

For myself as a person who believes strongly in collective bargaining and trade unionism, I know that they are not always, in most cases, interested in their staff or their workforce becoming members of trade unions and I think that is a dangerous thing in any developing society like Barbados.

Therefore, I am saying that we have looked at the loopholes and I hope that if there are anymore loopholes for us to look at, that we look at all the loopholes and we ensure that when these people would have applied for franchises that we have all the facts and we actually have everything marshalled so that when we say "No" it is "No".

It is our country and if we have great difficulty in getting our people properly employed and in seeing to it that our people are organized into trade unions to bargain for rights and privileges of the worker, then I do not see how we could, on the other hand, allow anybody to come in regardless of what it is.

I am hearing sometimes some things that make me wonder. We behave as though Barbadians do not have any skills and insights and have not been heading a number of important organisations of this kind throughout the world.

We have Barbadians with that sort of skill. We have many food technologists. We have many laboratory

technicians. We have people who are bakers, they are cooks, they are all sorts of things with the highest level of qualifications and Barbadians learn very quickly and, therefore, there is no reason why Barbadians cannot get the training. It does not matter whether they get the training if outside, and come back and set up some of these same businesses that we are talking about. Let the money remain in the country because any country that is developing needs foreign exchange and if you do not have foreign exchange you are in serious trouble so if we keep on allowing foreign exchange to leak out of this country, or if we keep on with people who want to come into this country who we know are going to leak out foreign exchange, then we will not have any foreign exchange to buy the goods and services and build all the beautiful buildings and everything that we want, and the lovely roads. We would be talking about them but we cannot get them because we do not have the necessary foreign exchange because it is eroded by somebody who has interest outside of his country.

Do not fool yourselves. People who do not belong here who have business interests in other places, I am not talking about people who have come here and been resident here, I am talking about people who are just out to make money, they are not going to be out to make money for Barbados. They are going to be out to make money to develop themselves, their families, and, I hope, their country but we have to be concerned in this little 2 x 5 country, a very small country with no material resources and we must keep remembering that.

We are a very small country. We do not have those resources like some of our neighbours and, therefore, we have to try and use the resources of our people and the intelligence of our people. Our people are very intelligent and there is nothing that a Barbadian puts his hand to that he cannot do and keep the foreign exchange in this island.

I am saying that there are further loopholes in any part of any legislation which is going to affect Barbados. This Honourable Chamber and the Other Place must look at them very seriously and ensure that there is no way that these people can get in and live off the fat of our bones.

Thank you, Mr. Deputy President.

SENATOR Miss V. P. BRATHWAITE: Mr. Deputy President, I am rising to support the Objects and Reasons of the proposed amendments engaging our attention at this time.

I wish, first of all, to associate myself with the comments made earlier by Senator McClean and Senator Blackman specifically. I wish also to point out that what I shall say at this stage is without prejudice to any remarks which I might wish to make later when this Chamber goes into committee.

I note a few areas of great concern to myself. There are areas where the legislation, as proposed, is ambiguous and inconsistent in itself.

1.20 p.m.

Certainly in the area of drafting there are some areas which I have discerned need to be tidied up, need to be made less ambiguous and I shall deal with them at a later stage.

The proposed legislation is wide reaching and far ranging in its application. It affects any and all types of operations whether those that are currently in operation in Barbados or those which might wish to come in at a later stage.

I wish also to associate myself with the comments made by Senator Fraser. Where questions of nationality and sovereignty are an issue, I am always on the side of nationality and sovereignty.

I note that most of the comments made so far in support of this proposed amendment have dealt whether largely or in some small way with the question of food and fast food operations. It is therefore my understanding that this legislation was designed, if not specifically, in general terms to deal with operations of such a nature. But, as I have pointed out earlier, the legislation catches all types of operations in this country which now are operated on franchise or which may in the future require or be requested to take permission to be operated on franchise.

I am of the view that Barbados being a small, open economy needs to be protected from, for want of a better term, cultural penetration. However, we must not encourage ourselves to be insular in our thinking or in our attitudes to matters which we cannot claim to be ours whether by convention or as of right.

There are certain advantages to be gained from allowing businesses which are non-Barbadian in origin to operate in our society. We speak of and encourage a great tourist promotion drive, and I note as a necessary offshoot of such that we must therefore offer a diversity of foods to the wide range of palates which come about as a result of encouraging tourists to our shores. Such operations as fast food operations and indeed any others will indeed also offer a considerable amount of employment generation. Barbadians themselves have widened their range of foods by virtue of their travel experience. And here I could not agree more with Senator Goddard where he stated earlier that the world has become a smaller place. However, Mr. Deputy President, we must at all times seek to strike a very happy balance between the local culture and the extent to which we allow foreign concerns into Barbados.

Any legislation therefore that comes before this Honourable Chamber must seek to redress this balance.

And the decisions of this Chamber must be guided and informed by these considerations.

As I have said earlier, the intent of the legislation I fully support and shall later have some comments, perhaps many comments on the proposed amendment as presently drafted and the application, as I see it, and the policing of the legislation and its enforcement when and if it does come into effect.

Thank you.

Applause.

Mr. DEPUTY PRESIDENT: Senator Clarke.

SENATOR Dr. THE HON. C. D. CLARKE: Mr. Deputy President, there are just a few comments I should like to make.

Senator Brathwaite alluded in her presentation to the fact that the legislation seems to carry the clear stamp of one dealing explicitly with food. I believe in my presentation I dealt with the whole question, the broad question of franchising, the possibility for leakages under the franchise arrangement, the possibility under current legislation for avoiding certain fees for Government.

On the question of tourism, we have been promoting tourism in Barbados as the engine of growth, the hedge of the foreign exchange earner to the extent that there are and have been great linkages in tourism to support, in the terms of imports, to support tourism. To the extent that we are able to forge linkages between domestic producers and tourism, the greater will be the percentage of foreign exchange retained in Barbados. To the extent that a franchisor comes into the operation where the market is currently being satisfied by local producers, using local products, then the net result would be an unnecessary outflow of foreign exchange.

Now both Senator Goddard and Senator McClean referred to competition but on two different scores. Senator Goddard talked about competition in a rather general way. This legislation is not intended to prohibit competition. Rather, what it seeks to do is that, in an area where the industry is already fully developed and is satisfying the demands made upon it, there is no need to encourage additional competition from overseas especially if that foreign exchange will require an additional outflow of funds.

Senator McClean's raising of competition more or less suggested another matter and the context which I perceived from Senator McClean was that greater competition will tend to lead to better products and hopefully at low prices, my inference not exactly your words. I do not think that this is necessarily so and in my presentation I pointed out the

case of the need to regularise the airlines to ensure that quality standards are maintained. Otherwise by competition and the lowering of prices then of course the possibility exists also for the lowering of standards.

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

The question was put to the Senate and was agreed to.

SUSPENSION OF SITTING

Mr. DEPUTY PRESIDENT: Senator Tudor.

SENATOR THE HON. SIR JAMES TUDOR: Sir, I believe that Senators will think this a convenient time to have a break from their labours and to refresh themselves.

I therefore beg to move that this sitting be suspended for one hour for lunch.

The question was put to the Senate and was agreed to and Mr. DEPUTY PRESIDENT suspended the sitting accordingly at 1.30 p.m.
1.30 p.m.

RESUMPTION OF SITTING

Mr. DEPUTY PRESIDENT: This session is resumed.

SENATOR Dr. THE HON. C. D. CLARKE: Mr. Deputy President, I now move that the Senate goes into Committee on this Bill.

On the motion of Senator Dr. the Hon. C. D. CLARKE, Mr. DEPUTY PRESIDENT left the Chair and the Senate resolved itself into Committee on the Bill, Senator J. C. W. WICKHAM in the Chair.

COMMITTEE

Clauses 1 and 2 were called and passed.

Clause 3 was called.

SENATOR Dr. THE HON. C. D. CLARKE: Mr. Chairman, I move that Clause 3 stand part.

Mr. CHAIRMAN: It is proposed that Clause 3 stand part of the Bill . . . Senator Blackman.

SENATOR C. A. BLACKMAN: Mr. Chairman, I move that the word "product" appearing in Clause 2A of Clause 3 be deleted from the Bill. My reason for this, Mr. Chairman, is that the term "product" is so wide as might catch things that are offered for sale in Barbados by companies I do not think are envisaged to be caught by this type of language. In the context of the section, Mr.

Chairman, you are dealing with inchoate rights with the term "mark, service, technique, device, copyright, industrial design, or invention" and producing something substantial to the use of the word "product" in that context of the section. I think that as the word "product" is here we will have a difficulty perhaps in being able, Sir, to make your purchases of Bally shoes that you are accustomed to, Sir, in Bridgetown or the lady Members amongst us from being able to pursue the products of Elizabeth Arden or Helen Rubenstein or whoever else there is and I suggest, Sir, for that reason for avoidance of unnecessary particulars the word "product" be deleted from this section.

Aside.

SENATOR Miss V. P. BRATHWAITE: My apologies, Mr. Chairman. I wish to move that the word "technique" be omitted from the question which appears in Section 2A(1)(a)(ii) of Clause 3. My reason for this, Sir, is that the word "technique" is difficult really in the application of this bit of legislation. It can lead to ambiguity and subjectivity – if you will permit me, Sir, to give an example or rather to phrase it in terms of a question. Who is there to decide that the method adopted in putting forward one person's product is the same technique as that used by another person? I can foresee certain difficulties arising, Sir, as far as technique is concerned. It might have no tangible character about it so as to be able to determine what is a technique and what is not.

SENATOR THE HON. L. V. H. LEWIS: Mr. Chairman, the very purpose of this legislation is to ensure that it is as wide ranging and as all embracing as to take into account the product, technique, service, and the device. It is felt that this is the only means whereby one can ensure that any activity whatsoever which is liable to require to be treated as a franchise can pursue the appropriate means of seeking out a licence. It does not mean that the seeking of a licence will hinder. All it will do is to ensure that there is orderly approach to the business activity that is contemplated. For those reasons the persons who drafted this inserted those words not only there but in the following section as well. We, therefore, on this side can never agree. They will find that in Section 4 the same words and in Section 5, and they were placed there with a specific intent and the intent is that there shall be no opportunity whatever to escape consideration and that is the important thing. If there is any doubt as to whether a technique or a product can be caught by this, there are appropriate means by which it can be challenged.

SENATOR A. W. A. McCLEAN: Mr. Chairman, I had anticipated that the opportunity would have been afforded to me or anyone else to second the motion before we heard contrary submissions. I just rise now to second the motion regarding leaving the word "technique" out of the question.

Mr. CHAIRMAN: Senator Clarke.

SENATOR Dr. THE HON. C. D. CLARKE: Mr. Chairman, I have listened to the comments of Senator Blackman, Senator Brathwaite, and Senator Lewis on this matter. I shall take your comments and advice under advisement and I move that Clause 3 stand part.

Asides.

Mr. CHAIRMAN: We have to put the amendments first. We have 2 motions for amendments before us. We shall have to take the Amendments first. Senator Blackman's proposal of amendment by the deletion of the word "product" in Section 2A of Clause 3 which has been seconded and the question now is that that Amendment should be now passed.

2.40 p.m.

The question that the word "product" appearing in subsection 2A(1)(a)(ii) of clause 3 be deleted was put and resolved in the negative, the Senate dividing as follows:

Noes: Senator the Hon. Sir James Tudor, Senator the Hon. L. V. H. Lewis, Senator Dr. the Hon. C. D. Clarke, Senator Mrs. G. L. Eastmond, Senator N. W. Boxill, Senator Mrs. V. C. Fraser, Senator T. A. Prescod, Senator D. A. Comissiong, Senator A. J. N. Phillips, Senator A. Morrison, Senator the Rev. Canon I. McK. Jones, Senator J. S. Goddard, Senator Miss V. P. Brathwaite and Senator A. W. A. McClean – 14.

Ayes: Senator C. A. Blackman, Senator Mrs. P. Y. Forde, and Senator L. L. Shorey – 3.

Mr. CHAIRMAN: The second amendment raised by Senator Brathwaite and seconded by Senator A. W. A. McClean is that the word "technique" in the same subsection as we have already just discussed be deleted.

The question that the word "technique" appearing in subsection 2A(1)(a)(ii) be deleted was put and resolved in the negative, the Senate dividing as follows:

Noes: Senator the Hon. Sir James Tudor, Senator the Hon. L. V. H. Lewis, Senator Dr. the Hon. C. D. Clarke, Senator A. Morrison, Senator Mrs. G. L. Eastmond, Senator Mrs. V. C. Fraser, Senator N. W. Boxill, Senator T. A. Prescod, Senator D. A. Comissiong, Senator A. J. N. Phillips, Senator the Rev. Canon I. McK. Jones and Senator J. S. Goddard – 12.

Ayes: Senator C. A. Blackman, Senator Mrs. P. Y. Forde, Senator L. L. Shorey, Senator Miss V. P. Brathwaite and Senator A. W. A. McClean – 5.

The question that clause 3 stand part was put to the Senate and agreed to.

Clause 4 was called.

SENATOR Dr. THE HON. C. D. CLARKE: Mr. Chairman, I move that clause 4 stand part.

SENATOR C. A. BLACKMAN: Mr. Chairman, clause 4 uses in its definition of citizen two rather technical terms.

""citizen" includes

- (a) a dependant of a citizen,
- (b) a firm in which the partners who are citizens have a right to more than one half of the assets or income of the firm, . . ."

I should like to suggest that the words "dependant" and "firm" do not have any special meaning in any other body of law in Barbados, and I should think, Sir, that perhaps the better course would be for the Senate to adopt a definition of the word "dependant" and a definition of the word "firm".

In an Act of this House, Cap. 84A, "dependant" in relation to another person means

- (a) the wife of such person unless she is living apart from him under a deed of separation or the decree of a court;
- (b) a child under the age of 16 years of such person;
- (c) any other relative of such person who is wholly dependent on such person for his subsistence.

This is a very specific definition of "dependant". As it stands before us, Sir, there is no definition of what you mean by a dependant of a citizen and it could be open to some difficulties in terms of its enforcement.

The Act, to which I have referred, Cap. 84A, also has a definition of the word "firm" which I think could only improve this legislation if it is adopted herein. It means an "unincorporated body of two or more individuals, or one or more individuals and one or more bodies corporate, who have entered into a partnership with one another for the purpose of carrying on business in common for profit."

It is my submission, Mr. Chairman, that the adoption of that definition within this section will be in the interest of the measure before us. This is in the Property Transfer Tax Act. This definition is used.

I should like to move that those words be inserted in the appropriate alphabetical order in the definition section of the principal Act.
2.50 p.m.

Mr. CHAIRMAN: The proposal for the amendment to clause 4 has been seconded.

The proposed amendment would have the effect of defining the word "dependant" in paragraph (a) of clause 4 and the word "firm" in paragraph (b) to define those words using the definitions contained in Cap. 84A, the Property Transfer Act, and I will read the definitions contained in that Act.

"Dependant" in relation to another person means the wife of such person unless she is living apart from him under a deed of separation or the decree of a court; a child under the age of 16 years of such person; any other relative of such person who is wholly dependent on such person for his subsistence."

"Firm" means an unincorporated body of two or more individuals or one or more individuals and one or more bodies corporate, who have entered into a partnership with one another for the purpose of carrying on business common for profit."

It is proposed that these definitions be inserted in the principal Act which is Cap. 179A with which we are now dealing.

SENATOR THE HON. SIR JAMES TUDOR: Mr. Chairman, I certainly am not qualified to pronounce on the merits of the amendments which are being offered although I daresay they do have some merit, but I have always been warned that drafting on one's feet is always a hazardous exercise and this warning has been conveyed to me by members of the learned profession opposite, and it is a warning which I take very seriously, and I would like certainly on this occasion to obey that warning.

Secondly, and this is an equally valid point, I could not presume to accept a point of view which would suggest that the learned draughtsmen who put this together would have mis-sighted or neglected to take seriously this whole question of the interpretation in respect of the meaning of dependant and other things, and because I believe that the drafters take some care with what they were doing and I have no evidence to the contrary, I do not feel able to advise my colleagues to support this amendment.

SENATOR D. A. COMMISSIONG: I, Sir, can say that I see the merits in the amendment being suggested by Senator Blackman in that what we really are being asked to decide about is whether we should leave the word "dependant" for example as it presently stands which would be subject to the dictionary definition of that word, and which dictionary definition would of course be a rather wide-ranging definition. I do not have a dictionary before me, but I am certain that if you look up the word "dependant" in a dictionary that the meaning given in the

dictionary would tend to be a rather amorphous and wide-ranging definition.

What Senator Blackman is suggesting is that we give the Act greater clarity and restrict the definition of the word "dependant" and the word "firm" to the definitions given in the Property Transfer Tax Act. I can see a lot of merit in that in that it gives it greater clarity, and certainly as it relates to the word "dependant" I think it has the beneficial effect of not allowing any and everyone to willy-nilly claim that they are a dependant of a citizen or permanent resident of Barbados or are not for that matter. It restricts them within a certain ambit and I can see a lot of merit in that particular amendment.

Mr. CHAIRMAN: I will have to put the proposal for the amendment.

The question that the amendments proposed to paragraphs (a) and (b) of Clause 4 of the Bill be accepted, was put to the Senate and decided in the negative the Senate dividing as follows:

No: Senator the Hon. Sir James Tudor, Senator L. V. H. Lewis, Senator Dr. the Hon. C. D. Clarke, Senator A. Morrison, Senator Mrs. G. L. Eastmond, Senator N. W. Boxill, Senator Mrs. V. C. Fraser, Senator T. A. Prescod and Senator A. J. N. Phillips - 9.

Ayes: Senator D. A. Commissiong, Senator the Rev. Canon I. McK. Jones, Senator C. A. Blackman, Senator Mrs. P. Y. Forde, Senator J. S. Goddard, Senator Dr. L. L. Shorey, Senator Miss V. Brathwaite and Senator A. W. A. McClean - 8.

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

Clause 5 was called.

SENATOR Dr. THE HON. C. D. Clarke: I beg to move that Clause 5 stand part.

SENATOR Miss V. P. BRATHWAITE: Mr. Chairman, at section 5 subsection (1)(b) the proposed amendment provided that no person other than a citizen or permanent resident shall operate a business in Barbados using his own mark, product, service, technique, device, copyright, industrial design or invention shall, before he commences business, obtain from the Minister a licence for the purpose.
3.00 p.m.

I see certain inconsistencies here in the drafting, Sir. At one and the same time in the first paragraph which I mentioned it provides that no person other than a citizen or a permanent resident shall operate a business in such circumstances and, yet, it further provides that any person

who not being a citizen or permanent resident shall apply for a licence.

It seems that one and the same time, Sir, to be restricting a right to operate such businesses in Barbados to persons who are only citizens or permanent residents and, at the same time, at Subsection 5(1A) (b) it gives persons who are not citizens or permanent residents a right to do so provided they obtain a licence.

I see an inconsistency there, Sir, and I think that it needs to be clarified.

I move, therefore, that section 5 subsection 1(b) be deleted.

SENATOR A. W. A. McCLEAN: I beg to second that because it seems quite evident that Section 5(1)(b) and Section 5(1A)(b) are contradictory. By rightly contradictory in terms that one denies the right to persons who are not citizens and the other one indicates that such persons should seek to obtain licences.

I presume that (1A)(d) is the one that is intended and, in the circumstances, therefore, I would think that 5(1)(b) was included in error and, therefore, I second the motion.

SENATOR THE HON. L. V. H. LEWIS: Mr. Chairman, I am a little concerned about some presumptions that, obviously, spring from reading the matter probably in haste and not clearly recognizing all the angles to the matter.

I think that even if the worthy Senators have a cause, that it would not be unwise for us to hear their concerns and have another look at it but, on this side, we could certainly not support, as Senator Sir James said earlier, drafting on one's feet. Moreover, Section 1 and Section 1A are specifically designed to catch people on all counts.

Section 1 speaks of no person other than a citizen operating a business in Barbados using his own product etc. and then the next section permits persons other than citizens of Barbados and that is what it is intended to do.

It seeks to ensure that whereas non-Barbadians must get a licence and if you do not have a licence you cannot operate so that you can even escape by saying you are using your own product and, therefore, you do not have to get the licence and that is why it might appear to be double barrel but that is precisely what it is intended to do.

One would not like to cite the instances in evidence of persons other than citizens seeking to use an existing loophole and the Act is specifically designed by persons who understand what they are drafting. I, therefore, could not in any way support any amendment to it.

SENATOR Miss V. P. BRATHWAITE: Mr. Chairman, I do not for one moment doubt the competence or efficiency or, indeed, the goodwill of the draughtsmen of this piece of legislation.

I have no cause, as Senator Lewis has sought to suggest, to fight or to attempt to draft while on my feet though I must admit I would much have preferred if I were given a longer time to study the legislation. Nevertheless, it is patently clear, even to those who are not in the business, or rather, who are not in the habit of seeing matters such as these every day, that the two sections cannot co-exist. They are contradictory.

The draughtsmen, I am sure, knew what they meant and attempted to draft what they meant. However, Section 5 subsection 1(b) stands in direct contradiction to Section 5 subsection 1A(b). You cannot at one and the same time restrict *carte blanche* persons who are not citizens or permanent residents from operating businesses in Barbados and then, at the same time, give them the right subject to a licence.

The draughtsmen, I am sure, had one or the other view in mind. They must, therefore, draft very clearly their intentions.

This bit of legislation, if and when it be passed, shall stand if and when it is amended and, therefore, persons who attempt to seek the refuge of this bit of legislation and, indeed, the Courts in their interpretation of it have only this document to go by.

It is true that it is a principle of constitutional law that the Court at all times must seek to ensure the intention of Parliament but the very first document that they have to deal with is seeking to interpret legislation in the expressed words stated in the legislation itself. Therefore, Sir, I move that Clause 5(1)(b) be deleted as being inconsistent and in direct contradiction to Clause 5(1A)(b).
3.10 p.m.

The question that the words proposed to be deleted stand part of Clause 5 was put and was resolved in the affirmative, the Senate dividing itself as follows:—

Ayes: Senator the Hon. Sir James Tudor, Senator the Hon. L. V. H. Lewis, Senator Dr. the Hon C. D. Clarke, Senator A. Morrison, Senator N. W. Boxill, Senator Mrs. V. Fraser, Senator T. A. Prescod, Senator D. A. Comissiong and Senator A. J. N. Phillips – 9.

Noes: Senator G. L. Eastmond, Senator the Rev. Can. I. McK. Jones, Senator C. A. Blackman, Senator P. Y. Forde, Senator J. S. Goddard, Senator Dr. L. L. Shorey, Senator Miss V. P. Brathwaite and Senator A. W. A. McClean – 8.

Clause 6 was called.

SENATOR Dr. THE HON. C. D. CLARKE: Mr. Chairman, I beg to move that Clause 6 stand part.

Mr. CHAIRMAN: It is proposed that Clause 6 stand part of the Bill. Senator McClean.

SENATOR A. W. A. McCLEAN: On a point of order, Mr. Chairman, I did not hear the result of the division.

Mr. CHAIRMAN: I will repeat the result. Nine Members voted aye and eight Members voted no. The ayes have it.

The question that Clause 6 stand part of the Bill was put to the Senate and was agreed to.

Clauses 7 and 8 inclusive were called and were passed.

On the motion of Senator Dr. The Hon. C. D. CLARKE, Mr. CHAIRMAN reported to His Honour the DEPUTY PRESIDENT, the passing of one Bill in Committee and Mr. DEPUTY PRESIDENT resumed the Chair and reported accordingly.

On the separate motions of Senator the Hon. Dr. C. D. CLARKE, the Bill was read a third time and was passed.

ADJOURNMENT

SENATOR THE HON. SIR JAMES TUDOR: Mr. Deputy President, I wish to thank Senators for their attendance here today.

I now beg to move that the Senate do now adjourn until Thursday, 9th March, 1989 at 9.30 a.m. in the Senate Chamber for the presentation of Addresses to Her Majesty the Queen and that thereafter the Senator do adjourn *sine die*.

Mr. DEPUTY PRESIDENT: The question is that this Senate do now adjourn until . . . Senator Blackman.

SENATOR C. A. BLACKMAN: Mr. Deputy President, speaking on the adjournment, I wish to make an observation, Sir, in relation to the business of the Senate. It is my understanding that the predecessor body the Legislative Council used to have the benefit of the attendance of Crown Law Officers to assist deliberations of that body when matters were being considered.

I am not reflecting, Sir, on a vote of the Senate which was just taken. That would not be right. However, Sir, with great respect to those who draft, they do not necessarily take a view of all that might be envisaged. And the amendment which I had offered was not as I say, on my feet. It is one that had already been enshrined in the Laws of Barbados. And I think it would enhance the proceedings of this Chamber if, as a matter of course, the draughtsman is required to attend meetings of the Senate, so that if there are issues that require assistance within a matter of a phone call, the person is on the floor to offer advice.

Aside.

SENATOR C. A. BLACKMAN: I am making a substantial point beyond the matter of a vote. I am saying that the Senate should be assisted by having officers, legal officers present in the Senate, to advise on matters that are raised from time to time.

Mr. DEPUTY PRESIDENT: Thank you for your observation, Senator Blackman. Senator Tudor.

SENATOR THE HON. SIR JAMES TUDOR: Yes, Sir, Mr. Deputy President, I would have to go of course outside of the ambit of the points which the Senator specifically raised if I do not myself wish to be reflecting on a vote of the House.

I believe that there is precedent in both Houses for what he is suggesting. I myself recall that when I had to pilot the Public Order Act in the House, in the Other Place in 1970, it was thought prudent to have the Crown Law Officers present to be able to explain to Members on both sides of the House the nuances of some of the possible meanings or interpretations which could be put on some of the Sections of that Bill. We found their presence very, very helpful to us. So that on general principle I could not object to the presence of Crown law officers in either Chamber assisting Members of either House to understand more clearly what the implications of legislation before us are. But I say this outside of the ambit of what we have done today because I myself would not wish to reflect on a vote of the House, but I take the Senator's point.
3.20 p.m.

*The question that the Senate do now adjourn until Thursday, March 9, 1989 in the Senate Chamber at 9.30 a.m. and that the Senate adjourn sine die after that, was put and resolved in the affirmative and Mr. DEPUTY PRESIDENT adjourned the sitting accordingly.
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