
THE SENATE DEBATES

(OFFICIAL REPORT)

FIRST SESSION 1994 – 99

SENATE

Wednesday, February 01, 1995

The Senate met in the Senate Chamber, Parliament Buildings, on Wednesday, February 01, 1995, at 11.15 a.m.

PRESENT

His Honour Senator Fred GOLLOP, (President)

His Honour Senator C. L. BOLDEN, (Deputy President)

Senator the Honourable R. R. FARLEY, (Minister of Industry, Commerce and Business) (Leader of the Senate)

Senator the Honourable P. C. GODDARD, (Minister of State, Ministry of Foreign Affairs, Foreign Trade and International Business)

Senator the Honourable G. S. H. MURRAY, (Minister of State, Prime Minister's Office)

Senator Miss C. Y. FORDE, (Parliamentary Secretary, Ministry of Education, Youth Affairs and Culture)

Senator T. E. BARKER, (Parliamentary Secretary, Ministry of Finance and Economic Affairs)

Senator Miss O. P. SYMMONDS

Senator D. T. GILL

Senator Miss J. C. ODLE

Senator N. P. WELCH

Senator J. A. WORKMAN

Senator Mrs. P. E. RICKINSON

Senator P. S. BERNSTEIN

Senator the Venerable Archdeacon J. L. SPRINGER, G.C.M.

Senator C. K. LAURIE

Senator Mrs. V. J. DAVIS

Senator Mrs. A. P. THOMPSON

Senator C. A. MASCOLL

Prayers were led by Rev. Errington Massiah.

Mr. PRESIDENT: The Senate is in session.

ORDER NO. 1 – TO MOVE THE PASSING OF A
RESOLUTION TO APPROVE THE COMPUL-
SORY ACQUISITION OF LAND AT WELL
GAP, CAVE HILL, ST. MICHAEL
FOR ROAD IMPROVEMENT

SENATOR THE HON. R. R. FARLEY: Mr. President, the first Order of Business today is to seek the Senate's approval for the compulsory acquisition of some 350.3 square metres of land which is the property of Mrs. Oneta Williams situated at Well Gap, Cave Hill, St. Michael for the purpose of road improvement. This acquisition is being sought under the provisions of Section 5 of the Land Acquisition Act, Cap. 228. This matter, Sir, relates to the early part of the year 1990, when the Government as part of the Barbados/Venezuelan Tenantry Road Project encroached on the land of Mrs. Oneta Williams as part of the tenantry road expansion in that area.

The formal process of acquiring the land was engaged sometime subsequently and the process was extended because of complications arising out of the fact that the work had commenced before the formal procedure for acquisition had begun, as well as the fact that at the time when the Government sought to acquire the land there was a formal offer of sale for the property which was obviously frustrated by the Government's decision to acquire the land for the project.

The land of some 350.3 square metres forms part of a larger parcel of land owned by Mrs. Williams of some 504 square metres. The area was mainly used for rental of houses, one of which literally sat on the curb by the time the road expansion was completed which made it necessary not only for the Government to seek to acquire the actual carriageway but also the property. Of course, you would

appreciate that as of 1990 the property would have been vacated because of its situation in close proximity to the road and naturally the termites and vandals would have taken over possession of the house situated on the land. This resulted in further delays because discrepancies or disparity between the valuation by the Government's Valuation Department some years later which would have influenced the offer price which another person was willing to pay in 1989 for the property.

Sir, the matter is now being formally concluded and the question of compensation has been settled. The Senate is therefore being asked to approve this Resolution for the compulsory acquisition of the land described in the appropriate Schedule from Mrs. Oneta Williams for the purposes of road improvement.

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

Mr. PRESIDENT: The question is...Senator Bolden.

HIS HONOUR SENATOR C. L. BOLDEN: Mr. President, there are three land acquisition matters before the Chamber today. What I am going to say in this one will certainly relate to each and every one of the other matters. But the startling thing that comes forth in this acquisition is what the Minister said that after the completion of the road one of houses literally sat on the corner. I am minded to ask where is the cooperation between the Public Works Department and the Town and Country Planning Department. I am going to say that Town and Country Planning, in my view, has reached the depth or the bottom of any Department which is given the responsibilities for planning. I am mindful to say that it has no moral right or duty to tell anybody anything dealing with construction or property in this country. There are too many examples of that Department not working and you cannot get an answer out of them. Because when the Minister said that a road was completed and on the completion of the road there is a house on the corner, then something is wrong between Public Works Department and Town and Country Planning. That road would have had to be designed and submitted on a plan either approved or disallowed before work could have been completed. So something is wrong and I think the Government of the day should take a careful look at Town and Country Planning and Public Works and see what is happening in those two Departments. I think they should. I will have a lot more to say at a later day because I know that the Estimates will come to this Chamber and it will give me the time for a long ranging speech and I will say a lot.

Another point I want to raise, Sir, is again the question of acquisitions. For years successive Governments have been acquiring land in Barbados and it is pathetic that quite recently I heard of an old lady who died and has not been paid for her land. Do you know where you heard it? It was in the Legal Department of Government. While

dealing with another matter, one officer could jokingly say, "Wuh. This ent long. We know an old lady who died and she didn't get as far as this yet." This is nearly five years. 11.25 a.m.

People's land has been taken, the Government has used it and the persons have not been compensated. I am saying to this Government that it can go to an international agency and say, "Look, we found a backlog of so many cases in Government we would like to borrow money to pay off these people." Start with a clean slate and give instructions to the civil servants that while they are drawing their money every month and they can go down the road and get a mortgage, a person whose land has been acquired, the banks are now foreclosing on. I have evidence to show that the banks are saying, "Go and talk to the Minister of Finance and tell him we are foreclosing. We want our money. Let Government pay you."

I have cases in my office with that situation and I am pleading that Government will find a method of paying all these people who have suffered and are suffering under circumstances like these. You go to Court and you get a judgment and that is all you can do. You cannot levy on the Government, so it is still no use to you.

I am going to say something now that a lot of people may not like. There is a department called the Ombudsman. I would like to recommend that that department be closed down. It is a well paid job for a civil servant who has reached retirement age and then draws a fat salary afterwards because you can rest there for as long as you feel like. He has no power and sometimes they write back to you and say we are still investigating.

I have a case that they have been investigating for four years now and I still cannot get an answer, but the Ombudsman has an office, fat salary, secretary etc.

Mr. PRESIDENT: Senator Bolden, I don't think that is relevant to the Resolution before this House.

HIS HONOUR SENATOR C. L. BOLDEN: Mr. President, you have ruled.

You know that Government from time to time will have to acquire land because this is one of the few countries in the world where there has never been crown lands. If you went to Trinidad, to Jamaica or any other country you would hear of crown lands or state land, land which initially belonged to Government. Barbados is one of the few places where the only land owned by the Government is land which has been purchased either through acquisition or through agreement or by a conveyance.

Government from time to time will have to acquire land for its improvement policy but we must find a system whereby as soon as we acquire somebody's land, you settle

it in the same way as if a willing vendor was selling to a willing purchaser and that persons must not be made to suffer inconvenience and hardship through an acquisition for improvement to the general society and that one person then is made to suffer. Thank you, Sir.

SENATOR Mrs. V. J. DAVIS: Mr. President, I rise to speak on this Bill because the first thing that occurred to me was that we seem to be asked in this Chamber to approve of acquisitions of land, and what struck me this morning was I might be part of a conspiracy, as the Honourable Member who has just spoken has enlightened us on the facts. Maybe I am involved in something that is being very unfair to a lot of people.

I have no idea sometimes when these bills are passed as to what is the cost, what do we owe these people and when they are paid. I sit here and I say yes. I agree to it and I am beginning to be very concerned. I am wondering whether there is some way how can we be sure when we say yes? We want to buy land, yes, we pass this. How can we be sure that the people we are depriving of their land get paid? What mechanisms are there? I don't know. I would like to know. I just don't want to be involved in something that is depriving people of their property not giving them a recompense so for their property and I won't sleep well at nights if I am going to be involved in this.

Could I get answers to this question before I pass? Thank you.

SENATOR Miss O. P. SYMMONDS: Mr. President, this Resolution relates to people on the left side going up towards Lodge Hill, as far as I understand, but on the right hand there are also two other mud roads in Well Gap which desperately need to be paved and for years the residents have been clamouring for two proper roads so that they can walk comfortably without having to enclose their shoes in plastic bags and so that they can protect their shoes for ingress and regress.

For 19 years, this area was neglected but this Government has already been displaying a strong interest in road improvement and I hope that it will act speedily to have these other roads in Well Gap fixed. That is all I want to say.

Thank you, Sir.

SENATOR C. K. LAURIE: Sir, I would just like to start by making an apology for the lateness or non-arrival of the Senators Trotman, Murray and Rickinson. There is a meeting with the Prime Minister this morning on the Incomes and Prices Policy at which these Senators are present. In fact, the Prime Minister suggested that it was a very bad show that I, a private sector Senator should be leaving while the union and public sector Senators

remained. So I would just like to mention that they probably are delayed because of that.

In addressing the point at issue, the Town Planning Department is notorious in the problems that Senator Bolden has referred to. However, one also knows that over the years there has been considerable political interference associated with that Department, in that the Minister under the present Town Planning Act has powers that he should never have in my opinion. These powers allow him to overrule every objection that the Town Planner has put in there and to grant the various applications. For instance, I know that in the case of agricultural land, in one particular government, some 80% of the applications for the development of agricultural land for housing were granted, in spite of disagreement by the Town Planning Department saying no, and where the Minister arbitrarily on his own, but legally, grant the applications.

I think that if Government is serious about doing something about the Town Planning Department it first has to amend the Town Planning Act to make it more equitable. Thank you.

SENATOR Mrs. A. P. THOMPSON: Mr. President, I would like to make my contribution on this Resolution. I also feel strongly about Government compulsorily acquiring the lands of mostly very poor people at times, people who can least afford to do without this money and that they have to wait for many years. I heard in the Other House that we have a backlog dating back to the 70s. So it is some time that we have had these matters outstanding and I agree with my fellow Senator, Viola Davis, that when we sit here and we give our assent to these matters we do not know when they are going to be settled and in a way it appears that you are involved in some form of conspiracy, that you are aiding the State to deprive poor people of their property which some of them have worked very hard to get.

I would like to suggest that Government give this matter its immediate attention. Ever since this Senate was convened we have been dealing with land acquisitions, a number of them, and maybe I will put a question to the Minister to find out how we are dealing with them and how soon these matters will be settled, because I don't think we can continue in this way. It does present a problem to these individuals when they approach financial institutions about the acquisition of maybe another property and have no funds to place on deposit and have no guarantees from the Government that these monies will be coming within a certain period of time. I think we need to act on these matters of compulsory acquisitions with haste. 11.35 a.m.

SENATOR THE HON. R. R. FARLEY: Mr. President, in wrapping up debate on this Resolution, I just want to make a few closing remarks. Senator Laurie in looking at the whole question of the change of use of land

brought attention to a very interesting period in our not too distant past. I believe he is speaking of a period during the last 8 years or so with respect to the conversion of agricultural land to housing. I would want to associate myself with his remarks. I think he could have been a bit more precise in terms of the reference which he made.

The question though of the process of land acquisition and the speed with which the matter should be settled is one that cries out for urgent attention. In fact, the comment has been made that since this Senate has been in session we have been dealing with a series of land acquisitions. What careful observation will also reveal is that many of these acquisitions we have dealt with in the last four months are matters that have been outstanding in 1989, 1990, 1991 and those sorts of periods. In fact, we can expect over the next few months to a year to be seeking to put the legal conclusion to a number of these matters that have been started some time previously.

The question of when the payment is going to be made is also tied up with the question of the correctness of the procedure. Although a matter might have been started as this one did in early 1990 by way of the Government encroaching on the land of the individual, the Government is only rendered to be in a position to pay after the matter has passed through both Houses of Parliament and the Crown has gotten the approval of Parliament to gain indefeasible title to the land. Part of the problem with the delay in payment is really due to the incorrectness of the procedure. If the formal proceedings for the acquisition of the land were started at the time when the Government actually took possession of the land, then you could clearly see that the process would have been considerably shortened.

We have also, as has been stated earlier by the Minister for Housing, made a decision to ensure that we have funds in the kitty to pay for those properties which we acquire. We know, for example that Government has on its hands a vast array of properties and it is sometimes a mammoth task to compile the appropriate listing of the properties, their value and size. But the Government intends to divest itself of those properties which are no longer needed for the public good and to use those funds in settling the acquisition of those properties that are, in fact, needed for the public's good. You can expect that those matters which this administration has to deal with by way of property acquisition will be dealt with in a much more speedy and tidy manner than has been the fashion in previous times.

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

The question was put to the Senate and agreed to.

ORDER NO. 2 – RESOLUTION TO APPROVE THE COMPULSORY ACQUISITION OF LAND AT AIRLIE TENANTRY ROAD, CAVE HILL, ST. MICHAEL FOR ROAD IMPROVEMENT

SENATOR THE HON. R. R. FARLEY: Mr. President, this matter is quite similar to the first, that is, the Senate's approval is being asked for the acquisition of land under Section 5 of the Land Acquisition Act, Cap. 228 relating to a property at Airlie Tenantry Road, Cave Hill, St. Michael for purposes of road improvement.

In this case, Sir, the project involved, a 1988 tenantry road expansion and some 27.7 square metres of a property owned by Miss Estelle Miller was utilised by the Crown in the expansion of the road. The area in question represented a narrow strip of frontage on the property of Miss Miller who subsequently submitted a claim for compensation for the land that was used by the Government. The validity of the claim was verified and as a result this Resolution after much time has come to the Senate for formal approval.

I beg to move that this Resolution for the acquisition of 27.7 square metres of land, property of Miss Estelle Miller at Airlie Tenantry Road, Cave Hill, St. Michael do now pass.

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

ORDER NO. 3 – RESOLUTION TO APPROVE THE COMPULSORY ACQUISITION OF LAND AT BREEDY'S LAND, CHRIST CHURCH FOR ROAD IMPROVEMENT

SENATOR THE HON. R. R. FARLEY: Mr. President, the third order, acquisition of land at Breedy's Land, Christ Church, for the purpose of road improvement seeks the Senate's approval for the compulsory acquisition of two parcels of land under once again section 5 of the Land Acquisition Act, Cap. 228. The parcels in question are both the properties of Mr. William Osbourne.

One property, Sir, that is 27.44 square metres forms part of a larger parcel of some 948.5 square metres of land and the other 35 square metres forms part of a larger parcel of 3 905.2 square metres. Both parcels were used in 1985 for the road improvement in that area. Again, Sir, a claim for compensation for the property used was submitted, hence this Resolution before us seeks to finalize that arrangement.

The works in question on the property of 948.5 square metres related to the use of a narrow strip of land for the straightening of a road which runs next to the property. In the case of the larger property of 3 905.2 square metres the area of 35 square metres was used for

the purpose of widening a corner in the area of Round Rock and the other public road.

I beg to move that the Resolution for the acquisition for the two parcels of land as outlined in the First and Second Schedule do now pass.

SENATOR C. A. MASCOLL: Sir, I rise to make a few points on this whole question of land Resolutions which we have had to deal with so far in the Senate. There is no doubt that our business has comprised about 80% or more on this whole question. That is kind of strange because it does indicate that the previous Government was, in fact, doing something about our roads and if you had listened to the now Government you would believe that there was no kind of road programme at all being pursued in Barbados over the last how many years.
11.45 a.m.

I am proud to see that, apart from the question of acquiring land, that there is something attached and associated with the whole question of road improvement which has been, as I repeat, an ongoing programme.

But there is also a question that was addressed by a previous Senator on ensuring that owners of this land are compensated early enough for it to be considered reasonable rather than allow it to span over a number of years. I do not think that anyone would go against that position. But certainly it cannot be simply a question of the absence funds on the part of Government. We need to investigate to see why it is that there is such a long delay in terms of compensating individuals for the compulsory acquisition of land by Government. But the issue of funds cannot be considered the major issue.

I am however minded that the Leader, Senator Farley referred to the selling of Government land as a means or an alternative to ensuring that funds would be made available so as to correct this issue or the delay of payment. But I wish just to make a few remarks on that score. Before we jump to try again to politicize an issue, I think that we have to be very cognizant of the need to do an entire inventory of Government's properties, not only land itself but also public buildings – there is definitely a need for that – so that Government can know precisely the kinds of properties that it has in this country. No one seems quite capable of telling you precisely what the value of Government property is. There is need, first of all, for an inventory of Government's properties. But to go the route of selling the properties just to acquire funds is indeed a misguided route because we have long heard of the question of providing economic equality in this country. If the kinds of properties owned by Government were to be sold, they would attract a certain kind of clientele. In that respect we are saying that you cannot use the wrong reason to sell Government's property. It would be a misguided position to hold on that issue.

I have no doubt that there are some speculators out there who would be only too glad to acquire a lot of the kind of land that Government would have. It is considered, in many respects to be prime land. They may very well feel that because it is Government land that it can be had at a bargain price. We have to be sure that we are selling the land above board and that people are not capable of sneaking in behind and getting access to this land in a way that would be unjust to the majority.

Certain remarks made by SENATOR C. A. MASCOLL were ordered, by Mr. PRESIDENT, to be expunged from the Record.

SENATOR C. A. MASCOLL: Mr. President, Sir, to the extent that it is a question of land Resolutions and that we continue to deal with these issues. An observation has been made in respect of the funding of land...

Mr. PRESIDENT: Senator Mascoll I have ruled. Please continue your speech.

SENATOR C. A. MASCOLL: I find it difficult to understand that we are dealing with land Resolutions, a recommendation has been put forward in relation to the funding for the owners. Are you saying therefore that I do not have the privilege of taking that recommendation and analyzing it within the context of another land Resolution?

Mr. PRESIDENT: Senator Mascoll, I am referring to Section 34 of the Standing Orders and I have ruled on it. Please proceed with your speech.

Aside.

SENATOR C. A. MASCOLL: There is no question of learning. The issue of a land Resolution here with respect to the payment of the owners of that property, that will remain a problem for us or for the Government, that the Government in terms of finding funds to ensure that this problem of delayed payment, that the question of using a foreign loan regardless of whether or not it was suggested by another Senator, the question of raising a foreign loan is only a component of the financing choices that are available to Government. I am not of the view that we should be going the route of a foreign loan in order to pay locals for the acquisition of land. It is a misguided philosophy or principle because land can easily be repaid by domestic currency. There is no need to incur additional foreign debt service or burden in order to make provision for land owners in this country. It is an unnecessary policy. Regardless as to whether or not it was said in relation to another land Resolution really does not have a bearing on my interpretation of the method that was being used or being suggested as a means of funding for property owners after the Government has acquired land from them. A structured approach to resolving this issue of land

acquisition and the payment to individual land owners requires a study on the inventory of Government.
11.55 a.m.

I repeat we cannot have a situation in which we can simply sell the land owned by Government in order to pay individuals for land that Government would have compulsorily acquired. It requires a far more detailed study than we are giving thought on this issue. The question of land reform is at the heart of the whole economic democracy route or economic enfranchisement route. There is need for land reform in Barbados and I think that we are all agreed there is need for land reform. Therefore, when we are deciding to change the ownership of land from Government to the private sector, we have to be conscious in doing so we are giving some expression to the whole question of economic democracy and that individuals at the lower end of the society should have equal access to that land.

I am, therefore, saying that if we are thinking of going the route of selling Government's land to ensure that we are resolving the issue of payment to land owners that we have to look embodied in that the whole question of economic equality. It does not seem to me as though we can simply decide to sell property and sell it willy nilly, because there are major land speculators in the country who would have first call as a result of their present economic status above and beyond that of individuals in the lower echelons of this society. So I cannot relate that to the whole question of land acquisition. I cannot relate that to the whole question of funding by Government.

Aside.

SENATOR C. A. MASCOLL: I have to talk because you seemed to have gone up on the wrong side.

Sir, I also said earlier that the question of pricing Government's property would require us to evaluate, in addition to the so-called value that Government would have put on property to what may be asked by a private individual for a similar portion of land. We all well know that traditionally Government has not used market forces to determine the price of its particular commodities or goods. Therefore, I think that we are all aware that private individuals who are well placed may very well have access or greater access and that is the area in which I stood on my feet to contribute to this debate. I never thought that such an innocent debate would require me to intervene. But having heard that there is a policy position to move towards selling Government land, I have to be very conscious that this seems to be another method of depriving certain individuals of access to certain lands in this country.

On that I will sit, Sir, and I thank you for allowing me to make my contribution to this debate.

HIS HONOUR SENATOR C. L. BOLDEN: Mr. President, sometimes I sit and wonder if thoughts of man usually take leave of them on some occasions. The Honourable Senator has a habit of speaking in here without remembering his past or without remembering who put him in here. He made some statements that really and truly I have tried my best to reconcile his statements and I never can. He said that it is a misguided idea to sell Government land to acquire money to pay local Barbadians. But I wonder if he remembered what happened to the Cement Plant and who sold it, and where the money went. Despite the cries of local Barbadians, it was never sold to Barbadians. I wonder if he remembered what happened to Heywoods Hotel and what happened to the money. I ask another question. I wonder who was going to sell the Oil Company and to whom was it going. But you see if you are selling to certain people like Trinidad and then you turn around and park out in Grand Barbados, and then have your retreat in Wakefield House...

Mr. PRESIDENT: Senator Bolden...

HIS HONOUR SENATOR C. L. BOLDEN: I am dealing with foreign financing, Sir. I am responding to foreign financing and, if you belong to a political party that is owned by a Trinidad company and you have to wiggle when they say wiggle, you talk what we hear in here today. I am talking about foreign financing. I am speaking about foreign financing.

Aside.

HIS HONOUR SENATOR C. L. BOLDEN: You want to know what does that have to do with the debate. I told you that I would catch you.

Mr. PRESIDENT: Senator Bolden, I would like the Senate to stick to the question of compulsory acquisition.

HIS HONOUR SENATOR C. L. BOLDEN: The Senator said that it would acquire wrong clientele. When you are selling Government land, he said that it would attract wrong clientele. If you said that we have sold Heywoods, the Cement Plant, and you are going to sell the Oil Company, who were the clientele who was attracted to it? He said that certain people would be in a better position to buy it than others. But because we are suggesting that we pay local Barbadians for the land that Government has acquired so that they do not die without seeing what has happened to their land, he began to talk. He forgot his whole position. What happened to Highway 2A-1? Where was the money coming from? What happened to the ABC Highway? Where did the money come from? I have said before that Government has no land in this country called Crown land. Every piece of land has been purchased. To build the ABC Highway, you had to buy land from every individual in Barbados. For the 2A Highway, you have to buy land from people. Sherbourne - You bought the land

from somebody. So what do you do? You allow the Democratic Labour Party to be at liberty to go and borrow money that you cannot see how it is spent, but the Barbados Labour Party must not do the same. You talk about selling land. What happened to the land at Graeme Hall? Who bought Graeme Hall land and who was trying to offload it during elections that their names are now coming to the fold? You must ask yourself these questions. You better ask yourself these questions.

Sir, I do not understand how it is good for one administration to go overseas and borrow money to build roads and at the same time in building the roads you have to acquire land belonging to Barbadians and when the next administration wants to do the same thing to pay Barbadians for their land, no they must not borrow. They must not go overseas. Sir, I do not understand the Senator's thoughts. I do not understand the Senator's reasoning. The Senator speaks for the sake of speaking and that is all that I can say.

Mr. President, I will say in this Resolution that this administration must show that it is a caring Government and, whenever it acquires land from anybody, it must pay them as soon as possible irrespective of where the money comes from because it is total improvement for the country of Barbados. But at the same time you are improving the country certain persons must not be made to suffer. Irrespective of what that other side says, I think you have a duty to acquire money from wherever and make sure that this Administration does not go out leaving a litany of woes behind it like the one that has just gone out.
12.05 p.m.

SENATOR THE HON. R. R. FARLEY: Mr. President, I believe that during the course of this debate some questions were asked as to why Government does not quickly pay for the lands that are acquired. Thankfully, Sir, we have been given an explanation.

Sir, on the one hand we are told that it is unwise and unsound and we should not sell government property which is no longer needed for the public good in order that we could pay for the lands that we acquire which are deemed to be for the public good. We are told that we should not do that but on the other hand we are also told that we are not supposed to explore some of the other options that were raised. So I believe, Sir, that provides an explanation as to why no payments have been made because the whole question of not wanting to take any of the alternative courses of action means that you will have inaction and we have had inaction on the payments for properties which have been acquired.

Sir, I just want to emphasise that no Government can be so uncaring as to refuse to pay for the properties that it has seized from individuals. Yes, we want to advance the public good but we have to be mindful of the suffering of

the individuals involved and we must ensure that their livelihood is not disrupted in such a severe and over such a sustained period. As in the example given by Honourable Senator Bolden, persons may very well die before they receive compensation for their properties.

All that remains for me to do after the interesting contributions made to this Resolution is to ask that it do now pass.

The question was put and agreed to.

ORDER NO. 4 – SECOND READING OF THE JURIES (AMENDMENT) BILL, 1995

SENATOR THE HON. R. R. FARLEY: Mr. President, in moving the second reading of the Juries (Amendment) Bill, 1995 the purpose of this amendment is to make better provision for jury service and it does that by way of a number of amendments.

The first amendment is by amendment of section 4 of that Act which is Cap. 115B to expand the age of eligibility for jury service from 60 years to 65. Secondly, immediately after section 25 of that Act inserted is section 25(a) which speaks to the question of obstruction of jury service.

Sir, over the last several years there has been a number of reports by individuals who have been intimidated in one way or another when called upon to do jury service. Some employers have been making attempts to restrict the right of the individual, in fact I should say the duty of the individual to do jury service.

According to the Juries Act, section 5 lists certain persons who are disqualified from jury service and this is largely relating to persons who are unable to read and write, persons of unsound mind and so on. Section 6 lists certain exemptions and the positions listed for those exemptions are those persons who by virtue of the office they hold may very well be involved in some area of conflict of interest. Other than that, Sir, by and large, the majority of the other citizens of the society are eligible for selection for jury service. The fact as to whether they are actually chosen or not would depend of course on the freedom of objection from the other side, the defence or the prosecution.

Sir, trial by jury is a fundamental tenet, as I see it, of the contract which the citizens of any country hold with the State. As you will agree, Sir, part of the benefits of individuals banding together in a State are included in areas such as trial by jury as well as other social services, but these benefits do not come without any obligations. The obligation we are examining today is the obligation to serve in a jury when called upon to do so.

In fact, I would submit to you, Sir, that the fact that we have been able to maintain a good system of justice with respect particularly to the quality of the verdicts which are delivered by juries has been founded on the whole principle of availability of a wide enough base on which selection can be made. Anything which can threaten to reduce that base, including this matter that we are debating today and others that may arise from time to time, threatens really to stand in the way of the proper dispensation of justice.

In fact, Sir, the unsavoury practices that have been creeping into this area include situations where persons when they have been given notice of their requirement to serve on the jury some employers have been threatening to deduct their wages. Some have actually deducted their wages and others have threatened dismissal in some cases and, in fact, the situation evolved to a level where in a particular business sector some employers in that sector, at least one employer in that sector, was seeking to influence his peers to lobby as a group for that group of employees to be exempted from jury service.

Of course, Sir, if we were to proceed along that path then that would only be the thin edge of the wedge because we will have other interest groups seeking to have themselves exempted from service. Sir, we recognise of course that in businesses where employees' knowledge and skills are critical that for the smooth functioning of the business any absence of key employees will naturally be a disruptive element in the business. That is a given, Sir. But the obligation which I refer to of individuals who live in a society administered by the State.

12.15 p.m.

All of us, whether as individuals or corporate citizens must be willing to make sacrifices in the broader interest of the state. The point we are making, Sir, is that employers must see it as part of their social responsibility, part of the pay back for the protection which they obtain from the state to sacrifice the production and the contribution which is made by particular employees when they are called on to do this high national service.

With respect to the particular features of the amendment, the amendment makes provision for the employee to give prompt notification to his employer that he has been summoned for service, which is extremely important because the employer must be given an opportunity to plan around the absence of the employees in question.

It creates an offence for an employer to make a deduction from pay or other remuneration of the employee, or to penalise the employee for jury service. It, of course, builds into its provisions the whole question of proof of service on the jury because we recognise as well that there have been a number of cases in which persons who had

been called for jury service have been subsequently excused but they have not promptly returned to their place of work.

The amendment is so worded that an offence would not be committed by the employer should someone who had been excused from the service of the jury not returning to work during the particular period. The punishment of the offence created in this section is a fine up to a maximum of \$5 000 or an imprisonment of 6 months. Of course, in creating an offence one must be able to identify the offender. Although so far in the debate we have been talking about various companies and businesses, we recognise that although a corporation is an individual created under the law, corporations exercise their mandate through the actions of particular designated individuals in the country.

We also know, Sir, that some of these actions, although carried out by individuals within the company, may not necessarily have the sanction of the corporate decision makers, persons at the level of the board. So the Act refers to every director or manager of such corporate body who knew, or ought to have known of the contravention.

We are basically attempting to be able to identify those persons who commit the offence as well as ensuring that the corporate policy makers, in recognising that an offence can be committed and that they ought to know, would make it their business as well to ensure that their corporate policy, as good corporate citizens, is one of making sure that their employees are available for jury service when duly called upon to be available.

Provision is also made, in case where there is a dispute as to whether the employee has been discharged or not, for the Registrar to provide appropriate proof of the period of service of the jury.

Sir, the Honourable Senate is being asked to give its approval for the passage of the Juries (Amendment) Act, 1995 which, as I outlined, the act of jury service constitutes an important aspect of our justice system and we must ensure that no matter whether it is these matters we have discussed today or any other matters stand in the way of allowing the courts to benefit from a jury which is chosen on as wide a base as possible.

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

SENATOR Miss O. P. SYMMONDS: Mr. President, I am pleased to support this Bill because, as the Leader of the Senate has so impressively stated, the amendment seeks to ensure that the jury system continues to work well. Partly because of a more condign punishment, employers generally will be constrained to release employees. At

the same time, it does give back something to the employers by seeing that employees do not exploit the system. The amendment clarifies the position, as has just been stated, that once persons are selected they have a duty to go back to work and I think this is important.

Perhaps, Mr. President, there is a need to widen the jury list so that one employer would not be too greatly affected and also to see that there is a wider cross section of jurors. I think that explains it, without having to elaborate. I also feel passionately, and have felt for many years, that there is need for civics to be taught in all our schools in order to imbue citizens with a greater sense of civic responsibility because there are some people who feel proud to be jurors but there are others who feel it irksome and a nuisance.

In addition, a series of programmes on radio and television should be launched so that adults too could see or be reminded of how the jury system is run. I hope that members of the jury will continue to be truly representative of the society and that the system will maintain its present reputation to the benefit of the judicial system as a whole.

I thank you, Mr. President.

SENATOR P. S. BERNSTEIN: Mr. President, in the past 30 years or so, the business community has always been ridiculed, especially at election time by politicians and others, but more so by politicians. They forget that the private sector provides a lot of jobs. They also contribute to helping the Queen Elizabeth Hospital, the aged, the mentally retarded, when one is sick and has to go overseas, it is the business community that helps with that sort of thing and other various types of charities that they contribute to.

On the amendment of the Juries Bill, any positive progressive successful thinking company would have no quarrel in having to pay employees when they are called upon for jury service. It is a civic duty. I agree with Senator Farley with what he said. As a matter of fact I would even go further and say that employers should also pay the employees their full wages when sportsmen and women represent the country overseas.

The basic problem facing the corporate community today is that when the courts select their jury, not everyone that is present is selected. Those who are not selected usually take the rest of the day off. They go on the beaches, they go down Bridgetown and various areas. It could be argued that in the past some of them were not paid. But I know of companies who pay and still when these people are not chosen on that particular day, they still do not go back to work. It should be mandatory that if they are not chosen that they should be allowed to go back to work, especially now since we have to pay the wages.
12.25 p.m.

As a matter of fact, there are even situations when the courts adjourn at 11.30 or 12.30, I would go as far as saying up to 3.00 o'clock, as long as the courts adjourn up to 3.00 o'clock that employee should be given one hour for lunch and should be made to go back to work because it is imperative that we get proper productivity in the work place.

I agree with Senator Symmonds when she said that you should not ask more than one employee from the same company at the same time to do jury service because those of us who have very small companies can feel the effect of this.

SENATOR Miss O. P. SYMMONDS: On a point of order, Mr. President, I did not say more than one. I said so that any one employer would not be greatly affected. But I did not stipulate the amount.

SENATOR P. S. BERNSTEIN: I am stipulating the amount. I agree that you should not employ more than one person from the same company at the same time to do jury work.

In winding up, Sir, productivity is the order of the day. It is needed for success both in the private enterprise and in the Government and it should very well start in the work place.

Thank you, Sir.

Mr. PRESIDENT: Senator Thompson.

SENATOR Mrs. A. P. THOMPSON: Thank you, Mr. President. I believe that jury service is the one occasion when individuals of all colour, races, class and creed get the opportunity to determine the future of other individuals of other races, class and creed and probably other than General Elections this is the only occasion on which such occurs.

I believe that it is a national duty. It is there to assure that justice is carried out and I therefore see it as a very important function in our society. Jurors determine the future of many families. They help to determine whether fathers can remain with their families to provide a good standard of living or whether people are a nuisance to this society and should be tucked away for remedial treatment.

I see this service as a valuable service to society. I know the jurors do not determine what the sentence would be. But whether somebody is guilty or not we get the result. I think our jury system has come a long way and it is one which we ought to do everything to make sure that it functions well. We have come from the days when your results were determined by battle and the fittest was determined to be the right person, the test of ordeal were

the methods used to determine whether you were right or wrong.

Now we have a system where people are there before their peers sometimes their neighbours and the evidence is brought there before the courts. This brings to the convicts a sense of fair play because they recognize that all the information is there, it is thrashed out before them and that some individuals determine what happens to them. They have the right to object by way of their legal representative to individuals who may, from time to time, come in with information which they would use against them, again I see this system to be a very good one. I therefore agree that we should do all that we can to prevent impediments standing in the way of our jury system and I support the Amendments to the Act at this time.

I have been a member of the jury myself and I do not believe that employees stay away because they want to stay away from work. I think some people remain because they want to see how jurors perform the function, especially in the early stages of a trial because this is something you are not prepared for in the classroom, you do not learn it at university and you a simple, ordinary citizen are asked to go out there and make a judgement call. You would want to stay on to see what happens. There is no orientation programme for jury service. It is a major undertaking on the part of jurors. I understand why, from time to time, jurors stay on to see how it is done.

The question of whether jurors stay away because they want to hide from work should be addressed in another way. I think we ought to look at the quality of work, job satisfaction in the work place. I think that some employers instead of looking at employees and saying you should be at work, should ask themselves the questions. Am I focussing only on the bottom line? Am I trying to make sure that the environment in which my staff functions is of the quality that they want to be here? Because I can identify categories of persons who would not remain in a courtroom if they are not selected. Remuneration is determined by effort and time is money. Sometimes you are probably glad to hear you are not sitting so as to get out there and earn some money. We need to look at these things. There are factors in the work place which will pull employees back to work and they would not want to stay away. We need not focus only on the employees hiding, as they call it, but employers must look at job satisfaction in the work place. It is a responsibility which must be placed on employer, employee and Government. I think it is very important that the summons are sent out in a timely manner because what we are actually doing here is we are causing dislocation in the work place. An employer needs to know within a reasonable period of time that any adjustments that have to be made to the staff can be made. I think we need to be empathetic and we need to be able to see why, sometimes, employers are concerned. Government, as a representative of the state must make sure that these

summons go out in a timely manner. That is the appeal I would like to make that all individuals, corporations and Government take the responsibility of jury service very seriously because it is still, the best form of trial today.

Thank you.

Mr. PRESIDENT: Senator Forde.

SENATOR Miss C. Y. FORDE: Thank you, Mr. President. I would want to be very short in the light that a number of the points that I wanted to raise have been already highlighted.

I agree too that the jury system we have in Barbados is a very reliable one and I know that certainly in other countries the natives volunteer their services to the army. They are released from their work. I trust that this would help our employers to recognize the important role that these individuals who have been selected to perform such an important role in the society have been called. I know too that the employers themselves will benefit because they too have their problems where the jury has to sit in place to assist in ensuring that justice is done in their particular area. I trust that the employers will pay attention to what is stipulated here and that they will comply.

I know that in Barbados we seem to scuff at the law when it comes to a number of very important areas. I trust that when this one is implemented, when these Amendments come into play, that it is not like this ZR confusion where we say we are going to use a ticketing system. We do all these things and then hardly anybody is brought to justice because everybody seems to have a friend in some high office. I trust that the employers will give their support and that they would release the individuals to go out to do this service to the country and that, in the end, all of us as Barbadians would be happy.

I agree with Senator Symmonds and others who made the comments that education is important. We are all aware that not all of our employers may be the kinds of individuals who have that commitment to society. Therefore, if they are unaware of a number of things, and they are also interested in ensuring that their businesses are productive, then they will have a grouse with what is happening. I also agree with Senator Thompson that the summons should come out at an early time so that there may be adjustments in the work place. When that individual has to be excused, the business of the work place would be run in a smoother fashion.
12.35 p.m.

I therefore, hope that this system will be put in place where we can utilize the Government Information Service and the AVA and all the other agencies like CBC. I trust they will create some programmes that the public will be educated to the role that jurors play in our society. That

medium will then create an awareness and an appreciation for the same.

Sir, I want to wholeheartedly support this Resolution at this time. Thank you.

SENATOR J. A. WORKMAN: Mr. President, I rise to support the measure before us today and to say that jury service goes far beyond a number of persons in the courtroom listening to speeches by lawyers, judges, and prosecutors and then coming up with a verdict. Indeed, Mr. President, jury service ought to be seen as a civic duty and responsibility and ought to become a fundamental freedom of every citizen. I think that the amendments before us today to a very large extent go towards ensuring the freedom for those who are called for jury service.

Sir, the amendment of Section 25(a) gives comfort to the employee so that he or she knows that when they receive notice for jury service they can approach with freedom and confidence some of the oppressive employers that we have in our community knowing you cannot take money, you cannot victimize me in any other manner because I have my fundamental rights enshrined by law. One of the problems, Mr. President, with a lot of our employers is their mindset, as was stated to me by a particular businessman some years ago when he said, "No employee of mine is worth more than the salary I pay him." In this year 1995, that is an atrocious system for us to continue to have in our society where, because an individual may be an employer, he sees another human being as worth a few dollars.

This amendment before us goes a long way in breaching the inequality of social justice as well. I am not from that branch of the legal profession which Senator Bolden is from. I am not hewn from that rock or dug from that well. I am from the branch which he erroneously refers to as the "wealthy" branch.

Aside.

SENATOR J. A. WORKMAN: What I want to say, Sir, is that even though I am not one who practises in the Courts, I meet several people who have been called to jury service. They have reported their delight at serving on the jury, not because they have been able to understand and learn some law but more so they have been able to assemble over a period of weeks with people from all strata of society who, through having a common goal, have come together not only in jury service, but subsequent to jury service and have been knitted as a community. They have even gone, Mr. President, to the extent where after jury service they have social functions where they have come together as a covenant people in a binding relationship including not just the members of the jury, but prosecutors, attorneys, judges, court officers...

Aside.

SENATOR J. A. WORKMAN: Maybe these attorneys have not accepted the invitation. But the point that I am making is that the jury system goes a long way in helping to build a sound society which we need badly in our community today. It is a system in which our country has much faith so much so, Mr. President, that in recent times there is a famous libel case before the Courts where one of the parties has opted for trial by jury rather than by a judge.

Mr. PRESIDENT: Senator Workman, I do not think that you can make reference to any matter that is before the Court and that is a breach of Standing Orders.

SENATOR J. A. WORKMAN: Mr. President, I was not debating the issue. It is a matter of fact that the Court in an issue has determined that there can be trial by jury. I am just using that, Mr. President, to show the extent to which the people of our community have faith in the jury system; that in matters which normally are not tried by jury they have opted for the jury system, which is provided for by law. It shows the faith of the people of our community in the jury system.

The amendment goes further to give protection to the employer from those members of their staff who may absent themselves. But here again, Mr. President, I think that where employers discover that their members are absenting themselves from work when they are excused from jury service, employers need to look within their own businesses and at their attitudes to see if their approach to their members of staff does not assist the staff in staying away. I am sure, Mr. President, that employers who give the appropriate freedom and the appropriate rights to members of their staff who have been chosen for jury service will in themselves reap benefits, because the analytical approach which those members of staff bring to jury service will also be brought to their work and thereby employers will benefit through enhancement of productivity in their work. I support the amendments before us today, Sir.

SENATOR C. K. LAURIE: Mr. President, I am not a lawyer but this employer bashing seems to be prevalent. Looking at this thing, I find that it is so strange that an employer who contravenes this Act is liable to a substantial penalty or six months in jail. In addition, I assume that he would then have to recompense the employee according to what he should have done in the first place. Now if the employee stays away and contravenes the Act, there is no penalty. Presumably, the only thing that an employer can do is just not pay them for their time. The employee also seems to have a loophole in that the Act says: "The judge shall inform that juror/employee of his obligation to his

employer." Now if the judge by some chance does not inform the juror of his obligation to tell the employer, then this absolves him, (I presume not being a lawyer), the employee of any obligation to recompense his employer by returning to work. It just seems to me that the Act is slightly out of balance in terms of the employee/employer relationship.

HIS HONOUR SENATOR C. L. BOLDEN: Mr. President, I think that we need to have a very long look at jury service and what the Act is trying to do. I remember as a law student one of the things I learned about jury service is that a man should be tried by his peers, an old ancient English saying. As Senator Symmonds has said, I believe that one of the basic reasons why we run into this problem is because in recent years the jury list is not as wide as it used to be.
12.45 p.m.

When I started practising in Barbados in 1964 there was a Jury List from which you could pick out every type of trade or profession being represented on that list. That is why I say a man should be tried by his peers. Within recent years, the Jury List appears to be a very concise and contracted document. The Jury List is prepared from the Voters' List. There are 150 000 plus voters on that Voters' List and it gives adequate room for a wider basis of jurors who are selected.

I have heard potential jurors, people who have been selected to do jury service, saying this is the third time this year that I have been selected. It tells you why employers behave in the way they behave towards those persons. I can say it is not an easy task for jurors to sit in a case, especially those cases which run 4, 5 or 6 days. We as lawyers will tell you that if you are in court from 9 o'clock in the morning until 1 o'clock that when you leave court you are practically useless to yourself. The stress and the strain that you undergo. Sitting down is a hard job and people do not understand that.

When you put a panel of jurors who have to listen or sit down from 9 o'clock until sometimes 2:30 o'clock you cannot expect that juror to return to work at all.

I would go further and say that when you are selected to jury service you should not be obliged to report to work until that case is finished, if you are sitting on a case. We have to understand what happens. I suggest, Mr. President, that the authorities should look at selecting jurors twice a year from the 190 000 voters who are on the Voters' List. I am now told there are 206 642 names on the Jurors' List. I would go so far as to say that the authorities should consider selecting juries twice a year and select a sufficient number of persons and the Jurors' List should be published. Then the employer would know and the persons selected would know that they have been selected to Jury Service.

There are sufficient legal methods of dealing with persons who attempt or who tamper with persons selected to Jury Service. So there should be no fear of people approaching those persons whose names appear on the list for jury service because they still would not know the twelve that would be selected in any given case; but the list would have been published, the employer could collect a list and anybody else could select a list and see who is on jury service.

Yes, it is civic duty but when you are selected and you go to court on the first day the judge directs every person what is expected of him. When the first twelve are selected for a case, in nine times out of ten the presiding judge will invite the other persons to remain in court for the first day to observe how the system operates. Thereafter, a number of persons like to sit in the courts because of the interest of the matter that is before the court.

I think we have to look at what is civic duty. I think that courts will have to decide at what stage they will release those persons who are doing jury service. Sometimes, the judge will say, "do not leave the precincts because this case may finish early and we need to have you." Sometimes there are problems and the case may collapse at 11 or 12 o'clock. Now that person who came to court at 9 o'clock waiting would have been sitting down in court until 12 or 1 o'clock. I heard somebody say an hour for lunch and then back to work. I don't see it possible. We must bear in mind that if you are asking members of society to sit in jury you must consider their welfare and their comfort.

I go further, our courts are not the most comfortable things out. Our courts are antiquated. The seats are hard, the conditions are bad and people who give of their time to do jury service are giving up a lot to society. Employers must understand that, you can relieve the pressure on employers if, as I say, you pick a large number of jurors. Then you do not come into the problem of one person saying, "this is the third time this year that I have been selected for jury service," because then, having selected those persons they will not pick that person out of a hat every time there is jury service and you have to send out a new list. I think that is our basic problem.

The list is not wide enough and, in my view, I think it does not now include a proper cross section of community that can be represented as jurors. I believe if that is done both sides will be equal. There is no reason, in my view, why some person should be picked to do jury service three times in a year or twice in two years or something of this nature.

Another point, I heard one Senator speak about what the jury is. The jury is a fundamental part of the English system of what is called trial by jury. The jury is

supposed to enter a courtroom having no knowledge at all of the matter for which it will preside. The judge will tell them, "the facts belong to you, the law belongs to the judge." The job of the jury is to listen to the evidence, analyse it, the pros and cons, and come to a decision. That is exactly what a jury is to do.

That is why I say that jurors can undergo great stress while sitting there because when you have complex cases with several technical witnesses, you have cross-examination by attorneys and then you have a summation which lasts three or four hours by a judge, you can then understand what those persons have gone through. I think if you have a number of jurors so that the person would only be away from his employment say, for one season – because you have four periods – there should be no problem with an employer paying that person. The little compensation that is given to jurors... They don't get lunch as such. We don't have the times now when we used to put them in the YMCA and shut them up overnight. They get a break which says "well we'll take a break for 15 or 20 minutes." Then they have to sit until court is finished at the end of the day.

Consider you, the employer, who can go and take your coffee break at 10 o'clock, come back, go and have your lunch at 12 o'clock, come back and have a coffee break or a soft drink at 2 o'clock and that juror has been there before 9 because the court begins at 9 o'clock, has one break in the morning and then has to sit right through until a case is finished for the day and then as employer asking that poor soul to return to work at 3 o'clock in the evening. I hope that there are no employers of that sort knocking around in Barbados because it is those jurors who are sitting in justice on the man in the dock who might have been charged for going in the same employers' business or something. You ask a poor juror to do his job there but you want him to get up at 3 o'clock after a long hard day to come back in the evening.
12.55 p.m.

As I said, I believe the solution lies in a longer jurors list and a wider cross section of the community so that two,

or three, or more persons would not be drawn from any individual employer on two or three times in any given year.

Thank you, Mr. President.

SENATOR THE HON. R. R. FARLEY: I beg to move, Sir, that this Bill be now read a second time.

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

On the motion of SENATOR THE HON. R. R. FARLEY, Mr. PRESIDENT left the Chair and the Senate went into Committee on the Bill, HIS HON. SENATOR C. L. BOLDEN in the Chair.

Clauses 1 – 3 were called and passed.

On the motion of SENATOR THE HON. R. R. FARLEY, Mr. Chairman reported to HIS HONOUR THE PRESIDENT the passing of one Bill in Committee and Mr. PRESIDENT resumed the Chair and reported accordingly.

On the separate motions of SENATOR THE HON R. R. FARLEY the Bill was read a third time and passed.

ADJOURNMENT

SENATOR THE HON. R. R. FARLEY: Mr. President, I beg to move that the Honourable Senate do now adjourn *sine die*.

I take this opportunity to inform you that we will most likely have our next meeting on February 15 because the House of Assembly should recommence on February 7 and we will meet on the following week.

The question that the Senate do now adjourn sine die was put to the Senate and agreed to and Mr. PRESIDENT adjourned the Senate accordingly.
1.00 p.m.

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