

HOUSE OF REPRESENTATIVES*Friday, October 03, 1997*

The House met at 1.32 p.m.

PRAYERS[MR. SPEAKER *in the Chair*]**CONDOLENCES****(DR. PATRICK SOLOMON)**

Mr. Speaker: Hon. Members, I wish to ask the House to note the passing of a distinguished citizen of Trinidad and Tobago, Dr. Patrick Vincent Joseph Solomon, who died on Tuesday, August 26, 1997, since the last sitting of this honourable House. For several years Dr. Patrick Solomon graced the Benches of this honourable Chamber and has, in fact, been the recipient of this nation's highest award, the Trinity Cross, which he was awarded in the year 1978.

He has held many portfolios in successive administrations of this country and has, in fact, not only acted as the Prime Minister and the Deputy Prime Minister of Trinidad and Tobago, but has been Minister of External Affairs, Minister of Education, Minister of National Security, has been the Trinidad and Tobago representative on the Special Committee on Apartheid (1966—1971), High Commissioner to London (1971), and has served this country for a long time and served extremely well. I feel sure that on both sides of this House Members would like to say words on his passing.

The Minister of Housing and Settlements (Hon. John Humphrey): Mr. Speaker, Patrick Solomon 1910—1997. Dr. Patrick Vincent Joseph Solomon was born on April 12, 1910 in Newtown, Port of Spain. He was educated at Tranquillity Boys' Intermediate School where he won an exhibition to St. Mary's College. It was at St. Mary's College that Patrick Solomon won the Island Science Scholarship in 1928.

Dr. Solomon attended the University College, London and the Queen's University, Belfast, Ireland where he studied medicine and graduated in 1934. He practised medicine in Ireland, Scotland and Wales until 1939. During 1939 and 1943, Dr. Solomon practised medicine in the Leeward Islands.

He returned to Trinidad and Tobago in 1943 to practise medicine. After working at the Port of Spain General Hospital for one year, Dr. Solomon entered into politics with the West Indian National Party. In 1946 he contested and won

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the Port of Spain South seat in the Legislative Council. During the 1950 election he was defeated.

Dr. Solomon was one of the founding members of the People's National Movement in 1956 and became the deputy political leader of the PNM party which won power in the 1956 general election. He sat on the Legislative Council for Port of Spain West from 1956—1961.

Dr. Solomon served as Minister of Education and Culture from 1956—1959. From 1959—1964 he served as Minister of Home Affairs. During the period 1962—1966 he served as Deputy Prime Minister and Minister of External Affairs. Dr. Solomon also acted as Prime Minister on several occasions during the Eric Williams administration.

In 1966 he left the political front and embarked on a diplomatic career. He served as permanent representative of Trinidad and Tobago to the United Nations in New York from 1966—1971. In 1966 he served as Vice-President of the United Nations General Assembly. Dr. Solomon also represented Trinidad and Tobago on the Special Committee on Apartheid from 1966—1971. In 1971 he became High Commissioner for Trinidad and Tobago to the United Kingdom in London, England until 1976, when he returned to Trinidad. In 1978 he was awarded the Trinity Cross, the nation's highest honour.

He was a founding member of the Trinidad and Tobago Association in aid of the Deaf (DRETCHI) and served on the board of the School for the Deaf. Dr. Solomon was also instrumental in spearheading the establishment of the DRETCHI complex on Wrightson Road, Port of Spain. Even in retirement, Dr. Solomon continued to serve the people of Trinidad and Tobago, sharing his long experience and knowledge.

Dr. Patrick Solomon died at the age of 87 on August 26, 1997. He leaves to mourn his wife Leslie (nee Richardson); two sons: Dr. Dennis Solomon, University Lecturer and Frank Solomon, Attorney; seven grandchildren and two great granddaughters. As a former hon. Member of this House it is fitting that we pay tribute to him. May his soul reside with the Creator.

1.40 p.m.

Mr. Kenneth Valley (*Diego Martin Central*): Mr. Speaker, we join with you and Members on the other side in paying tribute to one of our statesmen. I think it is known that in the other place we paid tribute to Dr. Solomon immediately on his passing and we were represented at his funeral service in the person of our political

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leader, my colleague from Diego Martin West and a number of his former colleagues. Of course, it is fitting that we pay tribute in this honourable House where he was a Member for a considerable period.

Mr. Speaker, we, in the PNM have always respected Dr. Solomon, even though at times there were disagreements. We recognized him as an elder statesman; we recognize the contribution he has made to Trinidad and Tobago and we know that there are others who would follow in his footsteps. We therefore join with you and the Government in paying tribute to this Trinidadian statesman and ask that he rest in peace.

Mr. Speaker, I thank you.

Mr. Speaker: Hon. Members, I am sure that it is your wish that I should ask the Clerk of the House to send a suitable letter expressing the condolences of this House to the wife and children of Dr. Solomon. I ask that Members of the House stand for one minute of silence.

The House stood.

I thank you.

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I wish to advise that I have received communication from the Member for Port of Spain North/St. Ann's West (Mr. G. Draper), who has sought leave to be excused from sittings of this House until October 11, 1997. This leave has been granted. I have also received communication from the Member for Arouca South (Mrs. C. Robinson-Regis), who has asked to be excused from today's sitting. She is excused.

PAPERS LAID

1. Report of the Auditor General on the accounts and financial statements of the Restructuring Support Unit (RSU), Ministry of Planning and Development (The Executing Agency) in respect of the Business Expansion and Industrial Restructuring Project for the year ended December 31, 1996 as required by Loan Agreement No. 3432 TR between the Government of the Republic of Trinidad and Tobago and the International Bank for Reconstruction and Development. [*The Attorney General (Hon. Ramesh Lawrence Maharaj)*]
2. Report of the Auditor General on the accounts and financial statements of the Technical Assistance Project for the year ended December 31, 1996 as required by Loan Agreement No. 3153 TR between the Government of the

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Republic of Trinidad and Tobago and the International Bank for Reconstruction and Development. [*Hon. R. L. Maharaj*]

3. Report of the Auditor General on the accounts of the Deposit Insurance Corporation for the year ended December 31, 1996. [*Hon. R. L. Maharaj*]

Papers 1 to 3 to be referred to the Public Accounts Committee.

4. Annual audited accounts of the Small Business Development Company Limited for the year ended December 31, 1996. [*Hon. R. L. Maharaj*]
5. Annual audited accounts of the National Quarries Company Limited for the year ended July 31, 1996. [*Hon. R. L. Maharaj*]

Papers 4 and 5 to be referred to the Public Accounts (Enterprises) Committee.

ORAL ANSWERS TO QUESTIONS

Agricultural Sector Loan (Programme Co-ordinator)

58. Dr. Keith Rowley (*Diego Martin West*) asked the hon. Minister of Agriculture, Land and Marine Resources:

With reference to the qualified panel which was established to interview and determine the relative suitability of applicants for the contract post of Programme Coordinator for the Agricultural Sector Loan, could the Minister indicate:

- (a) whether any meeting of the panel was held subsequent to the written submission wherein it was recommended that the job be offered to persons ranked 1—3, in that order;
- (b) the date and venue of any such meeting;
- (c) who convened the meeting and state which members of the authorized panel attended;
- (d) whether he received any report recommending changes to the original report?

The Minister of Agriculture, Land and Marine Resources (Dr. The Hon. Reeza Mohammed): Mr. Speaker, on two previous sittings of this honourable House, I had the opportunity to provide explanations to the Member of Parliament for Diego Martin West to questions relating to the procedures and process adopted by the Ministry of Agriculture, Land and Marine Resources for the selection of a suitable applicant for the contract post of Programme Co-ordinator for the Agricultural Sector Reform Programme (ASRP).

Mr. Speaker, with reference to the interviewing panel which was established to interview and recommend on the relative suitability of applicants for the contract post of Programme Co-ordinator for the Agricultural Sector Reform Programme, the events which took place in relation to the questions raised by the Member for Diego Martin West are as follows:

- a) Two meetings of the interviewing panel were held subsequent to the written submission of its report to the hon. Minister of Agriculture, Land and Marine Resources.
- b) These meetings were convened on Friday, November 29, 1996 and Friday, January 31, 1997 at the Agricultural Planning Division, Ministry of Agriculture, Land and Marine Resources, St. Clair, Port of Spain.
- c) The meeting of Friday, November 29, 1996 was convened by the Chairman of the interviewing panel to consider the report of the panel. The meeting was attended by those members of the interviewing panel who conducted interviews for the position of Programme Co-ordinator and Deputy Programme Co-ordinator.
- d) Those in attendance were, Chairman of the interviewing panel, Dr. Vincent Moe, Messrs: Trevor Murray and Alvin Seereeram. The Parliamentary Secretary and the hon. Minister of Agriculture, Land and Marine Resources were also invited to attend and were present. Two members of the interviewing panel were not in attendance: Mr. Reynold Rampersad, who participated in the interview of only one person for the post of Programme Co-ordinator and Mr. Winston Gibson.
- e) The applicants were scored according to the following criteria agreed to by the interviewing panel:
 - (1) Qualification/training
 - (2) Experience
 - (3) Currency of knowledge
 - (4) Appearance (dress, health)
 - (5) Interpersonal skills (communication skills, politeness, demeanour, attitude)

Mr. Speaker, at that meeting of November 29, 1996, discussions centred around the suitability of the applicants ranked one through eight for the post of

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Programme Co-ordinator as a function of the ability of the applicant to implement the Agricultural Sector Reform Programme effectively and efficiently.

Although it was the Minister's prerogative, by virtue of the doctrine of ministerial responsibility, to accept or reject partially or totally, any of the recommendations contained in the report of the interviewing panel, the meeting was conducted in an atmosphere of cordiality and respect for the recommendations of the interviewing panel and sought to arrive at a final decision through consensus and the collective wisdom of all present.

1.50 p.m.

It was against this background that the collective decision involving all those present at the meeting of November 29, 1996 was taken to recommend Mrs. Harrysingh to the IDB for the post of Programme Co-ordinator.

This approach was considered prudent since according to standard bank procedures, the bank reserves the right to review and approve the individual selected for the post of Programme Co-ordinator prior to the hiring of the individual. Subsequently, at a luncheon meeting with the IADB on January 31, 1997 a wide range of matters were discussed including the suitability of the recommended applicant for the position.

Mr. Speaker, having received a favourable response from the Inter-American Development Bank and I quote, "the candidate could do a good job", another meeting was convened by the Acting Director of the Agricultural Planning Division and was held in the late afternoon of January 31, 1997 after a wrap-up session with the IADB Mission which was on official business with the Ministry of Agriculture, Land and Marine Resources for the entire week. The following members of the interviewing panel were in attendance at that meeting: Mr. Winston Gibson, Acting Permanent Secretary, Ministry of Agriculture, Land and Marine Resources; Mr. Alvin Seereeram, Director, Agricultural Planning Division and Mr. Trevor Murray, Acting Assistant Director, Agricultural Planning Division.

At this meeting the opinion expressed by the IADB at the luncheon meeting earlier that day was considered and the final decision was taken by the interviewing panel to recommend to Cabinet Mrs. Harrysingh for the post of Programme Co-ordinator. As a consequence of the decision taken at that meeting, no written report recommending changes to the original report was considered necessary. The Acting Director of the Agricultural Planning Division of the Ministry of Agriculture, Land and Marine Resources was subsequently instructed by the

Acting Permanent Secretary to prepare a note for the consideration and approval of Cabinet. A note was submitted to Cabinet on February 6, 1997 recommending Mrs. Susan Harrysingh for the position of Programme Co-ordinator.

Mr. Speaker, the procedures followed in this case were totally different from those of the former Minister of Education under the PNM government who instructed his Permanent Secretary to appoint Maurice Chin Aleong to the post of project co-ordinator in January of 1995 under the World Bank funded loan to the Ministry of Education. I am advised that no short list was drawn up for the post, no interviews were held, no rankings were done, no meetings were held between the former Minister and his staff and, furthermore Mr. Speaker, I am advised that the World Bank objected vehemently to Mr. Chin Aleong's appointment by the former Minister of Education. I understand that the former Minister of Education made it abundantly clear to the senior staff of the Ministry of Education that anyone else but Mr. Chin Aleong will be appointed to the post of project co-ordinator over his, the former Minister of Education, dead body.

The actions of the former Minister of Education in the PNM government as just described clearly lacked the transparency, democracy and can be deemed unconstitutional, corrupt and unfair. Yet today, Mr. Speaker, we sit on this side of this honourable House and listen to accusations of interference and corruption from those on the opposite side who are the epitome of interference and corruption. The hon. Member for Diego Martin West must be mindful that those who live in glass houses should not throw stones, and furthermore those who live in teak houses adorned with teak furniture should pay for them.

Mr. Speaker, in concluding I wish to reiterate to this honourable House that the final decision to recommend Mrs. Susan Harrysingh to be appointed to the position of Programme Co-ordinator was made by the interviewing panel. Mr. Speaker, I thank you.

Dr. Rowley: Mr. Speaker, I just want to ask for clarification from the Minister. Is he telling this honourable House that a committee that issued a written recommendation to the Minister and the Minister having informed Parliament that the committee re-ranked its position, that that committee changed its position by word of mouth and issued no written document to change its original recommendation?

Dr. The Hon. R. Mohammed: Yes, Mr. Speaker, as I said in my answer it was not thought necessary after the discussions to seek any further written recommendation to change the original report.

Dr. Rowley: Mr. Speaker, I would just caution the Minister to take very good care because we observed in earlier times what happened with the answers. He has said that the committee met to consider the matter on January 31. One of those meetings took place on January 31. He also told this honourable House on February 14 and I quote: “that the person was selected and appointed for the post”, so that must have taken place between January 31 and February 14. Is that correct?

Dr. The Hon. R. Mohammed: Mr. Speaker, I made it very clear in my answer that the note that was prepared to go to the Cabinet was on the instructions of the Acting Permanent Secretary to the Director of Agricultural Planning and that note was submitted to Cabinet on February 6, 1997 recommending the person for the position.

**Agricultural Development Bank
(General Manager)**

59. Dr. Keith Rowley (*Diego Martin West*) asked the hon. Minister of Agriculture, Land and Marine Resources:

- (a) Could the Minister state the effective date of resignation of the last General Manager of the Agricultural Development Bank?
- (b) Could the Minister further state whether a replacement, acting or otherwise, has been appointed?
- (c) If the answer to (b) is in the affirmative, could the Minister identify the officer and outline the selection process which was adopted?

The Minister of Agriculture, Land and Marine Resources (Dr. The Hon. Reeza Mohammed): Mr. Speaker, by the Agricultural Development Bank (Amdt.) Act, 1995 the designation of the post of General Manager was changed to that of Managing Director. The Act further states that the Managing Director shall be the CEO of the Bank. The Member for Diego Martin West should know that there is no position of General Manager at the ADB as a former Minister responsible for the ADB and in addition to the fact that he also piloted the amendments to the ADB Act.

The former Managing Director of the ADB did not resign nor did he request that his contract be renewed with the bank. He opted not to have his contract renewed for very personal reasons, in particular those of health. By letter dated February 28, 1997, addressed to the Chairman of the Board of Directors of the

ADB, he indicated that he would not be returning to the bank at the end of his vacation leave which he wanted to commence from April 3, 1997 to the end of his contract on July 31, 1997.

As far back as September 1996, records of minutes of the previous Board, which was appointed by the former PNM government, indicate that a decision was taken by that Board to recruit a replacement for the Managing Director. The minutes of the 433rd meeting of the Board held on September 26, 1996 bear testimony to this decision. The minutes of the 435th Board meeting of December 5, 1996 are also instructive. I quote from these minutes as follows:

“It was agreed, that the incumbent, Mr. Terrance O’Neil Lewis will demit office effective January 31, 1997 and as such, he will be entitled to payment for accumulated annual leave as at that date.”

In the interest of the bank he was asked to continue working beyond January 31, 1997 and so he did. Agreement was reached with the previous Board for him to proceed on vacation leave from April 1, 1997.

To give effect to this decision advertisements were placed in the print media in November of 1996 inviting applications prior to the appointment of a new Board by this Government. However, Mr. Speaker, at the first meeting of the new Board held on March 24, 1997 at which the Managing Director was present, he expressed his willingness to co-operate with the Board to facilitate the smooth transition by deferring his vacation leave beyond April 1, 1997, the date originally agreed to by the previous Board. It is against this background that the Managing Director proceeded on vacation leave effective April 21, 1997.

Mr. Speaker a replacement in a temporary capacity has been appointed to act as Managing Director pending the completion of interviews for the appointment of Managing Director of the bank. Upon discussions between the Chairman of the ADB, the Acting Permanent Secretary of the Ministry of Agriculture, Land and Marine Resources and the Minister on April 14, 1997 an officer of the Agricultural Planning Division was identified on the basis of his qualifications and experience to act for the Managing Director who proceeded on vacation leave from April 21, 1997.

This officer, who was on approved vacation leave at the time and, therefore, was available without disrupting the exigencies of the Ministry, was assigned to the ADB on a “special attachment basis”.

2.00 p.m.

It is not only ironical but also coincidental that the former Managing Director of the ADB wrote to the Chairman of the new board by letter dated February 28, 1997, one day after the new board was appointed, requesting permission to go on leave with effect from April 3, 1997 and indicating that he will not be returning to the bank.

I am advised that the records of the ADB show that 81 loans all in excess of \$250,000, totalling \$60.02 million, were written off the books of the ADB between 1992 and 1994 whilst the former Minister of Agriculture, Land and Marine Resources, Dr. Keith Rowley, now the Member of Parliament for Diego Martin West, was responsible for the ADB. This was done in a most irregular manner, in that established rules and procedures were not followed.

Hon. Member: Do you want to repeat that?

Dr. The Hon. R. Mohammed: This was done in a most irregular manner, in that established rules and procedures were not followed. These accounts were not sent to Taurus, but the accounts of small farmers were sent to Taurus, a clear indication of the discriminatory practices that the former PNM regime exercised against farmers and business persons.

Included on this list of 81 loan accounts is a company called Mottley Limited, in which the directors are cited as Keith Mottley, David Mottley and Wendell Mottley.

I am advised by the Board of Directors of the ADB that the loan to Mottley Limited totalling \$251, 227.90 (Principal and Interest) was written off the books of the bank on June 30, 1992, contrary to the bank's policies and procedures. This loan to Mottley Limited was granted on July 27, 1978 for \$131, 973.00 and no payments were made to the bank. Yet, it was written off the books of the bank, while small farmers were treated differently and had to face up to the conditionalities of recovery prescribed by Taurus.

It is interesting to note that Mr. Wendell Mottley was the Minister of Finance under the former PNM government when these irregularities took place, and as Minister of Finance he had a joint fiduciary responsibility to protect and recover Government's assets and not to convert them to his personal benefit.

Another member of the then PNM administration, Mr. Desmond Allum, SC, former PNM Member of Parliament for Port of Spain North/St. Ann's West, had

his loan of \$651,668.30 (Principal and Interest) also written off. This was done whilst the Member of Parliament for Diego Martin West, Dr. Keith Rowley, in his capacity as Minister of Agriculture, Land and Marine Resources during the former regime, had the ADB under his portfolio, and was responsible for protecting the assets of the bank so that special favours would not be given to his colleagues or members of his party.

I would like to point out to this honourable House that the write-off of \$60.02 million in loans from the books of the ADB took place under the watch of the former Minister of Agriculture, Land and Marine Resources, Dr. Keith Rowley, and current Member for Diego Martin West, since the ADB falls under the portfolios of the Ministry of Agriculture, Land and Marine Resources the Ministry of Finance. It is my intention to make further disclosures on this matter.

Finally, I wish to advise this honourable House that the information relevant to the write-off by the ADB under the watch of the former Minister of Agriculture, Land and Marine Resources, totalling \$60.02 million, will be laid in the House in due course.

I thank you, Mr. Speaker.

Dr. Rowley: Mr. Speaker, just to clarify one point made by the Minister. At no time during my tenure did any instruction come from the Ministry to the ADB to write off any loan.

I simply want to ask the Minister whether, in fact, he is aware that any member of the current board is applying for the position of Managing Director of the ADB. Given the fact that the post is advertised, is any member of the board an applicant for the position?

Dr. The Hon. R. Mohammed: Mr. Speaker, I would have to provide an answer for this question after consulting with the chairman of the ADB.

**Trade Monitoring Unit
(Suitable Applicants for)**

60. Dr. Keith Rowley (*Diego Martin West*) asked the hon. Minister of Agriculture, Land and Marine Resources:

- (a) Could the Minister indicate whether a qualified panel of interviewers conducted interviews for the position of Contract Officers in the Trade Monitoring Unit of the Ministry of Agriculture, Land and Marine Resources?

- (b) Could the Minister identify the applicants who were short-listed as well as their rankings and scores?
- (c) Could the Minister indicate whether all hirings were done according to the suitability rankings as recommended by the qualified panel of interviewers?
- (d) If the answer to (c) is negative, could the Minister indicate how it varied from the recommendations and why?

The Minister of Agriculture, Land and Marine Resources (Dr. The Hon. Reeza Mohammed): Mr. Speaker, with reference to the interviewing panel which was established to interview and recommend on the relative suitability of applicants for contract posts in the Trade Monitoring Unit, the panel comprised the following persons: Dr. Vincent Moe, Ag. Permanent Secretary; Mr. Alvin Seereeram, Ag. Director, Agricultural Planning Division; Mr. Winston Gibson, Director, Regional Administration North and Mr. Trevor Murray, Ag. Assistant Director, Agricultural Planning Division.

The applicants were scored according to the following criteria agreed to by the interviewing panel:

1. Qualifications/Training
2. Experience
3. Accuracy of Knowledge
4. Appearance (dress, health)
5. Interpersonal skills (Communication-skills, politeness, demeanour)

With respect to the interviews and scores of candidates, the following average marks and rankings were given:

Name	Av. Marks	Ranking
Sherry Ann Ramsook	80.0	1
Wayne Huggins	76.0	2
Roger Jugmohan	73.8	3
Betty Ann Soo Hon	65.5	4
Rawle Mitchell	65.3	5
Mahadeo Bissoon	63.9	6

Mathew Ramsaroop	62.3	7
Raymond Daniel	51.3	8

The report of the interview panel on the filling of positions for the Trade Monitoring Unit was discussed at the meeting of Friday, November 29, 1996 which was convened by the chairman of the interview panel to consider the report of the panel with respect to the posts of Programme Co-ordinator and Deputy Programme Co-ordinator for the Agriculture Sector Reform Programme (ASRP).

As indicated previously, those in attendance at the meeting included the chairman of the interview panel, Dr. Vincent Moe, Messrs. T. Murray and Alvin Seereeram. The other member of that panel, Mr. W. Gibson, was not in attendance. The Parliamentary Secretary and the hon. Minister were also invited to attend and were present.

2.10 p.m.

Mr. Speaker, the very concerns which surfaced during our discussions on the suitability of applicants for the position of Programme Co-ordinator, as per question No. 58 of the 1996/1997 Session of Parliament, were taken into consideration in our deliberations on the suitability of the applicants for the Trade Monitoring Unit. This unit was established to monitor the impact of trade inflows on domestic agricultural production and to provide information to an advisory board which will advise the Minister of Agriculture, Land and Marine Resources and the Minister of Trade on the use of "snapback" mechanisms to support vulnerable domestic producers; all part of a social mitigation programme under the ASRP.

Mr. Speaker, it was considered prudent that the applicant selected must be able to share and implement the vision, mission and philosophy of the current administration and be able to exercise a great degree of independent judgment, informed by the new policy framework enunciated by this Government for the agricultural sector. An understanding of the inter-sectoral linkages between agriculture, fisheries, forestry and social development were considered critical to the success of any programmes for social mitigation.

As I have stated in my previous reply to this honourable House, it is the Minister who has to accept full responsibility for the failure or success of this critical programme for the transformation of the agricultural sector of Trinidad and Tobago. The meeting, therefore, sought to arrive at a final decision through consensus and collective wisdom of all present.

Mr. Speaker, it became evident during the course of the review meeting that the candidate who ranked sixth possessed expertise in economic geography and his travels and sojourns abroad totalling 30 years, as well as his involvement in the production and export of agricultural commodities on the international market provided an advantage to the candidate which were not given due consideration in the original interview and hence, underscored by two members of the interview panel who, at the review meeting recommended the reranking.

It was against this background, that a collective decision involving all those present at the meeting of November 29, 1996 was therefore taken to recommend the applicants ranked No. 1 and No. 6 for the positions of Contract Officer in the Trade Monitoring Unit of the Ministry of Agriculture, Land and Marine Resources.

Again, this is a demonstration of the transparency and democracy practised by this Government. Maybe the hon. Member for Diego Martin West would like to inform this honourable House of the circumstances surrounding the appointment of the former Chief Executive Officer of NAMDEVCO since I am advised that this vacancy was filled under his watch as former Minister of Agriculture, Land and Marine Resources.

Thank you, Mr. Speaker.

Dr. Rowley: Mr. Speaker, just for clarification, did I hear the Minister say that a person who was once ranked No. 6 was appointed above persons who were ranked higher?

Dr. The Hon. R. Mohammed: Mr. Speaker, he was reranked first by the interviewing panel and then appointed.

DISTRIBUTION OF EXERCISE BOOKS

Mr. Fitzgerald Hinds (*Laventille East/Morvant*): Mr. Speaker, in accordance with Standing Order 12 of this honourable House, I seek your leave to move the adjournment of this House at this sitting on a matter of definite, urgent, public importance, to wit, the distribution of exercise books to the schoolchildren of our nation bearing on the front cover the national flag, the coat-of-arms and the picture of the Prime Minister along with the symbol of the United National Congress.

Mr. Speaker, I submit that this matter is definite because these exercise books with the elements as I have just described appearing together on the front cover have, in fact, been distributed across the nation as the Minister responsible has

admitted. This matter is urgent because, as I speak, these books continue to be distributed to our schoolchildren and this is the first opportunity I have had to raise this matter in this honourable Chamber.

Further, Mr. Speaker, I submit that it is of public importance because it is adversely affecting our schoolchildren across the nation and teachers at all the institutions.

Mr. Speaker, those are my submissions. *[Interruption]*

Mr. Speaker: Order! Order, please!

Hon. Members, I have considered the application which was made and I deny leave for it to be raised as a matter of definite, urgent, public importance. I may say, that I had approved a question to be posed to—*[Member's cellular phone rings]*.

Just for the sake of the record, I advise all Members of this House, and strangers, that telephones and the like which could be heard by the Chair should, perhaps, be kept by chauffeurs and/or assistants on the outside and Members could be called.

I was simply saying that I have, in fact, approved a question which has been posed on this very same matter by the hon. Member for Laventille East/Morvant, and which will be listed in the normal course of things.

Thank you. *[Interruption]*

Mr. Speaker: Order! Order, please!

SUMMARY COURTS (AMDT.) (NO. 2) BILL

Bill to amend the Summary Courts Act, Chap. 4:20 *[The Attorney General]*; read the first time.

ARRANGEMENT OF BUSINESS

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that the House proceed with Bills Nos. 1 and 2 under “Government Business” on the Order Paper followed by the second reading of the Bill under “Private Business”.

Agreed to.

2.20 p.m.

STATUTES (AMDT.) BILL

Order for second reading read.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move,

That a Bill to amend the Statutes Act, Chap. 3:02, be read a second time.

This Bill proposes to remove certain ambiguities in the law and it is a simple legislative measure. What it attempts to do is to redress the situation where there seems to be doubt as to whether under the Statutes Act, a proclamation can be effected to a subsection or a section of a law. It also attempts to redress the ambiguity where the law provides for legislation for laws to be continued other than by a Bill. The particular instrument has been filed in the Parliament but the debate on that instrument is not completed before the law expires.

Mr. Speaker, we all know when laws are passed the normal process is for the laws to be assented to and, thereafter, the particular law becomes effective. There are certain circumstances where, in the law, it is stated that it would become effective on a day proclaimed by the President and that, in effect, means the Executive.

The Statutes Act, Chap. 3:02, under section 5 deals with the situation of laws coming into force by proclamation.

Under section 5 of the existing law it reads:

“(1) Every statute that is not expressed to come into force or operation on a particular day comes into operation immediately on the expiration of the day before the date of the passing thereof.

(2) Where a statute provides that it is to come into force or operation on a day or date to be fixed by the President by proclamation, or that it is not to come into force or operation until a day or date to be so fixed, any such proclamation—

- (a) may apply to the whole statute or any part or parts or portion or portions or section or sections of the statute; and
- (b) may be issued at different times as to any part or parts or portion or portions or section or sections of the statute.”

Under section 5(2) of the existing law it gives the power of the Executive to proclaim legislation either the whole of the legislation, or parts of the legislation or portions of the legislation or sections of the legislation. There have been interpretations which have stated that where it states “section”, it includes subsection and it includes “parts” of subsections. There have been some controversy about this matter and this amendment seeks to make the law clear.

Under clause 2 of the Bill dealing with repealing and substituting the following section 5, which is relevant, it states:

“(2) Where a statute provides that it is to come into force or operation on a day or date to be fixed by the President by Proclamation, or that is not to come into force or operation until a day or date to be so fixed, any such Proclamation may—

- (a) apply to the whole statute or any Part or section or other subdivision of the statute; and
- (b) be issued at different times as to any Part or section or other subdivision of the statute;
- (c) suspend until further proclamation or until a specified date the operation of any provision contained in the statute.”

Mr. Speaker, we know that not only the Parliament of Trinidad and Tobago, not only the Government of Trinidad and Tobago but governments throughout the Commonwealth, would have occasions where laws are passed and one cannot proclaim the entire piece of legislation at one given time. The overriding principle is that even if one can proclaim sections or subsections, one cannot proclaim the legislation in such a way as to defeat the intention of the Parliament in passing that particular law. That overriding principle is not being taken away. This particular clause gives more flexibility to the Executive to proclaim laws where it is not possible to proclaim the entire law at a particular time.

I do not want to go into the statistics in these matters. We know there have been many pieces of legislation which have been passed and which were not proclaimed, and which cannot be proclaimed. One hopes this particular piece of legislation would be able to give greater flexibility in effecting that purpose.

The other area of ambiguity which this Bill attempts to rectify is that there are times when a law ceases to have effect on a particular day and the law provides that the law can be extended by a Bill which is passed in both Houses of Parliament.

Under section 11 of the Statutes Act it states:

- (1) Where a written law is expressed to expire, lapse or otherwise cease to have effect on a particular day, the written law shall, except as provided by subsection (2), be construed as ceasing to have effect immediately on the expiration of that day.
- (2) Where a Bill is introduced into any session of Parliament for the continuance of a written law limited to expire in or during that session

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and that written law expires before such Bill, having passed both Houses of Parliament, receives in that session the assent of the President, that written law shall be deemed to have continued as fully and effectively in operation as if such Bill had received that assent before that written law expired.”

Mr. Speaker, section 11 of the existing law gives the power for a law to continue where the continuance of that law is conditional upon a Bill being introduced in the House as being passed. It is saying even though it is not passed before the law expires, and if it is laid in the Parliament but it is passed in that session, it would nevertheless continue to have effect. Under this particular section there has been some controversy. There are two schools of thought. One is to the effect that it does not only apply to where the extension is by a Bill. It also applies to where an extension is by any other instrument.

There are laws in Trinidad and Tobago which provide for laws to be continued by other instruments apart from a Bill in the Parliament. For example, it can be continued by a motion in the Parliament. The amendment tries to put on equal footing for clarity purposes to remove any ambiguity and it states in clause 3:

“(4) Where any proceeding, other than a Bill, is introduced into any session of Parliament for the continuance of a written law limited to expire in or during that session and that written law expires before such proceeding is passed, carried or concluded by both Houses of Parliament, that written law shall be deemed to have continued as fully and effectively in operation as if such proceeding had been passed, carried or concluded before that written law expired.”

Save that the proceeding shall be concluded during that session of Parliament.

Basically, this is what this amendment to the Statutes Act proposes to do. It is a very simple legislative measure to give greater flexibility to the Executive and also to ensure that in effecting that flexibility, there can be no doubts as to the proclamation and the carrying into the effect of laws.

Mr. Speaker, thank you. I beg to move.

Question proposed.

2.30 p.m.

Mr. Hedwige Bereaux (*La Brea*): Mr. Speaker, I crave your indulgence to enter this debate on a Bill to amend the Statutes Act, Chap. 3:02. In presenting this

Bill the hon. Attorney General indicated that it was a simple one to make the law clearer. In fact, this Bill seeks to do two things. I agree that it seeks to make the law clearer and more flexible, but how flexible do we want to make the law in this particular instance?

Section 5 is required to be amended. Subsection (2) states:

“Where a statute provides that it is to come into force or operation on a day or date to be fixed by the President by Proclamation, or that it is not to come into force or operation until a day or date to be so fixed, any such Proclamation may—

- (a) apply to the whole statute or any Part or section or other subdivision of the statute;
- (b) be issued at different times as to any Part or section or other subdivision of the statute;”

That is quite clear, but the Bill seeks to do more than that. As the hon. Attorney General pointed out, it is not only sections, but also a subsection and a part of a subsection. I would focus on this for some time. As flexible as the Bill may be, therein also lies certain dangers which should be pointed out. As the loyal Opposition in this country, I think it is our duty to do so.

As we know, a part of a bill is a term of art. It refers to a portion of the Bill dealing with a particular item. For example, with the Companies Ordinance, the vision of the Bill would be in respect of companies which fell under the Act. That entire part of the Bill would deal with one particular topic. In fact it would be as a module. If that module is enacted separately it would be unlikely to cause any serious danger or disruption because it would be complete in itself. To some extent a section is the same, but only on a smaller scale because a part is made up of a series of sections. When we deal with subsections, I am fearful and I think this House needs to reflect on it. Although it says the President, in this case it means the executive. If the executive is permitted to bring subsections into law, there might be a situation where the result may not be what the Act was intended to be.

I know that the learned Attorney General indicated that the laws of interpretation provide that if a portion of an Act is proclaimed and provides a result which it was not intended to, then it would be null and void. In order for us to get to the position of that being declared, that would involve going to court. We know what the court is like. It is said that it is like the Ritz. It is open to all men

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who could pay. When we look at this desire to make this Act more flexible, we must be concerned with what the outcome is likely to be.

In politics, it is said that one deals with the possible and not the probable. One may say that it is quite unlikely that such a thing could happen. It is possible and I do not want the Bill to be passed in this way and be told by the learned Attorney General that it is possible. In this House, we have seen where since it was possible to continue all night to prevent us from airing our views so that the public could hear it was done. It was possible and quite legal. I have no problem with that because it is possible. When we are looking at legislation we are supposed to see what is possible and not necessarily what is probable.

I am concerned about that. More importantly, we come to Parliament and various bills are passed in different ways. There are bills which require a special majority to be passed and others which, because of their nature and interference with certain rights and freedoms, require a certain majority. Usually, when such bills come before this honourable House sometimes both sides recognize merits and demerits. There would be discussion and certain checks and balances would be put in these bills to ensure that any mischief that is likely to come about as a result of their application is clearly thought out and guarded against.

After having painstakingly hammered out the provisions, and the checks and balances in a bill requiring a special majority, Cabinet has the ability to have that Act proclaimed in such a manner as to leave out the portions of the bill, which may safeguard the rights of individuals that we sought to protect. I am extremely concerned. One may say I am seeking to attack the Government, but I am not doing that. I am pointing it out. The events in this country are replete with instances where measures with all good intentions have become to nought.

I would use one example. The attempt to standardize textbooks was so incompetently handled and maybe, there is a textbook with 1,000 errors that is used in primary schools. Can any responsible representative seek to permit this type of situation to exist where we have inherited an Act which provides that portions of a statute can be proclaimed separately?

2.40 p.m.

We recognized that there was a rationale behind that—and I think the hon. Attorney General, both here and in the other place, mentioned certain statutes that he would want to treat that way. Whereas the part provision for the section was well thought out, the subsection, I think, is carrying a desire for flexibility, the cost

of which is likely to be too high a price to pay for simple flexibility. We have an element of flexibility here and even if we are wont to move in a direction of agreeing to some flexibility in this respect, at this time I am not prepared to do it. There must be some consideration given to those Acts of Parliament which require a special majority.

I do not want, because I saw only this side of the flexibility, to expose the populace to an erosion of their rights by a bill being proclaimed in a manner which leaves out certain safeguards for which we voted in that particular bill because we expected that it would become law in a particular way. Not trying to impute improper motives to anyone in this House, it was dealt with and proclaimed in another way.

Whereas, I understand the position of the hon. Attorney General, I still believe that this selective proclamation of a statute bringing it down to the element of the subsection, is dangerous, is something we need to look at, and could be corruptive of those Acts which, in particular, have been passed to protect the rights, the fundamental freedoms and some of the institutions which are enshrined in the Constitution.

I would like to go to the other element of this Bill. The other element which the hon. Attorney General pointed out is the question of the amendment to section 11. Section 11 states:

“(1) Where a written law is expressed to expire, lapse or otherwise cease to have effect on a particular day, the written law shall, except as provided by subsection (2), be construed as ceasing to have effect immediately on the expiration of that day.

(2) Where a Bill is introduced into any session of Parliament for the continuance of a written law limited to expire in or during that session and that written law expires before such Bill, having passed both Houses of Parliament, receives in that session the assent of the President, that written law shall be deemed to have continued as fully and effectively in operation as if such Bill had received that assent before that written law expired.”

The new provision states:

“(4) Where any proceeding, other than a Bill..”

This means a motion—where an existing law is to be extended by a motion and that motion:

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“...is introduced into any session of Parliament for the continuance of a written law limited to expire in or during that session and that written law expires before such proceeding is passed, carried or concluded by both Houses of Parliament, that written law shall be deemed to have continued as fully and effectively in operation as if such proceeding had been passed, carried or concluded before that written law expired.”

Mr. Speaker, if I were wont to use a colloquialism, this particular provision arose out of tabanca which I think the hon. Attorney General had in respect of the Rent Restriction Act. It was a matter on which lawyers on both sides of the House had differing views on whether the motion, having been placed before Parliament, the passing of the motion dated back to the date of the expiry of the existing law and had the effect of continuing that existing law, notwithstanding the fact that the existing law had expired.

I could see that this is a measure which is valid, but the fact that we had to bring it here is not so much a question of it being valid—and I am not denying its validity—but I think it is something to point out. We hear so much from the other side of how efficient they are and how well they perform, that it was refreshing to hear the hon. Attorney General come here today and say that things like that happen. Had it not been for some failure on their part to perform in the manner to which they had been accustomed to chastise us when we were on that side, but in terms of chastising the PNM government, I see that he has fallen and has recognized that to err is human. We now know that he is human.

We are well prepared to recognize this error, but the way in which this particular provision is drafted is not as succinct as I would like it to be. It is possible to pass a Bill to have *ex post facto* effect. Whereas it is possible in respect of an Act which was terminated and a law which expired and there is a new law to continue that law, it is possible to say that when that Bill receives assent, it goes back. I think in this case, the way this section is written, and I would like to read it:

“...carried or concluded by both Houses of Parliament, that written law shall be deemed to have continued as fully and effectively in operation as if such proceeding had been passed, carried or concluded before that written law expired.”

I think, though, that after “Parliament”, it should say “then upon the passing of such proceeding”. I say that because, in respect of the law in section 11, where the Act is continued by a Bill, it says “having passed both Houses receives in that

session the assent of the President". The assent of the President makes it law. In this case, the motion or the proceeding only becomes effective on it being passed in the House. I believe that there is need for an amendment between "Parliament" and "that written".

2.50 p.m.

I believe that the saving in respect of any criminality between the passing of the motion and the continuation of the law is good. We are prepared to support that, but in respect of the provision where there is a subsection of the law, and particularly that which requires a special majority, I believe that such a provision can be inimical to the interest of the citizen and, as I say, politics is about the possible, not of the probable. Whether this Government, notwithstanding some of its propensities as displayed by certain behaviour, or any other government will do it, when passing legislation we have to seek to think about what is possible and not only what is probable.

Thank you Mr. Speaker.

The Attorney General (Hon. Ramesh Lawrence General): Mr. Speaker, I thank the hon. Member for La Brea for his comments on this measure and I wish to assure him that the comments which he made, some were considered by us in the formulation of this measure.

The first point which he made has to do with the question of the possible abuse by any executive in the proclamation of legislation. As we all know, the way our Constitution and Government operate is on the basis that discretions must be exercised, and if, for some reason or the other, the exercise of discretions is misused or abused by the executive arm of the state, not only would persons have the opportunity of challenging those matters in the court, but the Parliament would have the opportunity on any motion brought, or question asked, to scrutinize the action. I am saying this because the hon. Member stated that there was no need to have this measure in order to safeguard the Parliament, the Members of Parliament and the input they had in the passing of the particular legislation.

Mr. Speaker, when I made my contribution, I recognized that even if we do not have this amendment and one has to proclaim, as under the existing law, a part or a portion of an Act, or even sections, if in proclaiming the executive misuses its power to proclaim to such an extent that the purpose of the legislation has been defeated, or that the wishes of Parliament appear to be defeated, the courts and the Parliament can intervene.

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It is probably difficult to look at this matter in a general way because one can consider there may be many pieces of legislation which in the way they are drafted, there may be a subsection which can come into effect without affecting the operation of the entire Act or defeating the intention of Parliament. For example, we have the Telecommunications Authority Act which was passed in 1987 which governments had tried to implement over the years, the Act may be proclaimed by subsections, and one can think of many other pieces of legislation. There may also be policy problems in respect of a piece of legislation.

I am not saying that the last administration accepted the Act, but attempts to proclaim pieces of legislation have produced difficulty and, therefore, as time changes we have to develop rules, and new norms to deal with some of these problems. As long as we recognize that there are safeguards to protect any misuse and abuse—and I would think that not only the safeguard of the courts, but that of the Parliament in scrutinizing governmental action in not only a question, but even filing a motion to deal with the issue to bring it to the attention of the public is a very important safeguard.

In any event, if a government is careless and decides to disregard norms and principles of law and breach the law, then the government and even Members of that government will have to pay the consequences of it. So that one would expect that governments would act responsibly and within the law. Although the President acts on the advice of the Cabinet, he himself would be able at any time to examine the situation and ensure that he or she is not acting contrary to the law.

Mr. Manning: I thank the hon. Minister for giving way, Mr. Speaker.

Is the hon. Minister suggesting that the President has a discretion in following a direction which comes from the Cabinet? Does he have the option to say no?

Hon. R. L. Maharaj: I was not saying that; what I was saying is that the President has the power and one of the great powers under our Constitution, is that he would be able to consult, talk, and try to reason. Therefore, if the President sees that something is going wrong, one would expect that he would draw it to the attention of the Cabinet and the Prime Minister, and obviously the government gives advice.

Mr. Manning: Does the President have a discretion to say no?

Miss Nicholson: You were a Prime Minister you should know.

Mr. Manning: I am speaking to the Attorney General. If a President is of the view that something is fundamentally wrong with either a piece of legislation or

any other action that has been brought to him by a Cabinet, does he have the option to say no?

Hon. R. L. Maharaj: Under the Constitution of Trinidad and Tobago, the President acts on the advice of the Cabinet, he has to act on the advice of the Cabinet, he has no discretion legally to say no, but the safeguard is there that the President, under the Constitution of Trinidad and Tobago, performs a function in which he consults, he tries to persuade, talk and influence.

Mr. Manning: I thank the hon. Attorney General once again for giving way.

Suppose, for example, the Government wanted to declare a state of emergency, does the President have the option to say no?

Hon. R. L. Maharaj: Mr. Speaker, I would have thought that the hon. Member for San Fernando East who had been the Prime Minister of this country would have known that there are certain functions and discretion which a President exercises which, not even the executive can take away from him and one such discretion is the declaration of a State of Emergency. For example, when the Member for San Fernando East was Prime Minister, he had asked the then President to declare a State of Emergency in which he ultimately arrested and imprisoned the Speaker; the then President, had the discretion to say no.

I would have thought that the Member for San Fernando East would have known that the only case in which the President does not have a discretion, is where the Constitution says that he acts on the advice of the Cabinet. I cannot remember the section, but I am sure he remembers it. Having refreshed his memory, I thought the Member would have thanked me for doing so.

3.00 p.m.

Mr. Speaker, the hon. Member for La Brea spoke about errors in the standardization of textbooks. With the greatest respect to him and with all due deference to his ability to know what is relevant and irrelevant, I cannot see how relevant that was to this debate. For the record, I cannot see how errors in textbooks, which are really caused by people who are not involved in Government and who are not Ministers, can have any relevance to the exercise of an executive discretion to proclaim legislation. I, in no way, want to pay any disrespect to his comments. I hope that the hon. Member would forgive me for not paying much more time to that particular comment.

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The other point which was made was that he would have difficulties, especially where there would be legislation which was passed by a specified majority. If I can try to understand what he was saying and to give him the benefit of the doubt, I think the point he was trying to make is that where a law has been passed by a specified majority which had to come into effect by the proclamation of it on a particular date, whether the proclamation of parts of a section in respect of that kind of law would really defeat the intention of the Parliament.

The point the hon. Member has made is the same point that would apply to any particular law, because if the proclamation of the part of a section undermines or subverts the wishes of the Parliament and, in effect, amounts to a total disregard of the intent and the spirit of what occurred in the Parliament, then the proclamation would be *ultra vires* in law and it can also be the subject of Parliament's scrutiny. So that one sees that one can think of any discretion which is given to the executive, such a discretion which can be misused and abused, in which case there would be safeguards and you would then have the opportunity of dealing with them.

In fact, what the hon. Member is saying is that it is quite legitimate. As a matter of fact, that is the function of an Opposition who wants to ensure that discretion is not improperly exercised. An Opposition Member must not only point it out, but if there is any such abuse, it is the duty of the Opposition to bring it to the Parliament and have it scrutinized.

Mr. Speaker, he did talk about "tabanca" and that the amendment to section 11 has to deal with "tabanca." I did not know that I had that reputation, but if I do, I wish to assure him that it would not be in respect of a piece of legislation. It is correct that one of the matters which came to this Parliament and which we had to deal with, was the question of the Rent Restriction Act. It is correct that when that Act lapsed there was a motion to extend it and it did not pass until after the Act lapsed. Yes, it is correct that the Opposition raised the point that what we were doing was *ultra vires*. They were saying that it was illegal and that we did not have the power to do that. Yes, it is correct that the Government took the position that we were advised that we can do it and what the Government did, in response to what the Opposition said, out of an abundance of caution since there were two views, was to come afterwards and introduce a Bill in order to remove any question about that.

Mr. Speaker, I would have thought that the hon. Member for La Brea would have complimented the Government for showing such responsibility in dealing

with the nation's affairs. We have tried to remove those ambiguities by saying: "Listen, in the future, if there is any law which says that a law is to be extended by a motion, and, for some reason, the motion has been filed but has not been debated before the law expires, the law would not lapse, it would continue in effect."

I trust that the explanation I have given would satisfy the hon. Member in respect of those matters. I wish to assure him that we, on this side of this honourable House, including the Attorney General, believe that to err is human. As a matter of fact, if we did not believe that, we would have been gods, but we are not gods; we are subject to the law of the land and to Almighty God.

The other point the Member has made with respect to clause 3 does not include the words in section 11 which deal with assent by the President. He referred to section 11(2) which says:

"...that written law shall be deemed to have continued as fully and effectively in operation as if such Bill had received that assent before that written law expired."

What he said is that we should cover that situation in this amendment. I am sure that the hon. Member has unconsciously forgotten that when one is dealing with a motion, one does not need the assent of the President. In respect of a bill, where the law has to be extended or continued by a bill, the bill would have to be assented to by the President. *[Interruption]*

Mr. Breaux: Mr. Speaker, I thank the hon. Member for giving way. What I had said was, whereas in the Bill it refers to assent, what we should do in this particular clause is say, "then upon the passing of such procedure," which means upon the passing of the motion.

Hon. R. L. Maharaj: Mr. Speaker, the hon. Member did say that in support of that contention. I am glad it has nothing to do with the assenting of the motion. That makes it a little simpler, in that, obviously, he prefers us to use the words "passing" and "concluded" during that session of Parliament. I respectfully ask him to accept what I am saying, in that it means the same thing and it was really a matter of semantics. The draftpersons have looked at it. As a matter of fact, it has been subject to the scrutiny of very distinguished lawyers in the other place and they had no problems with it, but if the hon. Member feels very strongly about it I would have to look at it again. I have checked with my draftpersons and they said that it is no problem.

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Mr. Speaker, I trust that I have answered the concerns of the Opposition through the hon. Member for La Brea, but may I say that I feel I would be failing in my duty to the Opposition and the Parliament if I do not say that the Opposition in the other place, supported this measure and that they had no problems with these facts. It may probably mean that there is no co-ordination, but I am not saying that there is no co-ordination. *[Laughter]*

Mr. Speaker, I beg to move.

3.10 p.m.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clauses 1 to 3 ordered to stand part of the Bill.

Question put and agreed to, That the Bill be reported to the House.

House resumed.

Bill reported, without amendment, read the third time and passed.

LIMITATION OF CERTAIN ACTIONS BILL

Order for second reading read.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move,

That a Bill to make provisions for the limitation of time for bringing certain actions be now read a second time.

The Bill before this honourable House has two cardinal features and what it does, in effect, is attempt to pass law so that limitation periods for filing certain actions will no longer be rigid and inflexible. Secondly, it attempts to treat the law regarding limitation in the filing of actions against the state on the same basis as it is dealt with as the law between subjects and between private individuals.

[MR. DEPUTY SPEAKER *in the Chair*]

Mr. Deputy Speaker, it is well known that in any civilized society which has a system of laws, there must be a certain period of time within which actions, suits

or claims can be filed in the courts. If there are no such time-frames, it would mean that the law would not be certain; there would be no end to litigation and, therefore, countries which had to deal with these problems had certain periods of limitation.

As an example, under the existing law in Trinidad and Tobago, if someone is injured by a vehicle belonging to the Government of Trinidad and Tobago—which, obviously, is part of the state of Trinidad and Tobago—and that person wants to file an action against the state for the negligence of the the driver employed by the state in the driving of that vehicle, under the present law, that person only has one year to file that action. If the person files the action over that period, the lawyer for the other side can even take the point that the action is not properly constituted.

That not only applies in respect of negligence. If someone goes to the hospital and, for some reason, the doctor or the hospital is negligent, and the family or the injured party wants to file an action, again under the existing law, there is only one year to file that action. Also, the existing law is so rigid that assuming that a person who is injured does not even know that the accident which he had, caused that injury at the time, but subsequently it was ascertained that the accident caused that injury, the law does not provide any extension of that one-year period. So, over the years there would have been many people who got involved in either motor vehicular accidents, or who have been victims of negligence, nuisance and breach of duties, but because of these time limits were denied justice at the court in that the state was not liable, or the state body was not liable.

As a matter of fact, Mr. Deputy Speaker, as I stand talking about this, I remember when I just started practice as a lawyer, someone got injured in a bus accident and the person filed a claim against the Public Transport Service Corporation. Because of the Public Authorities Protection Ordinance, it was found that the claim could have only been filed within one year of the accident. Therefore, the insurance company for the Public Transport Service Corporation and the Public Transport Service Corporation were not held liable. We live in a society in which the law is so adversarial that where the courts hold that the defendants are not liable, there is no system or culture whereby there will be some effort to minimize the effect of that and give what is called *ex gratia* payment in those cases where even the bus for the state was negligent.

3.20 p.m.

One of the things that this measure would do is give the law flexibility. As a matter of fact, first of all, it would remove that one-year period and now make it four years, put it on the same level with respect to private individuals.

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Mr. Deputy Speaker, let me explain that. Whilst there is a law that one can file an action against the state, but only within one year where there is an act or an allegation of negligence, if a private individual is negligent to another private individual, one has four years within which to file that action. So that one has a four-year period between private individuals, but one has a one-year period between a private individual and the state. *[Interruption]*

I am glad you asked that. It was so because what happened is that from the time we knew ourselves in Trinidad and Tobago, when the legal system started, that was the law and it was also the law in the 18th and 19th centuries. What has happened is that the law we followed was changed in England in 1939 and we attempted to change it in 1981. As a matter of fact, we passed a law to change it in 1981, the Limitation Act, but it was not proclaimed, it was not made effective because in the 1981 Act the legislation dealt not only with personal actions of tort, contract and matters like that, but in other areas of the law.

In 1981, there were all these proposals for reform which occurred at a time when the country was at a different stage of economic wealth, if I may use that expression. What happened is that a set of laws were drafted, but after 1981 when there was an altering of the economic position, it was felt that some of these laws could not have been implemented. One of those laws was the Limitation Act because it dealt with real property, land and other situations and, as the hon. Member for Diego Martin East would know, there have been proposals for reform that are taken into consideration with all the international conditionalities with respect to loans.

So the Parliament of Trinidad and Tobago in 1981 recognized the injustice which was being done by this kind of law. What this Bill really does, to some extent, is take some of those provisions and consolidate others—what we are trying to do is ensure that we do not offend the rule. Although we can now proclaim part of a subsection, we do not take the 1981 Act and decide to proclaim parts of that Act in order to defeat the whole intention of the Parliament.

Mr. Deputy Speaker, you saw just a few minutes ago when the hon. Member for La Brea was raising concerns as to whether the executive would misuse and abuse that provision, that we have decided to take the cautious approach which is, that one had a 1981 Act, which did not only deal with some of these measures, but dealt with other areas of the law. One of the things that can be argued, and properly so, is that if one proclaims part of that law one is defeating the whole purpose of the Parliament at that time. So what we have decided to do is take from

the measure what we find would be applicable to this area of the law, together with what we want to put in now and marry both, so that we can come up with a piece of legislation which we hope the Parliament would be able to accept.

When we look at the Bill, we must therefore recognize that there are situations or circumstances where a person or a family would not be able to file an action against the state or anyone for that matter, because at the particular time, either the person or the family would not have the information, would not know of all the circumstances, would be disabled, or as a result of poverty be unable to file an action. This Bill, apart from putting the four-year period as a time-frame, gives the court a discretion to give extra time depending on the circumstances of the matter.

In other words, let us assume that a person got in an accident and received an injury but did not know, it might have been a situation where the person's head was struck by a motor vehicle. At the time the person felt all right, he went to a doctor, a general practitioner, who looked at the head and said there was nothing wrong with the head and the person went home. But a few years afterwards the person found that he had severe pains in the head and there was strong medical evidence to show that it was as a result of that accident, but the four-year period has passed, what this Bill would do, is give the court a discretion to look at all those circumstances and, in spite of the fact that the four-year period has passed, rule that the action is not out of time.

What this Bill does is extend the rights of individuals, it attempts to ensure that the law not only seek to speak justice but to deliver justice and, it tries to do it in a way which is fair to all concerned. For example, in the situation I have just mentioned, where the court has to consider whether it will be equitable to allow the action to proceed, notwithstanding the fact that the four-year period has not been met or any limitation period has not been met, the court would not do it whimsically. The court would do it in accordance with certain criteria and it would have to examine those criteria.

Let us say, for example, the big insurance company or the rich person who is the defendant feel that this poor person who got injured and goes before the court after five years saying that he or she was injured, was not correct. It is not that the small person would automatically have a right against the person and would get the money, because the big person or insurance company would have an opportunity to go before a judge—not the Government, not the President, not the Parliament, but the court—to argue that what the small person is saying is not

correct. The court would take all the matters into consideration. If I may refer to clause 9 of the Bill:

- "(1) Where it appears to the court that it would be inequitable to allow an action to proceed having regard to the degree to which—
 - (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents, the court may direct that those provisions shall not apply to the action or to any specified cause of action to which the action relates.
- (2) The court shall not give a direction under this section, in which the provisions of section 6 are not applied except where the reason why the person injured could no longer maintain an action was because of the time limit established by section 5.
- (3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—
 - (a) the length of, and the reasons for, the delay on the part of the plaintiff;
 - (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 8 or, as the case may be, section 9;
 - (c) the conduct of the defendant after the cause of action arose, including the extent to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;"

3.30 p.m.

It may be, for example, that you may have a case where a person wants to file his action but for two to three years could not have afforded it, but coming up to the close of the fourth year, the person has been able to get some finance and goes to a lawyer who decides to ask for the other side's information. The lawyer on the other side or the defendant, believes it has only a month to go and says, "Let me try to see if I could postpone this thing a bit." *[Interruption]* I notice the Member for Diego Martin East is pointing to me but I want to assure him,

Mr. Deputy Speaker, that I have been so accustomed to people pointing to me, it does not make a difference anyway. Mr. Deputy Speaker, the other side may be trying to wait for the time period to elapse. What then happens is that if it was a four-year law, you would not have had an opportunity to go further. Under this Bill the court can consider that and extend the time.

This Bill also says that if a person is injured and becomes disabled, suffering a disability which, obviously, was a bar to the person filing an action, the period of time under which the person was disabled would not be counted and the person would be able to file his or her action. It says that the court would also consider the extent to which the plaintiff acted promptly and reasonably, once he knew whether or not the defendant's act or omission to which the injury was attributable might be capable, at that time, of giving rise to the action for damages.

One sees there is a provision to ensure that the plaintiff who is filing the action or on whose behalf the action is being filed, cannot find out and delay, sit back, relax and allow time to go and then want to file the action. There are, as lawyers know, safeguards to prevent any misuse or abuse of this section and the steps taken, if any, by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

Mr. Deputy Speaker, these measures were not only in the 1981 legislation which, if my memory serves me correctly, a PNM administration attempted to enact, this measure was a 1939 law from which we formed our present laws. We have been following the English statutes which were in existence since the 1800s. As time went on, we went into the 20th century but we had 19th century legislation. If we do not pass this Bill we will go into the 21st century with 19th century legislation. I feel confident that the Opposition would not want us to go into the 21st century with 19th century legislation.

We all know that for law to be effective, it must not be static; it must move with the times. Law is not like an antique which you take out, dust and put back. Law must be on the move all the time and must go forward; it must not lag behind the advancement of society. What we are, in effect, trying to do is to ensure that law is abreast of developments and try to solve the problems of the people. We want law to be so accessible that people would have more confidence and more respect for the law. Mr. Deputy Speaker, when the law cannot provide answers to injustices and avenues for redress; when the pipeline for justice becomes choked or blocked, law is disregarded, undermined and becomes subverted. It is in that

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context that the duty of any government or parliament is to ensure that law moves with the times.

Mr. Deputy Speaker, if we look at the Bill, therefore, we would see that in respect of clause 2, “personal injuries” has been widened to include any disease and any impairment of a person’s physical or mental condition and injury. I have explained that already to show that if one has a disease as a result of an accident, that would be covered as personal injuries.

[MR. SPEAKER *in the Chair*]

Mr. Speaker, in clause 3 of the Bill it states:

“The following actions shall not be brought after the expiry of four years from the date on which the cause of action accrued, that to say—

- (a) actions founded on contract (other than a contract made by deed) on quasi-contract or in tort;”

One sees that in actions in respect of contracts, quasi-contracts or tort, which is a civil wrong—if someone is negligent to you that is a tort—as well as actions to enforce the award of an arbitrator, actions to recover any sum recoverable by virtue of an enactment, there will no longer be any time limit of one year where it arises; the time limit would be four years.

In respect of actions on a judgment, clause 3(2) deals with that. Obviously, we need to have a time limit and any action which is brought upon any judgment cannot be brought after 12 years. That law would not apply. If one gets a judgment and has to bring an action on it, one has 12 years in which to bring it or in any way take steps to give effect to it. That law would not apply to where there is equitable relief, specific performance being claimed or where there is an action under the Compensation for Injuries Act because there are special rules dealing with compensation for injuries which I will come to when we deal with clause 6.

Mr. Speaker, clause 4 deals with contributions between two tortfeasors—two persons who have been wrongdoers. If one wants to enforce claims against another wrongdoer, the period of time would be two years. That period of time is a period which we have taken from the English legislation and consider to be reasonable in those circumstances between two wrongdoers where they are asking for contribution.

In respect of clause 5, it deals with common law actions and alters the law in respect of matters of negligence, nuisance and breach of duty, whereas clause 6 deals with the case of statutory matters. Clause 5(2) of the Bill states:

“Subject to subsection (3), an action to which this section applies shall not be brought after the expiry of four years from—”

This is important because this is the revolution in the law. It continues:

- “(a) the date on which the cause of action accrued; or
- (b) the date on which the person injured first acquired knowledge of the accrual of the cause of action.”

3.40 p.m.

So that that extensive four-year period arises, not only from the cause of action but four years from the time when the person first acquired knowledge of the accrual of the cause of action.

In subclause 3 it deals with circumstances where the right of action survives a deceased person for the benefit of dependants and also for claims in respect of claims for loss of expectation of life and also for claims later on under the Compensation for Injuries Act. And one sees the extension of the principle is dealt with in four years from the date of death or four years from the date on which the personal representative, that is the person who is acting on behalf of the deceased person, has knowledge of the matters.

Mr. Speaker, clause 6 deals with—I would not go through every subclause. Whatever responses we can deal with will be dealt with in committee stage—the question under what is called the Compensation for Injuries Act. What it is saying really is that there is going to be a four-year period under the Act but that four-year period can be modified or extended depending on the circumstances. The Compensation for Injuries Act as you know, Mr. Speaker—I do not know if you have in recent times been familiar with these aspects of the law, having regard to the fact that parliamentary life in the 20th century can make it so demanding for those who are involved in Parliament to be so concerned with parliamentary matters. But I am sure, Mr. Speaker, you would remember that under the Compensation for Injuries Act what happened is that the normal rule applied where the executor of the estate or the administrator of the estate of the deceased person had to file this action. That can be dispensed with and the dependants themselves—people who are dependent upon the income of the deceased person—can file the action and claim for the loss that has occurred as a result of the death of the person. So that under that Act it is four years from the date of death or four years from the date of knowledge of the person for whose benefit the action is brought, whichever is later.

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Clause 7 determines and gives guidelines in respect of the acquisition of knowledge; the principles to be considered.

Clause 8 deals with cases where there is more than one person for whose benefit an action under the Compensation for Injuries Act is brought. It is quite straightforward and the same principles would apply.

Clause 9, which I have dealt with already, gives the court this overriding power to examine the justice of any situation and to ensure that this rigid period of limitation would not obstruct persons who are entitled to have the benefit of a judgment from the seat of justice given, to ensure that person would be able to have his or her day in court.

Mr. Speaker, I do not think that it is sometimes recognized how many people who are injured and who are the victims of accidents, victims of default are not able to have their day in court for many reasons. But what this measure is attempting to do in respect of this aspect is to give to the court discretion, give to the judicial arm of the state that discretion to be the watchdog, to be the safeguard to ensure that there is no prejudice to either party but that the victim of injustice is given his due. So that clause 9, therefore, gives the court the power to disapply the provision of the Bill which in effect makes it a four-year period or any other period where the justice of the situation warrants the intervention of the court.

Clause 10 has to do with respect to conversion of a chattel. If, for example, someone takes an article from Mr. A and after one takes the article from Mr. A, Mr. B takes it from Mr. A, and then Mr. C takes it from Mr. B, you would not have four years from every time you take it you will have four years from the first time the person lost the article because the person from whom the article is taken must take steps within that four-year period or the extended period in order to do that. So that the Bill itself also has certain provisions to ensure that it is not abused.

Clause 11(1) says:

“Where on the date when any right of action of which a period of limitation is prescribed by this Act accrues, the person to whom it accrues is under a disability, the action may be brought at any time before the expiry of four years from the date when the person ceased to be under a disability or died, whichever first occurred, notwithstanding that the period of limitation has expired.”

This again is really a revolution of our limitation laws. It is a radical departure from what exists, it is a departure from the rigidity and it is a way in giving flexibility to the court to give justice to people who have been injured, who are disabled, who do not have the time, who do not have the money, the energy while they are recovering from their disability, to file action and go to lawyers to see about cases, but who would be more concerned with seeing about their health to give them an opportunity to say that after the disability—if for some reason the person after the disability wants to file an action, he can file it after the period of disability within four years thereafter, provided that the court is satisfied with these circumstances.

Mr. Speaker, I know that in 1981 when the then government attempted to pass these laws there were lawyers who said that you could not do this because if you do this, you would not make the law certain; you would in effect give the courts too much power; business people would not be able to balance their affairs. I am saying this in order to demonstrate that what is happening here is not any unfairness to anybody, no unfairness to the business community, to insurance companies, to lawyers, because the courts are the people who are going to be given the power to determine whether an action should proceed or not.

Clause 12 deals with a principle of law which already exists under common law principles, but out of an abundance of caution, in the case where there is a debt and that debt has been there for some years, every time that there is a payment or a part payment on the debt is a fresh start of the run of the limitation period and every time there is an acknowledgment of the debt the time for the limitation period starts from that time.

Clause 13 deals with formal provisions as to acknowledgments and part payment. Clause 14 also entrenches a well-established principle of law that really time should not run where there is fraud, concealment or mistake. But, Mr. Speaker, although that principle of law existed, and it does exist, under the present law if there was fraud, mistake or any concealment that would not have been able to overcome the difficulty of filing an action within the period of one year or four years as the case maybe. So what clause 14 does is says, where in the case of any action for which a period of limitation is prescribed by this Act, either the action is based upon fraud of the defendant, or any fact relevant to the plaintiff's right of action was deliberately concealed from him by the defendant, or the action is for the release from the consequences of a mistake, the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake, as the case may be, or could with reasonable diligence have discovered it.

3.50 p.m.

That again is being very fair. If a defendant has contributed to preventing a victim from filing a claim because of his fraud, because of his concealment or because of facilitating a mistake to occur, then the time would not run until the person has discovered these matters or a reasonable period has passed for discovering them.

Clause 14 deals with the well-established principle of law also. We have put it in the statute in order to ensure that an innocent third party would be protected. In effect, if an innocent party has not been involved in any fraud or any such matters, time would not operate against that party.

Clause 15 really is a consolidating provision, as one would see from the Schedule of the Bill. It is a reproduction, in substance, of the provisions of the Arbitration Act. If one looks at Schedule II, one would see in the Arbitration Act, "section 24 repeals except subsection (5) thereof".

Clause 16 makes it clear as to what is the status of "set-off" and "counterclaims". Clause 17 says:

"Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise."

The Bill applies to proceedings by or against the state, in like manner as it applies between citizens. In the transitional provisions of the Bill, it makes it clear that this law is a new law and it is for new events and, therefore, it would apply to causes of action which occur after the Act comes into force. In other words, the Act would not apply to any cause of action which occurred before it came into force. It would apply to matters which occur after the Act comes into force.

As the hon. Member for San Fernando East has stated, and quite rightly so, you do not want law to have retroactive or retrospective effect because that is a principle of law which parliaments do not like to endure. So that we have taken that into consideration and we have ensured that the Bill would not have those effects.

I will just indicate that in Schedule I, where there is "The Arbitration Act", there is a typographical error, in that, it states, "In section 2 omit the definition of 'reference'". I am giving notice to the Opposition that it would start, "In subsection (5) of section 24."

In respect of Schedule II, since this Bill is only dealing with personal actions, it would not repeal the State Suits Limitation Ordinance because that deals with property and we are not dealing with property in this matter.

Under the Compensation for Injuries Act, in subsection (1) of section 5, where it says that within four years an action should be filed, we are repeating that in this Bill so we are going to repeal that subsection.

The Limitation of Personal Actions Ordinance was passed in Trinidad and Tobago on January 26, 1845. Under that law, at section 5, it says:

“All actions for the recovery of any chattel...”

And it deals with other claims:

“...or movable thing, or the possession thereof, all actions founded upon any simple contract without specialty, all actions for damage or injury to persons or property, and all personal and mixed actions whatsoever, shall and may be commenced and sued within four years...”

That deals with actions between private individuals:

“...except, nevertheless, all actions by this Ordinance otherwise specially provided for, and except also all actions of assault, battery, wounding, imprisonment, or any of them, and all actions of libel and slander shall be commenced and sued within two years...”

This Bill would deal with, not only libel and slander or assault and battery, it has to do with wounding and matters like that. So after this Bill becomes law, if anyone is libelled, slandered or there is any assault or battery against that person, the person would now have four years within which to file that action. Even if the tort is done by the state, the person would have four years. This law is going to come to an end by this Act of Parliament.

Section 27 of the Medical Board Act has a time-frame, that any claim for negligence or malpractice by doctors must be filed within one year. That section is going to be repealed and there will be the same limitation period of four years with the powers of the court.

The Public Authorities Protection Act was passed in 1912 and it stated that in respect of a public authority there was a period of one year in respect of matters resulting in neglect for a default of a public authority. This Act has produced many injustices to people, as far as the time-frame is concerned. It has given the state

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many victories in court. It has denied poor people many of the claims that they should have got and we want to put an end to that.

In summary, really, this Bill is attempting to make revolutionary and substantial changes to the law as far as the limitation in respect of personal action is concerned. We all know that most of the people who are victims of these matters are not rich. Although the measure would provide a great deal of justice to people at the lower rung of the economic ladder, to people who are disabled, people, who because of poverty cannot file action, it would also apply to the rich. So it is a Bill which would give equity and would result, I am sure, in giving effect to what the Parliament, the people's representatives, since 1981 voted for, but because of circumstances, 1981—1997, 16 years, we have not been able to give effect to the wishes of the people; to the wishes of the Parliament. Here it is that the Parliament has been given a second chance to provide social, economic and distributive justice to the people of Trinidad and Tobago.

I beg to move.

Question proposed.

4.00 p.m.

Mr. Colm Imbert (*Diego Martin East*): Mr. Speaker, the Bill before the House is quite interesting. If one goes through it clause by clause one would see that an effort has been made to introduce a wide number of areas in the interpretation of law, and deal with a number of issues, as the Attorney General has pointed out.

On the outset, I must say that this is a form of antiquated law and there can be no gainsaying that fact. The Attorney General made the point that some of the laws affected by this Bill date back to 1845, and that changes were made in England as early as 1939—some 58 years ago.

Mr. Speaker, before Members on the opposite side get the wrong impression, let me state that I support this legislation—

Mr. Maharaj: But? [*Laughter*]

Mr. C. Imbert: But, there are some issues which I would like the Attorney General to look at and, perhaps, clarify.

If we go to clause 10, for example, which deals with conversion or wrongful detention of chattel, as the Attorney General pointed out, it does not allow for

successive extensions of time if there has been more than one fraudulent conversion of chattel. Therefore, I ask the Attorney General: What about the case where a person suffers because of wrongful conversion—theft perhaps—and cannot establish the whereabouts of the article or the identity of the person involved in the wrongful conversion for a period of four years? What happens when four years expire in a case where a person has been disadvantaged and an article has been converted wrongfully several times and the original owner is seeking to find out where this article is or who was involved in the fraud? Perhaps the Attorney General could respond to that. Is this fair? That is one area in the Bill I would like the Attorney General to look at.

Secondly, Mr. Speaker, clause 11 allows a person with a disability the right to extend the period of limitation while they have a disability. I ask the Attorney General: What is the definition of “disability” or would it be left up to the court to interpret exactly what is a “disability”? A person may claim a disability when they have none and therefore seek to apply certain clauses of the legislation to extend a period of limitation. Could the Attorney General let us know whether there should be a definition of “disability” in this Bill or whether that is going to be left up to the courts? I respectfully submit that there should be a definition of “disability” which would be sufficiently serious to prevent a person from taking action with regard to this legislation. Perhaps we can look at this in the committee stage of this Bill.

One of the things I noticed at the outset, in looking at this Bill, is that as the Attorney General says, it provides flexibility. If the Attorney General would listen for a while he would realize that it provides tremendous flexibility to put more money in the pockets of lawyers. Whereas in the past—and with due respect to you, Mr. Speaker, as an attorney of note—the law was clear; there was a limitation period of one year during which persons could seek to take actions against the state for negligence, now there is an infinite number of possibilities. It can be two, four, 12 or 24 years for that matter, in the case of the person with the disability. What we are going to see is a wide range of arguments coming from the attorneys as to the interpretation of this Bill and, therefore, as I said, a large number of opportunities would be created for lawyers to earn money.

I have noticed that from time to time the Attorney General brings legislation of this type which opens up all these areas of interpretation. The Attorney General has taken the law from one extreme to the other. For example, this whole question of acquiring knowledge. I am intrigued by the detail given to the whole question of what constitutes knowledge and how a person may acquire knowledge of an injury

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and all of the added areas that one can go into to determine whether a person had knowledge or not. The lawyers will have a field day in establishing whether a person acquired knowledge, did not acquire knowledge, should have acquired knowledge, might have acknowledged and so forth.

This is not a complaint, Mr. Speaker, it is just an observation as I find this Bill very intriguing. What the Attorney General is doing with this legislation is giving the lawyers a platform on which to expand their range of skills. Previously, if someone went to a hospital for an operation and the doctor left a needle inside the person and no ill effect appeared for 13 months, that person could not bring an action against the state. One year may have expired and the person may not have been aware that a needle was left inside of him or her. However, after 13 months the needle may have corroded or whatever and the person started to exhibit signs that something was wrong, and after examination it was determined that the needle or some other instrument was left inside the person. At present, no action can be taken.

This goes further. This allows a person to say, "I did not know that I had a problem. I now know and shall take action against the state." Someone can have a needle inside of them for 20 years and not know. So, especially in the case of personal injury, it is going to increase the cost of malpractice insurance—I am sure the Member for San Fernando West will concur with this. The doctors will now have to be extremely careful about how they deal with patients because whereas in the past a doctor could have gotten away if an injury or effects of an injury did not occur within one year, now there is no time-limit as far as I am concerned.

Hon. Member: What is wrong with that?

4.10 p.m.

Mr. C. Imbert: There is nothing wrong with that. This is why at the outset I was careful to preface my presentation by saying that I support the legislation.

Therefore, I submit it is impertinent for someone to ask: "What is wrong with that?" The fact is, there are far-reaching implications of this legislation. As the Attorney General has pointed out, the arguments against the 1981 legislation were that it introduced ambiguity or it introduced opportunity for interpretation of whether there should be extension of limitation of a period or not, therefore, businesses could not close their books. They could not deal with matters because they would have to make provision for possible awards that might come 5, 10, 20 years down the road. The Attorney General will explain.

I notice the Attorney General is saying this is not so. He will explain what he meant. The fact is that this will affect businesses operating in Trinidad and Tobago. At the present time, private hospitals do not have the type of insurance that will now be required. They do not have to make provisions for all sorts of claims that may come 10, 20 years down the road. There are far-reaching implications from this legislation. I am not saying I object at all. I would just like Members on the other side to be aware that this piece of legislation is not as simple as it appears on the surface.

The other clause that I find extremely interesting is clause 9, where it gives the courts the power to override limitation periods. This opens up an infinite number of possibilities where a person may have sought legal remedy through this Act or through other Acts and not be satisfied. Clause 9 allows the court to override limitations provisions in clauses 5 and 6 and gives the court jurisdiction to determine that there may have been special circumstances which would not have allowed a person to take action if the limitation period expired. So, it introduces even further flexibility into the law. I ask the Attorney General: Why has this Bill been limited only to certain types of action? In the particular case of libel, at the present time if someone is engaged in libel action and that person is killed or died through natural causes, the libel dies with that person. For example, the Selwyn Richardson case. I believe the Attorney General is very familiar with that case. The Attorney General should tell us why extension is being given in instances of personal injury, fraudulent conversion but no provision is being made for the estate where a person has brought an action for libel, the person dies in the middle of the action, and no further action can be taken. Why has this not been considered or included in this legislation?

I note that the Attorney General left out property from the law. Perhaps, the Attorney General is bringing legislation on property at another time. I would like to know why he left libel out of this law. Why do we not allow libel actions to continue once a person who has been libelled has died? I heard a facetious remark that it is in the Green Paper.

There is a particular case where the Attorney General has knowledge where a very famous person was killed during the middle of his libel case and the action died. I was happy to learn that this legislation would not be retroactive. Because there was a suspicion. I did not have the suspicion, certain persons had a suspicion that the reason for the bringing of this legislation at this time is that the Attorney General has some trick up his sleeve and, perhaps, wanted to make it retroactive

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so that actions that could not be brought, because the limitation period had expired, could now be brought under the umbrella of this law. I am very happy that the suspicions of other persons, not myself, have now been allayed and the Attorney General has confirmed that this legislation will only apply to matters after the legislation is passed.

Clause 12—and this is not a criticism—I find very timely. It deals with a case where a person may owe money to someone and delays payment and may have paid a small portion of the sum after the payment has expired and then tells the claimant, “carry me to court because the limitation period has expired.” Clause 12 will now remove that situation, where the clock starts to run again from the time of every payment. This is a commendable clause in the Bill.

The question of fraud. As I said at the outset, the law addresses a number of issues and that is why it is so interesting. There is a genuine effort—and I commend the Attorney General at this point—in this legislation to deal with all of the fraudulent tricks that conmen and their legal representatives get up to in trying to avoid payment of legitimate claims. This law tries to plug every hole. Clause 14, for example, deals with fraud and concealment where a person can avoid paying for something or avoid liability by concealing the true nature of the circumstances of a matter and allowing the limitation period to expire. Clause 14 plugs that hole and is a very commendable clause in the legislation.

I am happy to see that the Attorney General did not take the opportunity in clause 18 to apply this legislation to proceedings by the state for the recovery of tax or duty or interest. I think that would have been quite unreasonable. I am happy to see that in clause 18 (2) it says:

“This Act does not apply to any proceedings by the State for the recovery of any tax or duty or interest thereon or any forfeiture proceedings under the enactment relating to customs or excise.”

That removes the question of fraudulent conversion and chattel from tax matters.

As I said at the outset, I support the legislation. I now ask the Attorney General to deal with matters which I have raised. I will list them again for him: What is the definition of a disability? Could we not have a definition in the Bill to the effect that the disability is sufficient to prevent the person from bringing the action under reasonable circumstances? Why is libel not covered in this Bill in the case of death of the person bringing the action for libel?

I support the legislation and I congratulate the Minister for bringing this Bill to the House. I thank you.

4.20 p.m.

Mr. Hedwige Bereaux (*La Brea*): Mr. Speaker, I rise to make a very brief intervention in this debate to provide for an Act to make provisions for the limitation of time for bringing certain actions. I thank the hon. Member for Tobago West for that timely prompting. I believe that this Bill was well handled by the Attorney General.

With respect to clause 3 of the Bill, it is noted that for actions founded on contract except other than a contract made by deed on quasi-contract or in tort, the period of limitation is four years. In respect of injuries which were not discovered, there is the possibility that in actions on contract, a latent defect could be discovered subsequent to the four-year limitation period. I refer to the event where a party was contracted to build a house and there was a defect in the foundation which was only discovered subsequent to the four-year period. In England, there is a provision that the time will begin to run from the date of the party gaining knowledge of the latent defect with a limit of 15 years. I am commending that particular provision in respect of contracts.

I note that this Bill specifically excludes limitation periods set out in other Acts of Parliament. I take this opportunity to point out a limitation period in respect of a most important Act and persons who have been seriously disadvantaged. I speak about the limitation period in respect of actions brought under the Workmen's Compensation Act. This Act provides that once a workman has been injured on the job he is entitled to compensation if the information is communicated to his employer within six months.

There are situations where a workman might have been injured as a result of negligence either on the part of his fellow workers or employer, as might have been with respect to those persons who were injured recently in industrial accidents. That particular provision is covered in Chap. 88:05, section 4(3). It states:

“Where compensation payable under this Act for injury by accident arising out of and in the course of employment is received as such by a workman who is an adult, no action shall be brought against the employer for compensation independently of this Act by such workman in respect of such accident after the expiration of one year from the date on which the cause of action accrued.”

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Because the workman under the Workmen's Compensation Act is not required to prove negligence, he has to prove that he is a workman and was injured and he would receive compensation. The compensation is very modest. It is measured based on the workman's salary.

Mr. Maharaj: Mr. Speaker, I thank the hon. Member for giving way. May I assure him that a special bill to amend the Workmen's Compensation Act and other matters dealing with time-frame is coming to Parliament.

Mr. H. Beraux: I thank the Attorney General for that information. In order to assist him with whatever legislation is coming before Parliament, I point out that because the workman's compensation is based on his salary, he might be seriously injured and the compensation would be small.

In another dispensation, I was travelling with an employee of my employer and the disparity in the compensation was unfortunate. In most cases where the real sum of money can be paid if there is negligence on the part of the employer or workman representing the employer, then that worker would have the right to sue. The employer is usually covered by insurance and the workman can be properly compensated. In most cases, because the workman receives payment while he is injured, he does not think about it. He waits until as he would say, the doctor has given him up and then he would try to sue. By then the limitation period would have passed and there would be difficulty.

The Attorney General has said that would be addressed and I support the legislation. I inform the learned Prime Minister that it is not sufficient to say that I should have done it at another time. He was a labour leader and he should have checked it out. I like to help both sides.

Thank you.

Mr. Speaker: Hon. Members, the sitting is suspended for half an hour. I ask Members to take careful note of the conditions under which they would be taking tea.

4.28 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed.*

ARRANGEMENT OF BUSINESS

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, by agreement, we would like to suspend further contributions on this matter until the next occasion and proceed with the other matter under Private Business.

Agreed to.

PREMIER VESTING BILL

Order for second reading read.

The Parliamentary Secretary in the Ministry of Works and Transport (Mr. Chandresh Sharma): Mr. Speaker, I beg to move,

That a Bill to vest of the undertaking in Trinidad and Tobago of Premier Oil PLC formerly known as Premier Consolidated Oilfields PLC, a company incorporated in Scotland, in Premier Oilfields of Trinidad and Tobago Limited, a company incorporated in Trinidad and Tobago be now read a second time.

Mr. Speaker, this Bill originated in the Senate and was considered before a select committee. In addition to the association's Minute Book and the Register of Membership, the Senate Committee examined the association's financial statement which was audited by an external auditor and found everything to be in order. In its report to the Senate, the select committee found that the facts and allegations set forth in this Bill were true and correct and recommended that the Senate accept the Bill subject to certain amendments which were made.

The Bill was passed in the Senate on July 27, 1997 and has been sent to this House for concurrence. The concerns which were raised by the Member for Diego Martin Central at the last sitting of the House related to the issue of non-payment of certain duties, particularly stamp duty. The Member felt that this vesting would enable the company to avoid payment of stamp duty. However, this Bill in clause 5 provides that the company shall within six months pay to the Government such stamp duties and registration fees as may be required by the Board of Inland Revenue and the Registrar General. Given those circumstances, I hope the Bill will now receive the full support of this House.

Question proposed.

Mr. Hedwige Breaux (La Brea): Mr. Speaker, Premier Oil Company and Premier Oil of Trinidad and Tobago Limited held holdings in the constituency of La Brea. I am quite cognizant of its operations and the manner in which it carried out its work and I think the Bill speaks for itself.

It follows the same pattern which occurred with the Petrotrin Vesting Act, the Textrin Vesting Act and the BWIA Vesting Act and what is more, this is required because of the complex nature of the conveyancing matters which are involved. The operations of the company have been completely Trinidad managed for some time now and it is producing better than it did when it was foreign managed.

I see no reason why this Bill should not be passed into legislation having regard to this.

Premier Vesting Bill

Friday, October 3, 1997

The Parliamentary Secretary in the Ministry of Works and Transport (Mr. Chandresh Sharma): I thank the Member for La Brea for his support; and all other Members.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clauses 1 to 7 ordered to stand part of the Bill.

Schedule ordered to stand part of the Bill.

Preamble ordered to stand part of the Bill.

Question put and agreed to, That the Bill be reported to the House.

House resumed.

Bill reported, without amendment, read the third time and passed.

ADJOURNMENT

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that the House do now adjourn to Friday, October 10, 1997 at 1.30 p.m.

When we resume on that date, we expect to complete the matter which was under debate and then we shall do the Venture Capital Bill followed by the Summary Courts (Amdt.) Bill.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 5.17 p.m.