SENATE

Tuesday, March 21, 2000

The Senate met at 1.32 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence has been granted to Sen. Prof. Julian Kenny for the period March 16, 2000 to March 22, 2000 and Sen. Philip Marshall for the period March 21, 2000 to March 23, 2000.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, T.C., O.C.C., S.C., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

TO: MR. KENNETH AYOUNG-CHEE

WHEREAS Senator Professor Julian Stanley Kenny is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, KENNETH AYOUNG-CHEE, to be temporarily a member of the Senate, with effect from 21st March, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Professor Julian Stanley Kenny.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 17th day of March, 2000."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, T.C., O.C.C., S.C., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

TO: MRS. NIRUPA OUDIT

WHEREAS Senator Philip A. F. Marshall is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NIRUPA OUDIT, to be temporarily a member of the Senate, with effect from 21st March, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Philip A. F. Marshall.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 17th day of March, 2000.**"**

OATH OF ALLEGIANCE

Senators Kenneth Ayoung-Chee and Nirupa Oudit took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Report of the Supervisor of Insurance for the year ended December 31, 1998. *[The Minister of Public Administration (Sen. The Hon. Wade Mark)]*
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts of the Institute of Marine Affairs for the year ended December 31, 1998. *[Sen. The Hon. W. Mark]*

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I seek leave of the Senate to deal with "Bills Second Reading" at this stage of the proceedings instead of "Motions".

Agreed to.

1.40 p.m.

DISTRIBUTION OF ESTATES BILL

[SECOND DAY]

Order read for resuming adjourned debate on question [February 8, 2000].

That the Bill be now read a second time.

Question again proposed.

Mr. President: I want to indicate that Members had already contributed to this debate and the Attorney General was in the process of responding when we last adjourned. He had already utilized 14 minutes of his speaking time. I call on the Attorney General.

Hon. R. L. Maharaj: Mr. President, the contributions of hon. Senators to this debate highlight the dilemma which the courts and lawmakers around the world have been seeking to resolve for many years. Whilst it is now generally accepted that cohabiting spouses should be accorded property rights and rights upon intestacy, there remains the on-going debate to this crucial question now posed by clause 25(2). That is, where an intestate dies, leaving both a legal spouse and a cohabitant, whether and in what circumstances and to what extent should the surviving cohabitant be entitled to receive a share of the net estate?

Mr. President, when this matter was raised on the last occasion, I promised hon. Senators to look into the matter. I have done so in great detail and there is a proposal which I have discussed after long discussions, which are reflected in the amendment to be circulated. I think I owe hon. Members some explanation as to how this problem is difficult and how it should be put in the perspective of what is happening in other jurisdictions.

In the Caribbean region, we had seen it fit to sidestep this issue by simply restricting the definition of a "cohabitant" to single partners. This approach has, however, operated to eliminate from the purview of intestacy law, a very large category of cohabiting persons and this has not infrequently led to cases of serious injustice. Should we continue to sidestep this issue by not legislating an appropriate remedy, then we would be guilty of perpetuating or allowing those injustices to continue.

If we look beyond our region, we would recognize that in other Commonwealth jurisdictions, a very different and more liberal and realistic approach is evolving in an attempt to address these conflicting claims. The

definition of "*de facto* spouse" used in the Australian territories in New South Wales, in Queensland and many of the Canadian provinces, is not restricted to single partners. As a matter of fact, the recent trend in these jurisdictions has been to completely disinherit the legal spouse in favour of the cohabitant once the parties have been living separate and apart for a number of years, and the cohabitational relationship displays the characteristics of a *bona fide* relationship.

Moreover, in recent legislation enacted in all these jurisdictions, the phrase "*bona fide* domestic relationship" has been preferred over the outdated phrase "living in a conjugal relationship". In fact, in New South Wales, a body of judicial response to the phrase had been built up, and it is expected that in time a similar development will take place in Trinidad and Tobago and in our courts. In the meanwhile, the New South Wales cases would provide a body of precedent.

If I may remind hon. Senators, Mr. President, the Green Paper on Cohabitational Relationships, whilst it noted the importance of protecting the legitimate rights of the legal spouse, found favour with this new approach. At paragraph 7.6, this is what is stated in the Green Paper:

> "Notwithstanding, the majority of persons living in cohabitational relationships often consider themselves as living in a family unit and live happily, unaware of the serious legal consequences which would result when they fail to provide for each other upon death. In many instances a common-law spouse would lose the property for which he or she had worked hard and had shared during the many years of their relationship with the deceased partner."

Although the unproclaimed Succession Act of 1971 sought to alleviate these harsh consequences, the remedy which has been legislated is extremely limited in its application.

By virtue of section 2 of the Act, a cohabitant will only inherit if he or she can qualify as a spouse by virtue of five years' cohabitation with a single man or a woman. There are many persons in Trinidad and Tobago who are in cohabitational relationships and who will not fall within this definition.

Paragraph 7.8 says:

> "If the rules of intestacy are to be extended so as to enable a cohabitant to share in the intestate's estate, then consideration must be given to those situations where a deceased person is survived by both a legal and a de facto spouse or with children from either one or both relationships or even with children resulting from other relationships."

The approach of the New South Wales De Facto Relationship Act is interesting. The Act provides that where the deceased relationship with his legal spouse has come to an end and the *de facto* relationship has demonstrated some degree of stability and permanence, the *de facto* partner would be entitled to a share in the estate. The Act further stipulates that two years or more demonstrates the necessary stability and permanence.

In paragraph 7.10 of the Green Paper, it states that:

> "This can be compared with legislation in South Australia where a 'putative spouse' is entitled on intestacy to share equally with any surviving legal spouse."

So, the Green Paper also went on to recommend that where there is a period of cohabitation exceeding five years, the cohabitant should be entitled equally to a share in the estate of the deceased.

The limited definition of "spouse" contained in the 1981 Succession Act was considered in a book entitled *The Developing Legal Status of Women in Trinidad and Tobago*. This book was written by the well-known local attorney, Mrs. Stephanie Daly, and has been published by the National Commission on the Status of Women.

At page 83, the author, in considering the extended meaning of "spouse" under the 1981 Succession Act, made reference to the number of inherent limitations in this definition and noted that:

> "This sudden jump from virtually no status to recognition once five years is attained will no doubt lead to a lot of hard cases as women will be excluded from these benefits if their partner dies within the five years or if they have separated before their partner's death regardless of the length of their association or their reasons for leaving. Also excluded are those whose relationship was adulterous... It is not possible to foretell what proportion of long-term unwed unions will benefit from this new definition but it is clear that there will still be a very great number of common law wives who will not."

The Members of this honourable Senate have suggested that because in these situations injustices will arise, where, for instance, there is a very long marriage followed by a short period of cohabitation, or where there is a very short marriage followed by 20—30 years of cohabitation, that the law should, perhaps, be redrafted so as to allow a spouse or a cohabitant to inherit in proportion to the length of the relationship.

Perhaps it is necessary at this point to clarify what the proposed legislation is seeking to do. It is seeking to set out in an orderly scheme the rules of intestacy. Intestacy rules which the law has established are to address the situation where there was no will to direct the disposition of property under the death. It is a sort of statutory will which the law expects an average reasonable man would put in place to provide for his family and dependants upon his death if he had gotten around to doing it. These rules are, however, limited because unlike a will, they refer not to individual persons, but to classes of persons and, therefore, cannot differentiate between deserving and undeserving claims within the class.

It is important to appreciate this inherent limitation and to accept that intestacy rules cannot be expected to do justice in every individual case. These rules cannot distinguish between the deserving cohabitant and the undeserving spouse, or between the loyal, caring child and a neglectful child. There is only one solution to avoiding any injustice and that is for the person who has died to have made a will.

Since intestacy rules are intended to take the place of a will, they must seek, as far as possible, to reflect what the law supposes would be the intention of the deceased. Where the deceased has lived with a cohabitant for more than five years, it is reasonable for the law to assume that he would wish the cohabiting partner with whom he has lived at the time of his death to receive some part of his net estate. It is only reasonable for the law to assume that a deceased intestate would wish his partner to at least inherit property, or some part of the property or the savings, which they would have acquired or built together during the period of cohabitation.

It is not correct to say that the equal distribution of spousal share as proposed under clause 25(2) is an attempt to equate or to place a cohabitant on the same footing with a legal spouse. There is an important difference, as in the case of a cohabitational relationship, there is the additional requirement of duration. The relationship must have also existed for five years and must be in existence at the time of the death. By contrast, however, in the case of marriage, inheritance rights are gained immediately upon marriage and even though the spouses may be separated for a number of years and would have seen nothing of each other, if one dies, the other is entitled automatically to a share of the estate.

Sen. Mohammed: Thank you very much for giving way. I simply want to ask a question. Whether you can envisage a situation whereby an intestate could have had a cohabitant and a lawful spouse at the same time just prior to his death, both co-existing at the same time; not necessarily in the same house; but certainly prior

to his death, he may have had a cohabitee as well as a legal spouse and, if so, that issue about the equating of rights and the potential conflict that can arise which we raised during the course of debate, how do you envisage that we deal with such a situation?

Hon. R. L. Maharaj: I thought I was coming to that and the amendment which has been circulated, I thought would have tried to solve that problem. The amendment to clause 25(2) says:

> "Notwithstanding section 24, where an intestate dies leaving a spouse and a cohabitant and the intestate and his spouse were at the time of his death living separate and apart from one another, such part of the estate as was acquired during the period of cohabitation shall be distributed to the cohabitant, subject to the rights of a surviving spouse and any issue of the intestate."

Is that what you are talking about?

Sen. Mohammed: Did you realize that the amendment deals with a situation where the intestate was living separate and apart from his spouse. But I am asking: What about the situation where you do have a lawful spouse and you are living with your lawful spouse but, at the same time, there is a cohabitee as well? What do you do in a situation like that?

Hon. R. L. Maharaj: I think we will have to establish the five years duration and the onus would be for her to establish that.

Sen. Mohammed: That is duration. So, therefore, any assets that were acquired—

Hon. R. L. Maharaj: It is not only duration, but other aspects of a cohabitation, a *bona fide* relationship, a family unit and things like that.

Sen. Prof. Spence: I do not want to prolong it here, but I suppose the question arises: Suppose there is difficulty in establishing cohabitation? In other words, if the man or woman has two homes and lives in both at different times, how do you establish which is the home that he or she is living in?

Hon. R. L. Maharaj: Mr. President, I think then it will have to go to court because you would not be able to provide for each individual case where there is a dispute. I think what we have to do is to find a formula in the class of these persons so that you would not have injustice, because there may be a wife who, because of the fact that they have been separated, may be entitled to a share of the estate. That is why we are trying to put it in this way.

Mr. President, what I was going to say was that marriage, under the law, automatically results in certain legal rights, whereas any rights now being conferred on a cohabitant requires antecedent proof of the fact of the relationship. Proof of the relationship is often costly, time-consuming and may require judicial determination. So, in considering how intestacy rules should deal with the competing claims of a surviving spouse and a surviving cohabitant, there is a general consensus among law commissions throughout the Commonwealth that cohabitants should be entitled to receive a share of the estate, and there is a clear case for giving cohabitants some rights upon intestacy.

1.55 p.m.

Mr. President, where the legislation spells out a long period of separation such as five years, the legal spouse should exercise the option of approaching the courts for a dissolution of the marriage and settlement of property rights. In other words, before death—not that persons would know that someone is going to die, but—the spouse can, on separation, be entitled to approach the court and get the settlement of the property matters determined. But under this, even though it is not determined and the matter is pending, it will be subject to the rights of the spouse. Cognizance must be taken of the fact that legal remedies are available to a separated spouse under the Matrimonial Proceedings and Property Act and during a long period of separation.

Under the Matrimonial Proceedings and Property Act, the court has very wide powers to regulate maintenance and award property rights upon divorce. The courts' power is not limited to simply ordering periodical payments but there is also power to order interim maintenance, *et cetera*. The court is also empowered to make orders for transfer of property. There are very wide powers in relation to property.

In cases where a marriage has been terminated by the court, that is; one first gets what is called a *decree nisi* and then it is made in absolute, and if one spouse dies before an application for ancillary relief is made, or whilst an application is pending, there are specific provisions in the Matrimonial Proceedings and Property Act which empowers the court to make an order for maintenance for the surviving spouse.

Under sections 40 and 43, the court can make an order for such reasonable provision for the survivor's maintenance, as the court thinks fit, to be made out of the net estate of the deceased. There is even power under the Matrimonial Proceedings and Property Act for the court to make an order for a spouse before the *decree absolute* if, for some reason, the spouse dies.

Where, however Mr. President, proceedings for divorce has been instituted and an order for ancillary relief has been made to the courts before death of one party occurring, then, whether there is a will or an intestacy, the order of the court is binding on the personal representatives of the deceased and can be enforced against the estate.

If the law is reformed so as to allow cohabitants to inherit upon intestacy, then it is to be expected that more and more couples would avail themselves of the provisions of the Matrimonial Proceedings and Property Act. This would enable spouses to settle their property interest and move on with their lives.

Five years separation is, I think, sufficient time for a legal spouse to come to terms with the fact—because that is what the Parliament has recognized—that the marriage is over, and appropriate steps should be taken to bring the marriage to an end and conclude property rights. The period of five years, when linked with the requirement, the deceased must have lived with the cohabiting partner for five years, ensures that a marriage is well and truly over and the legal spouse has had ample opportunity to take appropriate measures to secure what is rightfully theirs.

Before closing, Mr. President, there are two points which should be emphasized. Firstly, if we are to trace the history and development of the rules of intestacy, it will be seen that these rules have consistently changed over time to take account of the injustices which have occurred as a result of the changing social conditions and the wider acceptance of relationship outside of the marriage union.

In the early 18th Century women were not even allowed to inherit property, nor were intestacy rights given to children born outside of legal marriage. All this has now changed and the law, in the 21st Century, must move a step further and extend intestacy rights to long-standing cohabiting relationships so that the injustices arising out of these situations may also be addressed.

Secondly, Mr. President, during the debate, the impression has been given that, to make provision for cohabitants in the Law of Succession would create confusion between a cohabitant and a surviving spouse. It is to be noted, Mr. President, that under the Wills and Probate Ordinance, it is only a spouse or next of kin who is entitled to apply to the courts for the administration of the estate of the deceased person. This has not been changed and it is the court which will decide, based on the application and the rules of intestacy, as to how the estate should be administered. Where the rules of intestacy seek to include a cohabitant, it does not mean that there is an automatic entitlement. That person may be

required to make an application to the court and it is the court which will decide how the estate is to be administered; having regard to the rules of intestacy. The onus will be on the cohabitant to provide the court with evidence relating to the duration of the relationship and whether it was, in fact, a *bona fide* relationship.

Mr. President, if Members are of the view that clause 25(2) accords to a cohabitant too great a share in the deceased estate, where there is also a legal spouse, then, perhaps, consideration can be given to an amendment, which I have circulated, which would at least, ensure that a cohabitant would be entitled to inherit whatever property or money was acquired during the term of the cohabitational relationship. This would ensure some degree of fairness.

Mr. President, the amendment to clause 1 would provide for the new rules of intestacy to take effect only upon commencement of the Act. This is necessary in order to prevent a flood-gate of applications in respect of the estates of persons who would have died before the coming into effect of the new rules and to prevent claims being made against estates which have already been distributed according to the existing rules.

The proposed amendment to clause 3 would provide for a cohabitant to inherit only such part of the estate as was acquired. *[Interruption]*

Mr. President: Hon. Attorney General, on February 08, 2000 one set of amendments was proposed which is different from the one you are reading.

Hon. R. L. Maharaj: I am sorry, in the light of what has happened, we are asking for a withdrawal of the one from the last occasion and the substitution of the one which was circulated a short while ago. I am sorry, Mr. President.

The amendment to clause 3 would provide for a cohabitant to inherit only such part of the estate as was acquired during the period of cohabitation. This will prevent any injustice occurring; for example, where there was a very long marriage, as I mentioned a short while ago, followed by a short period of— *[Interruption]*

Sen. Mahabir-Wyatt: Mr. President, I wonder, before he winds up, if the hon. Attorney General would just clarify a point in a situation, for example, that has happened recently, rather a public one, if there had been two cohabitants, one after the other, and the person died intestate, would either cohabitant—if the cohabitant preceding this cohabitant—this one has lived with him for the last five years and if it was a cohabitant who lived with him for 15 years before that, and the house was built during her cohabitancy, would that cohabitant be able to claim

under this provision? I do not mean to make the Attorney General's life more complicated. I realize, through you, Mr. President, that it is already complicated enough. *[Laughter]* This is an actual case, as we know, that has happened recently. I just wonder if the Attorney General could comment on it?

Hon. R. L. Maharaj: Mr. President, I am indebted to the hon. Senator. I was wondering, when she was talking about complication in life, whether she was talking as a result of cohabitation. *[Laughter]*

Subject to what my technical people would tell me, and what we could discuss at the committee stage, it would seem to me that the Act does not deal with two sets of cohabitants because it will be a cohabitation at the time of the death. If one goes that route, it would therefore mean that one can have four and one can have five, but it does not prevent—For example if this Bill only deals with one cohabitational relationship at the time of death, it does not mean that if a cohabitee, apart from that person, made contribution to any property rights, the person would be without rights. The person can resort to the ordinary courts to get a declaration to show that, in equity, the person would be entitled to some relief. If I remember my law correctly—these days there is more politics than law—that has happened in the past. What this is doing is that in cases where people have not made wills, there are certain statutory rules and, therefore, the cohabitee, who is living at the time of his death, would be able to inherit without a will. But it does prevent any other individual who feels that he or she has made contributions, and may have a share in the property to take whatever action he or she considers necessary.

2.05 p.m.

Mr. President, the proposed amendment to clause 4 is that the Wills and Probate Ordinance was repealed and replaced in 1972 in the Schedule to the Matrimonial Proceedings and Property Act, so it is not necessary to rephrase clause 4 to reflect this. I hope that in making my response I have been able to deal with the concerns of hon. Senators. I know that I did not deal with every individual matter, but I thought that I should use my time dealing with what was regarded as the main areas of concern.

Mr. President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1.

Question proposed, That clause 1 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by the hon. Attorney General.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 1 of the Bill be amended as follows:

"Delete and substitute as follows:

'Short title and application No.27 of 1981 Ch. 8:01 Ch. 8:01	1. (1)	This Act may be cited as the Distribution of Estates Bill, 2000.
	(2)	With respect to a person dying on or after the date of commencement of this Act, Part VIII of the Succession Act, the Administration of Estates Ordinance and the Wills and Probate Ordinance, shall have effect subject to the amendments set out in sections 2, 3 and 4.'."

As I explained before, this was to ensure that if the Bill is passed it will take effect only upon the commencement of the Act. This was necessary to prevent a floodgate of applications in respect of the estates of persons who would have died before the coming into effect of the new rules and to prevent claims being made against estates which have already been distributed according to existing rules.

Mr. Chairman: Are there any other contributions?

Question put and agreed to.

Clause 1, as amended, ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Mr. Chairman: There are two proposed amendments, one by the hon. Attorney General and one by Sen. Mahabir-Wyatt. Perhaps, we can take both together unless there is an objection by the Senator.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 3 be amended as follows:

"A. Delete clause 25(2) and substitute the following:

‘(2) Notwithstanding section 24, where an intestate dies leaving a spouse and a cohabitant and the intestate and his spouse were at the time of his death living separate and apart from one another, such part of the estate as was acquired during the period of cohabitation shall be distributed to the cohabitant, subject to the rights of a surviving spouse and any issue of the intestate.

(3) A person claiming a share of the estate of a deceased person under subsection (2) shall make an application to the court within six months of the date of the grant of letters of administration.’.

B. Insert in clause 26B after the word ‘been’ the words born in his lifetime and had survived him’.”

I am sure, Mr. Chairman, that Sen. Mahabir-Wyatt would withdraw her amendment in light of the concession which the Government has made, that this is a starting point. I think our amendment is in the spirit of Sen. Mahabir-Wyatt’s amendment.

Sen. Mahabir-Wyatt: The problem that I was trying to address there in talking about shares that are in proportion to the length of the marriage and the cohabitational relationship, respectively, is not entirely taken care of by the amendment that the Attorney General has made, although I realize that he was trying to get into that general area.

My worry here was that where somebody dies intestate, as has often happened, our period of cohabitancy is limited to five years to prove cohabitancy. There may have been a situation where somebody was married and living with a legal spouse of either gender—[*Interruption*] a married wife—a married spouse, for 15 years and lived for five years with somebody after that, which does sometimes happen. It seems to me to be inequitable that the five-year tenancy should outrank the 15-year tenancy, if I can put it that way.

I am not sure that this actually takes care of it, Mr. Attorney General. What this says is, “such part of the estate was acquired during the period of cohabitation be distributed to the cohabitant”. Does this “subject to the rights of a surviving spouse” mean that the surviving spouse who is still married but has been replaced in the autumn of his years, and has the right to apply for the part of the estate that was built up during her tenancy or cohabitancy or whatever word it is we use?

It is a complicated issue legally, I understand, but from a human point of view it is very real, because it is very often towards the end. There are many elderly women who have been left in their 60s and 70s for somebody half their age and are left with nothing because their husbands did not make wills. In that case, although the cohabitant was there for the last five years, they are left with literally nothing; no pension, no nothing, no property, and it can be very difficult for elderly women.

Mr. Maharaj: Mr. Chairman, I think that Sen. Mahabir-Wyatt came in late so probable she did not have enough time to read this clause. From what this clause says, it gives more protection to the spouse. Let us take it very slowly:

> "Notwithstanding section 24, where an intestate dies leaving a spouse and a cohabitant and the intestate and his spouse were at the time of his death living separate and apart from one another, such part of the estate as was acquired during the period of cohabitation shall be distributed to the cohabitant, subject to the rights of a surviving spouse and any issue of the intestate."

So it is the property which was acquired.

Sen. Mahabir-Wyatt: So it means that the surviving spouse would still have the right to acquire the property that was acquired during her cohabitancy.

Mr. Maharaj: Yes; well, during the time she was married to the person. Let us say, for example, there is still pending proceedings, the wife has not completely got her *decree absolute,* this distribution cannot take place, subject to the rights of the spouse.

Sen. Mahabir-Wyatt: That is what I want to be assured of.

Mr. Maharaj: I have learned some new expressions about these relationships and I am noticing that some Members of the honorable Senate are getting very concerned, for example, when you talked about tenancy rights. [*Laughter*]

Sen. Prof. Ramchand: Mr. Chairman, would it be too commonsensical to put in the word "only" before the word "such"? Would it be too much commonsense to put the word "only" before the word "such part" or do you want to stick with the legal formulation?

Mr. Maharaj: I wonder if the Senator is implying that the law does not have much commonsense?

Sen. Prof. Ramchand: A commonsense reading would say "only such part of the estate as was acquired" and that would make it absolutely clear.

Mr. Maharaj: My draft person does not have any objection to Sen. Ramchand's insertion of the word "only" before the word "such".

Sen. Mohammed: I am still very much concerned about the situation where you have a spouse, you are not separated, you have not gone through any proceedings for separation or any such thing and you also have a cohabitee. One of the suggestions that had been raised during the debate was the idea of linking it to some kind of criteria, like the relationship of dependency, the degree and extent of the dependency relationship. [*Interruption*] That is where the Succession Act itself takes care of this.

Mr. Maharaj: I do not know if I am correct, but I am getting the impression that you are of the view that any cohabitee would be entitled. It is not any cohabitee; it is a cohabitant that fulfils the requirement under the Act.

Sen. Mohammed: That requirement being?

Mr. Maharaj: That is a person who has lived together with the person in a *bona fide* relationship for a period of not less than five years. If this person has been living with a person in this domestic relation, immediately preceding his death—[*Interruption*]

Sen. Mohammed: The issue we had raised there is the vagueness of the definition of "*bona fide* domestic relationship".

Mr. Maharaj: That is a matter which in the Cohabitation Act will be determined by the court, if there is a problem. In intestacy, the matters could always go to the court.

Sen. Mohammed: You can be in a *bona fide* domestic relationship with somebody, and that somebody can, at the same time, have a lawful spouse.

Mr. Maharaj: Yes, but it provides for that, in that, if there is a cohabitee under the Act and there is a legal spouse, let us say that the legal spouse wants to dispute that this person was not a cohabitee under the Act, that can be determined by the court.

Sen. Mohammed: It is setting up a situation for conflict, when we need to avoid that kind of situation.

Mr. Maharaj: Parliament would not be able to put any measure in place in which there would be an automatic situation in relationships where disputes can arise.

Sen. Mohammed: Remember we are trying to implement part of the Succession Act here. But in other provisions in the Succession Act—I think it was sections 96 and 97—where the Act actually talks about making reasonable financial provision, it actually sets out the criteria and tells you what factors should be taken into account. This was the whole point about it. There is a need to put some—[*Interruption*]

Mr. Maharaj: But there is a criterion, in that, for a cohabitant to be entitled he or she has to establish certain criteria.

Sen. Mohammed: Five years, that is all.

Mr. Maharaj: It is not five years and that is all, there must be a *bona fide* domestic relationship. It is not only in Trinidad and Tobago, but also throughout the world where that has to be established; that is a principle. If it is not established you can go to court, but how else would you deal with the issue? If you recognize that there is a social problem and you want to be able to provide relief to cohabitees, what do you suggest, in relation to what we have decided?

2.20 p.m.

Sen. Mohammed: That is why we were saying that you stick to the definition that is in this 1981 Act that deals with a single man and a single woman in a relationship, and it will also take into account Sen. Mahabir-Wyatt's concern about the situation with two cohabitees.

Mr. Maharaj: We showed how that was a defective definition because it deals with single persons, but there is a situation in Trinidad and Tobago where there are persons who are married. If you deal with only single persons, there would not be a problem with respect to spouse.

Sen. Mohammed: That is the point.

Mr. Maharaj: There is a problem in that what exists in Trinidad and Tobago—I do not have the statistics here—is not only single partnership. You have where people are married and there is common-law relationship, but you are not dealing with situations in which they are not *bona fide*, you are dealing with situations in which there is another domestic unit and there is separation from the legal spouse for a period of at least five years.

Sen. Mohammed: I have no difficulty where the separation is established, but it is where there is a *bona fide* marriage, and a legal marriage existing.

Sen. Prof. Ramchand: Mr. Chairman, the matter really hinges on the definition of cohabitation and a cohabitational relationship. Let me give an

example. Supposing I were an officer located in Tobago and I go there on Monday morning, and I have a woman with whom I live from Monday to Thursday, and on Friday I return to Trinidad and live with my married wife, Friday, Saturday and Sunday. Would my relationship in Tobago be defined as a cohabitational relationship?

I am doing this for years, I might even have children. So I have an active marriage in that I am with my married wife three days a week, and I am with the other lady four days a week.

Mr. Maharaj: Mr. Chairman, it will be determined if there is a *bona fide* domestic relationship for a period of not less than five years immediately preceding the death, and if there is a dispute—if for example, the legal spouse accepts the fact that you are a real cohabitee—if I may use that expression—under the Act, or if nobody disputes it, then…

Sen. Prof. Ramchand: But she does not know I have a woman in Tobago.

Mr. Maharaj: If she disputes it, it is a matter which you would have to establish—that you had a domestic relationship. There is no other way of doing it because there is no formula that you can put that if a person travels to Tobago three times, lives in a house five times, goes to the cinema two times. What you would have to do is use a formula in which it can be established, and if it is to be disputed, it is for courts to assess whether it is so or not.

Sen. Prof. Ramchand: So when I die, my lady in Tobago could say—

Mr. Maharaj: It is not any lady that anybody has in Tobago or anywhere else.

Sen. Prof. Ramchand: She is saying: I live with this man for seven years.

Mr. Maharaj: She can make a claim, but it must satisfy the requirements of the law and it can be adjudicated by the court.

Sen. Prof. Ramchand: So there is not a definition that says what is cohabitation?

Mr. Maharaj: Yes, it says what is cohabitation. It says:

"'cohabitant' or a 'cohabiting partner' means—

(a) in relation to a man, a woman who has been living with or who has lived together with a man in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the date of his death;"

I understand that this Act has been enforced, and I understand it is working.

Sen. Mohammed: If I am a lawful spouse, and it is only after the death of my husband I understand that there was a cohabitee in Tobago, are you telling me I now have to go to court to compete for my rights in the estate?

Mr. Maharaj: She has to go to court.

Sen. Mohammed: So she is going to take me to court now?

Mr. Maharaj: Yes, so what?

Sen. Mohammed: That is attacking the whole institution of marriage.

Mr. Maharaj: The hon. Senator knows that this would not apply where there is a will, but in the normal circumstances if a man makes a will, subject to other things—this is applying where the Parliament has to find a way in which it is thinking as a statutory will, how the man would want to give his property. Certainly, if a man has been living with a woman for five years in a *bona fide* domestic relationship, it must be presumed that what was acquired during that five years, he would want to give her that.

Sen. Mohammed: May I make a suggestion hon. Attorney General, that you restrict this automatic right for the cohabitee to go to situations where there would be a will—

Mr. Maharaj: Where there would be a will?

Sen. Mohammed: This is an automatic right on intestacy if the person dies without a right, the cohabitee, the issue of the double entitlement arises.

Mr. Maharaj: If there is a will, this does not arise.

Sen. Mohammed: Exactly.

Mr. Maharaj: It does not apply. Intestacy does not apply if there is a will. If there is a will and persons are not provided for adequately, they can make an application to the court, that law is still there, whatever it is, but these rules only apply if the person does not make a will.

Sen. Mohammed: And it is automatic.

Mr. Maharaj: It is automatic in the sense as you know as a lawyer, you make an application to the administrator and so forth, but if there is a dispute, a *caveat* is lodged and the matter will go to court.

Hon. Senator: Just make your will.

Sen. Mohammed: A suggestion has been made to change the definition.

Sen. Mahabir-Wyatt: I would withdraw my amendment in light of the assurances of the Attorney General.

Sen. Daly: Mr. Chairman, I think we are trying to reconcile the irreconcilable. If you are making provision for cohabitees, you are making provision for cohabitees, so trying to define all these situations is—What I would like to know specifically, is when we say "subject to the rights of a surviving spouse," what is the source of the rights we are referring to there? For example, she will no longer have rights under matrimonial proceedings of property because the marriage would have terminated with the death, so she could not then go and file for alimony, to make it simple. What is the source of the rights we are talking about there? What is it that gives her rights, that entrenches rights with her even after the spouse is dead? That is what I would like to know. That is my problem.

Mr. Maharaj: Although the marriage terminates on death there may be proceedings pending, there would be property applications pending and the court has power to—

Sen. Daly: Suppose none are pending, suppose one is taken by surprise.

Mr. Maharaj: She would have one-half share prior to the date of the cohabitation. A lawful wife would be entitled to one-half share of the estate.
Sen. Daly: I see. So the rights we are talking about there, are the rights given to her by the statutory provisions governing intestacy. So it is really subject to her rights as a surviving spouse. I am not saying to change it, I am just trying to understand it. On the issue of the—intestate governs the surviving spouse as well.

Mr. Chairman: Sen. Prof. Ramchand had proposed the inclusion of the word "only" in line 5 between the word "another" and the word "such" and the Attorney General had no objection. Is that in order?

Sen. Daly: Mr. Chairman, I want to try to work this through, may I have another minute please?

Mr. Chairman: Sure.

Sen. Daly: Let us assume that a house, a fairly grand house, was acquired during the reign of the cohabitee, but in fact, those assets have been building up over a long period of time.

Mr. Maharaj: We do not know what you mean, "r-e-i-g-n" or "r-a-i-n"? *[Laughter]*

Sen. Daly: R-a-i-n is all you have in mind, I had reign very much in mind. Let us suppose that during the marriage, by diligence of both parties, they built up the assets, but for whatever reason, the assets were not actually acquired until the new reign, five or six years into the new reign, but definitely by assets identifiable as having been acquired during the marriage. It is only a question, because I think this is quite sensible. Does that mean that the surviving spouse can still make her claim as the survivor of the intestate to that house even though it was acquired during—because this suggests that the cohabitant has the first right if it is acquired—her reign. Do you see what I am getting at? If we say that the cohabitant has the right to what is acquired during the period of cohabitation, then in my example she is entitled to the house.

Mr. Maharaj: If the only property that is left is the house and that house was acquired during the reign of the cohabitee—

Sen. Daly: But with assets built up during the marriage.

Mr. Maharaj: It was acquired as a result of assets which were built up during the marriage—I think that is the reason they have drafted it in this way to say that the part of the estate which the cohabitee would get would be subject to the rights of the spouse.

Sen. Daly: So she could still claim her half even though it was not acquired during her reign?

Mr. Maharaj: Yes. What happens in practice is the legal spouse always makes the application for the administration. That has not changed, but the cohabitee will make an application to share in the property, and the cohabitee would then have to establish a claim and the legal spouse would have to show how she has contributed to these matters.

Let us say, for example, the acquisition took place in the reign of the cohabitee, obviously in her affidavit she will be able to show that it was acquired from proceeds during her reign, then if there is a dispute, it would probably have to go to court.

Sen. Daly: You might start a tracing exercise—

Mr. Maharaj: If the administrator general cannot do it, and there is a dispute, as long as there is a *caveat* then the court determines the matter.

Sen. Daly: Thank you, Mr. Chairman.

Sen. Prof. Ramchand: Mr. Chairman, why can we not make a law which says just like you have to file income tax every year, you make a will and update it every year?

Mr. Maharaj: Mr. Chairman, he is talking about political cohabitation, but we are dealing with other kinds of cohabitation.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4.

Question proposed, That clause 4 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 4 be amended as follows:

"Delete and substitute:

Act No. 2 of 1972	Part III of the Wills and Probate Ordinance, as contained in the Schedule to the Matrimonial Proceedings and Property Act, 1972 is hereby repealed."

This amendment is necessary because as Part III of the Wills and Probate Ordinance was repealed and replaced in 1972 in the Schedule to the Matrimonial Proceedings and Property Act, it is necessary to rephrase clause 4 in order to reflect this.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, with amendment, read the third time and passed.

2.35 p.m.

INTERRELATED BILLS

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, Bills Nos. 2, 3 and 4 are interrelated, I therefore seek leave of the Senate to deal with them together.

Question put and agreed to.

REGISTRATION OF TITLES TO LAND (NO. 2) BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I beg to move,

> That a Bill to provide for a register of land titles, and to provide for the registration of estates and interests in land, in that register, be now read a second time.

Mr. President, when I introduced these measures in the Lower House, they also took them together on a similar Motion. Mr. President, I would ask you to permit me to read from my contribution in light of the technical nature of these Bills.

The history of these Bills show that upon the request of the Government of Trinidad and Tobago, the Land Tenure Centre at the University of Wisconsin, Madison, in the United States, led a team to carry out, on behalf of the Government of Trinidad and Tobago, land rationalization studies in Trinidad and Tobago. That university, together with the Lands and Surveys Division of the Ministry of Planning and Development; the Ministry of Agriculture, Land and Marine Resources; the Ministry of Housing and Settlements, and other ministries made certain recommendations. These recommendations are contained in the report entitled, "Land Rationalization and Development Programme" dated August 1992.

Mr. President, I do not want to go into the details of the report but I must draw attention to some of the main features of the report. The report pointed out that there existed a high incidence of insecurity of land tenure in Trinidad and Tobago, where lands were often possessed or occupied without valid deeds for leases, and this situation imposed constraints on the development of the agriculture sector, as well as on land development, generally.

The report pointed out that part of the insecurity problem was due to a land administration system, which was designed for the relatively small number of transactions of a few property owners operating a plantation-based economy. A century and a half later, changes have occurred in the economy resulting in thousands of families having acquired lands for various purposes: agriculture, housing and business purposes, but the report pointed out, that more than half of the occupancies of land, used for agriculture and housing, are not protected by valid deeds or leases.

I am sure you are aware that there are two systems of recording interests and transactions in land in Trinidad and Tobago. One, is the title registration system.

Mr. President, one's title gets registered in this system. Since the title is certain and known, it is readily accepted by lending institutions and other persons; but by lending institutions for the purposes of security. This system falls under the Real Property Ordinance, Chap. 27:11 and the Government certifies and guarantees the interest shown in the title record.

The other system is the common-law deed registration system, now under the Registration of Deeds Act, Chap. 19:06. Under this system, the state is a mere custodian of the documents of title, prepared by attorneys-at-law. In general, there is no requirement that a deed be registered to make it valid. However, failure to register may result in loss of priority; a later deed from the same source may gain priority over the earlier deed by early registration, if the interests are in conflict.

It must be noted, here, that registration gives priority, it does not give validity to the transaction; validity depends on whether or not, the maker of the deed has a title or not. This being the case, those whose titles are not under the first system, the Real Property Ordinance would have to produce a chain of deeds to establish their title to secure a loan from a lending institution. Lawyers and persons who have had to deal with this will know that there are search clerks in the Red House, and that there would be a title search, and sometimes the search is accepted and sometimes it is disputed.

There have been difficulties in dealing with these properties. When one goes to purchase a property which is not registered under the Real Property Ordinance, he relies on the professional undertaking of his attorney-at-law, who then gets the title searched by the search clerk and the state does not guarantee this title.

Mr. President, we are attempting to cure this defect in Trinidad and Tobago. These measures, among other things, are trying to effect these reforms so that title would be easy to discern. And, therefore, it is to ensure that there shall be no uncertainty of ownership, that people would know for certain their interests and properties and that they are put in a position to go to any lending institution and raise a loan to build a house or do a business; that Government agencies know for certain who owns what property; that people know for certain the boundaries of their properties and avoid unnecessary litigation; and that there be a parcel-based map prepared for Trinidad and Tobago, with every parcel of land bearing an identification number.

2.45 p.m.

Mr. President, it has been estimated that the state owns 52 per cent of all the land in Trinidad and Tobago, but it is not known to what extent these boundaries

exist. In any exercise like this, one of the points which has been raised is whether the Act should bind the state. I will come to that later on because one does not have a process in which the state, in not making its claims within a given time frame, would lose its lands.

Mr. President, I think I should mention, however, that we have on our statute books the Landlord and Tenant Act of 1981, the Land Law and Conveyancing Act of 1981, the Trustee Act of 1981, the Limitation Act, the Condominium Act, the Land Registration Act, and the Succession Act. These have not been brought into operation because the Wisconsin Report stated that those Acts were intended to modernize the laws governing property dealings and inheritance in Trinidad and Tobago, but were not proclaimed for the reason that the resources necessary for their operation were not then forthcoming.

In August of 1993 the then Government of Trinidad and Tobago contracted with the Inter-American Development Bank for two investment sector loans. These were intended for balance of payments support and for the implementation of social impact mitigation programmes. The land rationalization programme fell into the category of social impact mitigation programmes. The loans have been disbursed in three tranches. The previous government accessed the first tranche upon signing of a loan agreement in 1993 and since then there was the obligation on the Government to take steps in order to see that these pieces of legislation have been drafted.

Mr. President, I do not think that anyone can deny the fact that, having regard to the present circumstances, there is need for reform of the system. I must say that I recognize at the outset that there have been problems at the Registrar General's Department. I think that hon. Members would know that over the years steps have been taken in order to improve the conditions at that department. There have been problems in respect of the search clerks and the kinds of records but steps have also been taken in order to improve those matters.

What I want to deal with first, particularly at this time, is the Land Adjudication Bill. The Land Adjudication Bill is to ensure that every parcel of land is demarcated, its boundaries identified and the nature of the title held by various persons on the parcel of land clearly established. The officer in charge of this adjudication process under the Bill is the adjudication officer who will be an attorney-at-law of at least seven years' experience in conveyancing and who will be appointed by the Judicial and Legal Service Commission. Provision is made for the appointment of assistant adjudication officers, demarcation officers and recording officers and survey officers.

These officers' duties, Mr. President, would be to ensure that every parcel of land in Trinidad and Tobago, whether private land or state land, is identified and surveyed and their boundaries demarcated, recorded and registered. In the other place, concern was expressed as to the advisability of having the provision in clause 28 of this Bill bind the state. I promised to revisit this and it was felt on reconsideration that the Act should not bind the State. However, in order to ensure that every person who has any interest in land makes his or her claim, the provision is made to give adequate notice as soon as an area is declared an adjudication area by order. The system would ensure that all those who have claim to any interest in land within the adjudication area would have an opportunity to participate in the process.

So what will happen is that areas in Trinidad and Tobago from time to time—it will not be done at the same time—will be declared adjudication areas. People will have to make a claim and say that this is their land, they have had these boundaries and the adjudication officers would mark off the boundaries of the land in an effort to identify where the boundaries are. The adjudication process would give an opportunity to neighbours or owners of adjoining properties to agree to adjust boundaries for better use and enjoyment of their respective properties. What could happen is that in identifying the boundaries if, by agreement, the owners believe they want to adjust their boundaries by giving a little part and taking a little part, the law gives them permission to do that with certain safeguards, obviously. So that the boundaries can be adjusted in order to have the maximum and the best use of the land as the owners see fit.

Concern was also expressed in the other place as to what would be the position if people did not agree. The law can only provide a mechanism for people to adjust boundaries by consent. In other words, the law only permits adjusting of boundaries by consent of the owners. A party who parts with a portion of his land would have to be compensated by the party who gains that portion of land. Provision is made for this sort of adjustment. It is up to the people to make use of it.

In the process of adjudication, disputes as to boundaries are likely to arise and clause 15 provides for settlement of those disputes by the adjudication officer. There is provision for any aggrieved person to appeal to the land tribunal and from the land tribunal to the Court of Appeal. So, let us say, Mr. President, that there is a dispute and the adjudication officer gives a decision, that is not the end of the matter. Under these three measures, this package of legislation, there will be a land tribunal to which one can appeal the adjudication officer's decision and,

if one is dissatisfied with a decision of the land tribunal, one would have an appeal from the land tribunal to the Court of Appeal. Then the process continues, whether it is in the Caribbean Court of Justice or the Privy Council. So that, it is not that the measures will be taking away anybody's rights to property and it is not that if an adjudication officer makes a decision that is the gospel truth and that is the end of the matter. If people are dissatisfied there are processes by which these decisions can be challenged.

Mr. President, clause 16 of the Land Adjudication Bill sets out the principles of adjudication. You may observe that the Bill recognizes possessory title. This is because of the time-honoured principle that possession is nine-tenths of the law, provided that you have sufficient possession in law. So that, the Land Adjudication Bill in clause 16 says:

"In preparing the adjudication record, where the Adjudication Officer is satisfied that—

(a) a person has a valid title to a parcel of land registered under the Real Property Ordinance he shall regard that person as the owner of the parcel and shall declare his title to be absolute and register it as such;

(b) a person who without a documentary title is in open and peaceable possession of a parcel of land other than a parcel which is State land and has been in such possession whether by himself or through his duly authorised agent or his predecessors in title for a period of thirty years or more, he shall declare the title of such a person to be absolute and record it as such;

(c) a person who has a good documentary title to a parcel of land and that no other person has acquired or is in the process of acquiring a title thereto under any law relating to prescription or limitation, he shall declare that person as the owner of the parcel with a qualified title and record as such;

(d) a person is in possession of or has a right to a parcel of land but is not satisfied that such a person has been in possession for a period of thirty years or more, he may nevertheless record that person as the owner of the parcel and declare his title to be provisional and shall record—

(i) the date on which the possession of that person shall be considered to have commenced;

(ii) the particulars of any deed, instrument or other document by virtue of which an estate, right or interest adverse to or in derogation of the title of that person might exist; and

(iii) any other reservation which may affect the title

(e) any land is entirely free from private rights, or the rights existing in or over it do not amount to full ownership and are not such as to enable him to proceed under paragraph (d) above, he shall record the land as State land;

(f) any land is subject to any right which is registrable as a lease, charge, easement, profit or restrictive agreement under the Registration of Titles to Land Act, 1999, he shall record such particulars as shall enable such right and the name of the person entitled to the benefit thereof to be registered and if such right is registered under the Real Property Ordinance, he shall record such particulars as appear in that Register."

Mr. President, I do not know if I could spend a little time trying to explain to Members how difficult it is under the present system to find out who owns land and where these lands are. As I said, the Real Property Ordinance enables one to check that as a schedule and you will have it recorded in a particular area. As to the other lands which are not under the Real Property Ordinance, it depends upon people's title. So that, there is a problem at the present time in knowing, within a short space of time, if one has lands in a certain area, who owns this piece of land, who owns that piece of land or who owns the other piece of land. When people go to conduct a title search or if the state wants to find out about land and property or if anyone wants to find out, it is not possible to do it.

What the report has come up with is, if you are going to deal with reforms in the land system, you have to devise a way in which people will know their title to land easily, businesses would be able to deal with it in a very commercial way and the state would provide a system in which it would be easy to access information relating to these matters. That is why, apart from this legislation which is before the Senate, there have been administrative reforms taking place. These reforms include a situation where these things will be recorded, the intention being that by the press of a knob one would be able to get this information on a screen. So the Bills are here but the infrastructure is needed to support them. Those administrative reforms have been happening in the Registrar General's Department.

So, Mr. President, clause 16 therefore gives the principles but it also recognizes that you can have appeals. Ownership of land may have changed many hands many years ago without any formal change of ownership even being registered. The transferee may have taken possession and worked the land for many years. The true owner may have abandoned the land and someone else may have entered possession and worked on the land for many years. So it would be unfair, therefore, to allow the prodigal owner to return at any time in the far distant future and require the possessor to leave, denying the possessor the fruits of his or her labour. That is why the law has provided that if a person is in an undisturbed possession of land for, I think it is, over 16 years, the person has possessory title of the land.

Clause 16(b) however, prescribes a period of 30 years of open and peaceful possession to acquire title, and I think that is because under the present system in order to establish a title to land, you should show a route of title of 30 years.

3.00 p.m.

Mr. President, there have been some proposals that this period of 30 years should be reduced. As a matter of fact, some of the Members in the other place have stated that, perhaps, we should consider removing this 30-year time frame and what I said is that we will go with the 30 years because that is something I do not think we have done enough study to determine whether that should be done or not. At the present time, there is a committee of many lawyers from the private bar who are conveyancers looking into these matters, and I am awaiting a report to see whether we should really reduce that 30 years. We have many implications of that and I indicated that it is something which I would like to think about.

Mr. President, land adjudication under the Bill is the process of determining authoritatively, all rights that exist in a parcel of land. It would be ideal to have the adjudication process nationwide at the same time, but human and financial constraints would not permit this. I think that in any event, in the light of the fact of its newness, and the present state of affairs with the land in Trinidad and Tobago, it would be more advisable to do it region by region.

Mr. President, it is envisaged that under this Bill, the adjudication process would be done on an area by area basis, and the success of this and the speed with which the exercise would be completed, would depend upon the co-operation of the people of Trinidad and Tobago in order to get this done. I do not have any doubt that in the light of its beneficial aspects, it will be done with the co-operation of the people.

There are other provisions of the Bill that I have not specifically talked about, but clause 17 of the Bill deals with the lands which are unclaimed.

Clause 18 deals with what the adjudication record should consist of and one sees it consists of:

"(a) the unique parcel and approximate area of the parcel as shown in the demarcation Map;

(b) either the name and description of the person entitled to be registered as the owner of the parcel with particulars of the manner in which that person acquired that parcel and of any restriction on his power of dealing with it, or the fact that the parcel is State land;

(c) such particulars of any right registrable under the Registration of Titles to Land Act, 1999, as shall enable it to be registered as a lease, charge, easement, profit or restrictive agreement, as the case may be, affecting the parcel…

(d) where any person shown in the adjudication record is under a disability, whether by reason of age…the name of that person's guardian;

(e) a record of the documents, if any, produced to the Recording Officer….

(f) the date on which the form is completed."

Clause 19 deals with when the adjudication exercise is completed, the adjudication officer shall sign and date a certificate and give notice forthwith of the completion thereof, and of the place or places at which the same can be inspected together with the relevant map.

Part V of the Bill provides for objection against the adjudication record, by any person affected who thinks that there is inaccurate information. He or she can object to it and there will be a prescribed form.

Under clause 20(2):

"The Adjudication Officer shall within thirty days after the receipt of the grounds of objection give notice in writing to all persons affected by the objection after which he shall hear the objection and may allow or dismiss the objection…"

There is a procedure for hearing the objection, dispute and transmission of record and it deals with that, and it shows that on the expiration of the period under subclause 21(2)(c) the matter is transmitted to the land tribunal.

Clause 22 provides for the correction of adjudication records, so there is a process for correction.

Clause 23 deals with the finality.

Clause 24 deals with appeals.

Part VI deals with miscellaneous matters.

Mr. President, basically, what the Land Adjudication Bill would do, is try to identify, through adjudication officers, the boundaries, the parcels of land, and who owns them.

Mr. President, the next piece of legislation is the Land Tribunal Bill. The Land Tribunal Bill would establish the land tribunal. The scheme of the Bill is such that in time to come, there will be only one land tribunal, or there will be this land tribunal to deal with all land matters in Trinidad and Tobago. Various legislations have given jurisdiction to various bodies to deal with disputes relating to land matters. Enabling provision is made in clause 12 to extend the jurisdiction of the land tribunal to hear matters now given to other bodies in other legislation. This will be done by order of the President.

Mr. President, what this Bill does—one sees that normally, tribunals are established to resolve disputes speedily, inexpensively and in a less formal manner, adopting simple procedure. To ensure this, the tribunal will be constituted of members who are lay persons and parties to disputes could make their case without professional assistance. Having regard to the matters in which disputes could arise in the process of adjudication of title; it was thought that the chairman and deputy chairman of the tribunal should be appointed by the Judicial and Legal Service Commission, and they be attorneys-at-law with seven years' experience in land law. The other members would be appointed by the President, having regard to the experience in various disciplines necessary for the implementation of the Bill.

The land tribunal is vested with the jurisdiction to hear and determine appeals, not only against any decision of various officials appointed under the Land Adjudication Act, but also against any decision of the Registrar made under the Registration of Titles to Land Act. There is also provision for any person affected by decision of any officer appointed under the Land Adjudication Act or the Registration of Title Act to apply to the tribunal for directions.

Mr. President, under the Land Adjudication Bill, where the adjudication officer is having a problem and there is a dispute, and he does not know clearly

how to deal with it and he wants some direction, he can apply—obviously giving notice to all parties—to the land tribunal for directions to be given on how he should resolve the dispute. This provision is vital since a dispute could be settled then; it could be settled there as it arises and the adjudication process would go on without delay.

Mr. President, in the Land Tribunal Bill, therefore, one sees—if I may go quickly to Part II—that it shall comprise a chairman or deputy chairman and such other members appointed under this section and as I mentioned about the attorneys-at-law:

> "The other members, not exceeding six in number, shall be appointed by the President from among persons as appear to him to be suitably qualified by virtue of their knowledge and experience in the various disciplines necessary for the implementation of this Act."

The decision of the tribunal shall be by majority.

Under clause 5 of the Bill it gives the tribunal the jurisdiction and it is set out there very clearly.

Clause 6 deals with directions and then it sets out for any person who wishes to appeal in clause 7, how he or she does it.

3.10 p.m.

It says what the tribunal may do. It may affirm the decision of the Adjudication Officer; it may remit the matter back in the case of an Adjudication Officer and make such orders as it thinks fit in the circumstances. There is also under clause 8:

> "Where a person submits a claim for compensation under the Registration of Titles to Land Act…"

there can be an application to the tribunal and the other matters are matters which are easily understandable. They provide for appeals. The appeal is to the Court of Appeal. It was changed from the High Court to the Court of Appeal.

Mr. President, we now go to the Registration of Titles to Land (No. 2) Bill. The Wisconsin Report, to which I referred earlier, states:

> "The circumstances outlined above suggest that there is an urgent need to institute a programme of Title Registration. Title Registration should be made mandatory throughout Trinidad and Tobago for three principal reasons:

- in order to compile a complete Title Register of all land in Trinidad and Tobago showing information on parcel boundaries, names of 'owners', and limitations on ownership (e.g., mortgages, leases, rights of way, etc.) unambiguously referenced to a map and having a unique parcel number;
- in order to eliminate costly, time-wasting and repetitive searching for every transaction on any parcel of land; and,
- in order to provide essential support for the introduction and maintenance of a larger Land Information System of interest to planners, economists, revenue assessors, agriculturists, public utility operators, local government administrators, and others, and which could not operate efficiently without the certainty provided by a system of Title Registration."

The report further stated:

> "In their present forms, neither the Real Property Ordinance nor the Land Registration Act, 1981 is appropriate for the expeditious implementation of title registration in Trinidad and Tobago. In both cases, the machinery for bringing land on to the title register relies heavily on the direct involvement of the Judges and processes of the High Court. More speedy, less formal and less costly machinery should be devised for routine land matters and expensive judicial attention should be reserved for those land-related problems that cannot be resolved by less formal means."

It is for this reason that we have not brought into operation the Registration of Land Act, 1981. Instead, we have brought this Registration of Titles to Land Bill and, as the name suggests, what would be registered is title with a state guarantee for the information recorded in the register. The Bill would, for the first time in our history, establish a parcel-based registration system.

In accordance with clause 2, this Bill would apply to every parcel of land for which a folio of the register is established. Clause 2 says:

> "This Act applies to every parcel of land for which a folio of the Register is established under the Act."

And it gives the purposes.

> "In order to carry out the purposes mentioned in subsection (2), the Act provides for—
>
> (a) establishment of a parcel based register for land brought under this Act;

(b) use of a Unique Parcel Reference Number to identify each parcel of land;

(c) establishing the ownership of interests in land by registration;

(d) establishment of priority for enforcement of interests by time and date of registration;

(e) establishing procedures to manage the land registration process;

(f) the maintenance of records in prescribed format; and

(g) establishing procedures for compensating persons who sustain loss subject to…"

certain criteria.

So, when enacted, the Bill would provide certainty of ownership and interests in land and since proof of ownership is simplified, it will facilitate execution of transactions. The Bill will also provide for the compensation under prescribed circumstances, and the time-consuming and expensive method of search deeds, if it is not done immediately but, certainly, within a few years, would become a thing of the past.

When this sort of system was introduced in South Australia, the South Australian legal profession received the new system with some disdain. Some viewed it as a threat to their livelihood and there was opposition, but times have changed and today the legal profession need not only depend on conveyancing but, in any event, these Bills would put a framework in which it would be possible to have land registered and identified.

Clause 2(3) provides in short what the Bill provides for—I have read that—and Part I of the Bill sets out the preliminary matters. Clause 2 sets out the purposes of the Bill which I have already read. Part II of the Bill deals with the establishment of the land registry and other administrative matters. Clause 4 provides that all deeds:

"…instruments and other documents relating to land shall be effected in the offices of the Land Registry…"

and that all records:

"…in the Registers and Indices maintained for that purpose by electronic or other means in the office of the Land Registry in such manner as may be prescribed."

This clause gives the legal base for maintaining records by electronic system.

Part III, clause 13, provides details of the register. The register shall be comprised of folios and there shall be:

"(a) a folio for every parcel of land…"

in Trinidad and Tobago. There will be:

"(b) a lease folio in respect of every lease…required to be maintained under this Act; and

(c) every interest folio created in accordance with sections 17, 18 and 19."

There is a provision to create a folio for a lease if the lease is for a period of less than 21 years. There will be a folio for mines and minerals and there will be a folio created for every unit and condominium property.

In this Bill, we have provided for the registration of titles for all units and condominiums. May I mention at this stage that the Condominium Act is being revised with the intention of having it, in its amended form, brought to Parliament in order for it to meet this Bill when it comes into force.

Clause 14 provides for the registration of every parcel of land when the adjudication record is received by the registrar. Under clause 23 of the Adjudication Bill, the Adjudication Officer is required to send the adjudication records to the registrar. The registrar will create a folio for every parcel. The first registration shall be effected by preparing a folio and subsequent registration would be effected by making an entry in the relevant folio.

Clause 24 provides for the issue of certificates of title. This certificate would indicate all the entries in the register affecting that land or lease subsisting at the date of the issue of the certificate. In the other place, concern was expressed that there was no provision in the Bill for the issue of duplicate certificates. In fact, there is no need for them. Anyone can, on paying the prescribed fee, obtain a certificate. The certificate would carry the date of the issue and would indicate the subsisting entries.

Clause 25 gives the contents of the certificate of title. It shall contain—and I read that—a unique parcel reference number; reference to the parent folio; the date of its issue; the date of the registered proprietor and the nature of the estate or interest; a schedule and the order of priority of all current encumbrances, charges, *et cetera.*

A certificate of title is all that you would require in the future and if a parcel of land is sold, the certificate would indicate the new owner. This would bring an end to the laborious process of title search.

Part IV of the Bill deals with instruments and dealings in land. Clause 34 confers conclusiveness to the register indefeasibility of title to land registered under the Bill. Except in the case of fraud, the title would be absolute and indefeasible. The proprietor of any estate or interest in land shall hold the land subject to any encumbrances recorded in the folio, but free from all other estate or interests.

Clause 35 states:

"A person contracting with the registered proprietor in good faith and for valuable consideration is not required to—

(a) enquire or ascertain the circumstances under which the registered proprietor or any previous proprietor was registered;"

In the other place, concern was expressed with regard to the stamping of instruments and I indicated that I would look into the matter, but it would seem to me that we would have to look at clause 42 to see whether there can be facilitation of payment of duty in cash at the office of the Registrar General, rather than by stamps. That is something with which I will deal at the committee stage.

Part V deals with Transmissions, Liquidations and Trust, and Part VI deals with the Effect of Registration. Perhaps I may refer to clause 61 which provides that:

"…the registration of any person as proprietor with absolute title to a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatever, but subject…"

to certain exceptions.

So, you will see the effect of registration under this Bill. Provision is made in clause 16(d) of the Land Adjudication Bill to declare certain titles as provisional titles. A person may have a possessory title, but if the adjudication officer is not satisfied that the person has been in possession for over 30 years, the adjudication officer is required to declare the person's title as a provisional title.

What is the effect of declaring a title a provisional title? The effect is given in clause 62 of this Bill. The clause provides that:

"Subject to section 34, the registration of any person as proprietor with a provisional title to a parcel shall not affect or prejudice the enforcement of any estate, right or interest adverse or in derogation of the title of that proprietor arising before such date or under such instrument or in such manner as is specified in the register of that parcel; but except as aforesaid, such registration shall have the same effect as the registration of a person with absolute title."

Part VII provides for the establishment of an Assurance Fund and for the payment of compensation out of the fund. What we are going to embark on is a very big project and there would be errors; officials may make mistakes and, therefore, there must be a fund from which not only to provide compensation at this time, but also from time to time.

So, Mr. President, the cumulative effect of these three Bills is really to provide a system of identifying land, parcel boundaries; also, to find a system of having a way in which disputes in land matters can be heard before a land tribunal away from all the formal processes of the court. It would also reduce the time and expense and have a registration system in which title would be registered and, with the effect of the three Bills, it would mean, therefore, that the objectives which the report stated can be achieved, in that there can be improvement in obtaining search for title, and in detecting title, it will obviously improve commerce, provide greater security and, in effect, save a lot of expense and give people more peace of mind in property dealing.

3.25 p.m.

Mr. President, I have circulated some amendments to the Land Tribunal Bill and I will deal with them at the committee stage, but they are quite clear in relation to the Bill.

Thank you, very much, Mr. President. *[Desk thumping]*

Question proposed.

Sen. Nafeesa Mohammed: Mr. President, as I sat here this afternoon listening to the hon. Attorney General as he presented these three Bills dealing with land matters, I could not help but remember an expression that is often used within the East Indian community, that is: "in the next *janam*" which means "in the next world" because the legislation that the Attorney General presented here seems to be technical stuff, yes, but the big question that arises with this package of legislation is: when will the system actually take effect or come into effect? I mention this because it is a real problem that has been existing for a number of years. I think even before Independence, some of the problems that have been mentioned have been in existence. I really hope it would not take us into the next world before we see the reforms kicking in as the Attorney General has presented here this afternoon.

By and large, we on this side recognize the importance of the Bills that have been presented here this afternoon. Certainly the package of legislation is long

overdue and, generally, we are in support of the package of legislation. As you would appreciate, Mr. President, land is indeed a very scarce and valuable resource in any country and certainly for us in Trinidad and Tobago. When one is talking about land matters it has a very strong bearing on our history and, indeed, our culture in our country. Because of the scarcity of the resource and how valuable it is, the reality is that over the years, there has been an increasing demand for land in our country, for many purposes: for agricultural purposes, for example, for commercial use, for industrial use and certainly for residential use. As a result of this growing demand, one would find that over the years there has been a certain kind of strain developing, particularly, as it relates to our legal system and the legal aspects of transferring lands and what have you.

Mr. President, over the years we recognize that there are problems and there, certainly, is a need to reform our land laws. We have no difficulties with that need, or recognizing the need to reform our land laws here in Trinidad and Tobago, and we are, indeed, very happy to see that the work of previous administrations in this country is, in fact, being continued by the presentation of these Bills here this afternoon.

Mr. President, I would just like to touch, briefly, on the background to these Bills. The hon. Attorney General has made mention of the *Wisconsin Report*. Our land laws here in Trinidad and Tobago have been based, more or less, on the English laws relating to land. As I mentioned, even before Independence, one can see that some of these laws were, in fact, and are still, very much outdated.

I understand there is a book that was written by J. C. W. Wiley on the land laws of Trinidad and Tobago some years ago, after a certain package of legislation had been passed in this Parliament. I can only assume that much of the information in this book—because that package of legislation is not going to be put in force, some of the material in that book—may no longer be relevant. Basically, reference was made in that book to the fact that way back in 1959 there was a Sellier Report; a report done by Sellier. I can only assume it has some link with the well-known legal firm of J. D. Sellier and Company. Since then, warnings had been given out about the need for reform.

It was not until, perhaps, the 1970s when the Law Commission came into being, that the real impetus for reform of our land laws started. I believe it was in 1973 that Justice Kelsick had presented a paper in a conference dealing with reform, generally, to our laws in Trinidad and Tobago. In that paper he would have dealt at length of the need for reform of our land laws.

So it was in 1978 that the Law Commission embarked on a programme of modernizing the land laws of Trinidad and Tobago. This is what led to the package of legislation that the hon. Attorney General referred to in his presentation, which had been passed in the Parliament in 1981. Having passed those Acts, however, we have been told and we are aware of the fact that these laws that were passed were never proclaimed. They were not proclaimed for a variety of reasons; because of the kind of resources that would have been required to implement them. It is, indeed, a monumental task to effect the reforms that were being proposed since then.

Subsequent to that 1981 enactment of new land laws in the country, I think it was in the late 1980s that, an attempt was made to come up with a policy for land use in Trinidad and Tobago, in fact, a policy to deal with the administration and distribution of land in our country. It was a question of reviewing all the laws that existed and seeing what new policy could deal with the situation. This work had started, I think, perhaps in 1989.

It was in 1992 when the then People's National Movement Government had come into power, an attempt was made to review the work that had been started under the National Alliance for Reconstruction Administration, and to continue with the whole process.

3.35 p.m.

In fact, I have in my possession a document; which is a note for Cabinet titled, "Report of the Ministerial Committee appointed by Cabinet to review a proposed new Administration and Distribution Policy for Land". This document is dated October 27, 1992. Generally, what this report tells us is that a ministerial committee had, in fact, been set up. Cabinet approved it on June 4, 1992, that is, the appointment of a ministerial committee under the chairmanship of the then Minister of Planning and Development to review the work of the previous administration. This ministerial committee was working hand-in-hand with a technical team of persons. I think, for the records, I ought to indicate the membership of these various committees, because a lot of work has gone into the Bills that we are looking at this afternoon.

Making up the ministerial committee was the Minister of Planning, the Attorney General, the Minister of Agriculture, and the then Minister of Housing. The technical team was made up of the Permanent Secretary of the Ministry of Planning, the then Director of the Town and Country Planning Division—who I believe is now deceased, may her soul rest in peace; the Acting Commissioner of

Valuations, the Acting Director of Surveys, Senior Planning Officer in the Ministry of Agriculture and Mr. Hugh Robertson a Senior Parliamentary Counsel from the Law Commission.

In this report, if I may be permitted, Mr. President, just to make some references to the policy that was arrived at: it is contained in Appendix III of the document to which I am referring. At page 4 of the actual policy document it deals with the administrative and institutional framework which deals with land administration and distribution in the country. In this section it tells you about the number of agencies that actually deal with land matters, I think it was from seven ministries, at that time.

You could identify the Town and Country Planning Division, which controlled land use and development; the Lands and Surveys Division dealing with surveying, mapping and state land administration; the Valuation Division dealing with land values, conditions of leases and so forth; the Environmental Management Division from the Ministry of Planning and Development; the Ministry of Housing and Settlements; the Ministry of Trade, Industry and Tourism; the Ministry of Agriculture, Land and Marine Resources; the Office of the Prime Minister; the Ministry of Works and Transport and the Ministry of Energy and Energy Based Industries. All these agencies or ministries were, in fact, involved in one way or the other with land matters in the country.

At page 5 of this report, it makes mention of the need for an integrated land information system. Because of the deficiencies that were identified and recognized in the information system, as they relate to land administration and distribution, the recommendation was made for the strengthening of the administrative apparatus. This report said that that administrative apparatus should be given priority. Mr. President, the idea behind this integrated land information system was to come up with a modern computerized system of collecting data as it pertains to land and to be able to retrieve information.

In this document as well, extensive reference was made to the need for a restructuring of the Lands and Surveys Division—and I will come back to this division in a short while, because there are numerous problems that affect this particular department. There is a lot of work that goes on in the Lands and Surveys Division.

At page 24 of this document, in dealing with the recommendations of the committee, the proposal was made that the 1981 package of property law reform legislation not be implemented and instead there should be a review of all the

laws. In fact, what was proposed in this report is these three Bills before us this afternoon, that is, the Land Adjudication Bill, the Land Tribunal Bill and the Registration of Titles to Land Bill.

Mr. President, at present, we know that there are two systems of dealing with lands in our country: the hon. Attorney General made mention of it. There is the common law system and what is known as the Real Property Ordinance system of dealing with titles to land. When we are talking about the registration of titles, these are the two main systems that operate in our country. Under the common-law system, there are certain Acts of Parliament that govern the registration of titles. There is the Registrar General Act, which is in Chap. 19:03 of the Laws of Trinidad and Tobago; the Registration of Deeds Act, I think it is in Chap. 19:06 and there is even a Tobago Deeds Act, which is in Chapter 19:07.

Generally, what happens under this system is that for persons wanting to transfer ownership of land, an attorney-at-law would normally prepare the deed and it is actually registered right downstairs here in the Registrar General's Department. The state is really the custodian of those original records.

The real property system was supposed to be a simpler process. It is governed by an old law, Chap. 27, No. 11, in the 1950 edition of our laws. Under this system, the state certifies and guarantees the interests that are shown at the back of what is called the Certificate of Title. With this legislation that we are looking at, particularly the Registration of Titles to Land Bill, what is being proposed is to introduce a mandatory title registration system. But as we talk about introducing such a system into our country, I think it is imperative for me to highlight some of the problems that exist at present and for us to see how, while we are trying to phase in a whole new system, we can ensure that the transition is made as easy as possible for purposes of dealing with land matters in our country.

The reality is that the system seems to be on the verge of collapse. There is sufficient evidence of it. About a year or two ago you would recall that many of the search clerks who operate from right downstairs here in the Red House virtually went on a go-slow. That could have had a crippling effect on the whole economy of our country, because not only lawyers and law firms depend on search clerks when they are dealing with land matters, but the financial institutions. The banks, those who prepare mortgages, rely heavily on the work of our search clerks who operate from the Land Registry right downstairs here. Whilst we are talking about having a modern system of recording land transfers and land information, until such time as that system comes into effect, which I hope to God would not be in the next *janam*, we need to ensure that the old

system, as we know it, continues to operate and function in as efficient a manner as possible.

Mr. President, we know that a lot of public relations work has been going on over the last few months, particularly, when the former Minister of Legal Affairs, who is now the Minister of Education, was in charge of the registry downstairs. There were many pronouncements made and now we have the hon. Attorney General taking over the whole Land Registry once again. The reality is that the Land Registry is housed right here in the Red House building. We have complained and talked about the conditions in this building on a number of occasions in various debates in this Parliament.

I have been downstairs in the Land Registry already, only to realize that some water, or whatever it is that was dripping from the rooftop to downstairs was, in fact, some leakage taking place in the plumbing on this floor right here. These are some of the conditions that exist downstairs. The condition in which our very significant records are kept in a vault downstairs is really cause for concern to all of us, regardless of our political affiliation. I say this because downstairs of the Red House is a vault in which all records of deeds that have been prepared in this country for, I suppose more than 100 years, are kept. The system that operates is that, by and large, the Registrar General's Department keeps these records.

When we are talking about the common law system of registering titles, for example, there are certain books that are used for determining the title to property, and these are the records that our search clerks have to go through manually in order to determine whether a title is good or not. There are indices of deeds which are broken up into various parts for the year; I think there might be four volumes for each year. There are also country books which deal with records of transactions according to wards in the country and there are Town books for the city of Port of Spain, San Fernando and what have you. But it is a pathetic sight if you were to go into the vault downstairs or the search room and see the condition of these books.

The problem is that there is a need for a continuous process of maintaining these books. Every time you turn a page, that page is getting weaker and weaker. From time to time, attempts have been made to bind these books and reproduce them and now we know that the computerization process has started. My information is that the computerization process has started from the books from 1999 and they may have gone back, I do not know if it may be 1991; I do not know if they have reached that far. But I understand that some kind of attempt is being made to scan these books in order to store the information on computers

and it is being done by some private contractors. The books are actually taken out of the Red House on an almost daily basis, somewhere down on Henry Street, I understand. I do not know if it is CCS that is doing the work. But we recognize that it is a very big job that has to be done.

In the meanwhile, whilst these books are being taken down there to be scanned, they are being returned in some binders; these binders are being taken back into the vault. The problem there is that, at the same time, our search clerks have their work to do, because if somebody is interested in buying a parcel of land one of the first requirements is that the purchaser, through his or her lawyer, must get a search done on the title to the land if the land falls under this old common law system. To do that search it requires a search clerk having to go into these books and search the title for a minimum period of, at least, 30 years in order to establish a good title, and you may even have to go back to more than 30 years in order to get a good root of title.

3.50 p.m.

What my information is—in fact, I have been there myself and I have experienced it. There are other lawyers in this Chamber who I am sure will testify to this problem. Because of certain changes being made, now I understand that at any one point in time, only three or four search clerks are being allowed to go into the vault in order to extract a title. So search clerks have to actually put in a request for a particular volume and wait, sometimes for a day, two days. Whereas, not too long ago, as a lawyer, you could have advised a client that a search would take about three weeks, now it is almost impossible to say that a search would take about three weeks to be completed because our search clerks are functioning under very adverse conditions and the system seems to be grinding to a halt. In fact, I was told that when a person is now entering into an agreement to purchase a property, it may well be that they may have to stipulate a six-month period for the completion of that transaction.

Quite apart from the problems in assessing the books in the vault, there is the major problem in dealing with the condition of the books where pages are lying loosely in various places, and sometimes a plan might be missing from a deed, or some pages are missing from the volume and the search clerk is put in a position where, at present, he cannot guarantee that the search he may do on that particular property is, in fact, a comprehensive and complete search because pages may be missing and you could end up in some difficulties.

Mr. President, quite apart from that, there is the situation where you are computerizing and trying to get the information stored under a modern system,

but the reality is that while this is going on, there is need to preserve the present system by preserving the books, ensuring that they are being bound and the information continues to be kept in a safe place. On the issue of the computerization that is going on, I am hoping that when the Attorney General is winding up he would be able to tell us something more about the status of this computerization process. Around 1977, I remember there was a big fanfare that they had started the process and they are always quick to say that we did not do this, and we did not do that. I understand there was some consultant who came from Australia to get this process going. I am curious to know where he is, and how far he got with it. We would like to know what is the position with that.

Another big problem is the actual condition in the search room. Because of some attempts at tightening up security, the opening hours for the search room, I think, are from 9.30 a.m. to 3.30 p.m. every day. This is a major handicap to our search clerks. There are search clerks who have been working in the vault for 20 and 30 years. There are some 120 search clerks or thereabouts, including persons who work privately for lawyers. There are also government search clerks from the various government agencies like the National Housing Authority, functioning downstairs, but one of their concerns is the need to actually open the search room, or make it accessible to them at an earlier hour, perhaps from 8.30 a.m. to 3.30 p.m.

Quite apart from that is the general problem involving the staffing in the Registry and I am talking about staffing, generally, as it relates to the Registrar General's Department. A simple thing like getting a book, or making a request for a certified copy of a deed requires attendance and there seems to be a shortage of staff operating in the search room. I understand there is only one toilet working for the gents. When it comes down to the problems involving searches as it relates to the old law system of dealing with land transactions, there are real problems. There are also problems that exist with the other system known as the RPO system.

Sometimes if a certificate of title is missing, it is a lengthy and tedious process to get a new one, and at times you may prepare a deed, you may have lodged the certificate of title but it takes a while to have the endorsements made on it.

Mr. President, I was very pleased to hear the hon. Attorney General mention the fact that in terms of the issue of stamps which had been raised in the other place, that he is considering an amendment to enable payments to be made by cash as opposed to stamps. The use of stamps especially now, is a real problem with which the Government needs to deal because our postal system is now in

private hands and many of our legal transactions that we do on a day-to-day basis as lawyers in this country require filing papers or registering deeds and in that process, you actually have to buy stamps from the post office and affix them to your documents before you actually file them. Now that the postal corporation has changed hands—it is in private hands now, it is no longer with the Government—it means that all the revenue that is being collected, supposedly for transactions that involve the state or the state legal department is going into the private coffers of others; the state is not benefiting and I am sure that will amount to millions of dollars at the end of any particular year. So that is a loss of revenue that the Government should look at, and if the Attorney General is suggesting an amendment to deal with cash in the Land Registry, I would suggest not just in the Land Registry, but in all our legal departments because it is a real hassle.

Mr. President, it is a frustrating experience; if I want to request a certified copy of a deed; I have to walk with stamps. In order to determine how much in stamps I must pay or tender to get the document, they will first have to determine how many pages are involved. If it is a deed, whether it is three pages or four pages, based on that, they have to tax it, and if after taxing it, it is like $16.00 or $20.00 worth of stamps, then you affix your stamps and you are given a receipt and you collect it in a week or two. The process is a ridiculous situation, especially now. Whereas before, you could have said to someone it would take two weeks to get a certified copy of a deed, nowadays it is taking a month. Your law clerk will come to the office downstairs and when he or she makes a request for a certified copy, that clerk has to return on another day, by which time an attendant would have gone into the vault to check the deed book to see how many pages are involved and when the cost of it is assessed, then you pay your stamps and then come back some two or three weeks after to get your certified copy. That is why I said the system seems to be grinding to a halt and it is causing many delays and unnecessary frustration for many people. As I said, I am very happy to hear the Attorney General is considering setting up a system where you can deal in cash because this system with stamps affects—for example, if you go to the Companies Registry it is the same hardship, you have to walk prepared with stamps. I believe maybe now in the Intellectual Property Registry they may be using cash, which certainly would be a welcome move.

Mr. President, as I continue to talk about the hardships that are being experienced in the Red House, I want to make mention of the fact that over the last two or three years, we had been hearing much talk about the relocation of the Land Registry from the Red House to what is known as the Huggins Building.

When we come to the Huggins Building, there are some real, real issues that need to be investigated. I am calling on the Attorney General to be transparent and to come straight and level with the people of Trinidad and Tobago and tell us what is really happening down there. *[Desk thumping]*

When the search clerks were on a "go slow" a year or two ago, I cannot remember the specific date now, one of the complaints was the fact that they were told they would have to relocate to the Huggins Building and, clearly, the accommodation there was deemed to be very inadequate in terms of housing all these search clerks. In fact, I believe the Companies Registry has been moved into that building; there is the Intellectual Property Registry and there was a separate Minister of Legal Affairs, I assume efforts were being made to relocate her down there. Now that the Attorney General has taken over the ministry and the Land Registry in particular, I am concerned about the present status of accommodation, not just for the search clerks, but the space that is being provided, or that has been promised for the relocation of the vault from the Red House.

Just as the hon. Attorney General took over the Ministry of Legal Affairs a few months ago, there was a big sod-turning ceremony down there in an empty lot of land where the Huggins Building is located and they were boasting and the hon. Attorney General himself spoke about the fact that a proper vault will be constructed to keep the records that are presently being kept in the Red House.

Mr. President, in our records here in the *Hansard* of the Parliament, when the debate on these Bills was taking place in the other place, the hon. Attorney General specifically said in his contribution that apart from the building—that is the space in the Huggins Building—he was boasting that there is indeed space for expansion because there are some state lands right around the Huggins Building so that there would be much room for expansion and a new structure where the vault will be.

I am asking him to tell us what is the status of the construction of this vault because the report that we have gotten on this side is the fact that one of the Attorney General's Cabinet colleagues has, in fact, pledged or given approval for the construction of a sixteen-storey building near to the Huggins Building and some of the state lands there are going to be used for car park facilities for that friend of that particular Minister. I want the hon. Attorney General to tell us the truth and if, once again, they are compromising the public's interest by taking the public land for the benefit of their own friends and associates in the Government. *[Desk thumping]*

It is a very worrisome situation and we are asking the Government to come clean. We want the hon. Attorney General, who very often boasts about protecting the interests of the public, to tell us whether the vault is, in fact, going to be constructed there, or whether it is going to be used as a car park and whether an agreement has been arrived at with certain individuals to give them the car park facility. That is very important for this debate because we are talking about the relocation of the Land Registry after the Attorney General had promised a certain new facility, or expanded facilities.

4.05 p.m.

Mr. President, we have to wonder if the reports in the newspapers are not true; where a Cabinet Minister was alleged to have cuffed or attempted to cuff down another Minister. Mr. President, I am wondering if it is not the Attorney General involved—with another one of his colleagues—please tell us. Come clean and tell us. *[Laughter]* It is very significant because we want to know that when we are talking about improvements in our land registry *[Interruption]* We may need a tribunal to adjudicate but we know that judgment day is coming soon, it is just a matter of time. *[Interruption]* I am sure the Parliamentary Secretary in the Ministry of Housing and Settlements would, in fact, be aware of some of the things that are, in fact, taking place down there. It is a pity she is not in the Chamber right now. *[Interruption]* The Parliamentary Secretary in the Ministry of Housing and Settlements, Mr. President.

In any event, we are very concerned that whilst the legislation here suggest an improved system of recording information pertaining to land transactions and the retrieval of such information, we want to be sure that the system can really operate and we would continue to appeal to the powers that be, to ensure that the facilities that exist and the system as it exists at present, that whilst we try to phase in this whole new system of registering titles and so forth, that the system works efficiently. At present, it is not. We know that there have been problems for a number of years but we want to see real improvements being made, instead of just public relations work and promises and promises. We would really like to see some real improvements taking place.

Mr. President, apart from the Registration of Titles to Land (No. 2) Bill, we had the Land Adjudication Bill that the hon. Attorney General spoke about. In this Land Adjudication (No. 2) Bill, the idea is to set up a system for trying to get land records or, at least, as much information as possible pertaining to lands, to have proper surveys done and to set out the title and to actually define the boundaries as they relate to all parcels of land in our country. As good as it sounds, we know

that in some communities—sometimes when you go to court you would see families—brothers, sisters or neighbours—fighting; sometimes some people may pull a cutlass over some boundary dispute because of one foot of land or two feet of land or whatever it is.

Mr. President, when it comes to adjudicating on these matters, we recognize that there is a need for some system—and it sounds good to introduce a simple system where you would not have to go to the High Court where there is such a big backlog of cases—and do you know the hon. Attorney General has continued his attack on the Judiciary and now specifying our judges, but there are real problems. There is a backlog of cases, and if it is that the adjudication process would help to minimize the backlog, we would welcome it.

When we look at this Land Adjudication Bill, we would see that there is a certain section that deals with the appointment of certain officers. In Part II, there are provisions that deal with the officers, to have an adjudication officer; a demarcation officer; recording officers; and survey officers, as may be necessary. Under this piece of legislation, it is envisaged that the adjudication officer would be working hand in hand with the Director of Surveys. Mr. President, this brings me now to the problems that exist in the Lands and Surveys Division in our country. I can tell you—as an Attorney-at-Law I have written letters to this department, and two, three, four even five years have gone by and you cannot get a response because they cannot find the file or some other problem exists there.

I know for a fact that some attempts were being made in the past in terms of restructuring the Lands and Surveys Division. In fact, when I read from the report of 1992, that was one of the big areas for improvements; the restructuring of the Lands and Surveys Division. In fact, some work has already been accomplished, and there have been some attempts of institutional strengthening. The hon. Attorney General mentioned about the loans that were being accessed in or around 1993, and that the first tranche of one of the loans had, in fact, been accessed from the Inter-American Development Bank (IADB), and my information is around that time some pieces of equipment were, in fact, purchased for the Lands and Surveys Division to deal with mapping, a digital system and to have a satellite system installed and what have you.

By and large, there are some real problems that continue to exist in the Lands and Surveys Division. There is an acute problem—if I may say so—with inadequate staff at the Lands and Surveys Division. The reality is that there is not enough trained staff. In this age of information technology and very advanced methods of doing things, especially when it comes to lands and surveys, it is a

whole new world, with new technologies that are involved, and you need to have properly trained staff in place because of the type of work the Lands and Surveys Division is supposed to be doing. Even the professional staff—I understand, Mr. President, that the number of surveyors in that department has now declined from 31 to 18. Can you imagine—there are brilliant graduates coming out of our University of the West Indies, and if they are to go in the Lands and Surveys Division. *[Interruption]*

Mr. President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. M. Jagmohan]*

Question put and agreed to.

Sen. N. Mohammed: Mr. President, I thank my colleagues for the extension of time. I was making the point that in terms of the Lands and Surveys Division you have a situation existing where you may have young brilliant graduates coming out of our University of the West Indies who are surveyors, and if they are to go into the Lands and Surveys Division to work for a mere $4,000; I understand, nowadays, they are only being given contract jobs for six months, and with the volume of work and the kind of work that they have to do, it is really no incentive for them to remain there. So that you would find that the turnover with staff, especially with surveyors—and you need surveyors to make this department work efficiently—it is a very sad situation.

In other words, the Lands and Surveys Department is being called upon to do much more work with far less resources and what is happening in reality—especially in recent times under this UNC administration—is that the Lands and Surveys Department has become like a football in the Cabinet. The Lands and Surveys Division had some links with the Ministry of Agriculture, Land and Marine Resources and was based in the Red House, and has now been taken over fully by the Minister of Housing and Settlements.

4.15 p.m.

What is happening is that there is a duplication of work being done. I have heard the Minister of Housing and Settlements saying that you must do away with the Central Tenders Board. He does not like to have any restrictions or procedures to follow, and that is a fact. Look at his political career from the first time he became a Minister. As a Minister then, when he came to the Red House he decided that he was not going to operate in any Ministry. He wanted to do things

his way. The reality is that we operate with a civil service and, whilst there may be bureaucratic problems and so on, there are procedures and systems to be followed in order to get things done.

Instead, we have a situation where, through the Ministry of Housing and Settlements, there is some duplication taking place where various consultants are being hired to do work that trained civil servants are there to do and they have their work cut out for them. However, they are being marginalized and it is just their friends and the consultants that they are hiring to get the work done. There is a lot of politicking going on. Instead of the Government of the day ensuring that the department is given the necessary resources to do its work, we find a lot of political interference and overlapping taking place. You know it is a system, the core of which they are ignoring when it comes to Lands and Surveys. They are bringing all kinds of people from the outside and just doing things that suit them for their own political purposes. That is not right, Mr. President.

At the end of the day, if the Government changes, we still have a country to govern and to run [*Desk thumping*] and we want to ensure that things are done in an equitable manner and not just for cheap, political purposes and for friends and family. [*Desk thumping*] We want to know that the system is operating efficiently. Even the posts that exist in the Lands and Surveys Division, and this is a matter that I think the hon. Minister of Public Administration should look into, there is need to look at them. The Director of Surveys, I understand, has two jobs in one because he is also the Commissioner of State Lands, so he has major responsibilities to undertake. The whole thing needs to be looked at.

You need to look at the various posts to ensure that, especially with the modern technologies that are existing now, you have trained staff. You need to have adequate staff. All we say is, prioritize and put your resources into the division so that the system can work. Do not take your resources and contract them out and give big, big jobs to consultants who might be your friends and family, and at the end of the day they cannot get the job done. There are people in the system already who know what has to be done but they are not given the necessary resources and so on to get it done. [*Desk thumping*]

Especially when it comes to the Ministry of Housing and Settlements, and I have to say, it is like a hijacking of the Lands and Surveys Division because that Ministry has become a monster Ministry, you know. We know, for example, that the National Physical and Planning Development Bill has been in committee for some time now in this Parliament. That whole new system, whilst the legislation is not yet enacted, is continuing to operate. That system has stripped the Town

and Country Planning Division and they are doing their own thing. Approvals are being given to whomsoever they want and not to who is supposed to get and the system is not operated in the way it is supposed to operate.

That is why I raised the issue of the car park facility at the Huggins building. I really hope that the hon. Attorney General would give us an explanation with respect to the use of State lands in the vicinity of the Huggins building and tell us what really is happening. Are you going to get the space for the expansion of the vault or the construction of a new vault? Or, is it going to be used as a car park and will designated spots be given to the friends of your Cabinet colleagues? I do not wish to call the names. The hon. Attorney General knows who and what I am talking about. In fact, the country knows. I know the hon. Attorney General is a fighter with words but now, physically, he has to prepare himself, and not only him. The kinds of brawls that seem to be taking place, last week I thought the hon. Minister of Finance too might have been training for the boxing ring.

Anyway, Mr. President, I would also suggest that instead of the Attorney General spending thousands and thousands of our taxpayers' dollars to get advice, from law firms in England, on how to attack the Judiciary and our Chief Justice in this country, he should divert those resources instead to our Red House, [*Desk thumping*] right here in our Land Registry, and help to improve the system. It should not just be with public relations statements and turning the sod in an empty piece of land and saying that you have space to expand the vault and so on when, in truth and in fact, that is not happening.

Let us get the Land Registry working well. Let us try to see how the concerns that have been raised over time with the search clerks can be addressed. They have had meetings but I do not think the Government has committed itself in writing to anything. Let us see how we can improve the facilities. Whilst we wait for this building to be redone God alone knows when that will happen, certainly under this UNC administration. If you are to gauge it from the work being done with the National Library right next door, you would realize that there is no way this Red House is going to be fixed before the UNC gets out of Government.

We know we will have to do it but for the little time that you have left in Government, please, see how you can really use our limited resources in an efficient way. Do not spend our scarce resources only on public relations exercises. The people will not be fooled in our country. Use them wisely and let us see how this package of legislation, if we concentrate the resources both in the Land Registry here and in the Lands and Surveys Division and so on, would be

able to achieve something in this world. We can see this new system of registering titles come into being in this "*janam*", not in the next one.

With these few words, Mr. President, I would just take the opportunity to congratulate and to commend the very hard-working members of staff of the Registrar General's Department, particularly our present Registrar General. [*Desk thumping*]. I know Mrs. Latiff has died but the reality is that we have committed, faithful workers in our Land Registry and I really want to commend them for their hard work and hope that their cries will not fall on deaf ears. I know they may not complain to you hon. Attorney General but it is our duty to highlight the flip side of the coin. I know that you have toured the building downstairs and you are aware of the fact that there are real problems. Whoever is in power, however, it is a problem that needs to be tackled. All I can say is that when the PNM comes in we will continue to ensure that improvements are made in the system. Thank you very much, Mr. President. [*Desk thumping*]

Mr. President: We will break for tea at this stage. The sitting is now suspended until 5.00 o'clock.

4.23 p.m.: *Sitting suspended.*

5.02 p.m.: *Sitting resumed.*

Sen. Dr. Eastlyn Mc Kenzie: Mr. President, before I speak, let me say how cold and uncomfortable this Chamber is. *[Desk thumping]*

Mr. Maharaj: I have taken steps to provide some warmth.

Sen. Dr. E. Mc Kenzie: Thank you very much Sir. *[Laughter]* Mr. President, let me begin by warmly congratulating the hon. Attorney General and Minister of Legal Affairs for bringing these measures to the Senate. I know as Sen. Mohammed said, the task is, indeed, a very difficult one but I am sure that we can put measures in place bit by bit. I think by trying to do everything at the same time, we could become really entangled and not achieve very much.

Mr. President, the situation of land titles *et cetera*—especially in Tobago—carries a type of history where we cannot ignore our traditions and customs. Although these traditions and customs might have been good 40, 50 or 60 years ago, today we are finding that they are putting us in a lot of trouble.

As I said on a previous occasion, when the Government set up a Registrar General's Department in Tobago, I had the opportunity to take around the officer who was acting in charge. I indicated about the lectures in every village. One of

the areas that we found very interesting was, the area that dealt with titles and so on dealing with land. We found that because of the system in those days, a number of people had their deeds but they were not registered anywhere. Why was this so? Because your deeds had to be registered in Trinidad, and very few Tobagonians took their deeds from Tobago, journeyed to Trinidad to have them registered and then come back. What did they do Sir? They put their deeds in a canister, a trunk, or what we called in those days a grip, and locked them up.

Mr. President, so when the Registrar General's Department in Tobago went around and said these deeds had to be registered—and they carried a number, it was number "this" of 19 whatever—the people did not understand what they were talking about. They knew that they had a deed for their property but it was registered nowhere. So you could have had 15 search clerks searching downstairs, they would have found nothing for pieces of land for which people had valid deeds.

The next morning, the people lined up in front of the division with their pillow cases and all their documents—some of them you could not open them strong because the paper went into pieces—to the then person acting as the Registrar General to have their deeds rectified and to have them registered and so forth, and that started a process that up to today has not been completed.

Mr. President, two or three years ago, I brought the question about the situation of acquisition of land in Tobago, and the then Minister of Agriculture, Land and Marine Resources, under whose portfolio that fell, indicated how difficult it was to compensate people for their lands because of the fact that the titles were not right. They could not find the titles.

Another custom that we have in Tobago that has impacted on the situation now is the custom of parents, grandparents and great grandparents passing down property by word of mouth. I want to refer to a document in the *Tobago Times Pilot Issue* dated Friday April 20, 1984. This was a *Times Law Review* written by no other person but Deborah Moore Miggins and it began: "Grampa's Last Words". And what did it say? It started off like this—and this is Grampa speaking:

> *"Matilda! Mah tell yuh again cause mih noh want you foh forget. When mih dead, me want yuh for see to it dat Glenroy get ah lot of land close to the mango tree. Dat ah foh am foh build he house. Ah mih fus grandson and mih been ah keep am all de time for am, from de day he born."*

Mr. President, that may sound you know—but this to that Grampa was a legal entity to that piece of land, and it would have been seen to it that that person to

whom the order was given, would have made sure that this piece of land was for Glenroy because Grampa said that piece of land was for him and it went down like this. People believed. There was no document but Grampa's words, and these were trusted words and they were kept.

Mr. President, but as the article would say later on, when Glenroy would have been ready to build his house, the bank would have said: show me title to the land that you want to use as collateral. There is where the problem began. Glenroy has nothing; Grampa's words have vanished; he has nothing in writing; he has no deed—he has nothing. The advice here was: you go and have the land put under the Real Property Ordinance (RPO).

5.10 p.m.

Mr. President, that was the beginning of worries and up to today, we in Tobago have a problem trying to put lands under the Real Property Ordinance. I know that the last time the Honourable Chief Justice visited, lawyers in Tobago complained to him about the delay in having lands put under the RPO. What was the problem?

Today, you will hear that these are the criteria for having this done and the next time you go, the list goes a little further. I know that up to last month, there was a list circulated of new rules governing putting lands under the RPO. Putting lands under the RPO is no easy way out and, therefore, we have a problem.

We have another problem and I hope the hon. Attorney General would listen to this to see whether this part had been captured in the long list of amendments and regulations that we have. We have had instances of complaints from people who have done transactions with lawyers who have gotten deeds and, lo and behold, after they have gotten their deeds, they would have asked other lawyers to check for their deeds, to see whether these documents were valid. What they found was that downstairs of this building, there is one record, but at the Warden's Office or where the person pays their land and building taxes, there is another record. That is because there is no rule that says when property changes hands that the records must also coincide with the records in the Warden's Office where you pay the taxes.

What this gentleman found out when he tried to use his deed, and the bank or financial institution ordered a search on it; when the lawyer came to search downstairs, there was one name recorded on the deed downstairs. When the gentleman brought forward his deed to that lawyer, it carried his own name. When they checked the latter deed carrying the other name—the man went down

to the Warden's Office and checked—there was no transfer of the property, because it does not seem as though that is compulsory. Nobody would have found that out until that gentleman died and somebody took up the deed to say, "This is this person's property." When you go to the Warden's Office, you are still paying taxes in that person's name, but when you come to check downstairs, the property changed hands and the man does not even know. I am not talking about rumour; I am talking about facts.

Therefore, I am saying that there must be some sort of rule and regulation now, before these rules come into being, to safeguard people from having their property taken away by change of hands and they do not even know. I hope that we would look at this.

Another problem we had, was where Hurricane Flora destroyed many documents belonging to people so they could not find their deeds, and they were not registered so there was no record to go back to. What a welcome move it is to have these measures brought by the Attorney General.

Mr. President, we cannot stress more the need for surveyors because if we have to divide and have everything demarcated and we do not have surveyors to carry out the task, we are spinning top in mud. We must have surveyors, whether we are going to contract surveyors, or whatever we are going to do, let us have an increase in the number of surveyors to deal with the problems we have right now.

Right now, I would say that we have seen a little positive discrimination in favour of Tobago because we can now order a copy of a deed and be told that we can collect it in two weeks. There seems to be a special section dealing especially with matters relating to Tobago.

I want to talk about the cash and the stamps, and the experience that we have. When you order a copy of a deed, there is a flat fee of whatever it is—$20 I think—and there is a specific denomination of the stamps. They will tell you two stamps at $10 each and they will tell you, depending on the number of pages, you will have to pay so much per additional page. Therefore, you do not know how much you will have to carry in stamps when you go back to collect the deed. So, when you go back to collect the deed, and they say, "Oh! Your deed will cost you so many dollars more in stamps." You have to leave there, go back to the post office and get stamps to return there. The fact that the hon. Attorney General is thinking of bringing in cash, too, I want to urgently, really stress that would be an excellent move which would take so much burden off the people who go to collect these documents.

Mr. President, I urge the hon. Attorney General that this exercise is an extensive one, but we must start somewhere. Either we start with matters that are clear cut and straight, which I feel you may have in the majority; or we start with the ones which are difficult where there are problems, so we may probably start with the minority. But if we try to do everything at the same time, I think we will find ourselves in trouble. I think we can start right now with certain areas even if it is only to alert people to what is happening.

Finally, at this stage, I want to commend in her absence, the Parliamentary Secretary in the Ministry of Housing and Settlements, Sen. Carol Cuffy Dowlat. When, in Tobago, we were really trying to get around the problem of acquisition of lands and people not being paid, we wrote asking the Ministry of Housing and Settlements to send someone to deal with the situation. We organized it from the Tobago end, the four Senators who were here: myself, Sen. Alfred, Sen. Moore and Sen. Williams. We advertised it and people who were affected by this, came from all over. Sen. Cuffy Dowlat and her team came to Tobago. Before that, Sen. Vimala Tota-Maharaj had been working behind the scenes with us. They brought a nice document stating the land acquisition process, bit-by-bit, step-by-step, stage-by-stage. What an education it was for everybody.

I suggest to the hon. Attorney General that we could do something as simple as this, even if it is put in the newspapers, as Deborah Moore-Miggins had done—people cut this out; I kept it from 1981 to now—with making a will, giving an outline of how a will could be done. People kept it. In fact, I have mine at home. You would just put in your name and the other relevant things. I am saying that we could probably do something like this in the advertisement supplement of the newspapers on a Sunday. People could cut it out and keep it to know exactly what to do.

How educated were our people who came out to that meeting. We have been following it up and they have been harassing us all the time. I am sure with these measures that you have initiated, Sir, that we can tell people, "This is going to be law soon. This is going to happen. These are the steps to be taken." People will feel very, very relieved. I must say how very happy I am that we could actually tell people that the Government is taking steps to ensure that their titles could be registered, that they can appeal and do all sorts of things to make sure that matters are settled before they die.

Mr. President, I refer to a few clauses in the Registration of Titles to Land (No. 2) Bill. I am going from the beginning of it. The Attorney General said that clause 22 would provide for the Director of Surveys to furnish a unique reference

number, *et cetera*. People have told me that whenever the Government acquired a part of anybody's property, they were supposed to be given at the end, a copy of the new plan, because if you have disturbed the plan by acquiring a part of the land, then there is supposed to be a new plan. I have heard people say this has not happened. I am asking please.

I like clause 33 where the registrar could register a caveat where there are omissions. I will tell you of an experience I had of someone dying and leaving property, and people trying to have the land moved from the old person's name to the new name. When they went to have it done, the question was asked. Now, this person had four children. When he died, the four children were alive. When they went to the lawyer, by that time, one had died and they transferred the property to the other three persons' names and one of the grandchildren of the person who was left out filed a caveat and when they opened the case, they realized that the successors of that dead person should have inherited that. So, you see sometimes, Sir, you could have these problems looked at.

I have a problem with clause 49 which would empower the registrar to delete the name of a joint proprietor of land on his death, but I did not get the impression that if that joint person had made a will or whatever, bequeathing his or her half to somebody else, that that could have been done. I did not get that clear. I do not know whether you could explain this to me more when you are winding up, because I sort of tried to match clause 49 with clause 56, and I hope I could get some explanation on that.

There are some clauses that are really very good from the experiences that people have brought to me, and I really like them—like clauses 63, 71 and 76—and I commend you on that.

I say to the hon. Attorney General that we in Tobago have a unique situation and I know when people say this, other people try to scoff at it as if to say, "Well, we are one country." But we have our own history; we have our own rituals; we have our own folklore; and folklore played a great part in land titles—how you acquired lands and how you got lands. I think that we must not disregard how our old people dealt with giving lands to their children. I think that we need to look at the Tobago situation and the history of Tobago lands. We probably will think, "Well, you cannot come to me and tell me your grandfather and so forth."

I know that you have made provision where somebody could come to say, "Look, this person has been here for so many years. We know that the land is there. The grandfather gave it to him. That is it." But, it may be that the law is so

tight and so stringent, that there is no leeway for an understanding or a sensitivity on the part of the people who would administer the law, because I know, in many cases, there are the legal people who do not understand this and every time they deal with it, they ask for more and more and new guidelines, and the RPO process is stretching out longer.

Today they say: "We want a jacket." The next week they say: "We want a jacket and tie." The next week they say: "We want a jacket, tie and tiepin." The next week they say: "We want jacket, tie, tiepin and cufflinks." You do not know when they will stop. I am saying, Mr. President, let us try to make the thing easy. Let us go within the law and let us not try to behave as if we are oppressing or suppressing anyone in his or her efforts to get things streamlined.

Thank you, very much, Mr. President. *[Desk thumping]*

5.25 p.m.

Sen. Cynthia Alfred: Mr. President, when we look at these three Bills, or when I looked at them, I said: "What a gargantuan task one would have to implement the proposals in these Bills." Indeed, I must say that the question of land has always been contentious and will continue to be contentious, because we know, Mr. President, that he who owns the land, owns the country, and we know that bitter wars have been fought over time; under the pretence of religion, race, the atrocity of ethnic cleansing, social issues and the economy. But, the underlying factor is that when one country wants to gain supremacy over another country, or when an individual wants to gain supremacy over another individual, or when one set of persons wants to gain supremacy over another set of persons, control of land is what is the underlying factor in many cases.

We just have to take the question of Nigeria and Biafra. Nigeria overran Biafra and now Biafra ceases to exist. Biafra was absorbed into Nigeria. What was Biafra, is no longer. I remember, Mr. President, some years ago in England, I met a young man who was from Biafra. He said his family was wealthy and so on and after the war, he said he was not going back because to go back would have been to go back to Nigeria because there was no longer any Biafra. We recognize the importance of owning land and at the same time, the importance of being able to administer lands in the legal and proper way, so that persons do not experience the difficulty that they are experiencing now.

I do not know, Mr. President, how many persons have been following this question of Zimbabwe and the whole question of land. I have some articles here

on this question of Zimbabwe. Mr. President, I just want to quote from one or two of them. The first one says:

> "The land question, Zimbabwe"

This has been transcribed from an advert inserted by the IBDC in the *Herald* of December 08, 1997. It says:

> "It is common cause that the land issue has created much controversy and debate both here…"

That is in Zimbabwe.

> "…and abroad. The matter has been written about extensively and brought before the highest courts of the land. It is therefore pertinent to analyze carefully the land issues and view it…"

In this case it really should be "them".

> "…in its proper perspective in relation to the legal system of the land."

Which I believe is what these Bills are trying to do.

Later on, Mr. President, we understand, and we know for a fact that just last month there was a referendum in Zimbabwe on the question of redistribution of land to the black people in Zimbabwe from the Caucasians. Perhaps surprisingly, in that referendum, the majority of persons voted against the redistribution of land. It makes one think. I will not elaborate on that point but only to mention that the question of land redistribution in Zimbabwe caused great, and is continuing to cause, many problems.

Here we have from the *Focus;* that is a paper—I presume it is an African paper. It says:

> "Unemployment has trebled and now exceeds a million people out of a population of 12 million."

What has happened here, Mr. President, is that the President of Zimbabwe promised the larger population, that is of black people, in Zimbabwe, that after the referendum—because he was sure the referendum was going to succeed—the lands would be distributed. But the catch phrase there, I believe, is that the land was going to be taken from the Caucasians without any sort of compensation. Apparently it was on that issue that the referendum failed. The situation in Zimbabwe remains, I would not say the same but it is a very explosive situation. Because on the premise that, indeed, the lands were going to revert to the black

people in Africa, some of them went and squatted on the lands belonging to the Caucasians. Of course, police intervened and they were sent off the land and so on. Mr. President, this just underlines the cause for clarification and clear titles with respect to the distribution of land.

Before I go to the actual Bill, I want to mention Tobago. Before I mention Tobago, Mr. President, there are other countries where land dispute continues to be the major factor that is keeping back progress. We just have to look at the West Bank. For years there have been quarrels and peace talks which, day by day, seem to be going further and further away because—we understand that Palestine has been offered 6.1 per cent of the West Bank. For years that has been going on, and until such time as both parties, the Israelites and the Palestinians, agree to come together on a common front and decide: "Well, listen, we are going to take X amount of land and you will let us decide that we will distribute the land in a particular way." But when one offers 6.1 per cent to Palestine, we know that this question of the West Bank will continue, perhaps, long after we are no longer in this world.

Just this morning there was the question of India and Pakistan on the question of Kashmir. This just bears out what I am saying: the whole thing of "he who owns the land", because man realizes that once he can control the land, he controls the people.

Coming back into Trinidad and Tobago, we have controversy. We have the Jamaat al Muslimeen and the Government, Pan Trinbago and the Government and we have families in contention with land. We have so many contentious issues with respect to land. If this is an effort to rationalize things then it is, indeed, a commendable effort.

I want to talk a little bit about Tobago, Mr. President. I know Sen. Dr. Mc Kenzie spoke about Tobago, but I will talk about Tobago on another front. Maybe about two or three months ago, Mr. President, I mentioned the question of the Three Chains Act that was brought up by Assemblyman Mc Kenzie which, as far as we know, governs the use of the beach where—to put it another way—no one is supposed to go closer to the beach than three chains.

5.35 p.m.

What we are having in Tobago is a situation that is fast rivalling Zimbabwe. There are so many instances, Mr. President, where this Three Chains Act is not adhered to and what is happening is that when it comes to land near the seacoast we have, for instance, access to Pigeon Point. It was on the news, I think it was

yesterday or the day before, where the owners of Pigeon Point have made a concession to the All Tobago Fisher Folk Association that they could pass on the land leading to the beach, where the fishermen have their boats and so forth, between 5 o'clock in the morning and 9 o'clock at night. This may seem to be a great concession, but when you really think about it the fishermen do not have free access; they cannot go before 5 o'clock or after 9 o'clock. They say that sometimes when the sea is rough they will not be able to pull their boats up and by the time they go in the prescribed time they may not meet their boats.

Mr. President, that is one issue that I intend to take up at another time in this same Chamber, because it is not enough to give concessions. We have passed the stage of concession; we have reached the stage where fishermen cannot make their living as they should because of the restrictions that have been placed upon them. That is only one example. In Parlatuvier, a small, beautiful fishing village on the northeast side of Tobago there are persons, not locals, foreigners, putting surveyors' boundary marks down on big Englishman's Bay and saying, "You, the local population can no longer pass here, because we own this piece of property". I consider that an act of aggression and provocation because the local people are continuously being pushed out from land that they legitimately own.

The People's National Movement has always been consistent when it comes to the question of land, especially as it applies to locals having access to beaches and so forth, through land. This has been, and is being, eroded almost daily in Tobago so, on that premise, certain groups in Tobago got together, and these are the People's National Movement party groups from Plymouth, Bethesda, Black Rock, Whim and Mary's Hill. They got together and issued a statement of concern about where the management of the Turtle Beach Hotel took the action of fencing a vacant lot of land situated in the middle of the long stretch of road that runs parallel to Courland Bay. They have gone further; they have built a gate across a long used entrance saying, "This is our property". So you see, Mr. President, this legislation is timely.

We have to look at the legal aspect, yes, but we also have to look at the social aspect of the things, because if we are not careful the local population will end up being pushed further and further away and in the final analysis they would be in one little section by themselves and the rest of Tobago will be taken over by others. I want to make this promise and it is that we—and when I say we, I mean the PNM in Tobago—are not going to sit by and allow these acts of provocation to continue. [*Desk thumping*] It is sad that when Assemblyman McKenzie brought a motion in the House about this same Pigeon Point matter, it was not supported

by either the National Alliance for Reconstruction or the People's Empowerment Party in the Tobago House of Assembly. So one wonders, where is Tobago going? We will do our part.

It is unfortunate that every time I come here on questions of land, titles and so forth, I have to bring up things like these; we should have passed that stage already. Every time we come here we should not have to talk about Tobago; we have to say that all these things are happening. What is very frightening is that these are fresh atrocities that are being committed. If they were all in the past you could say, well, okay, something could be done, but we shall do something and when we do, we will do it in a very proper way and we hope that we will get the support of the local Tobago population. We do not want to keep out anybody, but we have to protect our turf and we have to take whatever means necessary, within the legal framework, to do so. [*Desk thumping*]

Mr. President, there is another system in Tobago that is working for some and it is not working for others: I am talking about using estates or large portions of land for other purposes besides agriculture. I have no problem with that, because I think it is archaic that every time you have large portions of land and you want to put up some facility, you are told, "That is agricultural lands and you cannot do it." However, some people get permission and if the big areas or the conglomerates or whoever get permission, and I do not see anything wrong with that, then the smaller man should also get permission. If he does not, that leaves the whole question of one law for the wealthy and one law for the poor, and we are not going to sit by and see our poorer people discriminated against because somebody else might have more clout. [*Desk thumping*]

If you have "X" amount of portions of land and you say that you are going to keep "X" amount for agriculture, but you want to develop Tobago, maybe eco-tourism or whatever, some are told, "Go right ahead," while others are told, "You cannot do it". Imagine having something like 15 acres of land, the land is for five of you and you go to the Town and Country Planning Division for division of the land where you are told, "Well, you have to divide it into 10-acre blocks"; 15 acres of land into 10-acre blocks. So that situation is not good enough and if you give permission to one, once you make one exception then you have to make two and three and you have to go down the road. Rather than make exceptions for one or two persons, revise the whole process, regulate it, let everybody benefit, because what they say about justice: "justice must not only be done, it must appear to be done." [*Interruption*] Justice delayed is justice denied. Many small people in Tobago are being denied justice.

Now, I am not blaming the Town and Country Planning Division, do not get me wrong, but the system needs to be amended. When that system is amended, and I hope it will not be too long, then things would work better. I had asked this question earlier. We have three ministries handling land and I asked the question, but I was told some are legal and so forth. There is the Ministry of Agriculture, Lands and Marine Resources, the Ministry of Housing and Settlements and then you have the Attorney General's Department that sees about the legal part, but sometimes the lines of demarcation get blurred and one is not even sure who is supposed to handle what.

I know that there has been confusion, and there will continue to be confusion, if all these ministries act independently and do what each one feels to be the correct thing for his ministry when, in fact, it might impact negatively on the other. Perhaps, consideration should be given. I will not repeat what the hon. Sen. Mohammed said, I think she was very explicit, and that is one example—[*Desk thumping*]—of where the ministries need to get together to determine their lines of demarcation so that they do not spill over into the authority of the others.

Then I come to the actual Bills. Before I go to the Bills I want to mention something about the lands at Signal Hill. I know that efforts are being made to regularize that situation, but do you know what I learnt, Mr. President? There is a housing settlement in Calder Hall and there is supposed to be one at Signal Hill, but what I learned recently was that Signal Hill was even before Calder Hall. Now we have a beautiful little village of Calder Hall; houses have gone up and people have occupied them; Signal Hill, however, remains unresolved. I know that efforts are being made, but sometimes we take too long, because I have been told by three different sets of people; one set of persons told me, in respect of Signal Hill, that because they did not get Calder Hall they would be the first to get at Signal Hill.

Another set of persons told me they were told that those who paid their moneys first would be getting first choice in Signal Hill. Yet a third set of persons said—I cannot remember off hand what the third set said—but each of those sets is expecting to get priority to Signal Hill; so you can imagine the confusion, 200 plots of lands for 600 persons and each one being given the assurance that he or she would get priority. So this situation needs to be addressed early and get it fixed.

The length of time that those persons in Signal Hill have waited, they could have built three houses. It is not fair to them. Some took loans, have finished paying off their loans and are waiting. Some are threatening to go to court. So

rather than subjecting the ordinary man—who, all he wants is a piece of land to build his house—to this kind of thing, why not hurry up with the Signal Hill land, let people get the land and move on from there.

When we come to the Bills, in the Land Adjudication Bill clause 13 it says:

> "Subject to any general or particular directions which may be given by the Adjudication Officer, the duties of the Survey Officer shall be—
>
> (a) to carry out such survey work as may be required in the execution of the adjudication process…
>
> (b) to prepare or cause to be prepared a demarcation map of the block referred to…on a scale to be prescribed."

In performing the functions, that is subsection (2), under subsection (1) the Survey Officer shall number the parcels in each section consecutively. That sounds very much like TT Post.

About five persons from a particular street somewhere about in Trinidad came on television and said that their houses were numbered in a certain way, then the next thing they knew their houses were numbered in another way, without any sort of reference to them. Of course, there was another side to the story. They ended up being totally confused; which number should they use. Before the Survey Officer renumbers any parcel of land or whatever, he should get in touch with the relevant persons to ensure that there is no confusion; that is one.

When we come to the Registration of Titles to Land (No. 2) Bill and we look at clause 14—I am not sure I understand it. I hope the Attorney General would explain this to me.

5.50 p.m.

It says:

> "14(1) Whenever an adjudication record has become final under section 23 of the Land Adjudication Act and the Adjudication Officer has delivered the adjudication record to the Registrar, the Registrar shall prepare a folio…"

Mr. President, that is okay, but it goes on to say:

> "…the Real Property Ordinance and the Registration of Deeds Act shall cease to apply to such parcel and this Act shall apply thereto."

So I hope in the winding up, the Attorney General would be able to explain this.

Mr. President, in clause 21, reference is made to the Director of Surveys and all of us know that land business, especially in that section takes years, sometimes so long that the people die, and we know that section is sadly understaffed. The point was made by Sen. Mohammed that there are persons on six-month contract and so forth. We cannot afford to have persons of that calibre to be put on such short term contracts. Half the time they do not have the time to complete the work and this goes on for too long. That is why I was so upset when, in the last Appropriation Bill, moneys were voted for the strengthening of the land survey section in that particular department and it either was not voted in time, or whatever, but the money was not utilized and it made me very sad because we knew that is a section that needs to be strengthened properly otherwise we will go on for years upon years in this position.

When one goes to the Land and Surveys Division and they tell you; "Perhaps in the next year, perhaps in the next two years." I think they must be very frustrated because everybody likes to know that whatever job he is doing, he gets some customer satisfaction. That is, when a customer comes and he can say; in two weeks you can come for so and so, and in two weeks you go back and get it. But when they themselves have to tell people they do not know when they can get it, maybe the next three years, or the next five years, that is not good enough.

Then clause 22 says:

> "Before any document containing a plan of subdivision or consolidation is registered, the Director of Surveys shall provide to the Registrar a new unique parcel reference number for each parcel of land shown in such plan of subdivision or consolidation and the Registrar shall create a new folio in respect of each such parcel."

Mr. President, again, that sounds like so many years down the road. That clause in particular needs a total revamping, so that all persons can feel happy that some of their land problems will be effectively dealt with.

Clause 27 says:

> "An instrument or other document affecting land that is presented for registration shall—
>
> (a) conform to such requirements as are prescribed…
>
> (b) be registered in the order of time in which it is so presented;
>
> (c) notwithstanding any notice, take effect in the order of priority according to the time of its presentation."

Mr. President, this is a new clause, but the system was in place and people have hidden behind this for years. They will tell you—suppose you are number 65 and you go to register—"Madam, you are number 65 so you will have to wait until the next seven years perhaps, because we have 64 other persons to attend to." This, Mr. President, is not fiction, it is fact. It has happened to all persons, those working in the department and others will tell you that sometimes their subject matter gets so far put back that they lose interest, they die, leave the country, or whatever and there is more and more jumble and confusion in that department than is really necessary.

I ask myself whether, in fact, other countries undergo the same problems. I know that the computer system is being put in place and that is great, and I hope that the act of computerizing everything—this is a tremendous task and I do not know what the staff is like now, but I would humbly suggest that other qualified persons be brought on board so that they can bring that system up-to-date otherwise, for the next 20—25 years we are going to have the same thing. It would not be the next 20—25 years because in another year or two, we will get back in there and I can assure you that one of the areas we are really going to do some work on is land, especially that Land and Surveys Division.

I am just letting this Government know, so that they will take note and when the time shall have come, we shall ensure that, but at the same time, the Government still has another ten months or so and in that time, I expect, if it really wants to put things in place, at least to impress the people a bit that it is really doing something with respect to land distribution and regularization it can do so.

These are all the points I would like to make, and as my colleague is saying to talk about Tobago, I do not know what is going to be done, but as I mentioned before what is happening now cannot be allowed to continue. There has to be intervention somewhere and we will always stand ready and willing, when I say we, I mean the parliamentarians, the Tobago Council in Tobago, that is the PNM, all persons who have an interest in Tobago, to see Tobago's development and persons who do not want to see Tobago once again being a central point of controversy because we know that Tobago changed hands 33 times in the early days, and it would appear that Tobago will always be in this sort of contentious position.

We live there and we really do not want that to happen. We want to see a beautiful island, well-administered and running along the lines where everybody can live together in peace and harmony. If others want to create dissension, let

them be advised that we would take such action as we feel necessary to ensure that Tobago remains beautiful, that it develops along the lines that right-thinking people would like to see Tobago develop, and in the final analysis, all of us, those who live in Tobago and those who live in Trinidad—because it is one big family—will all be pleased, happy and proud to know that at least one area of our twin-island state is receiving the type of consideration that it deserves.

In case I am taken to sound discriminatory, and also that this area—that is our sister isle Trinidad, the counterpart—is a beautiful country, we have beautiful people. When I looked at the last carnival I said; nowhere else in the world could you find people who could create on the scale that Trinidadians—here I make the distinction because in Tobago it is sort of a different culture, we go more for the heritage festival, the traditional, especially African folklore and so forth, but when it comes to creativity in the mas it is fantastic. We have a great country and we cannot afford to turn a blind eye, we cannot afford to have persons in high position using their position to make Trinidad and Tobago the sort of country that it should not be. *[Desk thumping]* If we do, we will sell out Trinidad and Tobago and then where will we be?

I thank you for this opportunity and I hope that the Attorney General will bear in mind, and may I recommend—because it is indeed three large Bills and the implications are great—that in committee we will look at all the pros and cons and come up with something of which all of us will be proud.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I think having listened to the last distinguished Senator and the recommendations she has made, it is a very good idea that we will probably spend an afternoon in the committee stage of this Bill and go through the Bill clause by clause and have whatever discussions.

I say that because there have been matters which had been raised and I saw the proposals circulated by the Independent Senators, and I feel to give justice to a cause like this, it is very important that we at least look at it in the committee stage in more detail.

What I would like to do, however, just for a few minutes, is to deal with some of the matters which I am sure people would want to know about. Yes it is a monumental task, but it is not that the Government had not been doing anything over the last few years to prepare for these Bills. The department headed by the Registrar General has been working very hard under the able leadership of the Registrar General and there have been situations in which you now have the

records in the deeds section of the department being converted into an electronic database which consists of both an image database on which you have the picture of the deeds themselves and an index database. So these deeds have been scanned and she has told me, that all wills going back to 1938 have been put on this database. I have also been told that the four years of judgments have been put on this database, four years of all the *lis pendens*, four years of all the bills of sale, and ten years going back with respect to all deeds. So from 1999 we have gone back to 1988 and I mean all deeds; conveyances, leases, powers of attorney, mortgages and so forth have already been scanned. *[Interruption]* Each year up to 1988. You will have to go back to at least 30 years, unless it is changed to 20 or 25 years.

6.05 p.m.

I was told that approximately 25,000 deeds are registered each year. So that gives you an indication as to the kind of work which has been done. Notwithstanding what the Senator said about the vault, we expect that the vault would be built. *[Interruption]*

Sen. Mohammed: In the next *"Janam."*

Hon. R. L. Maharaj: No, not in the next *"Janam." [Laughter]* It is very important for that vault to be built in order to complete the process. In order to get everything done you have to move out and have space for the registry; the deeds and the civil registration would be down at the Huggins Building. There is sufficient land to build the vault; there is nothing to worry about and I am sure that if we need extra management we can get a relative of Sen. Nafeesa Mohammed—who is attached to the Ministry of Foreign Affairs; attached to Whitehall—to assist us in seeing that the vault is built. *[Laughter] [Desk thumping]* And I am sure—since she is so very concerned about these matters—she may even want to assist him in ensuring that is done. *[Interruption]*

A point has been raised by Sen. McKenzie which deals with the question of bringing lands under the Real Property Ordinance. That is a major problem in the sense that there are delays. Mr. President, I am a bit skeptical about talking about delays these days. As a matter of fact, Sen. Alfred said, "justice delayed is justice denied" in another context. I would go further and say "delays are really the enemy of justice" because you cannot get justice. One of the problems that is happening with lands under the Real Property Ordinance, I am told by the Registrar General, is that, as you know, with respect to the applications you would have to get an order of a judge, because the judge can approve it; the judge can refuse it; and the judge can ask for more information.

Recently, there was a meeting with the Registrar General, the Chief Justice and some of his judges in order to have guidelines; the Judiciary thought that there should be additional guidelines, so, therefore, the Registrar General had this meeting and the Judiciary issued new guidelines. That explains why you would have probably found out that there are new additional matters.

So that we, in the Executive and the Parliament, would have to accept the fact that these guidelines have been established by the Judiciary because they and they alone can determine and decide these matters. If at any time it is felt that the guidelines are too onerous and too difficult and so forth, Parliament can intervene and decide whether there should be guidelines or not and what they should be. But I think we should see how they work. I have been told that because of these proposed guidelines, many of the matters had not been dealt with and therefore there has been an accumulative backlog. At the end of last year there were approximately over 200, which is a lot, but I have been told that that number is being reduced because matters are being determined.

So that these measures are very important and I recognize that it is a monumental task but one has to make a start at some time. Whether this administration finishes it in this term or the next term, the fact of the matter is that it would be finished. I have no doubt that if we have to finish it in the next term the hon. Senator would also come and assist us in finishing it in the next term. *[Laughter]*

Mr. President, I think a jurist once said that the things that are dear to man are life and limb; his right to property; his right to conjugal affection and his right to fame. I do not know in what order one would want to put those matters, but there can be no doubt that the right to property is very important to man; when I say "man" I mean man and woman. That is why in Constitutions the right to property protected is an essential, fundamental and inherent right. These Bills are really to promote the enjoyment of people's property because one cannot enjoy property if one owns it and cannot use it to mortgage or cannot get a title to it. So that one cannot enjoy property if one is circumscribed and constrained from enjoying it. So these Bills are really to facilitate the enjoyment of property.

Mr. President, I would take time to look at the comments and the contributions which have been made, and to look at the Bills again to see where I can accommodate some of the suggestions which have been made and it would also give us an opportunity of tightening up the matters further.

Mr. President, with leave of the Senate, if I can suspend my contribution at this stage and continue on another occasion.

Thank you very much.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, in light of the Attorney General's intervention and his very magnanimous response in seeking to, at least, give a lot of consideration to the various views that have been expressed here this evening, I would like to move at this time that the Senate do now adjourn to Tuesday, March 28, 2000 at 1.30 p.m., at which time we shall be focussing on Private Members' Business at the next sitting of Parliament.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.12 p.m.