SENATE

Tuesday, September 13, 2016

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

CONDOLENCES (ANGUS ALBERT KHAN)

Madam President: Hon. Senators, as you are aware, former Sen. Angus Albert Khan passed away on September04, 2016. I now invite you to offer tributes.

The Minister of Local Government and Rural Development (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. It is with remorse that I have to do this exercise here this afternoon to honour the passing of a former Senator of this honourable House, Sen. Angus Khan, who served for just about one year in this Senate and under the NAR from January18, 1988, to 22 January, 1989, before he was posted as Ambassador to Washington, United States of America, where he served out his term under the NAR regime.

Madam President, I said with remorse because although he is my namesake and no relative of mine, I knew Mr. Angus Khan quite well. When I joined Trinidad Tesoro as a young geologist way back in the early 80s, he already held the esteemed position of administration manager of Trinidad Tesoro and if I could reminisce on my Tesoro days, I would say it is one of the better companies that I have worked for in my life. It was a very progressive and efficient company that was extremely well-run and Mr. Angus Khan was a senior manager at the time.

What I remember of him basically, outside of his role in the Parliament, I remember two things. One, on Friday evenings when we had a libation at the Beach Camp club we had many a political argument and what I remember of him most definitely is that, one, he was a very close friend and confidante of Mr. ANR

Robinson, former Prime Minister and President and he did not like the PNM, but that was his choice. But we had a very, very good relation. We have had healthy discussions.

Today I want to pay tribute to him as a Senator and also I know he served with distinction as our Ambassador to Washington. I remember one evening him telling me that, after he came back from Washington, "That is a job you should not look for". So I said: Why? He said, "There are 169 embassies in Washington and everybody has a national day, so if you do not watch yourself you are drunk every night".

Having said that, in concluding, Madam President, because he did not really contribute much over the year, but Angus Khan and his peers came out of an era where politics did not matter and they were immensely patriotic to Trinidad and Tobago. And that is a generation that we are losing very fast and very, very quickly. I want to call on young politicians and young professionals that if they are to emulate the generation that we are fast losing, ANR Robinson, Angus Khan, George Chambers and the likes of these, we must understand that country comes first, political party comes second and at the end of the day, if all of us put our heads together for Trinidad and Tobago, as Angus Khan did, we will all build a better nation together. I thank you very much and may his soul rest in peace. [*Desk thumping*]

Sen. Wade Mark: Thank you very much, Madam President. Former Senator Angus Albert Khan, as my colleague stated earlier, served in this august Chamber for the period 18 January, 1988, to 22 January, 1989, prior to taking up duties as this country's ambassador to Washington.

Research has shown that he was a former manager at Petrotrin. He passed away on Sunday 4 September, 2016, at the age of 84 years. He also served as

Vice-Chairman of Petrotrin and worked at British Petroleum (BP) Trinidad Limited.

He was a politically active citizen of our country. Not only was former Senator Khan a member of the Democratic Labour Party but also served as its chairman at one point in time.

He also served, Madam President, as the Deputy Chairman of the Democratic Action Congress (DAC), from 1971 to 1978; a distinguished and outstanding citizen of Trinidad and Tobago. Mr. Khan made an extremely valuable contribution to the political landscape of our country and ultimately witnessed a change of government after some 30 unbroken years of PNM rule from 1956 to 1986, when the National Alliance for Reconstruction won those elections in 1986 by a landslide 33 seats to three. Mr. Khan, along with others, played their part in the stabilization of our economy and laid the foundations and platform for its ultimate recovery.

A dignified, civilized and distinguished son of the soil has passed on to another realm of existence. On behalf of the alternative government and hundreds of thousands of its members and supporters, may I extend our collective condolences to the family of the late Senator and to them, Madam President, we extend our profound grief and condolences. May his soul rest in peace and may he find eternal and perpetual peace in the hereafter. Thank you, Madam President. [*Desk thumping*]

Sen. Dr. Dhanayshar Mahabir: Thank you, Madam President. On behalf of the Independent Bench I would like to express deepest condolences to the family of the late Senator Angus and to indicate to them that we sympathize with them at this time of sorrow.

I myself never met the former Senator, but his name was very familiar to

me. And in reading his profile, I realized that for a very long time, Madam President, we have had, in the Republic of Trinidad and Tobago, a number of individuals who devoted large amounts of their time to public service.

He served in the Senate for a year but that was not the sum of his public service. His public service extended to the functions he performed on behalf of Trinidad and Tobago, as he represented us as Ambassador to the United States.

He also, interestingly was one of those, when I read his record I saw that Mr. Angus Khan was someone who earned a BA many, many years ago, it would have been somewhere in the 1950s, in, of all fields, geology, together with education, and it meant that he would have been a pioneer in the sector of oil and gas, maybe 50/60 years ago. It is because of the traditions established by people like Mr. Angus Khan I think our oil sector, our gas sector, has had generations succeeding of highly competent individuals, world-class professionals who could ensure that our oil and gas professionals would stand first and foremost amongst equals in the world.

Mr. Angus Khan was no doubt an inspiration to the Members of the Senate at the time that he served. We understand that he was associated with three political parties, the NAR, the DAC and the DLP. He was able to find the time to devote himself to the political affairs of Trinidad and Tobago, at a time prior to Independence, post-Independence, during our era of our Republican status and I suspect even later.

Mr. Angus Khan, in the devotion and in the dedication he showed to the Republic of Trinidad and Tobago and to the welfare of the citizens of Trinidad and Tobago, is an inspiration to us all. He has indicated that we can make the time so that the welfare of our fellow citizens can be improved. It does not matter where we sit or stand in government, whether we are in Opposition, Independent or in

Government, we can participate in the political affairs of Trinidad and Tobago so that we can produce the best law, we can produce the best public policy. He was an inspiration to us all and I am hoping that younger Members of Parliament and indeed all citizens can be inspired by the contribution he has made and also emulate him so that we can attract some of the best and the brightest in our midst into the arena of public service and into the Parliament of Trinidad and Tobago.

To his family I say deepest condolences. On behalf of the Independent Bench I say may his soul rest in peace and he will, of course, never be forgotten for the legacy that he has left. I thank you, Madam President. [*Desk thumping*]

Madam President: Hon. Senators, may I join in expressing condolences on the passing of former Senator Angus Albert Khan and may I endorse all that has been said before about former Senator Angus Albert Khan. Clearly he was a citizen who offered distinguished service in the political and diplomatic arenas and clearly was an exemplary citizen of Trinidad and Tobago.

Hon. Senators, I will instruct the Clerk to convey to his family the sentiments that have been expressed here about the late former Senator Angus Albert Khan and I now ask that we stand and observe a minute's silence.

The Senate stood.

1.45 p.m.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the San Juan/Laventille Regional Corporation for the year ended September 30, 2006. [*The Minister of Finance* (*Hon. Colm Imbert*)]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the San Juan/Laventille Regional Corporation

3. for the year ended September 30, 2007. [*Hon. C. Imbert*]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Chaguaramas Development Authority for the year ended September 30, 2010. [*Hon. C. Imbert*]
5. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro-Rio Claro Regional Corporation Chairman's Fund for the year ended September 30, 2007. [*Hon. C. Imbert*]
6. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro-Rio Claro Regional Corporation Chairman's Fund for the year ended September 30, 2008. [*Hon. C. Imbert*]
7. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro-Rio Claro Regional Corporation Chairman's Fund for the year ended September 30, 2009. [*Hon. C. Imbert*]
8. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro-Rio Claro Regional Corporation Chairman's Fund for the year ended September 30, 2010. [*Hon. C. Imbert*]
9. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro-Rio Claro Regional Corporation Chairman's Fund for the year ended September 30, 2011. [*Hon. C. Imbert*]
10. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro Civic Centre for the year ended September 30, 2008. [*Hon. C. Imbert*]
11. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro Civic Centre for the year ended

September 30, 2009. [*Hon. C. Imbert*]

12. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro Civic Centre for the year ended September 30, 2010. [*Hon. C. Imbert*]
13. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the National Institute of Higher Education (Research, Science and Technology) for the year ended December 31, 2008. [*Hon. C. Imbert*]
14. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Penal/Debe Regional Corporation for the year ended September 30, 2006. [*Hon. C. Imbert*]
15. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Trinidad and Tobago Racing Authority for the year ended July 31, 2007. [*Hon. C. Imbert*]
16. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Trinidad and Tobago Racing Authority for the year ended July 31, 2008. [*Hon. C. Imbert*]
17. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Agricultural Development Bank of Trinidad and Tobago for the year ended September 30, 2013. [*Hon. C. Imbert*]
18. Consolidated Financial Statements of Caribbean Airlines Limited (CAL) for the financial year ended December 31, 2013. [*Hon. C. Imbert*]
19. Annual Report and the Audited Financial Statements of the Trinidad and Tobago Heritage and Stabilisation Fund for the year ended September 30, 2015. [*Hon. C. Imbert*]
20. Annual Audited Financial Statements of National Flour Mills Limited for

the year ended December 31, 2015. [*Hon. C. Imbert*]

21. Annual Audited Financial Statements of the Telecommunications Services of Trinidad and Tobago Limited for the year ended March 31, 2016. [*Hon. C. Imbert*]

22. Annual Audited Financial Statements of the National Information and Communication Technology Company Limited for the financial year ended September 30, 2015. [*Hon. C. Imbert*]

23. Annual Audited Financial Statements of the National Maintenance Training and Security Company Limited for the year ended December 31, 2015. [*Hon. C. Imbert*]

24. Annual Report of the Unit Trust Corporation (UTC) for the year ended December 31, 2015. [*Hon. C. Imbert*]

25. Report of the Central Bank of Trinidad and Tobago (CBTT) with respect to the Progress of the Proposals to Restructure Colonial Life Insurance Company (Trinidad) Limited (CLICO), British American Insurance Company (Trinidad) Limited (BAT) and CLICO Investment Bank Limited (CIB) for the quarter ended June 30, 2016. [*Hon. C. Imbert*]

26. Annual Administrative Report of the Tourism Development Company Limited (TDC) for the fiscal year 2014. [*The Minister of Rural Development and Local Government* (*Sen. The Hon. Franklin Khan*)]

27. Annual Administrative Report of the Mayaro/Rio Claro Regional Corporation for the fiscal year 2013/2014. [*Sen. The Hon. F. Khan*]

28. Delegation Report on the Eighth Annual Gathering on Gender Equality Organised by the Group of Women Parliamentarians of ParlAmericas held in Quito, Ecuador from June 1 to 3, 2016. [*Sen. The Hon. F. Khan*]

29. Delegation Report on the Sixth Westminster Workshop on Parliamentary

Financial Oversight of Aid Effectiveness held in London, United Kingdom from July 4 to 7, 2016. [*Sen. Allyson Baksh*]

30. Delegation Report on the World E-Parliament Conference, 2016: held in Valparaiso, Chile, June 26, 2016 to July 1st, 2016. [*Sen. David Small*]

JOINT SELECT COMMITTEE REPORTS
(Presentation)

Committee of Privileges

Sen. Nigel De Freitas: Madam President, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

Report of the Committee of Privileges of the Senate, First Session (2015/2016) Eleventh Parliament.

Whistleblower Protection Bill, 2015

Sen. Michael Coppin: Madam President, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

Fifth Interim Report of the Joint Select Committee appointed to consider and report on the Whistleblower Protection Bill, 2015.

PUBLIC ACCOUNTS (ENTERPRISES) COMMITTEE
Audited Financial Statements of State Enterprises

(Presentation)

Sen. Wade Mark: Thank you, Madam President. Madam President, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

First Report of the Public Accounts (Enterprises) Committee (First Session, Eleventh Parliament) on the Examination of the Audited Financial Statements of State Enterprises (National Schools Dietary Services Limited, Evolving Tecknologies and Enterprise Development Company Limited, National Flour Mills Limited, National Quarries Company Limited,

Government Human Resource Services Company Limited, National Infrastructure Development Company Limited and Trinidad and Tobago Mortgage Finance Company Limited).

URGENT QUESTIONS

Oil Spill
(Measures Taken to Mitigate Damages/Losses)

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of Energy and Energy Industries: What urgent measures are being taken by Petrotrin to mitigate the damages/losses being experienced by the fisheries, fisherfolk and the environment as a result of the oil that has washed ashore at Carat Shed in La Brea?

Madam President: Hon. Minister of Energy and Energy Industries. [*Desk thumping*]

The Minister of Energy and Energy Industries (Hon. Nicole Olivierre): Thank you, Madam President. On September 12, 2016, Petrotrin received reports of oil deposits along the Carat Shed Beach in La Brea. A team was dispatched to the site and initial investigations via ground assessments were conducted which confirmed the presence of oil deposits on Carat Shed Beach and Coffee Beach. The Environmental Management Authority and the Ministry of Energy and Energy Industries were notified at approximately 8.45 a.m., and the Ministry of Energy and Energy Industries dispatched a team comprising two petroleum inspectors and one senior environmental officer.

For these spills Petrotrin is employing natural mechanical clean-up operations. At Carat Shed Beach a contractor was mobilized where seven labourers were deployed using shovels to scrape the deposits on the beach. A total of 105 double-lined crocus bags with contaminated sand were collected from Carat Shed Beach and were removed to be remediated; these bags were half-filled. At Coffee Beach, a contractor was also mobilized where nine labourers were initially

deployed, however they were stopped by the residents living in the area of Coffee Beach. Clean up operations at Coffee Beach did not take place yesterday due to residents not agreeing to the number of persons to be engaged in the clean-up activities.

An aerial survey was conducted via Trinidad and Tobago Air Guard from the Pointe-a-Pierre to La Brea area to determine the extent of the impact. Heavy iridescent sheens were observed along Carat Shed and Coffee Beaches, and a heavy rainbow sheen was also observed offshore Brighton at ABM 37 abandonment project. As of this morning, September 13th, a different contractor is currently mobilized to conduct manual clean up on Coffee Beach with employees hired from among the residents. A ground assessment conducted—[*Interruption*]

Madam President: Hon. Minister, your time is up, the two minutes.

Sen. Mark: Madam President, could I ask the hon. Minister whether it is the intention of the Ministry of Energy and Energy Industries to instruct Petrotrin to launch a formal investigation in this oil spill?

Hon. N. Olivierre: Thank you, Madam President. As part of the normal protocol where evidence of oil spills are observed, well, different agencies would be engaged and would conduct investigations. The Ministry of Energy and Energy Industries is in fact conducting its own investigation into the oil spill in collaboration with the EMA and with Petrotrin. Samples were taken; yesterday samples were taken from the beaches, and as we speak samples are currently being taken of the oil in the area of the offshore abandonment project that is currently being done. Samples are being taken there and we are conducting fingerprint analysis using the IMA to ascertain exactly the source of it. So as part of a natural course of business, I mean, investigations are always conducted once any sighting of oil is observed in any area.

Sen. Mark: Madam President, I hope the Minister would be here to answer future questions. My other supplemental question would be, does the Minister intend to compensate the residents whose properties might have been damaged as a result of this particular oil spill that you have mentioned a short while ago?

Madam President: Hon. Minister.

Hon. N. Olivierre: Thank you, Madam President. I, in fact, conducted my own investigations, I actually just came from there this morning. Well, the spill just reached as far as the shoreline so no damage would have been done to any of the residents' homes. But, certainly, whenever there is an oil spill, I mean, further investigation, depending on what the results of the investigations would show, then those types of decisions would be taken if necessary. Thank you.

Fire at King's Wharf in San Fernando (Assistance Given)

Sen. Mark: Thank you, Madam President. To the hon. Minister of Social Development and Family Services: What assistance is being given to the 12 persons rendered homeless after a fire at Kings Wharf in San Fernando?

Madam President: Leader of Government Business.

The Minister of Rural Development and Local Government (Sen. The Hon. Franklin Khan): Madam President, I rise to respond on behalf of the Minister of Social Development and Family Services. Madam President, the Ministry has been informed, that is the Ministry of Social Development and Family Services, that five families were affected by this incident. Of the five families who were affected the following families were contacted: Mr. Krishna Miguel, the number of persons contacted, one, that is himself; Ms. Joanna Mohammed, the second family, number of persons contacted, three; Jacob Mohammed, the third family, number of persons contacted, five; and Afesha Noel, the fourth family, the number of persons

contacted, three. The Ministry is still in an effort to contact the fifth family.

Madam President, these families will be meeting today, as we speak, with officials of the Ministry of Social Development and Family Services and will be provided with immediate support in the form of counselling, clothing and food support. The families will also be assessed for the following benefits, assistance with rental income, assistance with rental assistance, school supply grants for children attending school who have lost their uniform and books, et cetera, and also a grant for furniture and appliances. However, in a humanitarian cause the Ministry will continue to make every effort to contact with the fifth family and provide whatever additional support that the Ministry can possibly engage in.

2.00 p.m.

ORAL ANSWERS TO QUESTIONS

First Citizens Bank
(Details of Fraudulent Transfer)

66. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:

A. Could the Minister provide the Senate with an update on the attempts to recover the sum of $60 million that was fraudulently transferred from the First Citizens Bank account of the National Energy Corporation in September 2011?

B. Could the Minister further state, who was the President of the National Energy Corporation at the time when these fraudulent wire transfers took place?

The Minister of Energy and Energy Industries (Hon. Nicole Olivierre): Thank you, Madam President.

In September2011, the sum of US $9,608,904.36 was fraudulently transferred from the US dollar account of the National Energy Corporation held at

First Citizens Bank and paid out to the following recipients: Stedroy CO Benjamin and Company of St. John's, Antigua, the sum of US $4,633,717; Central International Company LLC of Boston, USA, the sum of US $1,250,187.36, and Mr. Andrew James Thomas Newman Inc. of Dubai, United Arab Emirates, the sum of US $3,725,000.

Regarding the payments made to Stedroy CO Benjamin and Company on October7, 2011, FCB returned to National Energy's bank account the full sum of US $4,633,717 that had been fraudulently transferred to Stedroy CO Benjamin and Company of Antigua.

Regarding the payment made to Central International CO LLC, through mediation proceedings held in Boston USA, National LNG was able to recover the sum of US $575,000, from Central International Company LLC, and through an agreement with First Citizens Bank, the sum of US $337,605, was returned for a total sum of US $912,605.

In the case of Andrew James Thomas Newman Inc, arising from civil action which was brought against Dubai resident, Mr. Andrew James Thomas Newman Inc, the court in Dubai in March2016 ruled in favour of National Energy and handed down the following judgment:

1. Mr. Newman and the national bank of Abu Dhabi jointly to return the sum of Arab Emirate Dirham, 13,124,740.15, which is equivalent to US $3,576,223.47, to National Energy.
2. Mr. Newman to pay to National Energy the sum of Arab Emirates dirham 528,848.07, equivalent to US $144,100.29, which was withdrawn before the account was frozen by the Dubai authorities.
3. Mr. Newman and the National Bank of Abu Dhabi to jointly pay interest at a rate of 9 per cent per annum from September21, 2011, until final repayment;

and

4. Mr. Newman to pay Arab Emirates dirham $1 million, equivalent to US $272,476.56, in compensation to National Energy with interest at 9 per cent per annum from the date of judgment.

In the latest development, the National Bank of Abu Dhabi has appealed the decision of the court in Dubai, and this matter is currently being closely monitored by National Energy.

In response to part (b), the President of the National Energy Corporation at the time that these fraudulent wire transfers took place was Mr. Andrew Jupiter.

Sen. Mark: Madam President, could the hon. Minister of Energy and Energy Industries inform this Senate exactly who is looking after the interests of Trinidad and Tobago in this matter involving Mr. Newman and the bank of Abu Dhabi, to ensure that within the quickest possible time those moneys that were fraudulently transferred are returned to the coffers of the National Energy Corporation?

Hon. N. Olivierre: Madam President, I wish to inform the Senator that the National Energy Corporation is paying very close attention to this, and the legal officers at National Energy are continuing to follow up. However, because the National Bank of Abu Dhabi has appealed the decision of the court, we have to await the outcome of that appeal.

Sen. Mark: Can the hon. Minister indicate to this House, who are the lawyers representing the interests of the National Energy Corporation and First Citizens Bank, on behalf of the people of Trinidad and Tobago in this appeal matter that you mentioned?

Hon. N. Olivierre: The lawyers of the National Energy Corporation.

Sen. Mark: Madam President, would you want to give this Senate the benefit of identifying the names of these lawyers representing the National Energy

Corporation in this matter?

Hon. N. Olivierre: I am advised that the matter is being handled by their internal counsel. The lead for that would be Miss Camille Blackman.

San Fernando City Corporation
(Dismissal of Casual Workers)

75. Sen. Wade Mark asked the hon. Minister of Rural Development and Local Government:

What measures does the Minister intend to take to address the dismissal of hundreds of casual workers by the San Fernando City Corporation?

The Minister of Rural Development and Local Government (**Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. This is a simple and straightforward answer. No casual worker has been dismissed by the San Fernando City Corporation.

Sen. Mark: I am very happy to hear that. May I go on?

Madam President: Yes.

Housing Development Corporation
(Recent Termination of Contracts of Several Managers)

77. Sen. Wade Mark asked the hon. Minister of Housing and Urban Development:

What was the main reason for the recent termination of the contracts of several managers, including the Managing Director, by the Board of the Housing Development Corporation?

The Minister of Housing and Urban Development (Hon. Randall Mitchell): Madam President, termination of the employment of the former Managing Director of the HDC is now the subject of active proceedings in the High Court of Trinidad and Tobago. In addition, the HDC is in receipt of pre-action protocol letters for the

other managers whose employment at the HDC was terminated. In this regard, I am unable to comment further on these matters at this time in order to avoid any prejudice to the outcome of these matters.

Sen. Mark: Madam Vice-President, through you, could you guide me on the sub judice rule and whether by providing this Parliament with reasons, whether it would prejudice the particular Standing Order that deals with sub judice matters?

Madam President: Sen. Mark, the Minister has answered the question. As I have said before, I cannot advise Ministers on how to answer questions, and the answer has been given by the Minister. So there are issues that the Minister may be aware of that I am not aware of, and the answer has been furnished.

Severe Overcrowding of Jails
(Details of)

78. Sen. Wade Mark asked the hon. Minister of National Security:

What immediate measures are being deployed to address the severe overcrowding of the jails?

The Minister of National Security (Hon. Brig. Gen. Edmund Dillon): Thank you very much, Madam President. Hon. Members, several measures are currently being implemented to alleviate the situation in the nation's prisons. One such measure is transfer of convicted inmates from the Port of Spain prison to the Golden Grove prison and the Eastern Correctional Rehabilitation Centre. Another such measure is also transfer of some of the inmates from the remand prison to the Maximum Security Prison.

Refurbishment is also one of the other measures that is being adopted right now. Complete refurbishment of building number 13 located at the Maximum Security Prison. This project is 90 per cent completed. Delivery of locks, the installation of which will complete refurbishment works is anticipated in four to

six weeks' time. It is expected that when completed this building will provide accommodation for an additional 320 inmates.

With respect to Tobago prison, it has been determined that a larger facility is needed. A suitable location has been identified for the construction of a new prison and discussions are currently ongoing with the Tobago House of Assembly with respect to surveying the land that has been identified.

Another measure is, in fact, the continued construction on the video conferencing facility at the remand prison, which is about 35 per cent complete to date. This facility is expected to speed up the delivery of justice and in so doing alleviate congestions in the remand prison.

The other measure that has been identified is, in fact, the implementation of the electronic monitoring system. The Ministry of National Security is, in fact, collaborating with key stakeholders. The key stakeholders include the Office of the Attorney General, the Trinidad and Tobago Police Service, the Trinidad and Tobago Prison Service, Office of the Director of Public Prosecutions and the Judiciary. The electronic monitoring system will allow persons charged with certain categories of offences to be monitored electronically when out on bail. It also introduces new sentencing options. It is believed that this will, in fact, help to alleviate overcrowding, particularly in the remand prison.

Sen. Mark: Could the hon. Minister indicate when he would anticipate the operationalization of the electronic monitoring system, which, as you said, is designed to aid with the overcrowding. Is there any time frame that you would like to share with this honourable House as it relates to that particular matter?

Hon. Brig. Gen. E. Dillon: Madam President, I am unable to set a time frame with respect to the implementation of the electronic monitoring bracelet, because it is not just a mechanism, but a number of administrative structures have to be put in

place.

Sen. Mark: Madam President, could the hon. Minister, as he spoke about Tobago, would be in a position to share with us the size of the population in prison in Tobago; and, secondly, whether he can give us an appreciation of what time line with the support of the Tobago House of Assembly is he anticipating for the possible construction of a new prison facility in Tobago?

Madam President: Sen. Mark, we will treat that as two supplemental questions.

Hon. Brig. Gen. E. Dillon: Madam President, with respect to the population of the prison in Tobago right now, the Tobago prison was built to hold roughly 30 inmates. There are about 59 inmates right now. With respect to construction of the facility, I cannot give the time line at this point in time.

REMEDIES OF CREDITORS (AMDT.) BILL, 2016

Order for second reading read.

The Minister of Finance (Hon. Colm Imbert): Madam President, I beg to move:

That a Bill to amend the Remedies of Creditors Act, Chap.8:09, be now read a second time.

Madam President, as this session of the life of the Parliament comes to an end, we thought it appropriate to debate this Bill in the Senate, since it was already passed in the other place before we went into recess.

The Bill has two clauses, one of which is the title. So it essentially has one clause which reads as follows:

"The Remedies of Creditors Act is amended in section 13—

by deleting the words 'twelve per cent' and substituting the words 'five per cent'; and

by inserting after subsection (1) the following subsection:

'The Minister with responsibility for finance may, by Order subject to

negative resolution of Parliament, vary the rate of interest prescribed in subsection (1).'"

There is a typographical error that I noticed in the Explanatory Note, although it does not form part of the Bill and will not form part of the Act when the Act is published. In the Explanatory Note it states that clause 2 will amend section 8 of the Remedies of Creditors Act. That, in fact, would be section 13 as is indicated in clause 2 of the Bill.

In addition, Madam President, it was drawn to my attention by the Chief Parliamentary Counsel's Department that in the existing Remedies of Creditors Act in section 13, there is no subsection (1). Because we are amending that section and we are adding a subsection (2), it is necessary to create a subsection (1). An amendment will be moved by the Minister in charge of the Bill at the committee stage, to insert after the word "thirteen" the word "one" and renumber the paragraphs. So that a subsection (1) will then exist which is what is essentially in the Act at this time. And then you follow with subsection (2) which refers to subsection (1).

2.15p.m.

Now, Madam Speaker, sorry, Madam President—[*Interruption*]

Sen. Mark: I know. I know.

Hon. C. Imbert: No. You are not in change here. Madam President, I apologize. I do not know why we are having noise from the former Speaker. You are not in charge here.

So, Madam President, in the year 2000 the then Attorney General amended the Supreme Court of Judicature Act to include a new section, section 25 which read as follows; 25A:

"Every judgment debt entered up carries interest at the rate of twelve per

centum per annum from the time of entering up the judgment, until the same shall be satisfied and such interest may be levied under a writ of execution on such judgment."

And a new subsection (2), 25A(2):

"The Minister of Finance may, by Order subject to negative resolution of Parliament, vary the rate of interest prescribed in subsection (1)."

Now those were some heated days, Madam President; that was on the cusp of the collapse of the then UNC Government and mistakes were made by the then Attorney General and the then Government.

The Supreme Court of Judicature Act was amended to give the Minister of Finance the power by order to vary the rate of interest on judgment debts. But I will have to say, through an oversight or in the heat of the moment, the Remedies of Creditors Act was not so amended. So in the Remedies of Creditors Act there is currently no provision to allow the Minister of Finance to vary the rate of interest on judgment debts whereas that power exists in the Supreme Court of Judicature Act.

So, we are doing two things today: We are fixing the lacuna in the Remedies of Creditors Act by introducing the ability of the Minister to vary the rate of interest on judgment debts subject to negative resolution of Parliament which would be the same as in the current Supreme Court of Judicature Act, and we are also changing the rate from 12 per cent to 5 per cent.

Now, when this was debated back in—when this legislation, the change to the Supreme Court of Judicature Act was debated back in 2000, if you go into the *Hansard*, the debate in the Senate—if I was to time it—two minutes, something like that. It was a very short exchange between the then Attorney General, Mr. Ramesh Maharaj and Sen. Danny Montano. And essentially what Mr. Maharaj said

at that time was that it was felt that the interest rate of 6 per cent which existed at that time was much lower than the bank rate and therefore, a creditor might want to avoid paying a judgment debt because of the low rate of interest existing at that time. And that was essentially the justification given for increasing the rate of interest on judgment debts in 2000 from 6 to 12.

Now, there was some science in it because if you look at the prime lending rate in 2000 it was almost 17 per cent, and on overdraft, people might pay 1 per cent, 2 per cent above prime. So that the overdraft rate at that time would have been of the order of 19 per cent for most customers.

So if you had an overdraft rate of 19 per cent, to be paying 6 per cent on judgment debts, the argument was a logical argument that the interest rate was too low, hence the reason why 12 per cent was proposed and everybody who participated at the time was of the view that 12 per cent on a judgment debt, when you looked at an overdraft rate of 19 per cent, was appropriate.

Well, we have done a survey of bank rates. The current prime lending rate is 9 per cent and rates for other types of instruments and loans and so on vary. So in the same way where the overdraft rate was about 19 per cent in 2000 and the judgment debt rate was raised from 6 to 12, we feel that it is appropriate now with prime at 9 and other interest rates being a bit lower than that, that an appropriate rate at this point in time would be 5 per cent. So we settled on 5 as something appropriate for this time.

And we have now put in the provision where the Minister can adjust the rate in this particular Act, the Remedies of Creditors Act, by order subject to negative resolution.

So that now after this legislation is passed—we are hopeful it will be passed—the orders can be made with respect to the variation of the rate of interest

by way of the Supreme Court of Judicature Act, the variation of the rate of interest on judgment debts by way of an order for the Petty Civil Courts Act, and the rate of interest for the Land Acquisition Act because all of these Acts will now have the provision whereby the Minister can by order vary the rate of interest.

I would also like to say, Madam President, that I have the utmost confidence in my colleagues on this side of the House and because of pressures of time and because I do not think this is a highly complex matter, I would be handing over the completion of this debate to the hon. Sen. Franklin Khan, so that he would be the Minister in charge of the Bill at the end of this debate.

But before I take my leave of this honourable place, I would just like to recite some of the learning on interest because interest is quite a complex matter. We are dealing here with interest on judgment debts, but if you look at the evolution of the courts' power to award interest over the years, it is very complex. And I would refer to a statement made by Lord Goff of Chieveley in the case of *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* (1996) where Lord Goff of Chieveley said:

> "One would expect to find, in any developed system of law, a comprehensive and reasonably simple set of principles by virtue of which the courts have power to award interest… Sadly, however, that is not the position in English law."

And it is not because you have arguments about simple interest, compound interest, whether compound interest should apply, whether simple interest should apply, from what time the interest should apply, what is the courts' power to award interest, is it discretionary, is it mandatory?

And if you look at the development of the law, the first case that I found was *Page v Newman* (1829), where:

> "Lord Tenterden in the Court of Kings Bench referred to: 'the long established rule, that interest is not due on money secured by a written instrument, unless it appears on the face of the instrument that interest was intended to be paid…'"

And there are a lot arguments about this, about whether you can claim for interest or not, whether interest is due on a contract or on other types of instrument. And this is the first decision made on this matter *Page v Newman* (1829) almost 200 years ago and that was the decision at that time, that interest was not due unless it is expressly stated on the face of the instrument that it was intended to be paid.

After this, a limited-power common law was enacted. Sorry, after this statement on the limited power at common law, Parliament enacted a statutory power to award simple interest on judgment debts and that was the Civil Procedure Act 1833 following the statement made by Lord Tenterden in the case of *Page v Newman*.

And the power of the court to award interest then evolved. In 1893, in the case of *London, Chatham and Dover Railway Co v South Eastern Railway*, the House of Lords held reluctantly that, at common law, in the absence of any agreement or statutory provision for payment of interest, a court had no power to award interest by way of general damages for late payment of a debt. And that flowed from the original *Page v Newman* of 1829.

As this matter evolved over the years there were arguments about whether interest should be simple interest, whether it should be compound interest, and usually compound interest was only recoverable by agreement or by practice rather than as a matter of course.

But the law has continued to evolve and in 1952 the English court in *Trans Trust v Danubian Trading* held that interest could be recovered as special damages

provided that this was a foreseeable loss within the contemplation of the parties when the contract was made. And so the law evolved until we got to the case of *Sempra Metals Ltd v the Inland Revenue Commissioner* (2007) as a UK House or Lords decision. And:

> "In Sempra, Lord Nicholls summarised the common law position as follows:
>
> A claimant can plead and prove his actual interest losses, including compound interest, caused by late payment of debt,…subject to remoteness, mitigation of loss,…the cost of borrowing and the loss of an opportunity to invest the money."

And that takes us into a number of statutes in England which mirror our statutes, the Supreme Court Act 1981, the County Courts Act, the Miscellaneous Provisions Act and so on. And in England takes us right up to up the present time where the statutory rate of interest in the United Kingdom is now 8 per cent. And they amended that, I think, in 1896 if my memory serves me correctly, and they also have the power to vary the rate of interest on judgment debts from time to time by way of orders. But they have also brought in this principle now about compound interest, but you certainly have to prove your case if you want to claim compound interest.

In our jurisdiction in Trinidad and Tobago, as indicated in the case of *Greer v Alstons Engineering Sales and Service*, a Trinidad case which went to the Privy Council, it was said that neither a claim for interest nor the facts and matters relied on in support of a claim need to be pleaded. And this is because of the particular legislation that we have now.

So in essence what we are doing is just continuing, we are reforming some law that has existed in Trinidad and Tobago for a very long time and we are changing the rate of interest to make it in line with current rates of interest. You

will know, Madam President, that right now if you try to put your money in the bank you might get .75 per cent, 5 per cent, 1 per cent. So interest rates, as I have said on other occasions, have changed considerably over the years.

I remember and I have said this before and I will say it now, when I was a student in England in 1981, I had saved up enough money to do a master's degree at that time and I had enough money for the whole year. And what I did was that I took half of it and put in on deposit, and the interest rate that I earned at that time in 1981 in England was 17 per cent on a simple savings account, 17 per cent. You go to England now and try and get half a per cent you will be lucky, and Trinidad and Tobago is the same thing.

As I said, overdraft interest rates have dropped from 19 per cent now down to 9, 10 per cent. The banks were giving their best customers loans at 7 per cent up to a couple years ago. In Trinidad and Tobago the interest rates have dropped in Unit Trust, for example, on their money market account you could have got 6 per cent 10 years ago, now you are getting 1 per cent. The Abercrombie account, I think, gives you 1 per cent. Other accounts give you three-quarters of a per cent and so on.

So that the whole interest rate regime the entire world over has changed. And we thought it appropriate at this time to just bring this legislation in line with the banking realities that exist in this country and elsewhere. So with those few words, Madam President, as I said I will hand over—[*Crosstalk*] I am so sorry.

2.30 p.m.

Sen. Roach: Madam President—thank you very much, Minister. Could you just, for the purpose of keeping it as brief as it is, just elucidate a bit, get some lucidity on the fact that the High Court retains the power to vary the interest rate as a prophylactic. At the end of the day the High Court, notwithstanding the interest

that is being made, can vary it, can give either no interest or an appropriate amount of interest which I think would help clarify any uncertainty in terms of the complexity of the interest. The fact is that it remains, has that ability to do. Thank you.

Hon. C. Imbert: That is absolutely true. However, when one looks at the awards made by the High Court, invariably they are in line with the judgment debt rate, because it just sets a standard. A judge can of course decide to award 3 per cent, 6 per cent, 9 per cent, no interest at all, depending on the particular facts and circumstances of the particular case and how it was pleaded, because in this note that I had, one of the things that the English courts have done is looked at how timely a claim has been brought before—whether a claim has been brought before a court in a timely manner and whether the claimant unjustifiably delayed the commencement of an action. And in many instances where the court has felt that the claimant was at fault, the claimant did not aggressively pursue the recovery of the money and the interest and so on, they have not awarded interest to them.

So you are absolutely right, but this judgment debt rate is normally used by the court as a guide, and more or less this is the rate that is awarded on judgment debt. So a judge may decide, or a panel may decide to come out of this framework and award an interest rate as they see fit. But this is what is used as the guide. So we felt in the context of the prevailing rates of interest at this point in time, a rate of interest of 12 per cent was punitive, it is way above prime, for example, it is way above the prime lending rate. It is simply obsolete, the 12 per cent rate is obsolete and we felt the 5 per cent rate—[*Interruption*] sure—

Sen. Mark: Madam President, through you. Hon. Minister, is it your intention to make a consequential amendment to section 25A of the Supreme Court of Judicature Act, seeing that in there, as we speak, is a 12 per cent and what you are

proposing is that it be reduced from 12 to 5. So would you be proposing at the committee stage that there be an amendment to the Supreme Court of Judicature Act? I am just asking for clarification.

Hon. C. Imbert: Thank you very much for that question. There is no need for that, because let me go into the Supreme Court of Judicature Act—I actually have it here, if you will just give me a second, I am sure I will find it. In that Act, the ability of the Minister to vary the rate by Order was inserted. The problem that we face is that in the Remedies of Creditors Act, this provision, and I will read it, this is what is in the Supreme Court of Judicature Act at this time:

> "(2) The Minister of Finance may, by Order subject to negative resolution of Parliament, vary the rate of interest prescribed in subsection (1)."

So under current the Supreme Court of Judicature Act I can simply publish an Order and the rate will change. But under the Remedies of Creditors Act there is no such provision. As I said it was an oversight, a lacuna, you know, as I said 2000 was a hot time so that a lot was going, people were walking in and out of political parties, Governments were collapsing, elections were won and lost—[*Crosstalk*]

Sen. Hadeed: And you were waiting for something.

Hon. C. Imbert: Correct, and I nearly did not get nominated. I agree with you. It was a hot time. So to answer your question, Sen. Mark, there is no need to amend the Supreme Court of Judicature Act because the provision that allows the Minister to vary the rate by Order is already there. It is not in the—it is already there, so we are bringing the Remedies of Creditors Act in line with the Supreme Court of Judicature Act. [*Crosstalk*] I will bring the Order. I just know we do not need to amend the Act itself, because that Act already allows the Minister to vary by Order.

So what will happen within the next month I would think, or within the next

couple of weeks, I will cause to be published Orders that vary the rate for the Supreme Court of Judicature Act, the Petty Civil Courts Act, the Land Acquisition Act and so on. So we do not need to do it, Sen. Mark. Our problem is in the Remedies of Creditors because the provision for variation of the rate is not inside of there. So I hope that answers that and I have answered Sen. Sturge, that we will be publishing the Orders for all of the relevant legislation to vary the rate to 5 per cent and it will be laid in Parliament and subject to the usual parliamentary process.

So as I said, I have extreme confidence in Sen. The Hon. Khan to answer any issues that may arise from this one clause amendment. I will now hand the Bill over to him, Madam President, and I apologize to hon. Senators but I am deep in the middle of the budget preparations, the budget is imminent and I would ask for your permission to allow my honourable colleague to complete this debate. I beg to move, thank you.

Question proposed.

Sen. Wade Mark: Thank you very much, Madam President. Madam President, I must say that the Bill that we are dealing with today, the Remedies of Creditors (Amdt.) Bill, 2016 is seeking to achieve essentially two purposes or two objectives. First objective is to reduce the statutory rate of interest from the current 12 per cent to 5 per cent. And the other objective in this particular measure is to allow the Minister of Finance the responsibility to vary the rate of interest by Order, subject to negative resolution of Parliament.

Now, Madam President, we do have some concern about what is informing and what is driving the thinking of the Minister of Finance in seeking to reduce the current rate of interest from 12 per cent to 5 per cent. I recalled looking at the *Hansard* records, in the other place, where as you know, Madam President, the

Opposition did not participate in that debate on June 06th, if my memory serves me right. And this was a debate of himself speaking to himself. So we did not have an opportunity then to provide to the Parliament our perspective on this measure that is currently before the Senate.

But I do recall, Madam President, that the Minister of Finance advising the Parliament and the country that the rationale for reducing the rate from 12 per cent to 5 per cent had to do with what he considered to be a reasonable balancing act. And the main focus of attention was the repo rate, the Central Bank repo rate. And the argument then was, that it was around 4.75 per cent. And a reasonable rate of interest as outlined then by the hon. Minister in his contribution was 5 per cent. And that is how the logic flowed at that time.

And, Madam President, we are yet to really get from the hon. Minister a proper formulae, a proper matrix that would guide the Parliament and the country as it concerns the rate of interest that should be imposed on judgment debtors or judgment debts. And again the Minister has come here today and he has just made some pronouncements as to why he is of the view again, it should be the repo rate, literally, of 5 per cent.

May I remind this honourable Senate that it was not arbitrarily done in 2000. It was based on a report. It was then called, and still called, the Gurley Report, Madam President, of 1992. And it was that report that sought to formulate a matrix, sought to provide a rationale for the movement from, Madam President, 6 per cent to 12 per cent. And that is why we take strong objection to any Minister of Finance, arbitrarily, capriciously, doing his own thing behind closed doors and issuing, like Hitler, an order.

Madam President: Sen. Mark—

Sen. W. Mark: All right, you do not want it.

Madam President: Sen. Mark, you know exactly why I am speaking to you now. That kind of language about Hitler approach, none of that, okay.

Sen. W. Mark: Should I say, Gestapo.

Madam President: No, you should not, Sen. Mark.

Sen. W. Mark: Okay, okay. Well, okay, Madam President, if you do not like—

Madam President: Sen. Mark, Sen. Mark, let us get it clear, okay. Language, what is parliamentary, what is unparliamentary.

Sen. W. Mark: Is Gestapo unparliamentary?

Madam President: Yes, it is.

Sen. W. Mark: I will say Gestapo outside. But, Madam President, I am guided by your ruling. But the key point I am making is that we do not support and we are moving an amendment to move from this negative resolution to an affirmative resolution. The Parliament must be involved in that or in those discussions, not through negative resolution, Madam President. We want it to come before us so that we can determine whether the Minister is on the right track on this matter and not to be done and then inform us. That is what a negative resolution does. Action is taken and then the Parliament is informed, and if we want to bring a resolution to negative the Order we can then do that within a 40-day period, Madam President.

Madam President, let me go back to the Gurley Report as I was indicating. Page 22 of this particular report and I shall read it for the records and for you, Madam President, it speaks to statutory interest on judgment and I quote:

> "If a debtor is not required to pay interest on moneys due to his creditor(s), or if the rate of interest payable by law is lower than a commercial rate, that debtor will be inclined to avoid or delay payment for as long as possible."

2.45p.m.

It goes on—the recommendation.

> "The statutory rate of interest should be increased to a rate that is more in keeping with the prevailing lending—"

Madam President, may I emphasize, we are not dealing with, for instance, how much you make on your savings, or how much I make on my deposits with Unit Trust, if it is .5 per cent or .8 per cent or 1 per cent. What the Gurley Report clearly stated:

> "…in keeping with the prevailing lending rates in the financial markets and it is thought that a rate of 12% per annum is more realistic than the present 6%."

So in 1992, when they wrote this report, they established a benchmark, a basis for determining the rate of interest, and it cannot be done arbitrarily, by telling me about the Central Bank repo rate and then arbitrarily deciding it is 5 per cent. I do not think we can support that at all.

And it goes on, Madam President:

> "Provision should be made for this rate to be revised"—not by the Minister of Finance, you know, but—"by the Attorney General with the concurrence of the Minister of Finance, such provision being along the lines of section 44 of the Administration of Justice Act, 1970…"

So, Madam President, what the Gurley Report was advocating then and caused the then Attorney General to bring an amendment to the Supreme Court of Judicature Act in 2000, it was based on a report, and that report indicated that it should be in keeping with the prevailing lending rates in the financial markets.

Sen. Khan: Yes, but those rates change every month.

Sen. W. Mark: Yeah, but what I am saying—that is why I am saying that we know they change every month and that is why we have to develop a formula that

is acceptable to the country and it must not be left up to the whims and fancies of a Minister of Finance. [*Desk thumping*] The Minister of Finance must bring through an affirmative resolution to this Parliament, the formula that he is proposing to use in an effort to determine the rate of interest, and we will decide here, as a Parliament, since you want us to approve the measure here. What, you want us to just approve and give you a blank cheque to write whatever you want, and then you will give us an order and then we have to file a negative resolution, or a resolution, rather, to negative. No, the days for that are over.

We are suggesting an affirmative resolution so we can debate the matter and if necessary send it to a joint select committee and bring in the players in the industry for this matter to be dealt with properly. Madam President, the hon. Minister did not give us an appreciation of what is the mischief the Government is seeking to cure. "Where this thing came from?" It is not on your legislative agenda; it is not in your manifesto. Where did it come from? What prompted you to bring this measure and table it in the House of Representatives on March 10, 2016 and then waited until the Opposition walked out and then passed it without any Opposition support? So you were talking to yourself in the other place. Well, today, you are talking to us on this side, [*Desk thumping*] because there is no walkout, Madam President. We are standing our ground, as we have been instructed to do, to ensure that the amendments that we are proposing are, in fact, debated and possibly addressed at the end of the day.

So, Madam President, we are asking the new Minister of Finance—no, not the new Minister, the hon. Leader of the House who I understand will be taking over this debate—I do not know if he is able, but we will certainly ask him questions and I hope you are able to answer our concerns. The first question: what is the mischief that the Government is seeking to cure in its attempt to reduce the

rate of interest on judgment debt from 12 to 5 per cent? What is the mischief?

We also want to know, in this civil environment how many organizations, how many individuals, how many entities are likely to be negatively impacted by this measure? Because, as the hon. Minister said, in the next two weeks or two months, he said he is going to issue orders, not only amending the Supreme Court of Judicature Act to tell the judges in those courts that from here on in, you have to be guided by this new order which arbitrarily reduces from 12 per cent to 5 per cent—that is what the hon. Minister said. And there was no need to amend that Act because he is going to issue orders.

Sen. Khan: But the Act gives him that power already.

Sen. W. Mark: Yeah, I know, and that is why we are saying, Madam President, it gives him that power already, hon. Minister Khan. We are saying we are here to curb that power, and that is why we are saying affirmative resolution, to curb it. [*Desk thumping*] That is what we are saying.

So the question is, the Minister—and I do not know if the hon. Minister of Rural Development and Local Government can tell this Parliament how many debtors are lined up and who are owing? Is it hundreds? Is it thousands? What is the sum of moneys that the State might be owing in this regard?

Sen. Khan: That is irrelevant—

Sen. W. Mark: No, no. [*Interruption*] Anyway, you will get your chance. You will get your chance.

So we are asking these questions. Madam President, we know when it comes to the issue of compensating someone, we have to be clear in our minds how we are going about this issue, and we just cannot come to this Parliament and in an arbitrary way just say "I am reducing the rate of interest from 12 per cent to 5 per cent" without telling this Parliament who is going to be affected by this particular

action, and who is going to benefit from this measure?

Do you have friends who have outstanding judgments—

Hon. Senator: Oh Lord.

Sen. W. Mark: I am just asking. These are questions, Madam President. I am asking, who is going to benefit? Madam President, as you know, money is an imprecise and flawed attempt—[*Noise coming from the public gallery*] What is this? I am being disturbed, Madam President, by some phone? Oh, I think the person switched it off before you can even rise.

So, Madam President, we know that money is an imprecise and flawed attempt by the court of our country to compensate persons who have been wronged in the system. When you are the victim of wrongdoing and illegal conduct, your entire life could be permanently and irreversibly ruined in this country. Madam President, you are aware of cases involving medical negligence, police brutality, compulsory acquisitions of property by the State, defamation of character. These are just examples, Madam President, as to how a person could be wronged in this land.

I remember Knowlson Gift, the former Minister of Foreign Affairs, it look him 20 years to be properly compensated for lands that were compulsorily acquired to extend the Crown Point airport in Tobago. I think it was just about a few years ago he was able to get a settlement. It took him 20 years to settle, and all this time this man is suffering because of the compulsory acquisition. If he was waiting on judgment still, when this law takes effect—if the judgment was not handed down before and it is to be handed down prospectively—how is this reduction of 12 per cent to 5 per cent going to affect Knowlson Gift?

Is that fair? These are some of the issues that we have to engage in, in our discussions, and not arbitrarily just decide to cut the interest rate on judgment debts

from 12 per cent to 5 per cent. What is the basis for that? Madam President, you know how poor people—this Bill is going to be like a hatchet, Madam President, if you are not careful, that can destroy the lives of ordinary people. And we would like to know from the hon. Minister who is deputizing and who will be moving—who will be piloting at the end of this this debate, this Bill—we would like to know from him how ordinary people are going to be impacted upon by this particular measure. [*Desk thumping*] That is what we want to know.

When we come to this Parliament we are representing the salt of T&T, the ordinary people, the working man and woman in this land and all of these people whose lands were compulsorily acquired by the State and they are still waiting for compensation.

I would like the Minister to tell us whether this Bill that we are debating takes effect prospectively, retroactively or whether upon passage. If a matter is in the court pending appeal, but the court has already awarded you 12 per cent, I would like the Minister to tell us, even though judgment has not been handed down, but judgment will be handed down two years from now, three years from now, but the court has already awarded this particular litigant 12 per cent, but the matter has been appealed and it is going through the process, what is going to happen to that individual? Are we going to have a situation where this Act is going to apply to that individual in the context of prospectively?

These are matters that we need to be clear about, otherwise we would be buying "cat in bag" today. The Minister has not cleared the air as to who will be impacted upon by this measure, you know.

3.00 p.m.

So I ask the question, Madam President: those cases that are pending in the courts of Trinidad and Tobago and the judges have already awarded damages and

interest at 12 per cent but no final determination and settlement have been arrived at because the matter is under appeal, what will happen to those judgments when this takes effect? Would it be that whereas it was 12 per cent three years ago it will then be 5 per cent prospectively? I do not know. I am seeking clarification. I believe the population would want answers to these questions.

We know, Madam President, that there are a lot of challenges before our courts at the civil level. As I said, we know of instances where people's character has been defamed, where people have been maliciously prosecuted by the State through the Executive arm and prosecuted and they are looking for justice at the end of the process, and we would like to know how these particular matters will impact on these individuals. So there are areas that we would like the hon. Minister to look at. For example, again I come to the question of the State which is made up of the three arms of the State. The three arms of the State, the Executive, the Judiciary and the Legislature, seem to be conspiring in an unwitting way to deny citizens their just due.

So, Madam President, you are wrongfully or wrongly arrested, maliciously prosecuted by the Executive arm, it takes you 15 years in the courts to get justice, and whilst you are waiting to get justice we come at the legislative arm of the State, the Parliament, to debate a measure to reduce rate of interest that would include damages awarded by the court from 12 per cent to 5 per cent. This is a matter that is of grave concern to us on the Opposition Benches.

Madam President, as I said, in instances of compulsory acquisition of lands by the State, the burden of loss is even greater on the citizen. The State implements a policy decision to go through with a project, let us say the building of a highway, they initiate the procedure by approaching civilians who own property in the vicinity of the highway, they are approached by the State and an agreement is

arrived at. Normally it is based on the value of the property and the civilian is relocated accordingly given the arrangement. And, Madam President, the individual may have spent all their earnings to acquire a new property, but a few years later there is no compensation forthcoming from the State. So legal action has to be instituted by the affected person in question and they go to the courts and they get some justice. Damages are awarded at a 10 or 11 per cent. That is fair.

Why must citizens of this country pay for the incompetence and the inability of the State to efficiently and effectively execute swiftly the delivery of justice in our country? Why must citizens pay for that?

Sen. Khan: It applies to civil matters—[*Interruption*]

Sen. W. Mark: "Yeah", we are talking are about civil matters here. That is what we are talking about, civil matters.

Sen. Khan: Outside the State.

Sen. W. Mark: Well it is not the State. I am dealing with the State here because no private sector person coming here. I am dealing with the State. The State has come with a piece of legislation saying that they want to reduce interest from 12 per cent to 5 per cent. I am concerned with the Government bringing that kind of legislation to the Parliament at this time. So we know it is not only the State alone. We know. We know the State is Trinidad and Tobago. We know that.

Sen. Khan: Go ahead. I will deal with you.

Sen. W. Mark: You will deal with me? You think I belong to you. You "go" deal with me. I am not Rowley, you know. You "cyar" deal with me, you know. You have to deal with Rowley, not me.

Madam President: Sen. Mark!

Sen. W. Mark: Okay. Sorry, Ma'am. He is disturbing me and I seek your protection.

Madam President: Yes, you will have my protection. When one Member seems to be disturbing you, do not infringe Standing Orders in responding, please. So it is the Prime Minister you were making reference to there.

Sen. W. Mark: Yes, of course, the distinguished and hon. Prime Minister of the country I was making reference to. I hope that you are around when we resume.

Madam President: Sen. Mark!

Sen. W. Mark: Sorry, Madam President. I understand there is going to be some Cabinet changes so I am just wondering—but, Madam President, I would not engage you on that because you are not involved in that. You will leave that for me.

So, Madam President, what we would like to advise the Government to look at is that there may be ways and means of addressing this issue, and therefore, we have some recommendations that we would like to suggest for the consideration of the Government.

Let us assume that the court has given the discretion in appropriate cases where the justice of the case is required or necessary, and in the interest of justice let us say the court awards a higher rate of interest, for example, it is our view—I think the hon. Member on the Independent Bench did raise the question about the Judiciary, and the Judiciary having the discretion to determine, given the contextual situation, how they would apply the application of interest rates to deal with damages that are before them. So, for instance, in matters involving cases that may be before the court between 10 to 15 years, cases that involve violence and extreme brutality, it is our view that the court, the judges, should have that flexibility to determine the rate of interest that should go to the particular individual who has been wronged.

Sen. Khan: They already do, but they will be guided by the 5 per cent.

Sen. W. Mark: Yes, you are going to guide them with the 5 per cent now. So,

Madam President, it is our view to decrease the rate of interest by what I would call legislative guillotine. Without proper checks and balances it will not ensure justice is done in the more efficient and timely manner, and therefore, that would be unfair to the large majority of citizens who may have matters pending in courts of our country. I believe if we proceed along that line, we may be guilty of protecting mediocrity and incompetence. That is what we might be guilty of.

Madam President, where then is the incentive for those notoriously slow departments of State to expedite in the knowledge that failure to do so would result in the penalty of a higher rate of interest being awarded? In fact, some persons have argued that the high rate of interest serves as a deterrent to the slow rate of justice and ought to properly remain. And to come here, Madam President, and reduce or seek to reduce the rate of interest from 12 per cent to 5 per cent, we believe the Government needs to rethink its position on this matter, and therefore, the Government should be moving to ensure that matters that are before the courts of Trinidad and Tobago, as an example, should be settled swiftly within five months, and if they are not settled—

Madam President: Sen. Mark, you have five more minutes.

Sen. W. Mark:—we impose that 12 per cent on the population.

Madam President, it is no secret that justice is malfunctioning in our country, and a lot of people are being taken advantage of because of the slow pace of justice. We are not prepared to take part in a debate in which we are going to institutionalize that slow pace of justice and allow, for instance, citizens who justly deserve proper rates of interest when damages are done to them, when they are maliciously prosecuted, when their lands are compulsorily acquired and it takes them decades like Knowlson Gift to get a settlement.

For these particular matters, we believe that the Government should rethink

its position on this rate reduction from 12 per cent to 5 per cent. And therefore, we will be moving, as I said, Madam President, an amendment at the appropriate stage to remove this negative resolution and replace it with an affirmative resolution as a start and maybe we can—we have a number of other recommendations that we will have to deal with at another stage. But stage one of this exercise is to ensure that the Parliament is involved in the ultimate and final determination of what interest rate should be levelled on judgment debts and debtors in this country. Let us determine that first through discussions, come up with the appropriate formula and matrix and then we can go to other recommendations that can really bring about greater speed and efficiency and justice for all.

I wish to thank you, Madam President. [*Desk thumping*]

3.15 p.m.

Sen. Dr. Dhanayshar Mahabir: Thank you very much, Madam President. On this the first day of the resumption of Senate after our break, I thought we were going to have a rather uninvolved Sitting, and when one saw the Bill before us it was rather innocuous looking.

But, Madam President, the matter before us is not as simple as the one line that the Minister is advancing for us. At the outset, let me indicate I understand and appreciate the context in which the hon. Minister of Finance is operating and I support the measure. However, I did not table a formal amendment but I will place for the consideration of the hon. Minister a possible solution to the conundrum that we have before us.

Madam President, the issue before us is that of interest rates, and in particular it is the interest rate on a peculiar instrument. Let us, without sounding professorial, try to address the crux of problem. Madam President, the interest rate itself is not as simple as individuals may think it is. There are some

cultures/societies which hold the view that interest is forbidden, but really when we try to pin it down, we are looking at the interest rate outside of a market setting and into a setting of the Judiciary where it is, as it were, a different type of debt we are looking at.

The interest rate really, is the price we pay for money. Money itself is the barometer of prices. But interest rate is the price we pay for money. And in the wider society, in the economy, there are a number of actors who wish to borrow money. First, we have the corporate sector. Firms; businesses, small and large borrow money on a daily basis, on a regular basis.

The Minister, in piloting the Bill, mentioned the overdraft rate. So that is an important indicator. He mentioned, Madam President, the prime rate. But there are various types of borrowers within the sector of the firm. Those familiar with banking will know there are some very creditworthy borrowers. We call them prime. They obtain a rate of interest on their loans that is lower than other borrowers within whom there is some risk and so in the commercial sector, basically commercial banks, we assess the borrowers and we assign to them a particular interest rate based upon their risk, the risk of default.

In addition, Madam President, we have the Government entering the market to borrow. I am going somewhere, I assure this honourable Senate, with that. The Government borrows regularly. In fact, the Government is always on the market for funds, via the Minister's issuance of Treasury Bills. Every 90 days the Central Bank, acting on behalf of the Ministry of Finance, will sell these Treasury Bills and he can borrow maybe now at around 1 per cent or even less. The Minister, if he wishes to borrow internationally, however, has to pay a higher rate of interest based upon something known as the London Interbank Offered Rate (LIBOR), plus, and that plus on LIBOR, he paid 4.75 per cent recently for loans in foreign

currency. That LIBOR-plus is based upon the risk of default. It is, therefore, in the interest of firms and governments to establish a procedure to place in the minds of the lenders that we will repay and if we can repay and if we will repay and if we have repaid then we are going to get a very considerable reduction on the interest rates that we pay on our loans.

Third, we have individuals who borrow. Well this is a different category. The rate of interest individuals pay on their loans can range anywhere from 6 per cent on credit union loans to 26 per cent on credit card loans, again based upon the perception of risks of the individuals.

Not only do we have borrowers, we have savers, those who are lending, and those who are lending will obtain an interest rate of 1 per cent on a money market fund. They may obtain an interest rate of 6 per cent on a more speculative bond, again, based upon the risks they are willing to take on the instrument that they purchase.

This is the interest rate in the private sector and there are a number of reasons that the interest rate arises. It arises because those who borrow would like the use of funds now that they do not have and for that they must pay a privilege and those who have surplus funds would like a reward for postponing consumption.

But that, Madam President, is the interest rate that we normally see in the economy. Now we are talking about a peculiar interest rate. The peculiar interest rate is the interest rate levied on debts decreed by the courts. These are the judgment debts, and we are trying to find whether the interest rate that is currently charged or levied on these judgment debts is appropriate/inappropriate, fair/unfair, just/unjust or whether we could dispense with it altogether.

The current interest rate on the judgment debt is 12 per cent and there is a

view that it is too high. If 12 per cent is too high, why do we not go down to 0 per cent which would then be as low a floor as we can go? The 12 per cent interest rate has to be seen in a context. The 0 per cent has to be seen in a context and we need to ask ourselves, as we ask ourselves in the private sector: Why is an interest rate charged on a loan? Why is an interest rate charged on a debt? In the private sector there is a voluntary contract, a voluntary arrangement between parties. The borrower and the lender both looking at their circumstances, agree that I will pay X per cent for the loan that I have. And there is a contract, therefore, that I will borrow from you a certain sum to be repaid X number of years, hence, at this particular interest rate and the lender willingly parts with his funds and the borrower willingly receives the funds and a contract has been agreed to.

In the case of the judgment debt there is a clear case that the parties to the dispute themselves may both hold the view that they are right, that the person or the institution, the entity, which claims that it has funds owing may have a legitimate claim but the individual who is charged with not paying may also hold the view that he or she or the institution does not have to pay this debt. Hence, there is a dispute and the dispute is then arbitrated according to the rules of court.

In this scenario, there is a loser, there is a winner. The courts, in its deliberations, looking at the facts of the case, will determine that an individual or a corporation owes a certain sum of money. The court will then determine that the funds are to be paid at a particular time.

The law as it currently stands is that moneys outstanding attract this interest rate of 12 per cent. And when we look at the time that this particular law was passed, the Minister indicated that it was in the year 2000, we saw at the time that monetary conditions were such that the interest rate, the prime interest rate, was exceedingly high. This was a time when we were just coming out of an IMF

structural adjustment programme. So that, in that programme, with monetary tightening with the fact that the commercial banks are not able to lend as freely as they would like to lend, that the Central Bank is regulating credit in the economy, the courts were then, according to the law passed, told that 12 per cent is the rate that should be applied to judgment debts. So that the rate of interest charged on judgment debts is a reflection—it is not made in a vacuum—of monetary conditions in the rest of the economy.

Today we are told, Madam President, that the monetary conditions are different. But what the Minister did not prove, certainly to me, is that the 5 per cent that he is speaking about is more relevant to monetary conditions and that it is a rate that will be relevant for a period of time. Because when we look at this problem, in 2000 the interest rate was 12 per cent. It has remained 12 per cent for the past 15 and a half years, close to 16 years, regardless of monetary conditions, and it means that in this Parliament we have, when we set certain guidelines, when we put certain measures in law, we have to understand that the law is going to stand for quite a period of time and we do not want in any way to be unfair to people five years from now who will be stuck with the circumstances which are relevant today. I know there is a procedure where we can change these things continuously.

But Madam President, if we were to argue for a 5 per cent and monetary conditions were to change five years hence, and again there is a period of monetary tightening and the prime rate of interest rises from where it is now 7/8 per cent to around 15 per cent, as it can, as it has in the past, it can in the future, we are going to be stuck with a law where judgment debts carry a 5 per cent interest rate penalty and debts in the rest of the country will carry a 12 per cent interest rate penalty. And so, we may very well find ourselves having to return in a few years from now

to change the law, to keep it current with prevailing economic conditions.

Let me then propose to the hon. Leader of Government Business who is acting for the Minister of Finance, the following, and it may involve some inconvenience but that is how the law is made. It is for his consideration that we should not, Madam President, relate or link our judgment debt law to a particular interest rate, but rather let us relate it to an interest rate concept that will fluctuate with the time. What I will propose for the hon. Minister is this, why do we not just say that judgment debts will carry a rate of interest that is the same as the repo rate of the Central Bank from the date of judgment. Because if we do that and the repo rate changes/increases next year to 8 per cent and then 9 per cent and 10 per cent, then the interest rate on judgment debts will not be stuck at a particular figure but it will be stuck at the repo rate, which is then reflective of prevailing monetary conditions. In that context, in my mind, it would be cheaper. It would be fairer to have a law that will be flexible. You see, Madam President, I have looked at some laws in this country and I have seen fines of $100 and $200 and these laws were passed 30/40 years ago where the fines are irrelevant, given the rate of inflation.

What my recommendation is, is that if we were to link the judgment debt to the repo rate, not to a 5 per cent. I do not think, you see, the Minister justified the 5 per cent. He just thought that it was lower than 12 per cent and, therefore, fairer and I agree with him. Because, Madam President, a debt of 12 per cent, if we were to compound that, if we were to compound 12 per cent and you owe $5,000 today, in six years you are going to owe $10,000. It will double in six years. Now, when the interest rate is 12 per cent, if I or someone to whom money is owed I have an incentive and all I can get from the Unit Trust is 2 per cent, I have an incentive, Madam President, to really postpone receiving that money hoping that somehow I could, in six years, obtain double the amount, claim someone's property and say:

well you therefore owe me double the amount at 12 per cent.

3.30 p.m.

So that we need an interest rate that is fair to both the creditor and the debtor. We need an interest rate that is going to be flexible to reflect the economic circumstance of the country. Between 2000 and 2016, I am sure if the officials at the Ministry of Finance were to track the repo rate on an annual basis they will see that the repo rate would have been very high in the year 2000. It would have fallen, and, therefore, all rates of interest, Madam President, the rates that I spoke about, except, in this country, credit card rates. Credit card rates seemed to be stuck at around 27 per cent, but, really, mortgage rates, the rates, the credit card rates seemed to have stuck at 27 per cent, and I understand the bankers' position.

They are lending to a range of people and the default rate is very high, but, really, you would want to look at mortgage rates, link it to the repo rate, you would want to look at consumer loan rate, you would want to look at hire purchase rates, the repo rates set the trend and the benchmark for all rates. I think it should set the trend for this particular rate as well, it would make the law flexible. And the objective of the Senate, Madam President, really is to propose, to the best of our ability, a law which can be reflective of the circumstances so that there will be equity and fairness to all.

Let me now look at the second area of the judgment debt. The second area is this: we know that the amount that has been decreed by the court, Madam President, is in itself a penalty. The entity will challenge the matter in the court, did not think that it would lose but it lost. We want to comply with the court judgment, the court says you owe $100,000, and this is $100,000 which must now be mobilized and raised by the individual who owes the debt. In the interest of the wider society, in the interest of the court, in the interest of the creditor and in the

debtor, what would we like? We would like that the judgment of the court to be upheld promptly, but, Madam President, we know that the creditor would like to get his $100,000 but the debtor may not be in a position to raise that sum forthwith immediately.

Many of us who deal with properties, Madam President, know that when you need to sell a property it takes 90 days from the date that you signed the purchase agreement or the sales agreement to the date of closing. It takes 90 days to settle that transaction. If someone has a judgment against him I think we need to ensure, certainly from the Parliament's position, that the person who owes, the debtor. is in a position to pay, and is given every opportunity to pay. We will talk about giving him an opportunity and giving him an incentive to pay, and this is what I would propose again for the consideration of the hon. Leader of Government Business in the Senate.

First, I am saying, strike the 5 per cent and link it to the repo rate which will always be there, and which is transparent, flexible, changing, reflective of economic circumstance. But then let us be fair to the debtor and let us provide an incentive to him to pay this debt in a timely manner. I would recommend, again for the consideration of the hon. Leader of Government Business in the Senate, and by extension to the Minister of Finance, that we provide guidance to the courts along the following lines.

I was advised by my colleague on the left, eminent counsel, that the judge in the High Court does have the flexibility. Well, let me provide—when he reads the *Hansard* sometime in the future—let me provide an economic justification of how we can provide the incentive. I would say for the first 90 days that a debt is due, that the law gives consideration to an interest rate or a penalty which is zero per cent. Basically, for the first 90 days the debtor has a period of time in which he can

raise his financing and he has zero interest rate between today and 90 days, hence.

For the second 90 days, I think that we can charge the debtor a 2 per cent interest rate. So he moves from zero on the ninetieth day to 2 per cent from the ninety-first day, and, Madam President, on the third 90 days that this debt is outstanding we move to 3 per cent. On the fourth quarter we move to 4 per cent and at the beginning of the second year, we simply indicate to the debtor that you will face the repo rate or a rate that is higher than 4 per cent. If the repo rate happens to be 3 per cent then you will face the 4 per cent. So I think in that way we establish an incentive mechanism, one that is flexible, the repo rate, and, two, an interest-free period and a scale system where at least for the first year that this debt is outstanding the debtor is given every incentive using the interest rate as an incentive mechanism so that he will be able to complete his debt transaction in the course of a year.

I think if we were to proceed, Madam President, on those two lines we will have a law that is flexible to reflect economic reality and we will not have to change the law when economic circumstances alter. We would have a repo rate that is easy to defend because it is the benchmark for all debts in the country; the repo rate is the benchmark. The variation from the repo rate simply depends, Madam President, on the risks associated with the particular borrower. If we do that we already have our benchmark, easy to justify economically and across the wider society. And if we can give consideration to a 90-day grace period, and also a 2, 3, 4 per cent for the next quarters in the year, I think we would be fair to all those who have debts outstanding as decreed by the courts.

Madam President, I thank you. [*Desk thumping*]

Madam President: Sen. Henry. [*Desk thumping*]

Sen. Dr. Lester Henry: Thank you, Madam President, for allowing me to

contribute to this interesting debate that, in some sense, should be rather straightforward, but I see the Opposition trying to make a lot of a meal out of this rather straightforward proposal. And, as we know, the Opposition tends to be rather irresponsible, both in and out of Government, so we see a continuation of this display of unwarranted, you know, scurrilous language and outrageous innuendo.

This Bill actually goes back quite, if I remember correctly from looking at the Bill, since 1845, so it is perhaps one of our oldest continuous laws and has been amended several times. The original debate, I guess, on this would have been quite interesting. Now, I just want to address a couple of issues in terms of what obtains and what our Minister of Finance laid on the table.

Now, the first issue I would like to address is the whole issue of this hullabaloo over the Minister having control over the interest rate, right. I think this is largely overblown, as our colleague on the Independent Bench was discreetly telling the Member of the Opposition, the judges already have the discretion to vary the rate based on their own informed wisdom. As the Minister himself pointed out, the rate of 12 per cent, and also the proposed new rate of 5 per cent is something that acts as a guideline and is not necessarily a decree that must be followed.

So we already have that in there, and, of course, the innuendo that somehow the Minister might be irresponsible and use Gestapo tactics, and all kinds of, you know, all kinds of inflammatory rhetoric, it is really unwarranted because we have existed, we have lived with these statutes for a long time in this country. As Sen. Mahabir said, this was going on 15 years since the last interjection where the rate was set at 12 per cent, and we have had different governments over the time and no one has abused this power. Do we know of any instance where any Minister in

Opposition or—meaning when they were in power or not, was this an abuse? Was there something seriously of any concern? So why set up these unnecessary straw arguments just to frighten the population and act as though you are making some serious case? And we know, including the hon. Sen. Sturge, that the judges do have the discretion so I do not know why to vary the rate of interest.

Also, in terms of the Minister, the hon. Sen. Wade Mark talked about how you arrive at the 12 per cent versus how you arrive at the 5 per cent, and so on. The Minister did point out that he looked at the overdraft rates and the lending rates over the period. So that issue was already covered. It was not an arbitrary, willy-nilly kind of decision as Sen. Mark is trying to make it out to be, and, as usual, ignoring what was said by the hon. Minister of Finance who covered the tracks already. So he did mention the overdraft rates and the fact that the variation of the rate was quite in order given the different currently prevailing interest rate environment, which I will say more about this in a little bit, later, okay.

Now we know that the interest on judgment debt is linked to deposit—sorry—lending rates or overdraft rates, which tend to be the highest rates that exist in any given economy at a prevailing time because the judgment debt basically is meant to be somewhat punitive, because usually judgment debt arise out of someone breaking a contract or doing something wrong; that is why you have a judgment against you. If you did not do anything wrong, chances are you would not have a judgment debt against you. So breaking contracts, and so on, is the real reason why this problem arises in the first place. Usually that was the genesis of this type of discussion in the past, so it is meant to be punitive that is why it is not linked to deposit rates, it is usually linked to lending rates. As we saw, of course, if we link it to deposit rates currently that would be .2 of 1 per cent in our economy, in our financial system.

So the rate is meant to be punitive and to give people—to give them the incentive not to break contracts and to be fair upfront. So that the reason you ended up in court is because you have a dispute and it is up to the judge to say who is right and who is wrong, and if the learned judge—[*Interruption*] So you have a dispute over a contract or a property, or some matter and a judgment is given against you, and, of course, we mentioned before, I think the Minister covered this as well, the whole issue of the incentive of the person to repay the judgment debt, and so the interest rate must be at such a level that the debtor who lost the judgment has an incentive to pay it quickly; that is the whole point.

Now, the Minister also raised the issue of these debates going back a long time, talking about whether we charge compound interest, simple interest, and I want to add, no pun intended, add on interest, because we do have in our society financial institutions that use add-on interest still. Now, we might want to debate at some point whether we should allow that to continue into the 21st Century. We should seriously have that as a debate because many financial houses actually do use add-on interest and engage in a type of false advertising that where they say the rate is 6 per cent and unless you have read the fine print it is add-on, not compound interest.

3.45 p.m.

So we might have to think of that at some point, because these financial institutions continue to do this. In fact, I thought it was illegal at one point already, but apparently it is not and they still do it. I even saw it in the newspapers advertised. Actually one entity was advertising loans at 7 per cent, and when you look down at the bottom they said, add-on and so on, making people believe it was 7 per cent compound. Seven per cent compound interest is about 14 or 15 per cent add-on. So we have to consider whether we really want to get to that debate

sometime soon and disallow this anomaly.

My colleague, Sen. Mahabir, also raised the issue of tying the rate to the repo rate, and to some extent of course that is a logical type of argument in terms of setting the rate at some benchmark rate. He mentioned LIBOR and so on. The last time this Bill was debated there was no such thing as a repo rate, so we could not have expected that to be done at that time. Also, my concern with the repo rate suggestion is that if you have a repo rate now, that is largely ineffective—I am sure Sen. Mahabir knows this—is largely ineffective because of excess liquidity in the system, it is just a signal that the Central Bank wants interest rates to move in a particular direction. In fact, some of us might even argue that the repo rate is totally useless and should be even abolished, because it really does not serve the purpose that it was set out to do. In a context of excess liquidity in the system, banks do not borrow from the Central Bank in any meaningful way. So you really do not have an effective repo rate. That is my problem with that.

I want to vary a little bit and look at the whole issue of compound interest, because we presume this 12 per cent and then this 5 per cent is based on compound interest, not simple or add-on. Now the magic of compound interest is something that I know a lot of people do not really have time to think about, but it is really a great con. I consider the individual, most likely some smart man, who convinced the world to accept compound interest, has to be the biggest con man in the history of the world. Whoever, way back when, decided that this was the norm, had to have been the biggest con man in the history of the world, whether it was in Europe, Africa or some other part of the world—maybe it was the UNC. [*Laughter*]

Compound interest is really something that causes a lot of stress in modern economies, because what they have to understand about compound interest is that

no economy can grow to keep up with the compound interest rate. Normal economic growth cannot keep up with compound interest. That is why debts are never repaid. Overall debt in a society could never be repaid, because compound interest grows at a much more rapid rate than natural economic growth. So if you go back to ancient Babylonia I think they used to cancel all debts every 47 years and start all over again. So you take, for example, a country like the US where total national debt, including government debt, corporate debt and individual debt, could be somewhere around $80trillion. Who is going to repay that? Impossible; and that is all because of the magic of compound interest. Therefore when we look at these things, we have to keep the context in mind. What is compound interest? Why are we using this in the first place?

So you have no basis in terms of a natural, normal economic growth ever catching up with compound interest. That is why you have such things as Third World debt rising to unsustainable level; the situation in Greece, you can go anywhere. But the whole idea as I was saying before about the rate on judgment debt is to be punitive, and that is why we tend to link it on the higher side.

The interest rate environment that exists today all over the world, as the Minister pointed out, and others I believe, is very low. We exist in a world where interest rates in many parts are negative. Even in Trinidad and Tobago if you take the basic savings deposit rates of .2 per cent that I mentioned before, when you add in all the fees that are charged to those accounts, the net effect is a negative interest rate. And as we know, banks are quite willing to raise fees on transactions; several of them have done it over the past few years. If you look at the rates over the years, it has been coming down drastically for deposit rates and it has come down significantly for loan rates as well and overdrafts, and so on. But what has happened, the gap between deposit rates and lending rates has tended to be stable,

in some sense. In other words, the banks are making sure that they get their cut regardless of what they do with deposits.

But when we look at the legislation now in terms of the Minister setting the rate, let us just do a quick comparison in terms of looking at some of what obtains in other jurisdictions. In the case of the United States, for example—of course it is difficult to compare ourselves to the American system because they have a federal structure with 50 States, and each State has their own laws and so on. So in the general case in the US, based on a paper published by the University of Pennsylvania Law School, the calculation of prejudgment interest, there is no single set of rules for prejudgment interest. Instead different rules apply depending on the jurisdiction, whose law applies and perhaps the cause of the action which the plaintiff is seeking to recover. That is what I was saying before, usually somebody is trying to recover something. That is why you have a case. If everybody were in agreement you would not reach before a judge. So, many States have prescribed very simple rules. Some States set a fixed prejudgment interest rate by statute, others the rate is established or tied to some index which was the suggestion pertaining to the repo rate.

Currently in Australia what we have is a kind of mixed system, where the rate could depend on the position of the Reserve Bank of Australia in terms of setting the rate. For example, the rate from January01 to June30 in any year is 6 per six cent above the cash rate last published by the Reserve Bank of Australia before that period commenced. So they have a flat 6 per cent, then you add on the variable component. The local court may not order the payment of interest up to a judgment in any proceedings in which the amount claimed is less than $1,000. So they also set a minimum for which you can impose a punitive interest rate.

In Canada it seems to be set by the Lieutenant Governor in Council and the

rate varies. In Singapore, which is slightly different from many jurisdictions, according to the Supreme Court there is a default rate of interest at 6 per cent or such rate as the Chief Justice may from time to time direct. So a base rate of 6 per cent and the Chief Justice can vary that rate. So the rate currently from April2007 was set at 5.33 per cent, which is not far off from what we are proposing, and many of you like to compare ourselves to Singapore. I often have that discussion with many people. Why are we not more like Singapore? I am just giving these examples to show that there is no one fixed rule, that different jurisdictions use different criteria to set the rate on judgment debt.

In Hong Kong, for example, the rate is not fixed. If not determined by the court it is left to the discretion of the Chief Justice, and currently since 2009 this Chief Justice has set it at 8 per cent. And even though the Chief Justice has the ability to change the rate, you can see that they still leave it relatively stable. The last change in Hong Kong was 2009. The last change in Singapore—unless they changed it recently and I missed it—was in 2007. So in other words there is stability in terms of the rate in the first place.

4.00p.m.

Our system that we have been operating with and will continue to do so even without the passage of this Bill—right?—is that there is flexibility already built in as we know in the system, and there is no need for this unwarranted fear of the Minister of Finance. Because generally, if you take that argument to its ultimate conclusion, you would not have a Minister of Finance at all. Because if you prescribe everything, if you do not trust the judgment of the Minister of Finance to make proper decisions, then what do you have?

Hon. Senator: Parliament.

Sen. Dr. L. Henry: So Parliament will debate every single—everything will go to

a joint select committee for you to waste time? [*Crosstalk*] To let you know that—anyhow I would not say it. [*Laughter*] Yeah. [*Crosstalk*] No. No. No. I see you are smiling and quite awake. You are quite intrigued. You are quite intrigued.

Sen. Ameen: It is not out of joy.

Madam President: And you know what intrigues me, Sen. Henry? The conversation that is going across, very, very intriguing. So how about you address the Chair?

Sen. Dr. L. Henry: Apologies, Madam President. As I continue, you know, I just have to, you know, remind them every so often, every so often of their, you know, ineptitude where they try to intervene and, you know, it is usually a lot of hullabaloo.

So, Madam President, the issue before us is fairly simple. The safeguards are already there. The Minister of Finance has tremendous power, regardless of who the Minister is, this is our system; this is our society. He has tremendous—he or she has tremendous power to change interest rates, to determine Central Bank policy, everything. So what is this worry about? Because, are you going to change every piece of legislation that gives any power to the Minister? Is that the idea? That, seriously, is not a practical approach. So, I urge all Members to, you know, ease up on the unwarranted rhetoric and accept the reality. This our system. This is what we operate by. And with those few words, I thank you. [*Desk thumping*]

Sen. Wayne Sturge: [*Desk thumping*] Madam President, this Bill which contains one clause is deceptively simple. I say so because on the face of it, it may seem innocuous, but in the absence of a report like we had in 2000 with the Gurley Report, my suspicion is aroused, and my suspicion is aroused for several reasons. I see nowhere in the PNM's manifesto any reference to a measure of this kind. It is also not in the Government's legislative agenda, and we have had nothing to

suggest, by way of notice, that this amendment is necessary.

So quite apart from it not being in the manifesto or in the Government's legislative agenda, I had to ask myself: was there some sort of groundswell of dissent from the general population? Was there some clamour for this, some clarion call so that this suddenly became necessary, and necessary to the point where it jumps the queue. Because when I listened to the Attorney General, in particular, foreshadow what would be the Government's legislative agenda, I got the impression, and it was reasonable to infer, that the real problem facing this country, quite apart from a failed health system, would be the criminal justice system. And all of what was foreshadowed and all of what was suggested would be coming by way of legislation and given priority, would be laws concerning the criminal justice system, laws concerning national security, corruption and so on and so on.

So I do not understand how this piece of legislation has jumped the queue of things like Whistleblower and so on. How it has jumped the priority of Bills dealing with the criminal justice system in particular. So it seems as if this bit of legislation has come out of the blue which makes me wonder and without seeking to cast aspersions, but it makes me wonder whether I should ask the question: is there somebody who is in serious debt? It is a financier? Because this Bill, if you look at it—[*Crosstalk*]

If one considers this: since there is no groundswell from the ground, nobody calling for this legislation, then how is it suddenly so urgent? That is the first thing. And how does this help the average man in Trinidad and Tobago? And when we look at it in the context of the society we live in, it seems as though this is another Bill geared towards helping some elite or some big businessman or something. Because if you look generally at judgment debtors, the small man, for instance, he does not pay his credit card and he owes 10 or $20,000, by us reducing

the rate of interest from 12 per cent to 5 per cent really makes no difference to him. The point is, he got there because he cannot pay. So whether you vary it from 12 per cent to 5 per cent, it makes no difference to him. He simply cannot pay.

So this Bill does not benefit the average man. It would benefit a financier who probably owes five or $10 million, then the interest if he has to pay 12 per cent interest—and I see my colleague Sen. Henry laughing from ear to ear. If his smile broadens anymore, the top part of his head might fall off. But it quite clearly would benefit the "big shots" in society. So this is, without being acrimonious, but you would note, Madam President, from all of my contributions in Parliament, I am really concerned with the average man. And I have said it before and I am saying it again today, it seems as though this Government is more concerned with helping big business.

Now, I agree there a need to reform the Remedies of Creditors Act, there is a need. There are several amendments needed, but this is not one of them or this is not one that is pressing at this time. There is a need on the ground and I am saying this because they are in charge and I would like them to put their ears to the ground and listen to their own supporters.

One of their supporters came to me a few months ago and I am going to use her story to indicate why we need to rethink the agenda and who we are seeking to serve, whether it is the big man or the small man. Because there is a disturbing trend. This supporter, PNM supporter, she lives in Belmont which is Port of Spain North/ St. Ann's West where I—[*Crosstalk*] a PNM supporter. Yeah.

Sen. Dr. Henry: That is a good place.

Sen. W. Sturge: Right. A good place, as Sen. Henry is saying. I was born and bred in Belmont like Sen. Henry. So she looked past the politics and she came. And this is the issue: she took out a refrigerator with Courts, the furniture store—

Sen. Samuel: So she end up in court?

Sen. W. Sturge: No. She did not end up in court. She ran into difficulties because "child father" dead, murdered. Could not pay very early in the game, and said to Courts, "Please come take back your refrigerator because I would not be able to pay for it."

But I learnt years ago that Courts really is not a furniture store. It is really a finance house masquerading as a furniture store. So the furniture is just like, how they call it?—collateral? In economics there is a way they—I cannot remember the term. It is not a primary good, but it is—right. And Courts did not come back for the refrigerator, no matter how she begged, they would not come back for it. Eventually she had to drop it off and a whole set of—forgive the language, I hope it is not unparliamentary—whole set of rigmarole to give Courts back their own refrigerator.

But when that eventually happened, instead of Courts suing the lady because they knew really they could not, or maybe if they did they would get some small money. Instead of suing, you know what they did?—they sat on that debt and they kept writing her and by writing her she would respond, so therefore, the limitation period kept on extending. Because if she did not respond, then they could not sue. In four years it is dead. They kept writing. She kept responding, well through someone else they were writing and she kept responding and so on. So the debt is kept alive—stop writing and it stretches out. Could you imagine what the rate of interest was with Courts?

Now, it became a problem for her when she was able to get her act together, and finally she wants to get a house and she approaches—what?—I cannot remember. I think she told me it was TTMF. She approaches TTMF only to find out that she cannot get the mortgage until she settles that debt. So, a refrigerator

which cost, I think it was $6,000, now costs about twenty-something thousand dollars.

Now, let me say what is wrong with that and what I was hoping the Government would do to remedy this—[*Interruption*]—has to be compound, I guess. And since we are on the issue of compound interest, I simply think that that should be outlawed. Maybe the Government, looking after the interest of the ground—the people on ground—should move some amendment to outlaw compound interest because it serves nobody's interest—[*Interruption*]—add on. Sorry. Yes.

Now, so the difficulty with the Remedies of Creditors Act—and it does not address it, so apparently it is not illegal until you declare that it is illegal. Madam President, you would recall that is one theory in jurisprudence, that all things are legal until it is declared otherwise.

So the thing is, without proving their claim against this PNM supporter, this finance house is able to have this very large debt against this PNM supporter and to prejudice the rights of this lady so that she cannot get a mortgage. Let me give you my experience before I go on into what is wrong with this Bill, and it is not a lot.

In 2007, I think it was, I took out a Digicel phone. I still remember the phone number—310-0595. That was supposed to be my hot-line because I was married and my wife was not supposed to know about it, but she found out and I had to give it back. And I took out the telephone at Digicel on Henry Street, I think it was Aboud's plaza or something like that. I paid the debt to clear it off in the presence of my ex-wife. Years later I was going to take a car loan and they said I did not pay the debt. I could not get the car loan until I liquidated it. So I paid the debt twice; went to head office and paid the debt. So I paid Digicel twice.

4.15 p.m.

And then years later, two years ago, I think it was, trying to get a mortgage, guess what? That debt still exists. So I go to Digicel and I told them, listen, you all told me you could not verify whether I paid it at the Henry Street branch because that branch closed down and you had no record of it, so I paid it a second time. Now, you are telling me you do not have it. So I invited them to sue. If I am owing you, sue and you prove that I owe you in court and there will be a judgment debt. No way, they are not going to do that. They are going to keep it to prejudice me, affect my creditworthiness, benefit by that and get a hefty rate of interest on the debt.

So, what I am hoping since it cannot be done by way of an amendment today, is if, perhaps in the future that this problem be addressed. Because we have companies like Digicel and Courts and other, what in essence will be finance houses, utilizing the services of Credit Chex, for instance, so they have this register of bad debtors where the banks go to the register, they see your name and you are prejudiced without going to the courts. That has to be wrong. And that is something that should be legislated against. He who alleges must prove, come and prove your claim in court instead of prejudicing people's rights.

Now, in terms of the figure for interest, I am of the view, I do not know if it can be done by way of amendment today, but it will certainly benefit the average man, if there is a different regime for commercial debts, vis-à-vis the average man as opposed to debts generally. Now, you see, the only reprieve the credit card holder has in this country is when he cannot pay his credit card bill, is to not pay it at all, do not even attempt to pay it and let them take up judgment against you and you pay 12 per cent, now it is going to be 5 per cent as opposed to 24 per cent. That is the only reprieve he has.

In a free market I guess the Government cannot do anything to legislate and

tell the banks well, do not charge 24 per cent. But it is obviously unfair if you are earning 1 per cent on your deposit and having to pay the banks 24 per cent. But I understand the argument put forward by Sen. Dr. Mahabir. But what I am thinking, perhaps, is for interest debts under the Remedies of Creditors Act, for debts up to a certain amount, perhaps 10,000, 20,000 that they attract no interest. I think that is the way forward for the ordinary man, because you have gotten there, [*Desk thumping*] on the basis that you cannot pay. And if you cannot pay, why are you going to saddle this man with punitive interest. Because that is what it is, he already cannot pay and then you turn around and punish him some more. I do not think any Government, any Parliament should encourage that sort of advantage, because that is what it is. And, of course, there could be a different regime for above 20,000, if the debt is more than 20,000, then we revert to the 5 per cent.

Now, there is also something that is a bit troubling in this legislation and I was hoping it could be remedied by this amendment. It is something that is discriminatory. You see, Madam President, under the Supreme Court of Judicature Act, and I appreciate what the Minister had said, that he is going to bring the necessary instrument to the Parliament so that under the interest rate, under the Supreme Court of Judicature Act, will be reduced from 12 per cent to 5 per cent in keeping with this amendment. But under the Supreme Court of Judicature Act a judge has a discretion, whereas under the Remedies of Creditors Act there is no discretion.

And the thing is, let me present the scenario. If you have money and you are sued and you can defend your litigation and you lose, the judge has a discretion as to what interest you pay on the judgment debt. That is fine. But if you cannot afford to defend your claim and by virtue of your own experience, Madam President, being a lawyer from one of the big firms, there is something called

default judgment or over the counter judgment as they call it. You cannot afford a lawyer, you might put in an appearance which would only delay it for a few more days because you have to put in a defence. You cannot afford a lawyer. That is why you could not pay the debt in the first place. So if you could not pay the debt then you cannot afford a lawyer to battle and then the big firms who have an entire floor dedicated to commercial debt collections on behalf of the banks [*Desk thumping*] they register a judgment against you, a default judgment. And with that default judgment there is no discretion. As it is now, with a default judgment, you have to pay 12 per cent. If you fight your case, if you have money to fight your case and you lose, the judge can say, well listen, I am not going to order the 12 per cent, I might even order 1 per cent or zero or something like that. So it seems as though those with money fare better and the judges are able to help, and Sen. Dr. Henry is saying that is always the case. But the trouble with this is, you are in Government, so you can change it.

So, I do not know if there is some amendment. Maybe we can bring back the Minister of Finance this evening and see if we can find our way at arriving at some sort of amendment that would perhaps not have this sort of discriminatory effect, because the effect is, the poor man cannot defend his claim, mandatory 5 per cent if this Bill is passed. The rich man who can defend his claim, the judge can give him a "bligh" if you want to put it that way. I do not think that is right in principle.

Now, the other thing is, Madam President, the 5 per cent as exists is much higher than whatever deposit you have in your bank and I think if we want to keep the civil administration of justice running smooth, we should provide a disincentive to litigation. Because as it is, it remains 5 per cent and if this business invests its money in the bank he is going to get not even 1 per cent on his money. But when you owe him there is no incentive for him to settle with you. In fact, the

incentive is, let me put you in court, bring the might of my MG Daly Law Firm or whichever law firm to go against you, you see these big lawyers coming, you get frighten and that is it, licks without even putting up a fight and then these big businesses instead of getting a 1 per cent from the bank they get 5 per cent. So in essence, if we leave it at 5 per cent, we are helping big businesses, in fact, we are encouraging them to sue.

Sen. Gopee-Scoon: But you said just now leave it at 12.

Sen. W. Sturge: No, I never said leave it at 12.

Sen. Gopee-Scoon: That is what you were advocating.

Sen. W. Sturge: No, I was never advocating that. You should listen carefully. What I am saying, is yes, we have moved it from 12 per cent down to 5 per cent, that is fine, but 5 per cent is still above what the companies would get. So a company investing, let us say, $1 million of its money in the bank, he is getting less than a percentage point in interest, that is no money for him. He makes more money by suing you and he gets—[*Crosstalk*] right, because he lends money and so on, and so on. Like Courts, they give you a fridge, you cannot pay, they sue you, they make more money off of suing.

So the better thing I think is, whatever is the deposit interest in the bank, whatever is being earned on an account, so if the banks are paying you 1 per cent at the highest, I think the judgment, the interest on judgment should be 1 per cent. [*Crosstalk*] Oh, you would not like that, you support big business. So that it evens out the playing field. In essence that says, listen, do not use the court as a business partner to make money. If you are getting 1 per cent interest on your deposit in the bank, 1 per cent interest is what you will get on your judgment debt. That is the only fair thing I can think of.

So, as I indicated from the outside, on the face of it, ostensibly, the

amendment seems innocuous. But since it was important to bring it, I am wondering perhaps if the Leader of Government Business can perhaps speak with the Minister of Finance to remedy other aspects of this Remedies of Creditors Act in short order, because as they are saying, we are in hard times right now and this ought to be the time if we are in hard times, where we try to ease the hardship on persons who run into debt, persons who are unemployed and so on and cannot pay their debts. This would be one measure that would help you to gain favour with a beleaguered population. Madam President, unless there is anything further, these are my thoughts on this amendment. [*Desk thumping*]

Madam President: Hon. Senators, I think that this is an appropriate time to break for tea. So the sitting is suspended until 5.00 p.m. and we will return at 5.00 p.m.

4.27 p.m.: *Sitting suspended*.

5.00p.m.: *Sitting resumed.*

[MR. VICE-PRESIDENT *in the Chair*]

Mr. Vice-President: Sen. Shrikissoon.

Sen. Taurel Shrikissoon: [*Desk thumping*] Thank you, Mr. Vice-President, for allowing me the opportunity to contribute to this very important debate. I want to say that while the Bill is just about one amendment or two amendments—just about four or five lines—I do not think that the length of the Bill has anything to do with the importance and relevance of the Bill. And so it is on that note that I did ask to contribute towards this Bill.

And today what we are debating or what we are considering here is the reduction in the rate of interest on judgment debts and we are seeing in the legislation being proposed here, a reduction from 12 per cent to 5 per cent. The hon. Minister, in his opening arguments today, did signal that one of the reasons for lowering the debt level was that of falling interest rates. However, as others

would have said before me that there was no justification for arriving at a nominal value of 5 per cent. So while he did indicate falling interest rates, there was no justification for that of 5 per cent.

What I would like to say, though, the last occasion that this rate on judgment debts was amended was in the year 2000, and if we look at the prime lending rate at that time, in September 1997 it was 15 per cent; 1998, 17.5 per cent; 1999, 16.5 per cent; and 2000, just an average about 16.5 per cent. So what we saw was a rate that was being used that was very close to the prime lending rate. What is more is that we are aware from the Gurley Report, as Sen. Mark spoke on, that this report was done in about 1992/1993 that recommended a percentage of 12 per cent. And if you look at the prime lending rate at the time the report was issued, it was also just about 12 per cent.

So the original recommendation in the year 2000 of 12 per cent, which was as a result of the Gurley Report which was prepared in about 1992/1993, the prime lending rate at that time was around 12 per cent. So that there is some element of consistency in the argument that the point or the rate of interest that was used on judgment debts at that point in time was very similar to that of the prime lending rate. The reason why I am saying this or bringing this argument together is as I quote from *Hansard* in the year 2000, the hon. Attorney General at that time, hon. Ramesh Lawrence Maharaj says:

> Creditors or debtors would not pay this money because they would believe that can hold back the payment, but in the meantime the person who is supposed to get the money has to borrow from the bank and pays 10 to 12 per cent interest.

So what he was saying at that point in time is that if the judgment rate—the interest on judgment was 6 per cent but the prime lending rate or the rate at that time was

17 per cent, then no one would be inclined to pay. Just let it go to court and let us have a benefit of 6 per cent. So he is saying, in order to increase or to allow efficiency in the market, let the penalty for the defaulting person be the same as the prime lending rate. And it is for that reason, in my view, that 12 per cent was used at that time.

He goes on to say and I quote from *Hansard:*

> If a debtor is not required to pay interest on moneys due to his creditors, or if the rate of interest payable by law is lower than the commercial rate, that debtor will be inclined to avoid or delay payments for as long as possible.

And so, in order to bring it together for there to be equity, the prime lending rate was used to influence the rate on judgment debts, and as Sen. Mark said here, from the Gurley Report, it says here that the recommendation from that committee is that the statutory rate of interest should be increased to a rate that is more in keeping with prevailing lending rates in the financial markets as it is thought that the rate of 12 per cent is more realistic.

So while we are focusing on the 12 per cent that was used, the logic behind the 12 per cent is what is important and not the nominal value because what was being used was the rate of interest that companies would have been able to borrow at—the prevailing lending rate. And that is really the core of the matter to bring it together so that there is balance on both sides.

Now, Sen. Mahabir referred to the repo rate and the hon. Minister of Finance said that we were in an era of falling interest rates. I would just like to say here that at present, until January2016, we have an article here that is entitled: "Central Bank maintains the repo rate at 4.75 per cent after eight consecutive increases". Central Bank has maintained a repo rate of 4.75 per cent after eight consecutive increases.

Where am I going with this?—that we were in a rising rate environment between the period 2014 to 2016, and it is only because of the economic outlook of 2016 that was linked to the US market that the repo rate or the interest rates were held. It never went down. So in the period 2014 to 2016, we were in a rising rate environment as evidenced by the repo rate. And I can quote the number of times that it was increased but I do not want to go there—I do not want to go into that—but it was eight consecutive times. So we are in a rising rate environment, and since January2016 it was stabilized. So to use an argument of a falling interest rate environment in Trinidad and Tobago to justify a move from 12 to 5 per cent, I am not too sure that I want to agree with that statement.

Now, what is happening here is that a move from 12 per cent to 5 per cent, and the prime lending rate in our country right now is just about 9 per cent. So if a company is borrowing financing for a project, they are borrowing at a minimum of 9 per cent. If there is a dispute and it goes to court, it is saying that the judgment now of 5 per cent that they could be awarded interest charges is insufficient to match the cost of capital for the company. And therein lies a significant issue. Here it is a company, utilizing debt financing at a cost of 9 per cent, has a dispute with the vendor or the person who he is working for, and the best offer that you can get through the courts at this time is probably just around 5 per cent. So even if the person who brings the judgment wins the case, he is still 4 per cent out. And that is not good for the private sector, a sector that you are looking to, to invest capital at a time when our country needs it the most.

It is not a way that you can attract private capital when, in the event of a dispute, that the courts could be guided by a rate of interest that is quite lower than the cost of capital. And that has a significant implication for investments in our country.

I would also like to say at this point in time that an interest rate, very close to the prime rate of interest, is an interest rate that may deter people from going to court or companies from going to courts, if it could be settled at a lower rate outside. And therefore, the interest rate on judgment debt should be one that is punitive, having to take a matter through the court system, tie up the court's time and then award a result. It should not be that the court system or a judgment from the court facilitates judgment against someone. It should be that through alternative mechanisms of resolving, the court should be the last place. It cannot be that the courts will be guided by a law that it brings favour to the person or the defendant in this case. It cannot be. [*Desk thumping*]

And I am saying this in the context of what is going on in our local economic environment in Trinidad and Tobago. According to a *Guardian* article published on June 12, 2016, the President of the Contractors' Association, Mikey Joseph, has indicated that the State owes in excess of $2billion to contractors. And I have been advised at this point in time that most of the contracts that are used, before a government and agencies that are building, take a contract form of FIDIC, which is really the international federation of consulting engineers. And those concepts in that form of contract usually influence the contracts that are in Trinidad and Tobago—most of them. And I want to read a clause from that FIDIC form of contract that exists in most, if not all the contracts in Trinidad and Tobago, and I am also aware that the Government is using some element of training, or utilizing training in this form of contract. And it says here:

> Unless otherwise stated in the particular conditions, these financing charges—meaning on delayed payments, because I am reading 14.8: Delayed Payments on the FIDIC form of contract, and it says here:
>
> Unless otherwise stated in the particular conditions, these financing charges

shall be calculated at an annual rate of 3 percentage points above the discount rate of the Central Bank in the country of currency of payment and shall be paid in such currency.

So here it is you have a contract or a form of contract that dominates the way in which contracts are prepared in Trinidad and Tobago. The contract law is saying that for delayed payments, a situation in which Trinidad and Tobago has found itself, is saying that financing charges shall be calculated at 3 percentage points above the discount rate.

And my check today is saying, from the Central Bank website, that the discount rate right now is 6.75 per cent. My calculation, 6.75 per cent discount rate added to the 3 per cent according to the FIDIC form of contract, is saying 9.75 per cent, very closely aligned to the prime lending rate of Trinidad and Tobago which is 9 per cent. The logic of 2000 that the proposed rate should be in line with the cost of borrowing, it is the same logic that is being used in contract law which governs the way in which the Government and the private sector handles their arrangements to build. And so we are seeing here, according to this FIDIC form of contract, 9.75 per cent is being used.

Now here is the challenge. If 9.75 per cent is being used according to contract law and this matter cannot be resolved and goes to court, then the court is so guided by 5 per cent if this law is passed. How can the FIDIC form of contract, which is the primary form of contract used in this country prescribing 3 per cent above the discount rate, is now subject to a different rate that we propose today? Will the private sector agree to invest in a country at this time when, through dispute and judgment, the rate of interest that they could earn is a lot lower than, one, the prime lending rate, which is the minimum cost of capital and, two, the penalty according to delayed payments, according to the FIDIC form of contract

that we use in this country, is it consistent? And the answer, clearly, in my mind is no.

5.15 p.m.

It places the defendant at an advantage given that the FIDIC form of contract is saying 9.75 per cent, but the law today is saying 5 per cent. I am suspecting that there could be some element of problems in and among our private sector and contractors if this persists. We are told as well, and in Prime Minister's address to the nation on Sunday evening, he said at that point in time that he gave a mandate to operationalize procurement. How can you engage the private sector if the dispute resolution, or the interest on judgment, places those same companies at a disadvantage? You want to operationalize procurement, but the interest on judgments, if there is a dispute, is not in sync with lending rates and places private capital at a disadvantage.

More so, not only would it affect Government and contractors, but foreign firms investing in Trinidad and Tobago, if a contract is worded and denominated in TT dollars the jurisdiction of that contract is Trinidad and Tobago. And therefore, they too, their private cost of capital, if it is higher than the 5 per cent, may actually say well I am not willing to go there because if there is a dispute and it ends up in court and after multiple years—because we know the judicial system in Trinidad and Tobago is not as effective as it should be—awards them a rate that is lower than the cost of capital. What are we really signalling to private sector and companies that are willing to invest?

The parliamentary staff of this honourable Senate provided a document for us, and they provided comparison, or a comparison of rates, that were used in different jurisdictions for the interest on judgment debts—Canada—and they quoted specifically Alberta which is 0.55 per cent. That .55 per cent applies to

Alberta alone and not Canada. The rate of interest that is used in Canada, as can be found on the website of the Attorney General of Canada, is saying that there is an interest rate for prejudgment and there is an interest rate for post judgment. Prejudgment 0.8 per cent, post judgment 2 per cent. What is prime in Canada? 2.75 per cent or 2.7. The penalty that is being used in Canada is that the interest on judgment rates, or interest rates on judgment very closely aligned to prime. What is happening in New Zealand? New Zealand judgment debt is up to 7.5 per cent. What is their prime? 9.2 per cent. So it is below prime, but it is very close to prime.

Prime should be one of the benchmarks that is used to determine the level of interest or the interest rate on the judgment debts. If you go to Australia, the same document that the parliamentary staff provided us with, it is—and Sen. Henry alluded to it—1.5 per cent, their cash rate which is very similar to our repo rate, plus 6 per cent, which brings it up to 7.5 per cent. What is the prime rate in Australia? 5.6 per cent. Very close. What are we doing in Trinidad? 9 per cent prime, 5 per cent being proposed and negative ratio or negative difference of minus 4 per cent. One of the largest that we have seen here based on the information provided by the parliamentary staff, and that cannot be favourable. It is saying that if our disparity is so wide we need to look at the logic that was used to come up with the 5 per cent.

Sen. Mahabir referred to the repo rate, but the repo rate as Sen. Henry was saying is not the cost of capital and not the cost that consumers or firms use, or not the cost that firms get at a commercial bank. It is not the rate. The rate they use is the prime lending rate, or just about the prime lending rate. But Sen. Mahabir in his contribution was using the repo rate, I am sure was thinking just like Sen. Sturge of the average citizen on the street with a judgment.

I am saying here when you are looking at the companies and private sector, the companies that engage in investment in this country, that the prime lending rate which is consistent with the logic used the 2000, which is consistent with the rates used across the country—and even Sen. Henry when he alluded to Singapore at 5.2 per cent, or 5 per cent, the prime lending rate in Singapore at that time was also 5 per cent or 5.2 per cent. So the logic is clear and resounding that across the world that the logic that is being used to come up with the interest rate on judgments is the prime lending rate.

Hon. Senator: One of the cases you cited—[*Interruption*]

Sen. T. Shrikissoon: No, I did not—5.6 per cent and the judgment was for Australia, and 7.5 per cent for Australia. Judgment was 7.5 per cent. 1.5 per cent plus 6 per cent. Prime is 5.6. So that is not incorrect.

If you look at the UK, the UK is very punitive. Prime in the United Kingdom is 1.25 per cent, and their interest on judgment there is 8 per cent. How many percentage points above prime. That is the only one that is so punitive. Everybody else usually settles within a 1 or 2 per cent around prime. So that is the argument being postulated here this evening, or being put forward here this evening, that the rationale for determining the interest rate on judgment should be very close to that of the prime lending rate, especially if we are thinking of the private sector in this token.

So I am saying here today as I close, and I am finished, that the rationale for arriving at the 5 per cent was not given. It was just used as we are at a declining rate environment, but as I showed over the period 2014—2016 we had increases in the repro rate which influences prime lending rate. So it is not consistent. The nominal rate of interest of 5 per cent is not in keeping with prevailing lending rates right now in Trinidad and Tobago. It is not. It can work to the disadvantage of

companies incurring a cost of capital of prime lending 9 plus, with only an interest payment on judgment at 5 per cent.

I ask the Government to consider the implications with the FIDIC form of contracts where it specifies that it is 3 per cent plus the discount rate which is 9.75 per cent. What occurs in a situation in Trinidad and Tobago when a significant amount of moneys is owed to contractors? This form of contract is governing the delay payment and we are ascribing interest on judgment for the courts to be so guided at 5 per cent. [*Desk thumping*]

I have also said that rate of interest on judgment that is lower than the prime lending rate can actually deter people from investing because in the event of a dispute the cost or the benefit coming out from the judgment may be insufficient to cover the cost of capital and the rate that is being proposed here today would actually encourage companies to go to the courts. And while we did argue before that the court has its own discretion, the hon. Minister of Finance did say that the courts can be so guided by the rate used in the legislation, and therefore, the rate being used will encourage firms, companies, individuals to engage the judicial services in their settling of debt and this should not be the way we are going. It should be a punitive measure when firms are entering into courts for disputes.

So with these few words, I thank you, Mr. Vice-President. [*Desk thumping*]

Sen. Daniel Solomon: Thank you, Mr. Vice-President. I am honoured here to make a contribution to this august Chamber on the Remedies of Creditors Act as amended in section 13:

(a) "by deleting the words 'twelve per cent' and substituting the words 'five per cent'; and

(b) …inserting…"—the words:

"(2) The Minister with responsibility for finance may, by Order subject to

negative resolution of Parliament, vary the rate of interest prescribed in subsection (1)."

And we have heard from the Minister of Finance already speaking about the ministerial Order that would change the Order in the actual Act as the Act under section 13 has no number (1) subsection.

Mr. Vice-President, what concerns me here today is that out of nowhere this massive, yet small in words but large in effect, change came about. From 12 per cent to 5 per cent has a massive effect on the judicial system and the persons and the stakeholders therein. Yet still, we have not heard of it of any consultation. There was no consultation with the stakeholders, there was no consultation with the Judiciary. We did not have any sort of consultation with the JCC, the Manufacturers Association, the Chamber of Commerce, the Law Association. What is the Law Association's view on such a drastic and monumental change? Why have we not had an opinion from them? This is a major change in the entire system of judgment debtors, 12 to 5 per cent. We need to have questions asked, we need data and we need to have a study done to understand the impacts this will have on the judgment debt system.

I listened to my friend, Sen. Sturge, when he spoke about the small man suffering and the story about the lady who had bought her fridge from Courts, and that is an extremely relevant story that we hear throughout Trinidad and Tobago, where poor people are tied in to a system of debt and made to suffer and suffer and they seem incapable of managing to pull themselves out of that dire situation. Does this situation help them? I do not think so. I think that what we need to do is to understand that certain cases deserve certain types of treatment, and a blanket removal from 12 per cent to 5 per cent lacks in-depth understanding of the effects that this will have on our society. How many cases involve insurance companies

for instance? How much is big business affected by it? These are the things that we need to understand. Who are the defendants who will benefit from such a change? A lot of the system is actually clogged because of insurance system, the insurance companies and their claims.

If I can indulge your—I represented a family some time ago. A young girl, 18 years old, her mother and father driving along Valencia stretch was hit by a truck along the stretch. Terrible injuries ensued and then began the horrific journey of trying to make a claim, a claim against the insurance company, claim against the truck driver who disappeared, the claim against the business owner who owned the truck. Now this matter took years. The young family did not have any money. It was a pro bono case and the injuries were severe. It required plastic surgery; it required several operations on the mother and the daughter; the father could no longer work. It devastated this family, just all emanating from a simple Sunday afternoon drive.

Now fortunately, we managed to get judgment fairly early in the matter, but then began the process of trying to get the actual money and that is where the real, real trick in this matter is and that should not be oversight because what happened is the judgment debt starts from that point. The truck driver disappears, cannot find him, he is a man of straw. We have to then employ private investigators to go and track down where the assets are, who the people are, go back before the courts with whatever evidence we can get to try and prove to the judge that this is where the assets are. Then you have to get the marshals and the bailiffs involved to try and recoup the losses. All that time this family will lose from 12 per cent to 5 per cent. Mr. Vice-President, that is not fair. That is the sort of people that we need to protect.

5.30p.m.

Now, if you flip the coin and you look at it from the other side of the coin, you have big business, you have insurance companies. They would be looking at this litigation. They have a battery of lawyers; the biggest firms, as Sen. Sturge has said, and as my friend, Sen. Shrikissoon has also said. It is in their interest to enter into litigation. Because at the end of the day, they are only looking at 5 per cent after judgment. They can string out a matter for years and years. A lot of the claimants may be poor. They may not have access to lawyers. They may not have access to the legal system. They may not have access to experts, medicals, doctors and they may not have the tenacity and the wherewithal to actually follow through the litigation over the years. They have to take time off work. The family that I am speaking about, the father was a mechanic. Every time he took off work he lost money and that is dozens and dozens of appearances.

So, the point I am getting at is, this actually will frontload the legal system. What you would have is you would have people saying well it is easier for me to just string it out, send the battery of lawyers down and if we get judgment for 5 per cent it is not a problem, we could handle that sort of loss because there is a certain amount of people who will lose interest pursuing that matter. So this is an elitist piece of legislation. This is not for the poor man. This is not for the man on the street. This is for big businesses. This is for insurance companies and the like.

Now, there is something that you need to understand—[*Interruption*] all except Beacon, of course, who is known to pay and pay well. I am not saying that it is entirely the fault of the insurance companies. The insurance companies are burdened in their own way. They have their own issues. They want to free up the system.

Now, I will get into that after I get into the overriding principle of litigation. The overriding principle by the CPR 1998 was to actually facilitate the settling of

matters. The overriding objective is to avoid court, save court time and that principle needs to be followed through with whatever legislation when you interfere with the judicial system, and this interference, I am afraid, is going to encourage ligation because it is cheaper for the major defendants to go to court.

So, bearing that in mind, there is another aspect that the insurance companies themselves need assistance with, and this is something that I was hoping this Government would have addressed. Right now the insurance companies are somewhat stifled, in terms of settling their claims. We need to bring to Parliament the Insurance Act. This Act has not be been laid in Parliament and this would empower the insurance supervisor and the Central Bank to properly supervise the insurance companies, because at the moment what is happening is the insurance companies are having difficulty getting claims from each other. It is a problem of subrogation, I believe that is, Sen. Hadeed. So between themselves there is difficulty and when that happens they themselves have to go to court, once again clogging the system. So I am imploring on this Government to please bring the Insurance Act to Parliament. Let us resolve those issues, lighten the load and lighten the court system.

There is a movement as well to mediation and arbitration and the Insurance Ombudsman needs to be more empowered, needs to be more proactive in order to assist to alleviate these types of claims.

Mr. Vice-President, there is a system, and I have to ask myself: Who benefits from this piece of legislation? I could not figure out why this was coming now. And then it came to me, and I think Sen. Shrikissoon hinted on it, and I would read from an article, if you will permit me.

Anna Ramdass wrote on July27th in the *Trinidad Express*:

"Pay your damn bills"

My phone has gone dead. The essence of it is that $2.4billion is outstanding to contractors by this Government at this time. If this continues and this Bill is passed, judgment debts to those contractors will reduce from 12 per cent to 5 per cent. So you do the maths, 7 per cent of $2.4billion is a significant decline in the pay-out that this Government would have to pay. And it reads:

> "Pay your damn bills
>
> This was the call from the businessman and contractor Emile Elias, who told Government yesterday it needs to pay $2.4billion worth of legitimate bills.
>
> The…JCC"—who, again I do not think were consulted in this—"held a news conference at the Professional Centre building in Port of Spain where its president, James Armstrong, Elias, Mikey Joseph, president of the Contractors Association, and others said a deadline of August30 will be given to Government to clear its bills or else action will be taken."

So, Mr. Vice-President, as an attorney I strongly suggest that these contractors take action so they can get their judgment debts in before they lose 7 per cent on their debts. Now if I calculated right that means that this over $350 million, with the passing of this Act, will go amiss. That is not acceptable.

Mr. Vice-President, the Minister of Finance had referred to a number of cases and I thought I would just refer to them as well. He referred to Page against Newman 1829 and he was making the point that it is a long established rule that interest is no longer necessary. However, I want to point to the part where the Civil Procedure Act 1833 actually came from, and it emanated as a result of Newman. Parliament enacted a limited statutory power to award simple interest on judgment debts or awards of damages. That is section 28 of the Civil Procedure Act, 1833. That is Lord Tenterden's Act. So whilst you may refer to several of these laws and cases he also referred to *Sempra Metals Limited v Inland Revenue Commissioners*

(2007). The part I wanted to point out in Sempra Lord Nicholls summarized the common law position as follows: A claimant can plead and prove his actual interest loses including compound interest caused by late payment of debt, breach of contract or in tort of special damages subject to remoteness, mitigation of loss, et cetera. The cost of borrowing or the lost opportunity to invest the money. This is the major point that he made: the statutory discretion to award simple interest is an additional power that does not displace the common law remedy. So, interfering with the statutory interest rate from 12 per cent to 5 per cent has major and far-reaching consequences.

Mr. Vice-President, I think that this Bill is an elitist Bill. I think it would cause poor man to suffer and I think it is a very surreptitious way for this Government to get out of paying their legitimate debts to contractors and people in this country. [*Desk thumping*]

Sen. Stephen Creese: Thank you, Mr. Vice-President. The proposed adjustment of this rate, to me—actually it had not been my intention to speak on it to be quite frank. But I was forced to intervene because, while I appreciate much of what has been said on the Independent Bench, I take Sen. Mahabir's point about a mechanism/a formula for fixing an acceptable rate that is not loaded against, either the defendant or the respondent and I take the Senator's point about whether all of this is heading in the direction of evading, downgrading, minimizing the debt owed to the contractors. [*Desk thumping*]

In discussions with another Senator during the break, he was a bit concerned that we all have this broad conspiracy theory, so that the notion that this loaded against the contractors will fall under the ambit of conspiracy theory and that, you know, we could be imputing certain kinds of motives to the Government side and I really did not want to stand here and lend any kind of credence that we are loading it up

now against the Government and claiming this is all about the contractors who are owed millions, if not billions. And I thought that there was need to step back and try to get this in the broadest and widest context before opting for a formula for the rate and deciding whether this is all class-based and, therefore, again, the dominant class, the ruling class, will win so this place will continue to be nice, continue be a paradise.

So I thought that, really, the underlying issue here is the question of financial jurisprudence, and, perhaps, the question of investments incentive or disincentives. And then the even larger question of constitutional reform/institutional development and how are we to travel along both routes when we should be in the Parliament fixing laws and when we should be in the wider society developing norms and mores and institutions. In a sense, that tells us the way the calypsonian has, that the journey really now start.

Financial jurisprudence, what are the lessons here from the perspective of financial jurisprudence? But I think Sen. Taurel has made the point clear, in terms of his analysis of other jurisdictions and the relationship between the prime lending rate and the rate used for judicial purposes, in terms of debt settlements. So I do not think I need to rehash that. I think he made that point eloquently; that there is a closeness and affinity between the two rates and that the movement from 12 per cent to 5 per cent is a total betrayal of what the international standard is. [*Desk thumping*] And in that sense, the Government of the day opens itself to the charge as to whose side they are on and how the metronome swings. Because it is clear that if you took some institution, some firm, some body to court while the inflation rates were rising and down the road you get the award, if this Parliament were to make the mistake of moving from 12 per cent to 5 per cent, that a class action suit should be brought against the Parliament for such a gross betrayal of the people's

interest.

5.45p.m.

Because it cannot be that you place people in this House, or in any of the Houses of the Parliament to institute against these self-same people whose homes you harangued, whose gateways you blocked, whose vote you sought, and then at the end of the day you leave them to "ketch", to find money for lawyers, [*Desk thumping*] legal fees, the weight of the court—for 5 per cent? The average credit union, certainly the top 10 are paying dividend rates at that level and above, and are lending at rates above that because their profit is usually spread between the dividend rate and their lending rates. So even if they take the credit unions as a sub-sector of the financial sector you would begin to see that the movement from 12 down to 5, it is almost a treasonable act. It is to sell the people's interest down the stream, down the drain. [*Desk thumping*]

It is in fact disgraceful, and to come before this august Chamber and not peg that to anything is to further compound the injury by insulting our collective intelligence here today. [*Desk thumping*] Financial jurisprudence: when last we were here we had to talk about industrial jurisprudence. So it would appear that the Government of the day, in less than a year, are finding themselves crossing the frontiers in the wrong direction. We are moving instead of from east to west, west being the high point of modern democracy, we are moving west to east. We are travelling back in time against the flow, against the ebb and flow of what justice in a post-slavery, post-indentureship state should be like; we have become the creators of our own new colonial order. Sad to say but increasingly true, clearly the motor-visioned eye is closed.

Investments, incentives and disincentives: again, Sen. Taurel made the point as to what the state of things would be for the local businessman, particularly those

in our construction and contractor sector, because given what the rate they would have secured the moneys that they invested in those state contracts, and we all hear talk about those state contracts because those are the biggest contracts around. We do not have a massive enough private sector so that contractors operating solely in that sector could travel very far. Surely they will have to travel up and down the Caribbean as some of them are doing because, you know, when you are on the wrong side of the political fence you better start travelling up and down the Caribbean.

[MADAM PRESIDENT *in the Chair*]

So that the question of whether when you move that rate from 12 per cent to 5 per cent what is the likely impact on the local business sector? Clearly it sends a clear and resounding message, start travelling up and down the Eastern Caribbean, start scuttling and doing whatever else you do when you hit the panic button, because if the State is moving to move the rate from 12 to 5 per cent when the State owes you, are you planning to go to court and fight that? [*Desk thumping*] So where your next contract will be? Which next school, which next highway, extension of highway, which next hospital, extension of hospital, which police station, fire station you are planning to bid for? "If you eh get de memo, aye, check your mailbox, it have one there for you. Get real."

In this little 60x40 miles that we reside on, you smoke something large you are dreaming if you think you could survive. [*Laughter*] If they move it from 12 per cent to 5 per cent and you going and fight that, you are planning to sing soca because you have to be out there where somebody other than the State finances your future. So you have to be into soca or chutney. It is only in the entertainment sector you could defy the State and survive. You could ask Bob Marley that. You could ask any of the pop singers that, only in the entertainment sector you could try

that.

But it is not just local disincentives, we have a larger debate about attracting investments from abroad because we are in a quest for US dollars, and if you are in a quest for US dollars, foreign dollars and you are fixing the court rate, the debt rate, you are sending a message to the Trumps of the world as to whether they should bring their business and their money here. Because if in one fell swoop you cut it from 12 to 5—that is more than half, you know—what are you saying to potential investors? What are you really saying? Is that what you had in your budget speech? Is that what you are writing in the speech that you are going to give at the end of this month? "Clearly de lef han eh talking to de right han, or one ah dem eh listening, or one ah dem eh unplug dey"—what they call the thing in the ears again Williams used to take out?

Hon. Senator: Hearing aid.

Sen. S. Creese: Hearing aid. Somebody either switched off their mike or pulled out their hearing aid, but there is a communication problem that is going down and we had better get it right because Parliament is live on streaming and what has been said is out there now and cannot be recalled, cannot be recalled. So we have said to the world, right from in this Chamber, that we are moving from 12 to 5 per cent and we cannot recall that proposition, and you will live by the consequences of that folly, because folly it was. [*Desk thumping*]

Constitutional reform, institutional development: I repeatedly make the point in this House, whatever the matter, that we cannot lose sight of the bigger picture. Yes, we are a young fledgling nation, and I think it was Sen. Solomon who made the point about the total absence of consensus of discourse with any of the stakeholders in this matter, so no prior debate with the Law Association, with anyone, and the question of how we should move this rate, how we should deal

with this issue of awards from the court on debt-related matters. As usual we would begin where we should end, debate should end in the Parliament but begin up and down the corridors. [*Desk thumping*] It should embrace our people, but sad to say one of the problems in a neo-colonial polity is that the old-style authoritarianism of massa lauding it over everyone continuous to permeate the society, because it is what we grow up knowing is what we practice.

So we tell our children be seen and not heard, and we tell the people much the same thing, be seen at election time and be heard no other time. So we do not have traditions of consultation that you see there are charades where we parade our URP and our CEPEP support rather than seriously engaging our people and inculcating habits that are core in any meaningful democracy. Let the sovereign people speak, why are you afraid of them? But we like to speak through choruses and dramatic arrangements; it is all theatre, meaningless theatre really, theatre in which we demean rather than inspire and uplift our people. [*Desk thumping*] So we do not have traditions of constitutional reform of, you know, we come back to the Marlborough House approach and concept, it is all up there, it is nothing down there. It is top-down not bottom-up. So we are back again in the business of lauding it, large and in charge.

When I first heard that phrase it struck me, it stung me because I thought we had gone past that, large and in charge, but it is at the core of what is happening you know, the arrogance of power. [*Desk thumping*] But they say, "pride cometh before the fall", a word to the wise they say is always, ought to be sufficient. But on the question of institutional development and where this connects to that, we tend in our legislation to name the power broker, the person who handles or inspects the scales as the Minister. So it is for the Minister, through negative or positive resolution of Parliament, to fine-tune the scales. Why this fixation with

Minister? A Minister is a political animal, came through a political system. You know you are on a better and sounder path when you rely on your institutions, when you encourage the growth and recognition of institutions rather than individuals, [*Desk thumping*] and the institutional arrangement that we should be bringing out in all of this is the Central Bank. In the US it is the Federal Reserve, in our political order it ought to be the Central Bank as the pinnacle of financial independence and independent thinking.

So if I go to propose an amendment it would not be for the Minister through any affirmative or negative resolution of the House, it would be the Central Bank. [*Desk thumping*] It is either we put these fellas there to manage the money as it were, but we do not. It is either we are mature enough to do that or we are not mature enough, so we close up shop and we go back to being a colony, like we do like what they had done in Jamaica; I might have referred to that before. I think it is in Jamaica where they had an Assembly versus a Crown Colony Government, where they voted—this Assembly was on their way to a higher form of democracy—voted themselves out of power, voted for a return to Crown Colony Government; the only place in the world that ever took place.

6.00p.m.

There was a reason for it, you know. They wanted to stall the mulatto, the increasingly black caste from coming into the Chamber, from coming into the Legislature of the day. So that if they voted themselves back into being a Crown Colony Government, the Governor would appoint the Chamber, and those people with their newly found freedoms who were amassing land and wealth and therefore qualifying to vote and enter the Chamber, they could be forestalled. So institutional development in the Caribbean is a difficult task, because all the forces are pitted against it historically. That is why it has to be our duty to go with institutional

development, because it is that kind of infrastructure, as opposed to highways and roads, physical infrastructure. It is the social, political infrastructure that has to develop, that has to deliver us all—all of us—out of this morass we find ourselves in. It is the only way to go.

That is why whenever we run into problems that strike at the core of our Constitution, we need to opt, not for legislation, we need to opt not for reform of various Bills and so on. We need to find solutions that are vested in our institutions and institutional growth. Therefore, the amendment I would propose would be one which recognizes the Central Bank. We went through so much trouble recently to make a point of what the Governor of the Central Bank could or should be, to not at this point in time to say, "Okay, we have sorted that out and, therefore, the Central Bank is up to the task." When would it be? When Twisty comes back to power? You see, it is really about Twirly and Twisty, two screws. [*Laughter*]

Madam President: Sen. Creese, I am enjoying your contribution, but I really would like you to link to the two clauses in the Bill, please.

Sen. S. Creese: I was coming exactly to that, [*Laughter*] Twirly and Twisty. Sparrow tells us they were two screws and they are opposite sides of the same coin. At the end of the day Twirly got us into debt with these contractors that my friends with the conspiracy theory are advocating is behind all of this, and Twisty's job is to manage that debt that was contracted. [*Interruption*]

Madam President: And Sen. Creese, Twirly and Twisty notwithstanding, my role is to get us to what is the Bill that is before us.

Sen. S. Creese: Madam President, earlier today I alluded—

Madam President: I was not in the Chamber, but I was listening to the contribution.

Sen. S. Creese: I alluded to the conspiracy theory by some that behind all of this is

the question of the payment to the contractors, and a reduction of the rate from 12 to 5 per cent would affect that debt in a certain way. So the reference to Twirly and Twisty is in the context that one side got us into that debt, and it is now the challenge of the other side to manage that debt. That is the context, so it is most relevant. One side would like the debt to be honoured at 12 per cent and the other side, it is alleged, wants it down towards the 5 per cent. That is the reference. So it is extremely valid for those who support the conspiracy theory, and I am not a member of that club. [*Laughter*]

I believe that our journey to democracy has now started, and that is why I went to great pains to insist that my proposal, rather than the formula suggested by Sen. Mahabir—I would prefer to be more akin to the analysis presented by Sen. Taurel Shrikissoon on the question of the link between the prime lending rate, the repo rate and any other rate, especially the one the court is going to use, they should be closely aligned, and that a spread from 5 to 9 per cent or 5 to 12 per cent really is clearly biased in favour of a particular group. In this case, given our own particular situation where there are a set of businessmen waiting to go to court, clearly we are putting down hara-kiri on a group of local businessmen who, whatever the faults of any other regime, clearly did their part as per a given contract, a valid contract. And we cannot be in the business of attracting international finance, if when they pick up the business pages of the *Guardian* or the *Express*, they are going to be reading about pending lawsuits from your local business sector to the State. That cannot be the way to go.

If even you reduce the rate to 5 per cent and therefore force the settlements out of court and so on, that will not be the way to go, because there would be consequences for that with a vengeance. Because any businessman who is able to get his hand on any amount of money at that stage, you want to bet where that

money will turn up? You think it would be in Republic Bank? You think it would be in First Citizens Bank? You think it would be in any of the banks registered here? Like I said they would be travelling up the Caribbean, and the furthest point north is the Cayman Islands and then on to the Swiss banks. So we have to understand what it is we are doing, and we can play smart with foolishness, because the consequences will be severe. It will be visited upon our children and our children's children.

Whatever took place with Twirly, Twisty sought office and had a duty to be prepared to occupy that office with all that is there. So what was wrong with Sunday night into Monday morning is that there was no sense in Sunday night of an appreciation of all of this and where all of this has to go. No link between our economic problems and our social problems, and that is the core issue. Whether it is crime—and this has implications for crime, because if we do a number on the contractors, whatever relief they have been providing within the social framework by the employment that they generate and the time and space they buy for all of us, there will be a consequence. Because the lifestyle will be sustained, you know, whether or not it is done through CEPEP, URP, contractor. Even the contractors themselves are a form of CEPEP and URP, do not be misguided. They are just better paid, but it is part of the same social framework. So we need to understand that. We cannot put down a work on the contractors, however much we may hate them. What wrongs you may think they may have participated in yesterdays, they cannot be declared an enemy. It is a high risk business to do that.

We have to understand that all of this is linked to the fact as to who or what we are and where we are. We cannot conduct a meaningful discussion about anything happening in our economy and the management of debts, because if we examine some of the wealth that dwelt in the building of the construction sector

and so on, and apparent boom in south in the construction sector outside of the state sector, we know that a lot of it came up the Godineau River late at night. And if it came up the Godineau River late at night, it has to do with the traffic that starts in Colombia, comes through Venezuela, up to Trinidad and on to North America or Europe. If we understand that all of these things are related, then we would be very careful before we tinker with anything in our system that could have immense triggers across the whole slate; because it would be very easy to drive those businessmen who got a taste of a one shipment here, a couple mules there and then pulled out and put down some huge structures across the south land upstream from the Godineau River. If we do not understand the link between this and we get into tinkering with anything else and our very fragile, young system, we will pay a tremendous price.

So I urge the Government side to rethink its position and leave well enough alone. I thank you.

Sen. David Small: Thank you very much, Madam President. I appreciate the opportunity to be here and to be able to contribute. I have listened intently to this debate, and I had actually several pages of notes, and as things went through I decided I was going to let it pass, but I have come to this august Chamber on more than one occasion and seeing very simple, benign looking documents turn into an eight-hour or 12-hour debate. It is because what happens as we start to delve into the issue, it is like peeling an onion, and the more you peel and you think you get to the centre of the onion and you keep peeling back the layers, there is more and more stuff being uncovered.

Madam President, in concept this seems very straightforward. I actually have no huge objection to the concept; my concern is rigour. During the presentation by the hon. Minister of Finance, the mover of the Bill, I am not

satisfied with what was explained as to the rationale to how we got to 5 per cent. I am not saying that we should not reduce it, all I am saying is that I am not clear as to what was used. The Government looked at it or we looked at it and this is the basis of which we used, and it came from 12 to 5 per cent, and this is the effect.

I have been in this Chamber I think this September makes three years. What I have observed in my short time here, is that often when we have legislation in front of us one of the things we always have to consider is what the effect on those parties to whom that particular piece of legislation applies. So it is very clear that whether intended or unintended, a consequence of this legislation being passed as is, moving the rate from 12 to 5 per cent, has the effect of potentially—potentially—placing those persons who are debtors of the Government in a serious situation—potentially, because not everyone may be willing to go to court.

I am not one of the conspiracy theorists. Normally when I start any process I start with the page looking like this, the page is blank. [*Sen. Small displays paper*] I like to listen. It may be that the drafters in the way in which they put the things together did not consider all of the consequences. You know perception is reality in this world. It is not necessarily what you do, it is often how it is perceived by others, and that is so important.

Madam President, I want to share. I was actually reading a very interesting *Economist* article about dishonesty in politics, but I do not want to quote from that. A very interesting article, I recommend it for everyone; an article in the most recent issue of *The Economist*.

I want to quote from an article written by university lecturer at the Cave Hill campus, Dr. Tennyson Joseph, and it is about "ALL AH WE IS ONE: Lessons from Jamaica". It is something that I want us to understand, because he says

here—and his basic argument is that there is an emerging trend in the Caribbean where there seems to be more and more one-term governments. There is something he calls anti-incumbency; it is his term. He says, and I quote, that:

> The prevalence of anti-incumbency in the Caribbean is because the governments themselves make themselves agents of capitalist accumulation rather than agents of people advancement.

This is somebody sitting in Barbados and is saying that one of the reasons why governments struggle with trying to understand what people need, is because whether intended or unintended, the capitalists seem to do well, but the advancement of the people does not seem to go as well.

And I think that while everyone will always argue whether he is right or he is wrong, there is a lot of validity in that argument, there is a lot of validity in it.

6.15p.m.

So my couple of points on this Bill is that, I am concerned, one, about the process by which we arrive at 5 per cent. I think Sen. Shrikissoon in an extremely, what I consider to be an extremely well-argued discourse about what happens in other places and how it is, whether deliberately or otherwise. I am not necessarily sold that the other countries deliberately tie their rates to the prime rates. I am not sold on that. What I do believe though is that it is not necessarily a coincidence that there is a linkage. It is not a coincidence that there is a linkage that in a lot of places the prime rate and the rate at which judgments are awarded, there is a relative confluence that they are linked. It appears that they are linked or that they are within one or two percentage points.

I buy that argument completely. Because there is a rationale that, listen, we are in a place where, Madam President, if you take a simple case: someone has a matter pending and it has been pending for five years. They are awarded $50,000.

Fifty thousand dollars, five years, if that was at a 5 per cent rate, the rate of inflation destroys that fact. It wipes it out. If I was supposed to get $50,000 five years ago and the rate that the court is giving is 5 per cent, by today that is $50,000 is worth—I think I did the calculations—it is worth about $14,000 or $15,000. So that you wipe it out. So that there has to be some consideration for the fact that our judicial system is not as efficient as we would like it to be and I am not getting into the reasons.

Let us just accept that it is not as efficient as we would like it to be and because of the time lag, if only for that alone, there has to be some consideration to understand that, whether wittingly or unwittingly, by moving the rate to 5 per cent, we are actually wiping out the net effect of somebody getting a judgment, and that is a real, potential effect and I am not sure if in the drafting whether the parties who were doing the drafting appreciated or even thought about some of these things. And this is why we have the debate. We will always agree or disagree with whatever people contribute. That is fine. But I believe it is rich for us to consider what people are saying.

I have listened intently to all the arguments. Some I agree with, some I partly agree with, some I did not agree with at all. But I believe that where we are, we are trying to do the right by the people of Trinidad and Tobago and that we are trying to put something in place here that eases the burden. But if in easing the burden and it becomes apparent, Madam President, whether intended or unintended, and I am not making any claims either way, but let us accept, let us accept that a consequence of this is that any party who has moneys owed from the Government and takes the Government to court, is very likely to be in a losing position. Let us just accept that. And that is not whether that was the intention. I do not believe that.

But what I am saying, that is the net effect and I do not believe that we can ignore the net effect. I am not in Government. I do not have to go to face anyone, but I believe that when we are doing something like this, we need to make sure, at least, put all the arguments on the table, and if the parties choose to go ahead, well that is fine. That is fine. And this is why we are here.

So, Madam President, I also want to say that I listened to the contribution by esteemed Sen. Mahabir. There are some points I agreed with. I did not necessarily agree with his formula, but I believe also it jogged some thinking in my mind because while what he put forward was something that I think could work, I felt that the element of it disadvantaged the small man. And at the end of the day, forgive me for using the pun of my name, but I also believe that at the end of the day we have to be considering the effect of something like this on the small man.

And as pointed out by Sen. Creese and also by Sen. Shrikissoon, we have the potential here to have an amendment that could disadvantage the small man. And I am not sure if the extent to which that could happen has been fully explored. I think it has now come out in the richness of the debate. And I have had the benefit of sitting here, Madam President, and listening and whether I was here or likely in another room, but I was looking on, listening to the points that were being made, and I think there is some validity around, one, trying to understand what is the basis. The basis that has been presented, I am unclear, I am unsure and for sure, in my respectful view, I cannot see the rigor, the rigour with which we move from 12 to 5 per cent. The rigour, the analysis to support what was done, is not evident to me. It is certainly not evident in the document here and it was not evident in the contribution this afternoon. And I have a challenge with, when we are doing things, Madam President, there is no rigour in the analysis. If there is no rigour in the analysis then I can call it and say it is faulty. And it is not that it is wrong, it is

just that it probably needed some fine tuning and for someone to spend a little more time with it, understanding the effects of what is being proposed. So, Madam President, that is my one big issue about how we got to where we are.

My other issue is that, in whatever we are doing, we have to accept the realities of life in Trinidad and Tobago. In Trinidad and Tobago everything takes time. It takes an inordinate period to get anything done. And if we are putting a rate that has the effect, unintended or otherwise of whittling away someone who has been done wrong by some other party and wins an award, and then by the time it completes the judicial process and they get the award and the rate that is being applied is well below the rate of inflation, then you have destroyed the award. You have destroyed the award, whether it is intended or unintended again, it is not the issue. It is the fact that it is a potential, a real effect. It is a real, potential effect. Because when you look back at what the average inflation rate is, it is certainly more than 5 per cent. So that any award is going to be whittled away.

And my last point, Madam President, I think that I am certainly not one of the conspiracy theorists. In fact, I argu the opposite, but I believe that I do not come out ascribing malice to anyone. I believe that we are here to do a job, but if in doing that job, and this should not really be my concern, it should be the concern of the mover of the Motion. If that the end of the process we are moving a Bill, an amendment that has on the face of it, the perception that could be easily drawn, that this is a Bill that advantages the Government—we had the hon. Minister of Energy and Energy Industries here earlier this afternoon, Madam President, indicating that Petrotrin has an investigation going for an oil spill. If someone brings a class action lawsuit against Petrotrin for damage to the infrastructure or for damage to the beaches, and then that matter proceeds along the way, as it normally, any kind of legal action in this country takes, by the time the award,

whatever award, and if it is successful, then again we are actually institutionalizing something that we should not want.

So that I have listened intently, Madam President. I enjoyed the contributions by all Members including my good friend Sen. Henry, but I believe, I think that some more—we need to look at what it is we are doing because I believe that there are consequences here to what we are doing that have not been fully considered. They have not been fully considered and I think that the debate today has allowed for the ventilation of several of those considerations, and as it stands now, I do not support moving it from 12 to 5 per cent on the basis of what I have seen here because most importantly for me, the rationale for moving it, I am not seeing it. I have no data to support it and there is absolutely no analysis that I can say, well let me look at the analysis and look at the rigour because there is no rigour. And if you give me nothing to work with, then it is difficult for me to support it.

Madam President, with those few words, I thank you. [*Desk thumping*]

The Minister of Rural Development and Local Government (Sen. The Hon. Franklin Khan): Madam President, it is a pleasure to join this debate after the parliamentary recess. I had planned to speak much earlier, actually immediately after the Minister of Finance, but I was told I cannot have two bites of the cherry, and I will now have the distinguished honour or wrapping up this debate.

The Minister of Finance did in fact say that he has total confidence in the Leader of Government Business in the House and I want to tell Members on the other side and on the Independent Bench that words of that nature very rarely come out the Minister of Finance. So I take it with much distinction and I hope I do him justice in this regard.

But, Madam President, before I do some rebuttals and comments on the

contributions so far, this debate on the face of it, in my opinion, should have been a simple debate and it is still at its most fundamental level, a simple matter. Okay? It is a matter of, on what basis we used to come up with the 5 per cent?—whether it is repo or whether it is LIBOR or whether it is prime, and the whole issue of other part of the legislation which gives the Minister the power by Order through negative resolution to adjust the interest rates.

The interest rate of 12 per cent was set 15 years ago. Okay? And this society does, in fact, suffer from inertia, you know, inertia in this very Parliament. Because for 15 long years while overdraft interest was 19 and 20 per cent, while prime was 10, 12, 15 and 17 per cent, the Parliament went asleep and nobody saw it fit to come back to the Parliament after changing circumstances for 15 years and say, hey this interest rate is too high because the parliamentary agenda is always filled. And every time we come here with legislation to say, give the Minister power through orders to make changes for negative resolution, there is nothing fundamentally wrong with that. Because if you have an objection to it, you can negative the Motion, [*Desk thumping*] but it accelerates the system of governance.

And there is this tendency and it rears its head in this House on several occasions. I mean, Sen. Creese is a man I totally respect, but there is this animosity towards, not PNM, towards ministerial authority, [*Desk thumping*] but that is the system in which we operate. You go to an election to vote in a government and the government is divided into three areas, the Legislature, which is here; the Judiciary which is, wheresoever they are in the Hall of Justice, and the Executive. And why the apprehension to letting the Executive execute executive authority? [*Desk thumping*]

It happens in the United States all the time. President Obama and his Cabinet run the United States of America. Very few things they have to go to Congress for

in terms of legislation. And even with legislation and with Congress, there are still executive orders of the President. And you see this system reoccurring.

And I want to throw back my attention to the SSA Bill when everybody wanted to object because the Minister of National Security demanded certain powers in terms of what he does with the Commissioner of Police and what. And here again, a major part of the objection, is not the objection that for 15 years this Remedies of Creditors (Amdt.) Bill could not find its way on the parliamentary agenda, you know. The objection is, the Minister should not have the power by Order which was really a lacuna in the law because it is in the Supreme Court of Judicature Act and it was just omitted, and now we are saying we want to put it back in.

So ladies and gentlemen, I mean, sorry, Members of the Opposition and the Independent, there is nothing so fundamentally wrong with Ministers exercising, with discretion, executive authorities because that is what this democracy and this parliamentary democracy, this Westminster system is all about. When I debated on the SSA Bill, I made the point, everything in Trinidad is not a Westminster, you know, because Trinidad has something called service commission and presidential authority. England has none of that, you know. The Queen has absolutely no executive authority in England and we took our pattern from them.

6.30 p.m.

The speech, the throne speech that she reads at the opening of Parliament is prepared for her, word for word. The President comes to this Chamber and he reads his own speech. So we have to understand executive authority is executive authority. But we have something here called service commissions, again, which is a creature of Marlborough House. That does not exist in England. So we have to understand that we operate in a system of governance and a system of government

of Trinidad and Tobago. We must let the executive do its job. If the executive abuses its power, you know what to do, once every five years vote them out. Look Sen. Small says, one-term government in the Caribbean. If that is the fact, so be it, but I can give you the assurance that this administration does not intend to be a one-term administration. [*Desk thumping*]

So we have 12 per cent interest rate on judgments, for 15 years nobody did anything. In 2000, I will just go through some statistics here, commercial banks, ordinary saving deposits was 2.94 per cent, 2000.

Hon. Senator: That is savings?

Sen. The Hon. F. Khan: Yeah, I know it is savings. But there is a saving side to the debt side too. There is obviously a saving side to it. Nobody spoke about it, you know. Ordinary saving deposit rates as we speak, 2015, is 0.2 per cent. Commercial banks, six to 12 months' time interest rates, 2000, 7.9 per cent; 2015, 0.78 per cent. Prime, which has been the topic largely articulated by Sen. Shrikissoon, prime in 2000 was 16.5 per cent; it was set at 12 per cent, which is 4 percentage points less than prime. Prime as we speak in 2015 is 8.9 per cent. And then it goes on to give other interest rates, banks, RBC, First Citizens and what have you. But basically, it has gone from a significant high in 2000 to extremely low figures.

Now, that obviously, any reasonable Government with changing circumstance has to act. And whether it is on the parliamentary agenda, or whether we are trying to slip it in, because it was supposed to be a simple legislation. One of the things this honourable Senate has to be careful with, if we take every single piece of legislation and expand it to fill an eight hour day, you will only have one Bill passing per day and in complex Bill it will take two or three weeks to do. And then your whole year, and your Fifth Session and your Third Session and your

Fourth Session would lapse and we would not have done anything meaningful, you know. So we have to understand that on simple legislation, come and make simple contributions and let us focus on the main points.

So we were in a situation where—[*Interruption*]

Madam President: Senator, please, the Minister is winding up and I think we should listen to him in silence. Those who do not want to be silent have the option of leaving the Chamber. Let the Minister finish, please. [*Crosstalk*] Sen. Mark, pardon me.

Sen. Mark: I said we are in a party group.

Madam President: Sen. Mark, either you choose to let the Minister speak and please remain silent.

Sen. The Hon. F. Khan: Okay, so the basis for reducing the interest rate is clear for everyone to see. As to whether we go with Sen. Dr. Mahabir's suggestion of repo, whether we go with Sen. Shrikissoon's suggestion of prime, or whether we go to LIBOR, because LIBOR is another measure that its definition is what the top commercial banks lend to each other, a series of LIBOR rates and even LIBOR over the years, in 2000, one-month LIBOR was 6.56; three-month LIBOR was 6.4; six-month LIBOR was 6.2, 12-month LIBOR was 6. To 2015, one-month LIBOR, 0.43; three-month LIBOR, 0.6; six-month LIBOR, 0.85 and 12-month LIBOR, 1.18.

So you have benchmarks for interest rates. Sen. Dr. Mahabir gave a very scholarly discourse on interest rates and the basis for interest, the cost of capital, the time value of money, all these things come into the fore. But in making legislation, the way legislation is written we stay away from formulas, okay, and that is the flexibility that the Minister now has to come through negative resolution to adjust the rate. But in drafting legislation we cannot put specific formulas

because it is not how the drafting department works.

Sen. Dr. Mahabir: Madam President, I want to thank the Minister for giving way. But Minister, you indicated that the Parliament really has been rather tardy in addressing some of these matters which warrant changes. And I am simply asking from you, whether the consideration is that the law itself should not be made a bit more flexible, given the relative time period it takes Parliament, to change the law to be reflective of contemporary situations. And in that context, when I issued the recommendation for the repo rate, repo rate has traditionally always been 4per cent less than prime, and what we are talking about here is a 5 per cent interest rate. Repo is currently 4.75. So, is it that the Government as part of its justification did not take the 5 per cent out of the hat but rather is implicitly linking it to the repo rate of Trinidad and Tobago?

Sen. The Hon. F. Khan: Well, numerically we will want to think that way, because repo is 4.5 and we have gone with 5 per cent. Obviously we drifted nearer to the repo rate than to prime, because prime is almost 9 per cent. So what we are saying is that from a legislative point of view we do not want to put that type of language in it and the fall back position is that the Minister of Finance has the flexibility, by Order through a negative resolution of Parliament, to adjust as the circumstances change. Because the Minister of Finance, under the laws of Trinidad and Tobago, is the most important—himself and the Governor of the Central Bank define fiscal and monetary policy for the country. And if the person who is responsible for fiscal and monetary policy cannot do a simple exercise like this based on the prevailing circumstances, what is wrong with Trinidad and Tobago? [*Desk thumping*]

Let me now deal with the saving side of this dilemma, and my good friend, Sen. Dookie, it is not only on the borrowing side, it is on the saving side. I will

give you an example. The Government through private treaty, let me just make this point, I am quoting from the *Hansard* of the hon. Minister of Finance presentation in the House and he says:

> "Madam Speaker, the statutory interest rate of 12 per cent, is applied to all unpaid balances when the Government acquires lands, and it escalates, it compounds and so on"—so it is—"really…a situation that is divorced from reality."

Sen. Creese spoke about the Point Fortin Highway. The State through private treaty, but there is a compulsory acquisition order that was passed in the Parliament. So in other words, if you do not want to negotiate by private treaty you could still be acquired compulsorily, but the State, both administrations have gone with private treaty because that is the more amicable solution, because you are dealing with citizens and you do not want to put the heavy hand on them.

By private treaty, NIDCO has settled with a lot of landowners, Fyzabad, Penal, Debe, Oropouche, what have you, for substantial sums of money. A lot of that money has not been paid as yet. But you have somebody now who the State owes, who will be getting a fair commercial market value settlement for their property. What would they have done with that money? Not put it in the bank? That is the saving side of it. What you would have been getting in the bank, 0.5 per cent. Up until now they are—their moneys accruing, 12 per cent interest. That is what bankrupt Clico, you know. That is what bankrupt Clico, when interest was going at 5 per cent they were offering you 12½ per cent.

Sen. Hadeed: "Dem was bandits."

Sen. The Hon. F. Khan: Okay, that is what bankrupt Clico. So here you have the State owing you for your parcel, legitimately acquired, $2 million, $3 million, $400,000, some people I do not want to quote their names, but some people got

$30 million and $25 million for properties along the highway. Obviously, paying 12 per cent in a regime like that is obscene in the current interest environment that we live in, and even 5 per cent is 10 times higher than what the bank will be offering you. So everybody in this debate, up until your humble servant, spoke on the debt side, but nobody spoke on the saving side, okay. So in setting the interest rate there are two sides to the coin, on the debt side you will want a higher interest rate, but on the saving side because there is the spread between savings and borrowing, okay.

So it is the context of repo with some influence of prime but more importantly with a balance between savings and the debt component that the Minister of Finance judiciously through consultation with the respective parties in the Ministry of Finance, we admit that there was not national consultation in the true sense of the word, but we felt these were decisions that could have been taken in all. We came up with the 5 per cent. And the check valve in this matter if interest rates change significantly through time, it is always there for the Minister of Finance through negative resolution to adjust the interest rates. And that will save us all these long, unnecessary debates for simple matters of things.

Sen. Mark: You call it long and unnecessary.

Sen. The Hon. F. Khan: No, no, I am not saying, I say it in context.

Madam President, let me just proceed with another matter here. The conspiracy theory, and Sen. Creese was quite articulate, you know, I have no problem, through you, Madam President, with Twirly and Twisty. Because Twirly in a very obscene way and sanctimoniously now get up here and speak every Tuesday afternoon, but Twirly left this country with 95 per cent of the Central Bank overdraft used up. [*Desk thumping*]

Madam President, there was a time in October of 2015 where there were

three days of cash flow remaining in Trinidad and Tobago. [*Crosstalk*] We met virtually $3 billion to $4billion from T&TEC, from WASA, from whatever, in six months' instruments that were due in six months after September. We had to go back and refinance the loan into longer term instruments, almost $4 billion in six months' instrument. [*Crosstalk*] Ninety-five per cent of your Central Bank overdraft used up. [*Crosstalk*]

Sen. Hadeed: Not true.

Sen. The Hon. F. Khan: And added to that, a $2.4 billion debt to contractors. This is what we are trying to balance our fiscal position with and I compliment the Minister of Finance again, [*Desk thumping*] because he has done an excellent job. That is why today we can breathe a sigh of relief that we have not retrenched any—there has not been significant retrenchment in the public service. [*Desk thumping*] There has been no significant cut in the very social programmes, all that you all criticize, okay, and we have stabilized this country. We have cut expenditure, we have cut waste so that today we are on an even keel as we celebrate with much pride, knowing that we still have far to go, our first anniversary in Government. [*Crosstalk*]

So, Madam President, Twirly, but I would not call us Twisty, we are un-twirling what they twirled, in the future. [*Desk thumping*]

6.45p.m.

So, Sen. Creese, you know, I live most of my life in Fyzabad—my adult life—and you are a Fyzabad boy. So I am both a Fyzabad boy but more a Mayaro boy, but I have interest in both towns. And he is a man–you are a person I have tremendous regard for and I respect your commitment to the cause of social justice, and when I say that I genuinely mean it. I respect your commitment to social justice, but—

Hon. Senator: Withdraw the Bill.

Sen. The Hon. F. Khan:—you have made certain statements that you really did not explain, and to me it was inconsistent in economic logic, by saying that the reduction of the judgment interest rates from 12 per cent to 5 per cent will detract or stop foreign capital inflow into the country. That, to me, does not make sense but the jury is out on that. And you did, in fact, imply—and much to my chagrin—that we acted, in bringing this legislation to Parliament, very arrogantly and implying that we are a very arrogant administration. This, to me, is based on false premises. I can give you my personal commitment and the commitment of most of the Senators, especially the Senators who are in the Cabinet of Trinidad and Tobago, and the entire Cabinet, that arrogance is something we abhor in the Cabinet of Trinidad and Tobago—[*Desk thumping*]

Now, let me deal with my good friend, Sen. Mark, my equivalent, so to speak, but I am more equivalent than he is. [*Laughter*]

Sen. Mark: You have no arrogance. "You humble." [*Crosstalk and laughter*] "He more equivalent. I never hear about that in my life. He could be more equivalent than me?" [*Laughter*]

Sen. Gopee-Scoon: In fact, your better half.

Sen. The Hon. F. Khan: Through you, Madam President, I encouraged the distraction so I have to accept it. [*Laughter*]

He based this whole conspiracy thing that the drop from 12 per cent to 5 per cent was conspiracy and what mischief was it brought here to solve. Now, that, as I told Sen. Wayne Sturge, you could write a spy novel on that, because it is all rooted in what I just articulated here, the interest rate change of the environment.

Mr. Imbert said, imagine you get—and I read the *Hansard* of the Lower House when he said he was doing his first Master's—my understanding is that he

has three. Okay?

Sen. Hadeed: "He still studying."

Sen. The Hon. F. Khan: So imagine England in the early 80s, 16 per cent interest on savings. Good? Now you have to pay them to keep your money. Okay? So the interest environment has changed significantly and fundamentally and that is the justification for this Bill and for changes in the law. It is no more, no less. There is no conspiracy; there is no ulterior motive; it is just the motive to keep the judgment interest rates in line with international trends and even with our local trends here.

Let me deal with another point on what I would say, to me, was misconstrued by, especially Sen. Wayne Sturge. Well, I have to play Finance Minister today; I have to play lawyer because I am reading from the Supreme Court of Judicature Act, clause 25, and it says:

> "In any proceeding tried in any Court of record for recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment,…"

So the flexibility of the judge is not after the judgment. The flexibility of the judge is to include interest in the judgment figure, if he or she so deems, from the date when the cause of action arose and the date of the judgment. And that new figure which may or may not include interest, will now be—and then 25A goes on to say:

> "Every judgment debt entered up carries interest at the rate of twelve per centum per annum from the time of entering up the judgment, until the same shall be satisfied and such interest may be levied under a writ of execution on such judgment."

Okay. So I think we created the impression that the judge had the flexibility to adjust the interest rate. After that, it is the statutory interest that kicks in after the judgment is taken. Okay? The court is now—

Sen. Hadeed: "Well yuh better dan Al-Rawi." [*Laughter*]

Sen. The Hon. F. Khan: "Well, I know ah better than Wayne Sturge for sure, because it is he who made the mistake that I am trying to correct." [*Desk thumping*]

Sen. Mahabir, again, a scholarly contribution in economics. He did, in fact, make a fairly credible case for pegging it to repo rate. While in theory and based on the figure we have come up with 5 per cent, which is more akin to repo which is 4.5, I have already outlined my case that we do not want to go that way in the legislation, we prefer to set a rate with the flexibility that the Minister can come in at any point in time based on changing circumstances. Because if you set a legislation for repo rate, repo rate changes so often and every judgment will be subject to a different interest rate and it will cause a confusion in the court. Okay? And the calculations will become very, very, very complex. So while, in theory, Sen. Mahabir, your point is well taken, from an execution point of view and an administration point of view or something like that, we want to stay away from it. Furthermore, again, the theoretical basis of your argument is sound. Your proposal that your first 90 days of zero per cent, second 90 days of 2 per cent, the third 90 of 3 per cent and the fourth 90 you come up to repo rate, again sound theoretical argument, but it is very difficult to implement in a court scenario.

Sen. Shrikissoon was the equivalent of Sen. Mahabir but he was just articulating a prime rate as distinct from a repo rate. Again, his arguments were very, very theoretically sound but I make the same proposal that we prefer to go with the rate that was fixed by the Minister of Finance and giving the Minister of

Finance the flexibility to adjust the rate by negative resolution.

The issue of the savings side which Sen. Shrikissoon missed totally, he focused on the debt side—and I think that is a very, very critical point in terms of what is happening here. The other thing is that a lot of the arguments that were articulated by both the Opposition and the Independent Bench was that the party which the judgment is against, the debtor who lost the case, based on the interest rate they can almost infinitely withhold payment just to get the advantage of a low or a high interest rate based on the borrowing rate. While, again, that is a sound theoretical argument, you can go to the court to levy on assets. So you cannot ad infinitum, just say, "Well, I am not paying".

Hon. Senator:—after 12 years you cannot enforce a judgment. That is in the Act.

Sen. The Hon. F. Khan: That is my understanding of it but I will leave that to some of the lawyers.

So, Madam President, we came here with two simple amendments to the Remedies of Creditors Act. One is to reduce the rate from 12 per cent to 5 per cent, and while the legislation did not specify a formula, trust me, there was a lot of analysis that went into it. Secondly, and probably more importantly, is plugging the lacuna in the law which, unlike the Supreme Court of Judicature Act, the Remedies of Creditors Act did not allow for the Minister, by Order, to make the adjustment through negative resolution. That is what we propose here to this honourable Senate this afternoon.

So, Madam President, I would not use up my entire 45 minutes. As the acting Minister of Finance, it was a pleasure wrapping up this debate, and there is going to be a Cabinet reshuffle [*Laughter*] and coming events cast their shadows. Who knows? But, seriously, Madam President, I think it was an honour. I want to thank all the contributors to this debate: the Opposition and the Independents. I

think some of their logic has been very well thought through. Some of the logic was well put forward. A lot of it, obviously, we cannot take on board for the reasons I have just explained.

And before I close and I say the key words of "I beg to move", I just want to inform this honourable Senate that this will be our last sitting in the First Session of the Eleventh Parliament, and I want, as Leader of the Government, to say that it was an enjoyable occasion. We have met for the first time officially as co-Senatorial colleagues. It was a pleasure working with all of you, sometimes more so than others—okay?—and in particular the relationships we have established with the Independents. We know what our relationship with the Opposition is—[*Interruption*]

Sen. Mark: Very friendly.

Sen. The Hon. F. Khan:—but at a personal level we have made good friends, but at a collective level we know where your loyalty lies, but that is the course of democracy.

So, once again, I want to thank all Members of this Senate for a wonderful and productive first year and with these few words, Madam 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.

7.00 p.m.

Clause 1 ordered to stand part of the Bill.

Clause 2.

Question proposed: That clause 2 stand part of the Bill.

Madam Chairman: Hon. Senators, there are two amendments proposed. The Minister has circulated his amendment, and then Sen. Mark has also circulated an amendment. Both are in respect of clause 2. So perhaps we can deal with the Minister's amendment.

Sen. Khan: This is a slightly—it is more like a typographical error here. So what we have is the Remedies of Creditors. It says:

"The Remedies of Creditors Act is amended in section 13—

(a) by deleting the words 'twelve per cent' and substituting the words 'five per cent'; and

(b) by inserting after subsection (1) the following subsection:"

But there is actually no subsection (1) in the parent legislation. So this amendment really is to state that:

After the chapeau, the following paragraph (a), by inserting after the word "13" the word "(1)".

So it will be 13(1), and thereafter you will renumber paragraphs (a) and (b) as paragraphs (b) and (c). So this is just typographical, but substantially the Bill remains the same without any major amendment.

Madam Chairman: Sen. Mark, we are just trying to work out because if I put the proposed amendment and the Committee agrees, then your amendment flies away. It is subsumed in that. So we are just trying to work out and we are thinking that perhaps we should deal with your amendment first. Okay?

Sen. Mark: Thank you. Madam Chairman, we have not been convinced by the arguments advanced by my honourable friend, Leader of Government Business, as it relates to why this drastic reduction from 12 to 5. But in addition, Madam Chair, we are of the view that the Minister himself has admitted that very long hours went into the formulation of this particular, or decision I should say, to reduce the

interest rate from 12 to 5 per cent. Unfortunately, we are the Parliament—and we have not been privy to none of these calculations. We have not been made privy to any of the formula that has been used to arrive at this, and therefore, the Government has not been able to convince us of the need to withdraw or not to advance our amendment.

In those circumstances, I believe that the Government must be held accountable for every action and decision that it may take from time to time. In those circumstances, Madam Chair, we are suggesting that if the Minister is going to reduce the rate from 12 to 5 via an Order, that Order should come to this Parliament before it is effected, and it is against that background we are submitting that we amend clause 2(2) in order to give the Parliament the power to understand and to have another opportunity to appreciate the formula that the Government has used to arrive at this 5 per cent.

That is why, Madam Chair, we are suggesting, with your leave, that the Government in clause 2, that is in subclause (b), delete the word "negative" and insert the word "affirmative". So that would encourage the Government to be more accountable not in words, but in deed and action and more transparent with the Parliament, and through the Parliament, the people of T&T. Therefore, I beg to move that this particular amendment is designed to bring the Government to book and the Executive to account as it relates to this.

So, Madam Chair, that is our justification for the affirmative and to remove the negative.

Sen. Khan: On the face of it, if we go through the robust procedure of setting the interest rate in a very scientific way based on somewhere between a spread of prime and repro, and with the technocrats at the Ministry of Finance, the Minister of Finance himself and some help from the Central Bank, I think more often than

not we would get it right. And if you have a negative resolution—if perchance on one occasion you have major queries in why you are setting the interest rate so high or so low, you could just bring your Motion to negativize it and we will debate it. But to debate it as a matter of course every time this change takes place, I think it is largely unproductive because we already set the template in which this operates.

Sen. Mark: Our position is that we want it to be affirmative, Madam Chair, and we maintain our position.

Sen. Dr. Mahabir: Madam Chairman, a question to the hon. Minister Khan, and that is: with respect to this type of legislation, what is the convention? For example, in 2000 when the rate was set at 12 per cent, what was the standard set at that time? Was it affirmative or was it negative? I am just trying to get the consistency in the Parliament for Bills such as these with respect to affirmative or negative.

Sen. Khan: The Supreme Court of Judicature Act does in fact have the same clause, negative resolution. Actually, this was always the intent of this legislation. It was just a lacuna. The Petty Civil Courts Act, I am being told, has the same formula for negative resolution.

Madam Chairman: Hon. Senators, the question is that clause 2 be amended as follows:

Delete the word "negative" and insert the word "affirmative".

Question, on amendment, [*Sen. Mark*] *put.* [*Crosstalk*]

Madam Chairman: I apologize. My apologies.

Question negatived.

Madam Chairman: Hon. Senators, the question is that clause 2 be amended, as circulated, by the Minister of Finance:

A. Insert after the chapeau, the following paragraph:

(a) by inserting after the word "13" the word "(1)"; and

B. Renumber paragraphs (a) and (b) as paragraphs (b) and (c) respectively.

Question put and agreed to.

Clause 2, as amended, ordered to stand part of the Bill.

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

Senate resumed.

Sen. The Hon. F. Khan: Madam President, I wish to report that a Bill entitled an Act to amend the Remedies of Creditors Act, Chap. 8:09 was considered in Committee and was approved with amendment. I now beg to move that the Senate agree with the Committee's report, Standing Order 69(1).

Question put and agreed to.

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

ADJOURNMENT

Motion made and question proposed: That the Senate do now adjourn to a date to be fixed. [*Hon. F. Khan*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.14 p.m.