

**ADDRESS OF THE CHIEF JUSTICE, MR. JUSTICE
ISAAC HYATALI, ON THE OCCASION OF THE OPENING
OF THE LAW TERM ON 3RD OCTOBER, 1972**

The ceremonial opening of the law term today signals the successful conclusion of a decade of judicial labour in the independent Dominion of Trinidad and Tobago. Happily and more importantly, it also heralds the inauguration of the 2nd decade of the accession of the Judges of the Supreme Court from the uncertain rank and station of Colonial Judges holding office purely at the pleasure of Her Majesty the Queen, to the secure and certain status of independent Judges of the Supreme Court of an independent nation.

This is a matter for much pride and gratification for as such, we hold our offices at no one's pleasure, and for all practical purposes, we are removable therefrom only on attaining the age limits prescribed, and before then, only by the considered judgment of that august and impartial body of legal luminaries, the Judicial Committee of the Privy Council, for inability to perform our functions whether arising from infirmity of mind or body or any other cause.

It is, I suggest, a worthy endeavour for us on this noteworthy anniversary of judicial independence to remind ourselves of our happy accession to that station 10 years ago and to re-dedicate ourselves both to the lofty cause of dispensing justice fearlessly and impartially in our society, and to the noble task of promoting respect and reverence for the institution and majesty of the law whose offsprings and humble servants we all are and whose vindication we are solemnly pledged to ensure.

As we submit ourselves to the re-dedication it is of the utmost importance for us as Judges to keep steadily in view and for the Society as a whole to continue to accept without reservation the cardinal principle, that the independence of the Judiciary from the Executive, is indispensable to the fearless and impartial administration of justice.

There can be no compromise on this principle, for the simple reason, that the Judge has not only to do justice between man and man but between the citizen and the State. In the discharge of his judicial functions therefore, he is not, and must never be, subordinate to anyone. Indeed

“the only subordination” as was so eruditely stated by the late Sir Winston Churchill “to which a Judge is subject in his judicial capacity, is that which the Judge owes to the existing body of legal doctrine, enunciated in the years past by his brethren on the bench, past and present and upon laws duly passed and enacted by Parliament.”

The principle of the independence of the Judiciary however, cannot be considered in isolation. A vital corollary to that principle, which is not always appreciated, is the independence of the Executive from the Judiciary; and just as it would be an impertinence for the Executive to arrogate unto itself a right to interfere with the independence of the Judiciary, so it would be an impertinence for the Judiciary to arrogate unto itself a right to interfere with the independence of the Executive.

Let it be always remembered that the Judiciary, the Executive and the Legislature, constitute three separate, independent and fundamental pillars in the edifice which houses our young democracy, and that its overall strength and stability is necessarily dependent

not only on the quality of the support and service which each pillar provides but on the loyalty which the personnel in each division has, to the edifice as a whole.

Undoubtedly it is the business of these pillars to respect the independence and support the integrity of each other but it is certainly not their business as some in the society seem to think, to wage war against each other or to undermine the foundations on which the others are secured.

No the true business of each is to maintain its independent support of the edifice, to perform its functions independently of the other and to respect absolutely the integrity, rights and prerogatives of the other.

In rather felicitous language, Blackstone the distinguished author and jurist described the functions of what I have alluded to as “pillars”, in these terms:-

“Like three distinct powers in mechanics,” he said, “they gently impel the machine of government in a direction different from what, either acting by itself would have done; but at the same time in a direction partaking of each and formed out of all; a direction which constitutes the true line of the liberty and happiness of the Community”.

This picturesque metaphor, graphically illustrates the doctrine of the separation of powers and I commend it for careful study to those who have not been able to appreciate fully, or are troubled by misgivings about, the true role of the Judiciary in our society.

In the ceremonial exercises this year you will have observed that new features, and I trust acceptable ones, have been introduced. The introduction or rather re-introduction of the

Police into the ceremony is not entirely an innovation but the restoration of a practice which was regrettably forsaken in 1962.

In my judgment, the police as enforcers of the law and keepers of the peace, are an indispensable part of the administration of justice, and no opening of term ceremonial in our country, can be said to be adequate or complete, without their active participation therein.

In the past too, the Chief Magistrates and his brothers, were relegated to a position in the ceremonial which did not pay proper respect to their status as judicial officers, did not give due recognition either to the fact that they hear and determine some 90% of the criminal cases in the country or that they are the projectors of the vital first image of justice to the man-in-the-street and the protectors of its sanctity thereafter in every nook and corner of the country.

The part which the Police played in the Ceremonial, the role which their Commissioner took in the Church, and the recognition accorded to the Chief Magistrate and his brothers today will I trust, go a long way in correcting some of the deficiencies of past ceremonials, and in restoring the Magistrates and the Police Service to the position of honour to which they are rightly entitled therein.

But my reference to the Police Service in this context must not be construed as implying that my brethren and I am unmindful of the excellent manner in which the Regiment has served us in past years on ceremonial occasions.

On the contrary, we are grateful to them and their Commander for making our past ceremonials successful, and now that a joint venture by both services has been inaugurated, it is to be hoped that in the future, our ceremonials will attract even greater interest and support from all our citizens and hopefully, a much wider participation as well, for we are planning to break new ground next year with the introduction of an ecumenical service at the Holy Trinity Cathedral.

It has been customary since 1962 to review in some detail the work done by Judges in the previous law term, to draw attention to the backlog of cases, and to analyse the significance of the data presented. I do not propose to follow that custom this year.

I shall merely content myself with informing you that the state of business on the civil side is such that three civil courts in Port of Spain and one in San Fernando have been notified and that it now appears likely that a civil court will be available in Tobago in November.

On the criminal side I only wish to say today, that in pursuance of a consensus reached between the Attorney General and myself, the Registrar (and not the Attorney General's Department any more) is now vested with the sole responsibility of preparing the Calendar of Cases for trial before Judges at the Assizes and he will do so under my

general supervision after the Attorney General's Department has notified him of the cases that are ready for trial. A Calendar will be published well in advance of each session and made available to practitioners and interested parties.

As to the Court of Appeal, it would suffice for me to say, that owing to the large number of appeals which were ready for hearing, it was not possible to accommodate all of them in the October list. Priority however was given as before, to criminal appeals against decisions of Magistrates and in accordance with the prevailing practice, the last week in each month will as far as possible, be allocated for criminal appeals from the Assizes, unless of course, circumstances dictate otherwise.

The hours of sitting in this Court however, have been altered to 9.30 a.m. to 12 noon, and from 2.00 p.m. to 4.00 p.m. daily. These hours are now in conformity with the hours of sitting at the Assizes, but the hours of sitting in the Civil Courts will not be reconsidered until I have had an opportunity to discuss the matter with my brethren.

Since my appointment as Chief Justice on 14th July last, I have established Chambers in the Red House, which I propose to visit every morning, before proceeding to my Chambers at the Court of Appeal in Trinidad House. I have considered this arrangement essential at this juncture, because I have been appalled at what I have seen and observed here at the Red House.

I am convinced, that unless I give my personal attention to the immediate and pressing problems of the Supreme Court at this venue, and secure their solution with the utmost despatch, extremely regrettable results are likely to engulf us all, and cause irreparable damage to the efficiency and integrity of our judicial system.

Without seeking to identify any of these problems, I would merely advise at this stage that I have inter alia appointed a three man Committee of enquiry with the following terms of reference:

“to enquire into and report upon the structure, operation and administration of the Registry of the Supreme Court generally, and with special reference to:-

- (a) the adequacy of its office equipment, physical comfort and amenities;
- (b) the due safety and security of files, court exhibits, court proceedings and other documents;
- (c) the security and efficiency of its services to the Courts, the Judges, the legal profession and members of the public; and
- (d) the structure, organisation and adequacy of its staff.”

The members of the Committee are Mr. P.S. Ruiz, at present Registrar General but a former and very capable Deputy Registrar of the Supreme Court, Mr. R.V. McIntosh Clarke, a former Registrar of the Supreme and Federal Courts whose distinction and wide experience both as a Solicitor and Registrar are well-known and young David Boucaud who has established a reputation for hard work and efficiency among his colleagues and in the Court. Mr. Desmond Jacobs of the Registry will perform the duties of Secretary.

I am most anxious to have the Registry well-furnished, physically, administratively and otherwise to meet the enormous and ever growing needs of the Judiciary, the lawyers, the litigants and the members of the public, and my brothers and I, are most grateful that these very busy gentlemen have agreed to sacrifice their time, and two of them both their time and incomes, to perform this crucial task for the improvement of the machinery of justice in the Supreme Court.

The next matter to which I should like to draw attention is the revision of the Rules of the Supreme Court which has remained substantially, in limbo, since 1946.

It was somewhat of a sharp shock to me, to discover after my assumption of office, that efforts which were first initiated in early 1963 to revise these rules had not borne any fruit. And now with the abandonment some two weeks ago, of the effort of former Justice of Appeal Aubrey Fraser, into whose hands the revision was ultimately entrusted by former Chief Justice Sir Hugh Wooding, I felt it was imperative for me to act swiftly, to give this urgent and important task the highest priority.

I accordingly consulted with two senior members of the Bar and the President of the Law Society and devised a plan for the speedy revision of these Rules. The plan is a simple one, and entails the adoption of the pattern of revision followed by the framers of the Rules of the Supreme Court 1970, of the West Indies Associated States Supreme Court.

For the due execution of this plan I have appointed what I would describe as a high-powered ad hoc Rules Committee, and I have requested its Chairman and Members to let me have their first report by the end of November 1972.

The members of this Committee are as follows:-

The Hon. Mr. Justice Malone, Chairman
Mr. Tajmool Hosein, Q.C. (Vice-Chairman)
Mr. E.H. Wells, Q.C.
Mr. Dennis Boucaud, Solicitor & President
Of the Law Society
Mr. David Boucaud, Solicitor
Mr. G.A. Edoe, Deputy Registrar who will also
perform the duties of Secretary.

It is my fond hope-unduly ambitious as it may appear to be – that the new Rules of the Supreme Court will be placed in the hands of the printers early in the new year.

There have been repeated calls for dress reform in the columns of the daily press over the past years, but I must admit that I am not sufficiently conscious of the anxiety (if any) of either the members of the Bar or of the Bench to modify the present mode of dress in the Supreme Court.

To illuminate the areas of darkness in my knowledge of this subject I have appointed a Committee to go into the question, and their terms of reference, which may be described as sufficiently wide to embrace all forms of dress by all manner of people attending Court, are as follows:

“To consider and make recommendations on –

- (a) the change (if any) in the present forms of dress which might properly be introduced or allowed in the Supreme Court for Judges, Barristers, Solicitors and other officers of the Court
- (b) the forms of dress permissible for Jurors, Members of the Press, Witnesses and other persons having regard to the necessity for maintaining the dignity of and ensuring due respect for the Supreme Court and its proceedings.”

The members of this Committee are:

The Hon. Mr. Justice Scott – Chairman
The Hon. Mr. Justice Narine
Mr. R.C. Archbald, Q.C. (Vice Chairman)
Mr. E. Gaston Johnston, Q.C.
Mr George Dhanny, Barrister-at-law
Mr. Selwyn Richardson, Barrister-at-Law
(Secretary)
Mr. J.B. Wilson, Solicitor

Some of the minimum and immediate needs of the Judges, the Courts, the Legal Profession and the public are comfortable accommodation, reasonable conveniences and ordinary amenities, all of which have been sadly lacking for the longest while in the Red House. The gravity of the situation has not escaped me.

In fact it spurred me on to take prompt action with a view to relieving it and I am pleased to report that a Committee of Cabinet Ministers appointed for that purpose by the Prime Minister visited the Red House in late July and were led on a conducted tour of the Registry, the Courts, the Chambers, the Library of the Red House and such convenience as were available for inspection.

This tour was well worth the effort made to procure it, for I have since been advised that this Committee was fully convinced of the urgent need to provide us with speedy relief. Steps in that direction have already been taken and I am delighted to state that the main hurdle in the way of providing that relief has been removed.

Some four weeks ago I was able to secure the agreement of the Attorney General to surrender to the Judiciary that portion of the Red House which he now occupies, and since then feverish efforts have been made to find alternative accommodation for him and his staff.

I have high expectations that these efforts will bear fruit shortly and as soon as they do the way will be cleared for providing Barristers with a proper robbing and common room, Solicitors, with a place to interview their clients in comfort, Judges with better Courts and Chambers, Ushers with a rest and lunch room of their own, the Clerk to the Judges with safer and more commodious surroundings for himself and his staff, witnesses and litigants with comfortable accommodation and, speaking generally, the High Court will be furnished with such amenities and conveniences as would befit its dignity, status and prestige. It is my prognostication, that long before we meet again for the opening of the next law term, my expectations in the direction indicated will be more than fulfilled.

I turn now to a subject that has been very dear to my heart for many a year, and it is the holding of a Law Conference. I believe it is true to say, even though I state it with much diffidence, that the lawyers and jurists of Trinidad and Tobago have done little, if any

thing, to reform, develop and enrich either the laws we have inherited, or those which have been enacted in the course of our history. Moreover, we have consistently neglected over the years, to exploit opportunities for our intellectual nourishment and the improvement of our legal system, and it is my firm conviction that the Judiciary must now take the lead in organising a law conference in co-operation and consultation with both branches of the legal profession.

The vast benefits which are bound to accrue to lawyers, the Judiciary and the society at large from such a conference, are too obvious to require any demonstration from me, and I earnestly trust that you will all come forward with eagerness and enthusiasm to assist in making this Conference which I am proposing for the Easter Vacation next year, a resounding success.

To this end, I have appointed a steering committee to settle the preliminaries for holding such a Conference which I suggest should be organised along the lines of the Commonwealth Law Conference.

The steering Committee will consist of the following persons:

The Hon. Mr. Justice Rees (Chairman)
The Hon. Mr. Justice Hassanali
Mr H. Hudson Phillips, Q.C. (Vice-Chairman)
Mr. Frank Misir, Q.C.
Mr. Selwyn Richardson, Barrister-at-Law (Secretary)
Mr. A. Roberts, Solicitor
Mr. S. Capildeo (Junior) Solicitor, Asst. Secretary

I have requested the Chairman to submit a draft programme to me before the end of October, and it is my expectation, that the final plans for the Conference, will be fully laid soon thereafter.

Time will not permit me to deal in detail with all of the several plans and proposals which I have already formulated and set in motion. I will accordingly refer to the more important of them and indicate briefly what has been done or is being proposed.

The Magistracy.

(a) District Courts

I have secured the agreement in principle, of the Attorney General, for the establishment of District Courts in the Country, which it is proposed to vest with a jurisdiction at common law and, to a limited extent, one in Equity. The main objects of this proposal are to relieve the High Court of some of its burdens, to establish what I might call for want of a better term, a nursery for High Court Judges and to modify, if not discontinue, the practice of recruiting such Judges almost exclusively from the Attorney General's Department.

In addition, the establishment of such Courts will give outstanding Magistrates and those with potential a real opportunity for promotion and eventual elevation to the Bench of the High Court and in the event, there will be removed I hope, from their professional lives a perennial source of irritation and frustration.

(b) New Magisterial Courts.

I have already made and repeated past representations to discard the Mayaro and Tunapuna Courts as unsuitable and I have reason to hope that new Court houses will begin to be erected in these districts early next year.

(c) Additional Magisterial Courts.

Agreement in principle has been reached with the Attorney General for the establishment of additional courts in San Juan and St. James and this will be pursued further with the relevant authorities.

(d) The Magistracy St. George West.

Soon after I assumed my office, it was brought to my attention that the sale and purchase of documents in this Magistracy had become a thriving and lucrative business. In addition, there was much cause for concern over the procedure adopted for the granting of bail and the execution of bail bonds. In consequence of the action which I recommended, the Governor General appointed Mr. Justice de la Bastide to enquire into and report on this ugly state of affairs in this Magistracy, and he has already begun to do so.

The Machinery of Justice and Jurisdiction of Magistrates in the Country

Magistrates, in my opinion, have for too long been, a neglected breed of judicial officers. Moreover, the Courts in which they work, the absence of amenities which are reasonable and the lack of proper security for Court and other important documents, convinced me that a comprehensive enquiry into the machinery and administration of justice in the Magistracy, the jurisdiction of Magistrates, the issue and control of Commissions to Justices of the Peace, and related matters had become essential and in the result a

Commission of Enquiry was appointed by the Governor General for that purpose consisting of Mr. Justice de la Bastide, Chairman, Dr Aeneas Wills, Barrister-at-Law and Mr. T. Malcolm Milne, Solicitor. Secretary to the Commission is Mr. Errol Matthews.

I am grateful to these gentlemen for undertaking this heavy, but I trust interesting assignment, and I feel certain that we will get a report from them of the utmost value and significance.

The Matrimonial Proceedings and Property Act 1971

This Act was assented to on 21st February 1972, but the Governor General's Proclamation for its operation has not yet been made. This is dependent on two things:(a) the enactment of a new Evidence Act and (b) the making of Rules under the Act to ensure its due operation and the achievement of its objects.

I have been actively pursuing the matter since my assumption of office and I am happy to report, that a draft of the Rules has now been printed and will be considered by the Rules Committee shortly. The enactment of the new Evidence Act however, is a matter for Parliament and I propose to exert such efforts as are open to me to expedite its consideration and passage into law.

Law Reform

Both Law Reform and the Revision of the Laws of the Country are now in competent hands since the appointment of Mr. Cecil Kelsick, Q.C. as Chairman of the Law

Commission and the secondment of an expert to this Country by courtesy of the United Nations. I refer to Mr. Cosie Harris.

He is a West Indian scholar of repute and served with distinction in the now defunct Federal government and lately in Guyana under the auspices of the United Nation. In my opinion we are most fortunate to have obtained his services and we may now confidently look forward to some action by these two gentlemen in this sadly neglected area.

But this prospect, should not be allowed to engender complacency in members of the legal profession. Notwithstanding the fact that there is now a Law Reform Commission, with which is associated two competent and experienced lawyers, it must never be forgotten that the individual lawyer will always have an important part to play in law reform. And he will be false to his profession and its great traditions if he allowed zeal for his clients and the allurements of fat fees to inhibit him from playing his part in promoting law reform.

To emphasize the point I am seeking to make I can do no better than to quote from, and endorse without qualification, the sentiments contained in a paper which was jointly submitted to the Commonwealth Law Conference in 1965 by Derek P. Hilton and R.E. Megarry of England, who respectively described themselves then as President of the Law Society and Bencher of Lincoln's Inn. They stated:-

“But a weakness of much law reform is the absence of effective means of putting right the small defects, each too small to be the subject of a committee and a report, but collectively a series of traps for unfortunate members of the

public. Practitioners can perform an immense service to the community by collecting these points as they arise and reporting them to some central body which should be brought into being for this purpose. In doing this, they do something which no body of law reformers, however eminent, can hope to do, so various is the effect of the law on the infinite circumstances of life.

As testers, lawyers can comment on reports of committees and other proposals for law reform as they emerge; and for similar reasons they can assay the proposals with a collective range of experience far beyond that of any committee. Is it too hard a judgment to say that the profession at present discharges these two duties inadequately? For us, such words seem euphemistic.”

Only passing reference can now be made to subjects like Professional Discipline of Barristers, Acting appointments, the employment of retired officers, Legal Aid, the high cost of litigation, the establishment of a Matrimonial Court, the Law Library, improvements in accommodation in the Court of Appeal, the employment on contract of practising lawyers as temporary Magistrates, the employment of Security officers for the Red House, the Court of Appeal and the Supreme Courts in San Fernando, and the steps taken to stop the use of the Judges’ corridor in the Red House as a public thoroughfare.

All these are matters on which I have already taken some action and the results thereof will become known to you in the course of this term.

In conclusion, may I say how grateful I am for the receipt of the expressions of good will, support and co-operation from my brothers, from the members of the Bar, from the members of the Law Society, from several firms and organisations and literally, from hundreds of citizens all over the country. These expressions have surpassed my wildest

expectations and I must confess that I have felt considerably heartened and encouraged by them. But may I take the opportunity today of repeating in this Hall of Justice what I said in the Borough of San Fernando recently-

I have assumed the office of Chief Justice at a time when the inviolable principle of justice according to law is under constant attack, when some of the results of justice according to law, confuse and befuddle the man-in-the-street and when the administration of justice itself, is facing serious and disturbing challenges.

I shall accordingly have my hands constantly full. But with the co-operation and support of the legal profession and my brothers, of which I have been assured, I am determined not merely to restore what has been lost, but to strain every sinew to preserve and enhance the image of justice in the Country, to enrich its quality in every direction, and to make it a many splendoured thing for all our citizens. It is therefore with much confidence, that my brothers and I call upon all lawyers in our midst, who we acknowledge with warmth, as our brothers in the law, as the “legal housewives” of this vibrant community, and as “the hub around which the intricate wheel of justice revolves” to join with us in a united and sustained endeavour to enrich the quality of justice according to law to such a degree and to elevate our mode and system of justice in the Country to such a lofty pinnacle, that all our citizens will come to regard the dispensation of justice in our Courts with affection and admiration and what is more, look upon those who dispense and participate in it, with respect and reverence.