

**ADDRESS OF THE HON. SIR ISAAC E. HYATALI, CHIEF JUSTICE,  
AT THE OPENING OF THE LAW TERM ON 3 OCTOBER, 1974**

**INTRODUCTION**

Today's inter-religious service and ceremonies inaugurate the 13<sup>th</sup> law term of the Supreme Court of our country and mark the end of the second law term under my administration.

**SERMON AT OPENING OF TERM 1972**

Those of you who attended the service conducted by the Lord Abbot of Mount St. Benedict Monastery on 3 October 1972 will recall that in his challenging and inspiring sermon he enjoined us, inter alia, to remember that –

“to render justice demands and presupposes on the part of judges, magistrates and counsellors a passionate commitment to the human rights of all citizens and an unselfish devotion to truth – a commitment and devotion which leave no room for interests that corrupt our human dignity, or fears that make us cowards.”

I think you will agree, that this exhortation found ample expression in the religious exercises this morning. The prayers, the readings, the blessings, and the sermon – the first to us by the Moderator of the Presbyterian Church – succeeded admirably in underlining the Lord Abbot's injunction and in impressing them indelibly on our minds. We are indeed grateful.

**EXPRESSION OF THANKS**

Our warmest thanks are due and we tender them gladly and sincerely to the Rev. Fr. Michael Hande for conducting the proceedings at the Church, to His Grace the Most Rev. Anthony Pantin, Archbishop of Port-of-Spain for his blessings and support, to His Lordship the Bishop of Trinidad, the Rt. Rev. Clive Abdullah, for attending and joining hands with us in this Service and to Pundit Simbhoonath Capildeo. Haji S.M.S. Rahaman, and the Rev. Allan Parkes for their stirring prayers and invocations.

A like measure of thanks, we tender to the Police Service and the Regiment for adding the impressive colour and pageantry to the ceremony. We were indeed impressed by the smart and efficient display to which the Police at the Church and the Regiment in the precincts of the Hall of Justice treated us this morning.

#### **THE LAST TWO TERMS**

The last two terms have spanned two stimulating and bustling years of judicial and legal activity during which I am delighted to say, I received the generous support, goodwill and cooperation of my brother Judges, the learned Attorney General and Minister for Legal Affairs, the Hon. Basil Pitt, the Chief Magistrate and his brother Magistrates, members of the Bar, the officers and members of the Law Society and the Registrar and staff of the High Court and Court of Appeal.

I acknowledge them today with much gratitude. Without them it would have been impossible for me to bear with equanimity, as I have endeavoured to do, those burdens and responsibilities which adhere so fiercely to the office of Chief Justice.

#### **VISIT OF LORD DENNING, M.R. AND LAW SEMINAR**

An eventful and significant year lies ahead of us. We move into it after enjoying firstly, the honour of receiving in our country Lord Denning, the distinguished Master of the Rolls of England and his charming spouse, Lady Denning; secondly, the pleasure of listening to his two learned and interesting lectures on “The Price of Freedom” and “The Common Law Transplant”, in honour of the memory of the late Sir Gaston Johnston, Q.C.; thirdly the intellectual stimulation of a law Seminar in July last, the highlights of which were the proceedings of the moot court of appeal over which our distinguished Governor-General, Sir Ellis Clarke, T.C., K.C.M.G., presided and in which the participants were students from the law school and articled clerks; and finally, the debate on and the overwhelming support given to the proposals for the retention of the Judicial Committee of the Privy Council.

#### **VISIT OF DIRECTOR OF PUBLIC PROSECUTIONS OF ENGLAND**

During the current term we shall have the pleasure of welcoming to this country the Director of Public Prosecutions of England, Sir Norman Skelhorn and Lady Skelhorn and if I may venture to make a prediction, I would say the added pleasure of hearing three stimulating lectures by him on the 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> October on “The investigation of Crime” at the Town Hall, Port-of-Spain, “Freedom Within the Law” at the Town Hall, San Fernando, and “The Role and Functions of the Director of Public Prosecutions” at the University of the West Indies, St. Augustine.

#### **VISIT OF DR. T.O. ELIAS, CHIEF JUSTICE OF NIGERIA**

This will be followed early in the New Year by a visit from the distinguished and learned Chief Justice of Nigeria, Dr. T.O. Elias, who will deliver two lectures (on subjects to be notified) in honour of the memory of one of our most distinguished lawyers and Parliamentarians, the late Sir Courtenay Hannays, Q.C.

#### **CARIBBEAN LAW CONFERENCE 1975**

The term will end with a Caribbean Law conference at the end of July 1975 which I am happy to announce has received the full support of the Organisation of Commonwealth Caribbean Bar Associations at their last meeting held over the weekend in Port-of-Spain.

Efforts are being made to attract to it the attendance of the Lord Chancellor of England, the Chief Justices of Canada and the United States of America, Judges and lawyers of the Caribbean Commonwealth and to invite contributions on topical legal subjects and problems, from eminent lawyers and scholars. It promises to be the most significant event in the legal history of the Caribbean and on behalf of the organisers headed by their indefatigable Chairman, Rees, J., I invite the legal profession here and in the Caribbean to give it their fullest support.

#### **NEW LEGISLATION**

Well before the term closes, I hope, there will be introduced into our Statute Books the County Courts Act, the Legal Profession Act, the Council of Legal Education Act, the

Law Reform (Miscellaneous) Provision Act, the new Rules of the Supreme Court, and the amendment of s.66 of the Supreme Court of Judicature Act 1962 and the Debtors Ordinance Ch.6 No.3 to invest the Registrar with effective jurisdiction to deal with Judgment Summonses.

#### **COUNTY COURTS**

Under the authority of the proposed County Courts Act it is intended to establish County Courts in Port-of-Spain, Arima, Chaguanas, and San Fernando and to give both a civil and criminal jurisdiction to County Court Judges. A preliminary draft of a Bill has been formulated and it is expected that the Bill will soon be put out for public comment.

#### **LEGAL PROFESSION ACT**

The Legal Profession Bill is now in the hands of the Draughtsman and ought to be published in the very near future for public comment. Members of the legal profession will have to make up their minds finally about fusion and other fundamental questions affecting the legal profession, soon after its publication, if not before. The discussions and debates which have taken place hitherto on fusion have not yielded a consensus, and it seems to me that if the legal profession cannot or will not agree on it then the duty will devolve upon the administration to promote the introduction of such measures as it considers to be in the best interest of the public, the legal profession and the cause of justice in the country.

#### **COUNCIL OF LEGAL EDUCATION ACT**

The main purpose of the proposed Council of Legal Education Act is to give legal effect to an agreement between heads of Governments in the Caribbean Commonwealth to establish and maintain the Professional Law School at St. Augustine.

The first group of its graduates are due to come out towards the end of 1975 armed with Certificates which would entitle them to practise in both branches of the legal profession here.

### **PROFESSIONAL INTEREST IN LAW SCHOOL**

Existing members of the legal profession have taken some interest in the students at this professional law school but I regret to say not the degree of interest that is likely to bring useful benefits to these students in meeting the problems of professional practice.

It is essential in my view, for the maintenance of the reputation, the integrity and the high standards of the legal profession, for students to be given regular opportunities while in training, to communicate, consult with and fraternise with practising members of the legal profession, magistrates and Judges at all levels. Let me illustrate what I mean.

### **RULES OF PROPER PROFESSIONAL CONDUCT**

The ten sacred and inviolable rules of proper professional conduct in relation to clients, the public, the Court, fellow lawyers and the profession itself are these:

1. A lawyer must never betray his client's confidences.
2. a lawyer must always advance his client's interests before his own.
3. A lawyer must be unremitting in his endeavours to assist his client rapidly and if possible without resort to litigation.
4. A lawyer must never assist a client to commit a dishonest or dishonourable act.
5. A lawyer must not act for a client where the interests of that client may conflict with those of another client or where the lawyer's own personal interests may be involved.
6. A lawyer must be meticulous in handling the moneys and securities of a client. He must always keep his client's

moneys separate from his own and never use the moneys of one client for the purposes of another.

7. A lawyer must always honour his undertaking.
8. A lawyer must never deceive the Court.
9. A lawyer must always be as frank with a fellow lawyer as he can be without betraying his client's cause and must accept special responsibilities towards overseas lawyers through whom he may be instructed.
10. A lawyer must always observe in spirit as in the letter the ethical rules of the profession, by which the reputation of all has been built up and is safeguarded. <sup>(a)</sup>

#### **PRACTICAL APPLICATION OF RULES OF CONDUCT**

Now it is one thing to be taught these rules in a lecture on professional ethics and to pass thereafter, even with honours, an examination on this subject. But it is quite another thing, as we all know, both to apply them properly in practice, to the hard and realistic facts of professional life, and to determine the manner and the method of conducting one's self in given situations, so as to ensure, as is stipulated in rule 10, observance in spirit as in the letter, the ethical rules of the profession by which the reputation of all has been built.

These principles can only be inculcated successfully in the fledglings at the law school through opportunities extended to them for the communication, association and fraternisation for which I plead.

(a) See: *Sir Thomas Lund, C.B.E. – Paper on Legal Ethics, 1965*

### **FRATERNISATION PROPOSALS**

Those of us who fall short therefore in extending these opportunities to them must be held guilty of neglect which is inimical to the true and best interests of the legal profession, the public, the courts and ultimately the due administration of justice. Our sins of omission in this respect call for immediate correction.

I therefore invite you, Mr. Archbald and Mr. Wilson, to get your respective organisations or groups together to formulate in consultation with the Deputy Director of Legal Education proposals for the speedy repair of this serious and grave omission and to do so with that sense of urgency which the situation manifestly demands.

### **LAW REFORM ACT**

The proposed Law Reform (Miscellaneous) Provision Act, I am relieved to state, is being designed to embrace all those recommendations of the Wharton Law Reform Committee, which can conveniently be included in the Act with, of course, such amendments to them as may be necessary, to bring them up to date.

### **DISTINCTION BETWEEN FELONIES AND MISDEMEANOURS**

Among its provisions there is likely to be included one which, if accepted by Parliament, will abolish the archaic and troublesome distinction between felonies and misdemeanours.

### **126 ABSCONDERS**

This would be a most progressive and useful step forward for many reasons. One of them is that it will open the way for the Court to try in their absence, some 126 persons who were released on bail from time to time over the past seven years or more but who failed to appear to stand their trials when required to do so.

### **SERIOUS OFFENCES**

The offences charged against three persons are not by any means minor. They are in the main serious ones. In fact, some of them are the most serious ones against our laws.

They make up a formidable list – Rape, Armed Robbery, Shooting with intent, Wounding with intent, Burglary, Store-breaking and Larceny, Arson.

#### **WARRANTS OF ARREST**

Warrants have been issued by Judges for their arrest but notwithstanding the exertions of the Police, they remain unexecuted. They present a forbidding task for law enforcement officers and agencies and constitute a cause for grave anxiety in our criminal jurisdiction.

#### **THE INFERENCES**

I would say nothing more at this juncture except this: The inferences to be drawn and the lessons to be learnt from the fact that 126 persons, released on bail for grave and serious offences alleged against them, have failed to appear to stand their trial when required to do so, are quite obvious but in particular they emphasize a cardinal and well-established principle in the criminal law that notwithstanding the presumption of innocence, the more serious the offence with which a person is charged the more unlikely it is that he will appear to stand his trial if he is released on bail. There is a grave imbalance in this situation and it calls for urgent corrective measures.

#### **POLITICAL VIEWS IN COURT**

While on the subject of criminal law I think it would be appropriate to draw attention in the public interest and for the benefit of those who appear in the Criminal Courts as advocates, to an important decision of the English Court of Appeal in *R. v King and Sampkins* (1973) 57 Cr. App. R. 696. In that case Lawton, L.J. expressed in categorical terms the injunction that –

“Courts are not to be used as sounding boards for anybody’s political views. Counsel should refuse to air an accused’s political views and an accused who attempts to air them should be stopped.”

The trial judge actually allowed counsel in that case to air the political views of the accused while addressing the Court in mitigation of sentence and it was against that occurrence the injunction of the Court was directed.

The statement itself which the Court of Appeal described as a political manifesto on classical anarchical lines contained a most revealing philosophy. A more dangerous expression of opinion it was difficult to imagine, said the Court. It speaks for itself and I therefore quote it without comment. It said:

“the police uphold the laws which in turn ensure the safety of the capitalist exploiters and their system. Therefore the police stations and Courts are legitimate targets for acts of violence which are necessary to bring about badly needed changes in the structure of our society. Other legitimate targets are government ministers, officials and buildings, prisons and prison staff and troops. I also feel that it is acceptable to carry out armed robberies in order to finance such acts. I do not regard myself or anybody else who participates in this type of violence against selected and legitimate targets as criminal. To accept this is to accept that the establishment is right and it most emphatically is not.”

#### **THE NEW RULES OF THE SUPREME COURT**

I had hope that the new Rules of the Supreme Court which the legal profession has considered and which were presented and discussed at the Law Seminar in July would have been in operation from January next but a breakdown of certain machinery at the Government Printery and the difficulty which has been experienced in obtaining replacements promptly, have delayed matters somewhat.

I was advised only yesterday however, that some of the required machinery has arrived and that efforts will be made to meet the deadline indicated.

#### **THE CHAMBER COURT**

May I say a word here about the Chamber Court. It is with a sigh of relief I inform you that it has now been transferred to more comfortable surroundings. To relieve the chaos which has been attending the Chamber Court for years, arrangements are being made to transfer to the Registrar as from November, the hearing of all judgment summonses. He will hear them on Fridays at a venue to be notified. Hence the proposed amendment to the Debtors Ordinance and s.66 of the Supreme Court of Judicature Act 1962 to which I referred.

### **UNCONTESTED PETITIONS**

This transfer however will not be sufficient to relieve the pressures on the Chamber Court lists. It is therefore proposed further to transfer all uncontested divorce petitions and workmen's compensation cases to a Judge in charge of the civil list who, under the new arrangement, will normally hear these cases on Fridays. With these matters taken away from the Chamber Court Judge it is expected that he will not only be able to deal with a much larger number of summonses whether they be new or adjourned, but that he will have more time to deal with assessments of damages, custody applications and other contested matters.

### **PRACTICE DIRECTION**

A practice direction to this effect will be issued shortly. Under the new arrangements, practitioners will not be allowed to stipulate or determine the dates on which they wish to have their summonses heard. Instead dates will be given by the officer in the Registry which are convenient. In urgent cases however, a date may be stipulated in the summons by the practitioner but this will be subject to the approval of a senior officer of the Registry who will be duly designated.

### **LEGAL AID**

The introduction of a new legal aid scheme continues to elude the society as grievously as unity among members of the Bar continues to avoid them. But a proper system of legal aid cannot be implemented without the active participation therein by a body that could speak with authority on behalf of the members of the Bar.

### **UNITY IN THE BAR**

No one wishes to have a legal aid scheme which is administered exclusively by the Executive arm of the Government. The Executive itself, in my estimation, would not wish and has no desire to do so. Government has already committed itself in principle to the provision of a sum of money to subsidise the scheme and I should have thought that thus commitment would have spurred the Barristers to put their house in order to take

advantage of the wonderful opportunity offered to them to serve the indigent and disadvantaged members of our society.

A useful paper on it was presented to the law seminar but the vital questions still remain – who is to represent the Bar and who can speak authoritatively on their behalf? Is it too much to hope, that the rapid march of events projected in this law term, will achieve the unity for which the Judiciary earnestly hopes and the young Barristers steadfastly yearn, or will it be left to the Legal Profession Act to heal the breach? If the latter then the sooner it is enacted the better.

#### **COMPLAINTS AGAINST BARRISTERS**

Following the amendment of s.77 of the Supreme Court Judicature Act and the validation of the Barristers (Disciplinary) Proceedings Rules made by the Rules Committee on 23 June 1965, the Rules were further amended to enlarge the membership of the Committee to twelve. The members of this Committee are now as follows:

Chairman: Mr. A.T. Warner, Q.C., Solicitor General  
Mr. Frank Misir, Q.C.  
Mr. Edgar Gaston Johnston, Q.C.  
Mr. Bruce Procopé, Q.C.  
Mr. Selby Wooding, Q.C.

Mr. Kenneth Lalla  
Mr. Neville Hordatt  
Mr. Martin Daly  
Mr. Stephen Norman  
Mr. George Dhanny  
Mr. Selwyn Richardson

Secretary: Mr. George Benny, Registrar of the Supreme Court

This Committee has performed reasonably well. Out of 33 complaints which were placed before it after its constitution 18 were disposed of up to 16<sup>th</sup> July 1974. The remaining 15 are awaiting determination and it is to be hoped that these will be disposed of as soon as possible.

#### **REPRESENTATIONS**

Representations have been made to me by individual Barristers and ad hoc groups from time to time to place discipline exclusively in the hands of practising Barristers, but I have said to them and I now re-affirm that while I am most willing to do so, I shall not in the present circumstances take any steps in that direction unless and until I am satisfied that there is a body which can speak with authority on behalf of the whole profession.

#### **THE CIVIL LIST**

I turn now to the state of the Civil List. The Criminal List and the Court of Appeal list give no cause for concern but the Civil List does. Because of the concentration we were obliged to make for the last two years to dispose of the alarming arrears in the criminal lists, the civil list inevitably suffered from some neglect, and now gives cause for much concern. The position has become aggravated by two developments – (a) the new jurisdiction given by the Matrimonial Causes Act 1971 which became effective earlier this year and (b) the incredible rate at which actions are being filed in the Supreme Court.

#### **THE ARREARS**

Between January to June this year as many as 1834 civil actions were filed in the Registry at Port-of-Spain and 671 in the sub-Registry at San Fernando. This roughly, is an average of 415 per month or 40 per day over a five day week. In addition to this, 466 matrimonial causes were filed during that period in Port-of-Spain and 146 in San Fernando. The arrears in respect of matters ready for trial are considerable – 716 actions and 383 matrimonial causes in Port-of-Spain; and 365 actions and 118 matrimonial causes in San Fernando.

To dispose of this overwhelming number of cases with the expedition normally expected, is impossible. A radical re-organisation is called for. The establishment of the County Courts will relieve the civil lists considerably but not sufficiently enough to avoid the charge that delayed justice is actually a denial of it.

Pending the introduction of the Rules of the Supreme Court when it is hoped that the method of dealing with cases on the lists will in fact be radically re-organised three expedients have been devised to improve the situation.

### **THE CIVIL COURTS**

The first is that three Civil Courts will sit regularly in Port-of-Spain until further notice. The second is that Judges in the Civil Courts will sit for three successive months at a time and not for one month only as in the past. The main purpose of this new arrangement is to enable each Judge to dispose of a greater number of cases per month than he is able to, under the present system. Under it he will be able to plan and organise his work far more effectively, and in particular he will no longer be compelled to postpone cases during the last week of every month to clear the way for his assumption of duty in a Criminal Court. This re-organisation will have its corresponding effects on Judges allocated to the Criminal Courts but I feel certain that the increased burdens that will descend on all Judges in the result will be accepted as unavoidable and will be borne by them with equanimity.

The third expedient is one that will not be popular with those members of the Bar who monopolise the lists in the Court. It concerns adjournments. There are far too many young Barristers of merit and promise who are finding it more and more difficult to get briefs at the Bar. Adjournments therefore will have to be strictly controlled and for this purpose I commend for the adoption by my brothers in the High Court here, the words of Ungoed-Thomas, J of the High Court in England. In making a plea to Seniors at the Bar to give the young barristers a chance, he said -

“Barristers should not have cases adjourned just to suit their own convenience. If counsel can’t take a case, it is his duty to return the brief and the solicitor’s duty to see that that other counsel are briefed instead. There are plenty of counsel available – and indeed it is the way young counsel get their opportunities and have their chance to develop. It was intolerable when counsel sought to adjourn the hearing of a case so as to keep it for himself. I do not look with any sympathy on an application for an adjournment in circumstances of this kind.”

#### **RED HOUSE ARRANGEMENTS**

Efforts have been made to make the surroundings, the Chambers and the Courts in which Judges and the lawyers perform their exhausting and difficult labours more comfortable and I trust that practitioners will so find them.

I express my own thanks and those of my brothers to Mr. Attorney for his painstaking and vigorous efforts to ensure the execution of the improvements and I am sure that you will wish me to do the same on your behalf.

Much is still lacking, but the situation will be kept under constant review. I feel sure that further efforts will be made to complete what has begun and, in particular, to execute the work necessary to exterminate the intolerable nuisance created by the coo-ing inhabitants of the central edifice of the Red House.

#### **TOBAGO**

I am advised that approval has been given for the construction of a new Court in Tobago on the same site on which the old Court stood and that the machinery for commencing operations has been set in motion. Representations have been made for the erection of a new Hall of Justice in Port-of-Spain and I trust that Mr. Attorney will be in a position to say something in that connexion.

The plea for such a Hall is several years old. I see in this audience one who will bear me out on this, for he himself has repeatedly advocated it over the years with much earnestness from a platform which is not available to many of us.

To cope adequately with our duties and responsibilities it is essential for us to have at the very least, ordinary comforts and amenities. It is well known that we do not have them now and that they have been lacking for more than a decade.

Mr. Attorney, Scott, J. and I had the opportunity of surveying the Red House when we were struggling desperately to devise a plan to make the best use of the limited accommodation available. That survey convinced us, beyond peradventure, that a new Hall of Justice had now become an absolute necessity.

Let me express the earnest hope therefore that as we travel on the road leading to the acquisition of edifices for the better administration of justice, Scarborough and Port-of-Spain will be marching side by side with at least equal prospects.

### **CONCLUSION**

In store for all of us in the current term will be opportunities to face and deal with interesting assignments as well as intricate and stimulating legal problems. The quality of our performance and yours will depend in the main on the manner in which and the extent to which we support and cooperate with each other in discharging our respective duties in the cause of justice.

In my address to the Council of the Organisation of Commonwealth Caribbean Bar Associations on Sunday last I made the point to them and I should like to repeat it here that your responsibility in this regard was heavier than that of the Judge. In support of it I relied on this quotation –

“the Bar cannot afford to stint its support to the Bench for in a real sense the judgments are written by judges but the law is made by lawyers.”

This opinion, which I fully and respectfully endorse, was expressed by Sir Hartley Shawcross, a former Attorney General of England. In expressing it however, Sir Hartley was re-echoing the words of that great American Jurist, Oliver Wendell Holmes, when in posing the question – what a court would be unaided?, he answered it himself by saying, “the law is made by the Bar even more than by the Bench”.

I commend these words of wisdom to you. I would also commend for our constant guidance, as we proceed to perform our respective duties during the term, the invaluable precepts contained in another part of the inspiring sermon delivered to us in 1972 by the Lord Abbot of Mt. St. Benedict Monastery. He said this:

“The fulfilment of justice implies... that the function of administering justice finds its irreplaceable foundation in the unsullied integrity of a personal life, a consummate knowledge of up-to-date jurisprudence, a humane and christian effort to deal fairly and expeditiously with the cases brought to court for decision.”

To the achievement of that ideal – the fulfilment of Justice I wish for all of us Godspeed.

On behalf of my brothers and my own behalf, I extend a warm and sincere welcome to Cross, J. and Roopnarine, J. who are taking part in these proceedings for the first time as Judges of the High Court.

Cross, J. has already received his welcome from the members of the legal profession and I would ask that what you have in store for Roopnarine, J. be deferred until tomorrow morning when he takes his seat in one of the Civil Courts.

